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ABSTRACT

This dissertation examines the early modern Japanese legal practice of explaining laws with narratives drawn from the cosmological and anthropological theories of the archipelago's varying religious traditions. From the formation of Tokugawa law in 1603 until Matsudaira Sadanobu's Kansei reforms at the close of the eighteenth century, lawmakers and their critics relied on cosmological and anthropological narratives to explain and justify their attempts to make Tokugawa law and, particularly in moments of crisis, reframe it. While the use of religious narratives occurred consistently over a two-hundred-year period, legal arguments based on cosmology were not a pervasive feature of Tokugawa law. Instead, lawmakers generally used these narratives in a specific context— to support or corrode the authority of the constitutional laws that framed the Tokugawa legal order.

Evaluating Tokugawa legal cosmology offers new perspective on a conundrum found in Tokugawa law; the cosmological narratives that appear in Tokugawa law varied widely over the course of the Tokugawa period, even as the substantive laws that they supported remained remarkably consistent. Tokugawa law, and particularly the Tokugawa constitutional laws, presented an appropriate forum to contest the political authority of the Tokugawa government. Here, interested actors constantly contested political authority in Tokugawa law in furtherance of personal or group interests. Legal cosmology served as an ideological battleground precisely because there was no “cosmological consensus.”

In analyzing the intent behind the production of narratives of Tokugawa legal cosmology, this dissertation makes the case against totalizing generalities about the relationship between Tokugawa religion and Tokugawa law in general or during any particular period. The story of Tokugawa legal cosmology is a story not simply of a singular “Buddhism” in conflict with a

singular “Confucianism” but of a myriad of particular Buddhisms and Confucianisms deployed in the service of legal rationation against themselves and one another at particular times and over the course of time. Focusing on periods of crisis, this work considers the articulation of Tokugawa law at times when social and political conditions demanded new responses from both government and law. Looking closely at laws issued in these historical contexts, instead of finding common themes we find tactical reimagination by interested actors, and instead of shared cultural understandings we find idiosyncratic interpretations that reflect multiple, open conversations occurring simultaneously. These narratives offer a new viewpoint from which to understand social dissensus, and particularly the types of arguments that shaped Tokugawa law.

The competition among legal cosmologies found across the Tokugawa period calls into question totalizing characterizations of Tokugawa law that remain common in legal scholarship and are still commonly used to explain the impact of Tokugawa law on Japanese religion. The constant conflict between contrasting legal cosmologies belies the idea that Tokugawa law was static across the period, or that Confucianism held a preponderant intellectual influence over Tokugawa jurisprudence. At the same time, the ebb and flow of different strands of cosmological speculation calls into question alternative teleological narratives of Tokugawa law.

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CHAPTER I LEGAL COSMOLOGY AND TOKUGAWA LAW

Even though the world has become decadent, the wise man subscribes wholly to the three teachings.

Miura Jōshin, *Keichō kenmonshū* (1614)

The period from the Keichō and Genna eras until the Genroku and Kyōhō years was an enlightened age of supreme peace, sincere courtesy and warm magnanimity. Anonymous samurai, *Seji kenbunroku* (1816)

Looking backwards from the early nineteenth century denouement of Japan's Tokugawa period, Buyo Inshi, the pseudonymous samurai author of the *Seji kenbunroku*, described the beginning of the Tokugawa rule two hundred years before as the golden age preceding a period of inevitable decline. In *Seji kenbunroku*, the early seventeenth century was a period of peace and prosperity, when the still-virile warrior class enforced a collection of well-devised laws laid down initially by the "Great Lord," the dynastic founder Tokugawa Ieyasu. Ieyasu "concentrated all his efforts on enabling the people to live in peace and security and showed compassion to those without families to rely upon."¹ As time passed under the military dynasty that Ieyasu established, the warrior-turned-bureaucrat samurai class would grow increasingly lax morally and professionally—increasingly becoming prone to bribery and favoritism—and fail to follow or enforce the laws of either the first shogun or his successors.² By the author's lifetime, public morals had declined to such a state that laws were ignored almost as soon as they were written.³ Buyo Inshi's attribution of the successes and failures of Tokugawa rule to adherence to

¹ Inshi, *Seji kenbunroku* ("Record of Things in the World I have Seen and Heard"), 389.

² *Ibid.*, 389-392.

³ *Ibid.*, 91-94.

the constitutional laws provided by Tokugawa Ieyasu was a theme common to both official and unofficial texts of the late Tokugawa period.⁴

While the valorization of the deified founder Ieyasu's lawmaking was a common characteristic across the two-hundred-fifty-year rule of the Tokugawa clan, Buyo Inshi identified different philosophical influences on Ieyasu's lawmaking from those that appeared in contemporary accounts and accounts from Ieyasu's own advisers. *Seji kenbunroku* describes Tokugawa Ieyasu as deeply reliant on Confucian ideals as the basis for state building, recalling that Tokugawa Ieyasu "renewed the state in accordance with the central teaching of the *Great Learning*."⁵ According to Buyo Inshi, Ieyasu's enlightened rule also lay in large part in knowing when to set aside the shogun's personal belief in Buddhism: "although the most honorable Divine Lord always had faith in the Buddhist Way, he never allowed it to interfere with the way of the bow or with government."⁶ In contrast, in *Keichō kenmonshū* ("Collection of Things Seen and Heard in the *Keichō* Era"- 1614), a work published within Ieyasu's lifetime, Miura Jōshin presents life during the *Keichō* era (1596-1615) as already decadent and troubled. Miura describes the work of the Tokugawa government during this formative period of early Tokugawa rule in accordance with the intellectual framework of the three teachings (*sankyō*)— a syncretic ontology combining Buddhism, Shintō, and Chinese thought—rather than primarily by Confucian principles.⁷ Both Miura's work and Ieyasu's own laws justified early Tokugawa lawmaking in accordance with

⁴ This theme will be described in more detail in Chapters 4 and 5 with reference to works like Matsudaira Sadanobu's *Igaku no kin* and the work of unknown provenance *Tokugawa seiken hyakkajō*. From the outset, readers should recognize that Tokugawa authorities censored any work that described Tokugawa Ieyasu in less than glowing terms, or even that sometimes just mentioned the Tokugawa too frequently. See *infra*, 245-246.

⁵ Inshi, 389.

⁶ *Ibid.*, 388. The author's characterization of Ieyasu also reflects his overwhelmingly negative characterization of Buddhist institutions of Buyo Inshi's era.

⁷ See, e.g. Miura, 4.

these syncretic Buddhist formulations, not Confucian ideas: “even though the world has become decadent, the wise man subscribes wholly to the three teachings.”

Seji kenbunroku's recollection of Ieyasu's laws and the government of the early Tokugawa government reflects the Confucian-oriented, anti-Buddhist sentiment of nineteenth century Japanese samurai political culture.⁸ *Keichō kenmonshū* similarly reflects the preconceptions of the Keichō era, a period in which Buddhist scholars employed by Ieyasu made a case for the new government and its authority that relied on what legal scholars portrayed as an intellectually hegemonic worldview that subscribed to the shared primacy of the *sankyō*.⁹ Between the seventeenth and the early nineteenth centuries, lawmakers would offer still more intellectual theories of the philosophical foundations of government. While lawmakers and their critics offered competing accounts of the philosophical bases for law, they shared a common interest in defining Tokugawa law in relation to broader intellectual trends. These competing claims also highlight the dynamic relationship between Tokugawa laws and Tokugawa religious traditions. This dissertation explores the ways in which lawmakers in the Tokugawa period used religious ideas to influence Tokugawa law.

In this work, I describe individuals and groups that influenced the creation of Tokugawa law as “lawmakers.” Although the shogun personally issued all laws governing his territory,¹⁰ the shogun was far from the only lawmaker. Competing advisers, drafters, and bureaucrats within

⁸ Ketelaar, 14-19. Teeuwen (2013) also situates the work as representative as a move to a form of non-Western secularism, though different in particulars from other works of the period, at 15.

⁹ See Chapter 2 *infra* for a more detailed discussion.

¹⁰ As described herein, the Tokugawa held direct authority over about twenty-five percent of the archipelago and had the ability to issue limited laws governing the remainder. In the remaining territory, provincial leaders (*daimyo*) had the authority to issue their own laws, provided these were consistent with the Tokugawa law. This dissertation focuses primarily on the laws of the Tokugawa but will address provincial and village law where the two intersect.

the Tokugawa government influenced the shape of Tokugawa law as it was formed; provincial leaders issued laws effective in their own provinces; and temples and shrines were also granted a measure of self-governance. Institutional actors were not the only lawmakers either, a broad group of supporters and critics outside of government ranging from intellectuals, to artists and satirists, and even to rioting villagers by their actions and statements also sought to influence the shape and production of Tokugawa laws. In this context, I use the term lawmakers advisedly, recognizing that the authorized voices of the period (both inside and outside the government) were overwhelmingly male. However, across the course of this work, authorized lawmakers periodically express concern about the threat of unauthorized female voices, who may themselves also be considered lawmakers. These voices are generally portrayed as bad influences, aligned with malignant superstitions, and appear to constitute a threat to the stability of the state. While these incidents do not occur regularly enough to serve as a focus in this work, I will note these occurrences when they occur in the hope that these are of value to future scholars.

Through the consideration of a broader group of lawmakers, I hope to broaden the universe of parties who engaged in the production of Tokugawa legal culture from prior analyses of Tokugawa law. As Tokugawa law was constantly contested and negotiated, the degree of influence among these lawmakers shifted, and new lawmakers frequently emerged. Each of these lawmakers drew from the broader culture to explain and justify their attempts to influence Tokugawa law, and as a result, Tokugawa law, like the laws of all cultures, incorporated varying, and competing, religious elements.

Although religious ideas consistently influenced Tokugawa law (and vice versa), Tokugawa law was never “religious law” in the modern sense, nor was the Tokugawa shogunate a theocracy, as modern writers conceive of such a government. The Tokugawa never claimed that their laws were divinely inspired, infallible, or that their laws were themselves *kami*. Nor, however, was Tokugawa law secular; Japanese lawmakers claimed that their laws were consistent with and their government was a natural embodiment of the way the world worked and of human nature. These claims, which I will describe as legal cosmologies and legal anthropologies,¹¹ drew for support upon competing narratives that incorporated religious ideas and religious traditions. These claims were not articulated haphazardly; the incorporation of religious ideas into Tokugawa lawmaking represented a practice within the field of law that occurred in predictable contexts and times. As I will describe in this dissertation, lawmakers introduced narratives invoking legal cosmology and anthropology primarily in the context of the Tokugawa constitutional laws¹² —the laws that offered or shaped the governing framework for Tokugawa law— and these invocations primarily served to support (or corrode) the claims of authority found in these laws.

¹¹ This work addresses narratives that touch on both legal cosmology- how the nature of the universe impacts the legal culture- and legal anthropology-how human nature impacts legal culture. In many of the narratives used in Tokugawa Japan the two theories are indelibly linked- the nature of the universe is often recapitulated in human nature and the ideal social order. For this reason, I will from time to time use the shorthand of legal cosmology to address both categories.

¹² In this dissertation, I differentiate between the “constitutional” laws and the “substantive” laws comprising Tokugawa law. Generally, the constitutional laws were those that established a framework for the Tokugawa legal and political order, or were particularly important in sustaining this order, and substantive laws were those that introduced rules governing particular forms of conduct. Thus, sumptuary laws that prohibited certain forms of dress to reinforce status distinctions often functioned as a constitutional law, while prohibitions on certain types of land transactions were generally substantive. This distinction remains fluid at its boundaries, of course, as Tokugawa constitutional laws contained many substantive provisions, and many substantive laws reinforced the Tokugawa political order.

Lawmakers introduced narratives relying on legal cosmology at those junctures where they felt the most insecure in their authority to make laws, and as a result, these junctures became a locus where competing narratives sought to negotiate the direction of Tokugawa law.

As reflected in the contrast between Buyo Inshi and Miura Jōshin, lawmakers made conflicting cosmological claims over the course of the Tokugawa period, and these differences generated confusion in later scholars about the relationship between Tokugawa law and Tokugawa religion. Commentators ranging from officials in Meiji Japan to twentieth-century legal scholars have previously attempted to explain this relationship in various unsatisfactory ways. One common narrative to explain these changes imagines the transition of Tokugawa law from an immature state reliant on Buddhist superstition to a more mature, rational rule of law reliant on Confucian norms consistent with the broader norms of the period.¹³ This narrative of development aligns generally with Tokugawa intellectual history; mirrors a description of the rationalist legal development in early modern Europe;¹⁴ and ultimately supports the notion that the Tokugawa legal culture provided a necessary continuity with the modernist reformulations of law in the Meiji period that followed it.¹⁵ However convenient such a teleological narrative might appear, a closer analysis of various periods of Tokugawa law does not support the linear development of Tokugawa law, nor more generally the notion that legal culture is a simple extension of the dominant intellectual culture of the period.

¹³ Bellah's *Tokugawa Religion* offers a paradigmatic example of this approach. See, e.g., at 24 ("Since no rational system of jurisprudence existed, interpretation of the law was made in terms of the general morality as the particular magistrate saw it.").

¹⁴ A common example of this description may be found, for example, in Griffiths, 38. For critiques of the "development" theory more generally, see Halliday, 263-265.

¹⁵ Haley (1994), 51-53, conjures up this ideal of development in his description of Tokugawa law within the broader ambit of Japanese law.

Politicians of the early Meiji period and later scholars of law and religion largely eschewed this teleological narrative. Seeking to differentiate the rapid changes following the end of Tokugawa rule, early Meiji state-builders instead sought to characterize the Tokugawa period as feudal, violent, and intellectually stagnant. Twentieth-century legal scholars largely accepted without much scrutiny characterizations like Buyo Inshi's of a static Tokugawa legal culture that was dominated from early times by Confucian ideas. Carl Steenstrup, in his overview of Tokugawa law, provides a representative description of the intellectual influences on the legal culture: "about 1690, the Tokugawa regime, prodded by scholars, adopted Neo-Confucianism as a state philosophy. From now on, a very strong Chinese influence, both in form and matter, came to exert itself on Tokugawa law."¹⁶ In support of the characterization of intellectual stagnation, scholars emphasized the relative stability of many of the substantive law across this period. To cite just one representative example that this work will periodically refer to for comparative purposes, the laws governing temples and shrines remained remarkably consistent across the breadth of the Tokugawa period. Scholars also relied heavily—directly or indirectly—on the late eighteenth-century leader Matsudaira Sadanobu's identification of one strand of Confucianism as the Tokugawa "orthodoxy," which Sadanobu characterized as a precedent derived directly from Tokugawa Ieyasu. Legal scholars—and historians of religion who rely on laws as source material—maintained, in effect, that with the support of a hierarchical Confucian philosophy that pervaded Tokugawa Japan, the Tokugawa government sustained a static legal culture that supported largely unchanging laws. This narrative of stasis, however, is both internally inconsistent and inconsistent with broader trends in Tokugawa intellectual history. The same line of reasoning that assumes an intellectual stagnation to explain the lack of

¹⁶ Steenstrup, 111.

substantive change in the law cannot accord with the apparent shift from Buddhist origins to a “mature” Confucian orientation that echoes broader trends in Tokugawa intellectual history.

This dissertation considers Tokugawa law from its formation under Tokugawa Ieyasu in 1603 to Matsudaira Sadanobu’s Kansei reforms two hundred years later. Instead of seeking to validate either the narrative of stasis or the narrative of development, this dissertation describes Tokugawa legal culture over the first two hundred years of Tokugawa rule as a culture in constant conflict, characterized by competing lawmakers offering a wide variety of religious justifications to justify the practice of lawmaking. The always deeply-contested interplay of these justifications belies the apparent stability of Tokugawa rule. Across the period from the foundation of the Tokugawa government (sometimes called the *bakufu* or “military-government”) until the Kansei reforms, this work identifies and focuses on one common practice of Tokugawa legal culture that frequently served as the locus for Tokugawa legal conflict—the presentation of shifting and various narratives of cosmology and anthropology.

During this period, lawmakers frequently—but not necessarily always—sought to uphold the authority of the Tokugawa government to make and enforce laws by offering narratives relying on “cosmologies” of law. Critics and political opponents of the Tokugawa offered alternative cosmologies to criticize these laws and, by association, the political order. This work considers the ways that a series of lawmakers working at critical moments in Tokugawa history used religious narratives to articulate legal cosmologies and anthropologies that explained their lawmaking—even as these narratives demanded an abandonment or reimagination of previously-proffered cosmologies— and the ways in which contemporary lawmaker/critics offered

alternative narratives to undermine these interventions. For lawmakers, religious narratives provided a source of authority that supported the legitimacy of Tokugawa law from its uncertain beginnings and across a series of political crises that demanded legal reform. For critics of Tokugawa lawmaking and Tokugawa government, alternative religious narratives provided corrosive perspectives that they hoped would shift or moderate Tokugawa reforms in ways that would empower them politically. Both the government and its critics shared the common understanding, however, that Tokugawa law, and particularly the Tokugawa constitutional laws, offered the appropriate forum to contest the political authority of the Tokugawa government.

By presenting a study over time of one Tokugawa legal practice—the representation of legal cosmology and anthropology—I wish to make the case against totalizing generalities about the relationship between Tokugawa religion and Tokugawa law in general or during any particular period. The story of Tokugawa legal cosmology is a story not simply of a singular “Buddhism” in conflict with a singular “Confucianism” but of a myriad of particular Buddhisms and Confucianisms deployed in the service of legal rationation against themselves and one another at particular times and over the course of time. A close reading of the legal cosmology underlying Tokugawa constitutional laws suggests that from the earliest formulations of a new legal system until the ostensible “domination” of Confucian orthodoxy at the close of the nineteenth century, the justifications on which lawmakers and their critics relied to uphold and criticize Tokugawa law were constantly in conflict, and rather than reaching a resolution that elevated one cosmology definitively, support for alternative legal cosmologies and anthropologies ebbed and flowed over time with the turbulent political tides. Equally importantly, the interplay of diverse legal cosmologies across this period underscores that law served as an independent stream of

Tokugawa thought that moved in accordance with its own patterns, which impacted, and were impacted by, other intellectual currents. By looking closely at the laws of the Tokugawa period in their own historical contexts, instead of finding common themes, we find tactical reinterpretations and reimaginings by interested actors, and instead of seeking broad generalities that reflect shared cultural understandings, we should conversely expect idiosyncratic interpretations that reflect multiple, open conversations occurring simultaneously.

This work focuses particularly on the appearance of legal cosmology and legal anthropology in Tokugawa constitutional laws, because the appearance of legal cosmology and anthropology in these laws often signaled a focal point for political conflicts. In Tokugawa law, the constitutional laws where legal cosmologies and anthropologies appeared most visibly worked differently than the substantive laws they supported. Lawmakers issued and reissued constitutional laws as a performance that conveyed meaning in surplus to the substantive provisions of these laws conveyed. Lawmakers like the late eighteenth-century Matsudaira Sadanobu, for example, sought by reissuing constitutional laws that were substantively nearly identical to their predecessors to perform the role of reformer. In support of these performances, legal cosmology provided additional persuasive messages that generally applied a narrative style of proving the truth of things rather than the practical reasoning found in substantive law. These narratives relied on existing religious traditions—Buddhist, Confucian, Shintō or a mix of the three—to support their cosmological claims. For purposes of this work, “legal cosmology” denotes religious narratives that authorized Tokugawa law by situating Tokugawa laws as a natural consequence of a broader understanding of the world and “legal anthropology” denotes

narratives that explained the efficacy of these laws through a broader understanding of human nature.

Legal cosmology and legal anthropology are necessary elements of any legal culture. Without a tacit understanding of how people react to laws, basic legal theories like deterrence would make no sense. What legal theorists refer to as “deterrence” is a form of sympathy; one legal anthropology assumes that people identify with the experiences of other and if they see others being punished particularly gruesomely,¹⁷ they will be less inclined to commit acts that would lead them to incur a similar punishment. Too often, however, the impact of legal cosmology and anthropology on law is ignored because culturally dominant assumptions are assumed to be pervasive, or, more perniciously, because interested lawmakers project culturally dominant assumptions as “natural” features of law itself. Under Tokugawa rule, a constant ambition of the governing shogunate was to use law to naturalize a set of cosmological and anthropological assumptions that would stabilize its rule.

Tokugawa law provides a particularly instructive case study to understand how lawmakers incorporated cosmology and anthropology into law. Tokugawa lawmakers wore their colors on their sleeves. Unlike other bodies of law in which the cosmological and anthropological assumptions are occluded and must be teased out, in their constitutional laws particularly, Tokugawa lawmakers explicitly invoked the cosmological and anthropological arguments on which they relied. The substantive laws of the Tokugawa also relied on cosmological accounts to inform their meaning, but substantive law depended on the constitutional laws for their

¹⁷ As was unfortunately common in Tokugawa Japan, described in more detail *infra*, 279-283.

direction. By identifying and analyzing the Tokugawa constitutional laws, we can clearly identify the cosmological narratives that support Tokugawa lawmaking. Over the course of the Tokugawa period there was also a remarkable dissensus about seemingly fundamental cosmological and anthropological assumptions. In part—and in contrast to the received wisdom both about Tokugawa law and, more broadly, about law’s relation to religion in Japan— this is because in any historical moment, there was never a single cosmology or anthropology that dominated Tokugawa law. In part, this dissensus occurred because cosmology and anthropology were not merely ancillary features of Tokugawa legal culture; lawmakers incorporated these ideas at the heart of arguments made in support of often radical proposals for legal and political reform. While it is my suspicion that Tokugawa law merely makes more evident a dissensus in underlying assumptions that occurs frequently in other historical and cultural contexts,¹⁸ the sense in Tokugawa law that at any moment the most basic assumptions about how the world works were up for grabs provides an opportunity to understand the nature of these conflicts in stark relief.

This work looks at a series of critical moments in the articulation of Tokugawa law, focusing particularly on periods of reform when social and political conditions demanded new responses from both government and law. When we view particular Tokugawa laws immediately and from the perspective of a particular lawmaker— reflected by the cosmological or anthropological arguments and assumptions that they offer in a law or set of laws— each moment of crisis is reflective of many others, containing within it a web of inferences that include remainders from

¹⁸ Such a dissensus is evident, for example, in contemporary Northern Thailand in the work of the Engels, for example, see Engel and Engel, 56ff. See also Ludin, 138-142 for an example of the openness of the category of “religion” in sixteenth-century Germany.

the past, attending to the concerns at issue in the present, and often anticipating counter-arguments that would arise in the future. Further, when any particular law is viewed closely with an eye towards the ways lawmakers and their critics deployed legal cosmologies in service to other particular goals, the same seemingly-static substance of the law offers the potential to serve multiple, often-competing perspectives. Rather than shining a light on shared cosmological or anthropological assumptions, the analysis of those religious narratives deployed in Tokugawa law that collectively form a Tokugawa legal cosmology instead provides an informative viewpoint from which to understand social dissensus, more particularly the series of political and intellectual conflicts that occurred in Tokugawa Japan. In this work, we learn more from considering how legal cosmologies and anthropologies were used than why they appeared.

The remainder of this chapter will provide background context to frame the analysis of cosmology and anthropology in Tokugawa law that will follow. First, I will identify particularly what the practice of legal cosmology means in this work, how legal cosmology in the Tokugawa context interacts with related concepts like political theology, and the ways that I understand these categories differently from prior analyses of law. After contextualizing terms,¹⁹ I will then analyze the ways in which prior scholarship on Tokugawa law considered the relationship between law and religion, and more pointedly, the narrative of stasis in which prior scholarship situated claims of authority in Tokugawa law more generally. After providing this background, I will provide a brief summary of Japanese law and religion prior to the Tokugawa era, focusing on those key themes and ideas that Tokugawa lawmakers would later draw upon to form their

¹⁹ Or, as the Tokugawa Confucian tradition would describe it “rectifying names”; see, for example, Ogyū Sorai’s *Benmei* as a representative example.

own distinct legal culture. I will conclude with a brief synopsis of the chapters that follow in this dissertation.

Legal Cosmology and Tokugawa Law

Before analyzing how lawmakers incorporated cosmological and anthropological narratives into Tokugawa law, I will first explain how I understand these categories and use them in this work. This section offers an answer to two basic questions: what role do legal cosmologies and anthropologies play in legal culture more generally?; and how does this work define and use these categories for purposes of Tokugawa law? By so doing, this work will highlight what can be learned by a close consideration of the practice of offering legal cosmological narratives, while attempting to avoid problems that might arise from the misapplication of these categories.

Law incorporates assumptions drawn from cosmology and anthropology in many ways, not least of which include generally framing what Paul Dresch has called the “transcendent values in terms of which conduct is judged.”²⁰ However, in Tokugawa law cosmological narratives most commonly served a more specific purpose, supporting Tokugawa constitutional laws to explain why the Tokugawa held the authority to issue these laws. Legal theorists from Weber onwards have acknowledged that laws are not entirely self-authorizing.²¹ Officials who make or interpret

²⁰ Dresch, 1.

²¹ See, e.g., Weber, 320-324 (“the emerging innovation is most likely to produce consensus and ultimately law, when it derives from a strong inspiration or an intensive identification.”); Bourdieu (1977), 815-816 (“In order to break with the formalist ideology, which assumes the subject can be found independence of the law and of legal professionals, without simultaneously falling into the contrary instrumentalist conception, it is necessary to realize that these two antagonistic perspectives, one from within, the other from outside the law, together simply ignore the existence of an entire social universe (what I will term the “juridical field”), which is in practice relatively independent of external determinations and pressures. But this universe cannot be neglected if we wish to

laws rely on social and cultural factors outside of the laws themselves in order to confer on laws their authority to bind people to their will and induce people to follow the law.²² Even if the authority to make laws originally is created by, or results from, the naked exercise of force coupled with the threat of future exercise of force, the continual exercise of force can be exhausting. To more efficiently retain authority, governments must construct and maintain narratives that legitimize the exercise of authority consistent with the conditions of the time and processes that institutionalize the transfer of authority to survive transitions that inevitably occur.

Carl Schmitt described as “political theology” the historical process of narrative creation through the assimilation of religious concepts into state law: “all significant concepts of the modern theory of the state are secularized theological concepts.”²³ While for Schmitt the creation of a modern legal culture necessarily involved the secularization of ideas drawn from a common religious tradition, Tokugawa law offers an alternative example in which the lawmakers relied for political justification on narratives that were not secularized. In Tokugawa Japan, lawmakers made no attempt to excise politically and legally significant ideas like “benevolent government” from their religious context. Instead, Tokugawa lawmakers who sought to reframe Tokugawa law to their own ends simply drew from different religious systems to recharacterize an existing set of legal signifiers.

understand the social significance of the law, for it is within this universe that juridical authority is produced and exercised.”).

²² If laws lack the rationality or acceptance of the people, they are often and easily avoided. For a classic example, consider de Certeau’s descriptions of walking in the city in accordance with the most convenient route, rather than the route laid out by planners, 97-99.

²³ Schmitt, 2-3. For a consideration of political theology unmoored from its origins in Western legal and religious traditions, see Kwok (2016).

In stable governments, authority sooner or later becomes maintained by habit, and in this habituation, the development of legal norms plays a significant role. The persuasive work of asserting authority occurs predominantly when laws are first issued, as properly issued laws are likely to be followed, and then rests primarily on the maintenance of those laws which constitute the legal and political order, a group of laws I describe generally as “constitutional laws”. In Tokugawa law, lawmakers generally presented narratives of legal cosmology in the constitutional laws that structured the Tokugawa state, rather than, for example, in the substantive laws that governed commercial transactions. Lawmakers legitimized Tokugawa constitutional laws through constant steady reinforcement, particularly in the face of changing conditions.²⁴ In times of crisis, especially, rulers who wanted to remain in power were obliged to explain why existing laws still work or why they should be permitted to offer new laws. Each of these explanations routinely drew from sources outside of the laws themselves.

Although the need for extralegal sources of authority particularly for constitutional laws is straightforward, the mechanisms of how social and cultural factors work to authorize these laws are often hidden, even mysterious. Perhaps for this reason, Bourdieu has described lawmaking as “an act of social magic which works.”²⁵ Bourdieu’s definition provides two important reminders. First, lawmaking is foremost an “act,” a performative practice;²⁶ laws are not found texts to be interpreted but intentional acts performed by interested actors. These creative acts can

²⁴ See, e.g., Mouffe, 2, “The social is the realm of sedimented practices, that is, practices that conceal the originary acts of their contingent political institution and which are taken for granted, as if they were self-grounded.”

²⁵ At 42. Bourdieu arrives at this description while criticizing as false the difference Weber finds between rational law based on predictability and calculability and charismatic law of the oath or ordeal. Ibid. As this dissertation focuses on the act of making laws, rather than its nature and bounds, this theoretical argument bears less importance. Still, I will suggest that the Japanese example supports Bourdieu’s critique of Weber.

²⁶ In this context, this work is reliant on Bell’s theory of performance, see Bell, 39-43. In the context of law, Bell notes particularly that “[p]ropositions and formulations occur in many rituals and they may even be the most critical moment They are, in the full sense intended by Austin, performative in their particular context.” 113.

be performed aptly or poorly, leading to more or less successful results. Second, Bourdieu's description of lawmaking situates the "magic" of creating authority in the milieu of the social, which is to say that those actors who perform lawmaking effectively must aptly intuit the social context in which the laws will be applied, and that the ultimate measure of success of a performance will be popular acceptance or resistance. In recognition of this latter point, H.L.A. Hart described the apt performance of lawmaking as the "rule of recognition,"²⁷ and this process has elsewhere been characterized by the term "narrative fidelity," the sense that the narrative tells a story that the audience understands as true.

To be effective, lawmaking must succeed on a number of different levels. At a formal level, lawmaking must contain the proper signals of valid production and must be performed by a valid actor (at least one who has authority to make laws governing the subject matter in question) in a manner that conforms to the formal requirements imposed within a society's legal culture. At the substantive level, the laws must generally cohere with other laws that have previously been issued. Although each can be manipulated, each of these "levels" of law remains important to maintain the basic indicia that surround valid lawmaking.²⁸ These indicia include such questions as whether the correct ritual forms have been followed and the correct language invoked to issue laws validly. In the context of Tokugawa Japan, for example, legal formalisms

²⁷ See e.g. Hart, *The Concept of Law*, 107 et seq. Hart describes the rule of recognition as those rules in a legal system "providing the criteria by which the validity of other rules of the system is assessed." At 106. Hart posits that the political institutions of each society will formulate the rule of recognition differently, and that the rule of recognition could arise from numerous different sources: "reference to an authoritative text; to legislative enactment; to customary practice; to general declarations of specified persons; or to past judicial decisions in particular cases." At 101.

²⁸ Tuori has expanded on the analysis of this substructure by providing a multi-tiered description of legal culture. Tuori identifies three levels of law that are used in laws and lawmaking. His first two levels- the surface level of laws that reflects the ordinary discursive language of laws; and the level of "legal culture" that includes general doctrines of law, general legal principles, and basic legal concepts- are those discussed in the body of the text. Tuori, 432-436.

included the issuance of laws under shogunal vermilion seal, also extended into more arcane cultural formalisms like complying with legal fictions like those that allowed dead samurai to adopt heirs nominally after their demise, in order to avoid succession problems.²⁹ However, simply providing what looks like a law does not guarantee treatment as law; issuing a publication that meets the grammatical characteristics of a law but fails to accord with the other norms of the legal culture will fail in other ways. Similarly, providing a narrative justification for the validity of a law is no guarantee that the law is actually valid, only that the lawmaker understands the elements of formal legal validity.

While concepts like the rule of recognition and narrative fidelity do not preclude the possibility that lawmakers might provide justifications for the validity of the laws they issue, these social and cultural factors often operate below the discursive level, at a level which has sometimes been called the deep structure of laws.³⁰ Set apart from the intentions of the lawmakers, the audience remains outside and constantly reflecting on the laws, and it is the audience that these narratives must convince, laws must compel, and within whom the habit of submission to authority must be normalized. Because of this relationship between lawmaker and audience, Hart famously referred to the law as Janus-faced. That is, lawmaking involves lawmakers drawn from both inside and outside of government, and the audience plays a role as significant in lawmaking as the players.

²⁹ See Roberts, 74 et seq. As Roberts notes, the laws governing succession planning shifted from early Tokugawa rule to later rule, *ibid.*, 74, with the strict forfeiture of territorial wealth for failure to declare a suitable heir falling into desuetude through the formalism of deathbed and even post-death adoption ceremonies becoming common in the nineteenth century. Roberts attributes this element of legal formalism to the broader social construction of *omote* and *naishō* (roughly social formality, and internal reality), which he argues played a broader role in allowing the conservative Tokugawa bureaucracy to accommodate changes in social and economic realities.

³⁰ On the “deep structure” of law and the theory of three levels of structure, see Tuori, 147ff.

When elements of the law no longer make sense to people under the circumstances, or the explanations for laws no longer adequately justify their coercive force, the discomfort of the subjugation to law (or the fear or pain of punishment) will dehabituate the exercise of authority and sow the seeds for disobedience. These circumstances occur most frequently in circumstances I describe as legal crises. As the Japanese economy and social structure grew more precarious over the course of the Tokugawa period, lawmakers faced crises with increasing regularity, leading necessarily to the provision of new explanations to reduce the risk of disobedience of the long-standing Tokugawa laws and to reestablish the authority of the Tokugawa to make new laws.

Legal theorists who have considered the “magical” process of cultivating legal authority attribute the popular acceptance of laws generally to broad social and cultural factors that vary by society, but these descriptions do not explore in detail how these various factors work in practice, much less provide a taxonomy of the factors on which lawmakers rely to achieve narrative fidelity. In Tokugawa law, one common practice to cultivate legal authority was to offer in relation to constitutional laws narratives that rely on legal cosmology and anthropology. Perhaps because the level of deep structure is where lawmakers tell stories about the nature of law, this practice of lawmaking applies an alternative, narrative logic of persuasion.³¹ The myths and narratives that lawmakers present to support their claims offer a different way of proving the truth of things—a narrative logic, rather than the practical logic applied to ordinary dispute resolution—that explains why legal rules fit a society. As Cover has described, “no set of legal institutions or

³¹ I argue, following Doniger, that the fundamental bases of laws are another constituent part of the open category of myth, in that they confer belief to the communications that they provide while providing a “story that is sacred to and shared by a group of people who find their most important meanings in it.” At 2-3.

prescriptions exists apart from the narratives that locate it and give it meaning.”³² Cosmological narratives found within the deep structure of law provide one type of truth validation, as they cause people to believe in the rule of law in society more generally, but such narratives in turn have their own set of rules that limit the conditions of possibility of the legal culture in a given historical instance.³³

Scholars who have considered how religious narratives impact legal culture have not limited their consideration of legal cosmology to the narrower role of constructing legal authority. To take two examples from those who study modern, predominantly-Buddhist societies, French and the Engels, we can see that the category of legal cosmology most frequently appears to articulate differences with, and sometimes identify shortcomings in, modern legal institutions.

When Rebecca French introduced the term, “legal cosmology,” in the context of pre-1959 Tibetan legal culture, she suggested that “legal cosmologies seem to encompass all aspects of what we might call legal culture outside the scope of the laws themselves,” including “use of myths, relations of power, concepts of time, space and personal identity, the legal rituals, history, religious principles, reasoning patterns, procedures, available roles, [and] symbols”³⁴

French identified a number of narratives drawn from legal cosmologies, including “(1) The Nature of Reality and Illusion, Cosmos and Time; (2) The Mandala of the Law including

³² Cover, 2. See also Fisher, 49 (“No matter how strictly a case is argued- scientifically, philosophically, or legally- it will always be a story, an interpretation of some aspect of the world that is historically and culturally grounded and shaped by human personality.”).

³³ While my discussion of the deep structure of lawmaking focuses on the mythic nature of lawmaking by states and institutions, the same forces remain in play at the level of ordinary legal interactions as well. As Raz has suggested, making law by judges is not radically distinct from legislatures, 90 et seq., and contestants in legal proceedings actively use narratives to shape the nature of their argument, even if these narratives do not directly address the legal merits of these arguments. See Burns, 164-166.

³⁴ French (1995), 97.

Institutions, Space and Legal Units; (3) Moral Narratives and Myths; (4) Jurisprudence of the Mind; (5) Rituals of the Golden Yoke including Language and Roles; and (6) The Grammar of the Law.”³⁵ By identifying the “layers of epistemological (indeed ontological) assumptions” in Tibetan law, French hoped to show that non-Western, non-modern legal systems offered legal systems that were no less (if not more) successful in producing social consensus than Western legal systems.³⁶ More broadly, French hoped that, through the interpretation of a legal cosmology that is pervasive across Tibetan law, readers can read laws against the grain and use legal culture to identify the broader “cosmological hemisphere” that is applicable to Tibetan culture.³⁷ To see how French understood legal cosmology, consider just one of these narratives: the Nature of Reality and Illusion, the Cosmos, and Time. French explains that because the Tibetan legal system acknowledged the Buddhist threefold nature of reality in ways that the Western legal system does not—as exemplified by the narrative she articulates—legal participants in Tibet made and were forced to defend arguments that anticipated complicated questions of reality and illusion.³⁸ In particular, because of the Tibetan belief in multiple rebirths and the illusory nature of reality, French’s interlocutor explained that he was obliged to anticipate arguments for divergences from apparent legal categories, for example the argument that a victim was actually a *tulku*, a figure with a much higher social prestige than the victim appeared to have.³⁹

³⁵ Ibid., 99-100 ff.

³⁶ Ibid., 98.

³⁷ Ibid., 97-98.

³⁸ Ibid., 100ff.

³⁹ French argues effectively that the Tibetan legal professionals routinely took these cosmological narratives into account in both argumentation and lawmaking, but her work does not explore the strength or pervasiveness of the influence of these narratives. As even her interlocutor acknowledged, taking karmic rebirth into account would have only doubtful influence on the impact of a murder case. Ibid., 100. French’s approach requires a great deal of explication of the hidden meanings of the interlocutor, a challenge made more daunting by her reliance on an interlocutor’s stories as the only basis to understand relevant elements of the legal culture. See Frechette, 56.

In their analysis of the changing legal culture around the redress of injury in contemporary Northern Thailand, David and Jaruwan Engel reconsidered the category of legal cosmology in a more nuanced fashion that incorporates a clash of conflicting legal cultures. The Engels' work focuses on the impacts of the interaction between legal cultures in the rapidly globalizing world, comparing what the Engels refer to as "state law," the law promulgated by the government, with what the Engels call the "law of sacred centers," the customary dispute resolution mechanisms of the villages around Chiangmai.⁴⁰ While the Engels had anticipated that the cultural norms of externally imposed state law would increasingly replace the law of sacred centers as economic forces drew people further away from their villages and brought the cultural assumptions embedded in globalization closer to the villages, they found that even as the law of sacred centers recedes from the lives of ordinary people, there remains a hesitation to seek recourse from state law, with the result that globalization's promises of expanded liberal institutions fails ordinary people who have become dislocated from any legal remedy to seek justice and believe that "law and religious belief are fundamentally incompatible."⁴¹

Among the reasons for the imperfect transition between state law and the law of sacred centers are the incomplete overlap in how the elements of the two legal cultures operate. Differences in legal cosmology are among the differences the Engels identify between customary and state law.⁴² For the Engels, State law does not have an explicit religious orientation to its cosmology, but instead derives from the state itself and, within the concept of the state, through the figure of

⁴⁰ Engel and Engel, 47ff. The Engels did not explore state law in depth, because "this conception of legality is so familiar in the modern era as to be axiomatic." Ibid., 47.

⁴¹ Engel and Engel, 139.

⁴² Ibid., 5-6.

the king, rather than through “supernatural elements.”⁴³ The law of sacred centers works very differently. The law of sacred centers has an evident and alternative religious cosmology, focusing on the need to use ritual practices to take into account the appeasement of spirits (both injured ghosts and guardian spirits) and disruptions in karma. From an anthropological perspective, alternative understandings of personhood include the existence of the *khwan*, the flighty spiritual essence of a person that must often be wrangled back in order to cure an ill or redress an injury, and *winyan*, the permanent spiritual essence of a person, which can turn into a vengeful ghost in the event of an unnatural death.⁴⁴ A predominant focus of the law of sacred centers is to restore these elements of self to their proper place, and so the law of sacred centers relies for its authority to a large extent on what may be called legal cosmology. The Engels’ interlocutors equate this restoration of the proper way of things with “justice,” and situate the search for justice in religious practice rather than in the operation of state law. This suggests that for Engels, much like for French, the category of legal cosmology offers an explicit corrective to a lack found in modern, secular Western law.

The Engels significantly refined the category of legal cosmology by contrasting state law and the law of sacred centers. The authors show the ways in which elements of legal culture work differently among the two concurrent legal regimes as both an authorizing force and a way to orient people to action. This analysis is necessarily nuanced, because the Engels recognized that people access law differently according to subject matter, and that cosmological questions were not equally relevant to all questions of substantive dispute resolution. In matters of contract,

⁴³ Ibid., but note that the authority of the Thai King and by association the state themselves rely heavily on Buddhist norms. See Reynolds (1994).

⁴⁴ Ibid., 58-64.

Thais generally rely on state law without consideration for the cultural alternative, while the relationship between state law and nonstate law is more complicated in cases of redress of injury. By showing how two legal cultures with fundamentally different legal cosmologies interact with one another, the Engels identify that the negotiation between different legal cultures impacts cultural understandings of religion. In Chiangmai, the conflict between two legal regimes ultimately resulted in a conflict between legal cosmologies that diminished belief in the law of sacred centers to the point at which this practice “no longer offers a viable option for the remediation.”⁴⁵ However, the results of this conflict remained ambivalent, resulting in a sentiment among their interlocutors that the authors describe as “disbelieve but don’t risk sacrilege.” Interlocutors continued to negotiate between the law of sacred centers and state law, even though they longer entirely believe in the cosmology of sacred centers in the event that this cosmology might apply.⁴⁶ On the flip side, Thais sought recourse from state law in order to speed along the process of damage remediation at the village level.

Of course, the legal cultures that French and the Engels identify are far different from those found in Tokugawa Japan, and the differences in legal cosmology associated with these legal cultures necessarily impact the deployment of the categories of legal cosmology and anthropology. In particular, the contours between what the Engels describe as state law and the law of sacred centers worked differently in Tokugawa Japan. Like Thai state law, the Tokugawa *bakufu* generally envisioned its laws spatially, to apply equally without regard to spatial location. Unlike Thai law, the Tokugawa intentionally treated status categories differently, and even

⁴⁵ Ibid., 160.

⁴⁶ In this context, the Engels’ contrast between two different interlocutors of different generations that share different understandings of the viability of local cosmology offers particularly instructive evidence of just how variable at the personal level ideas of legal cosmology can be. Ibid., 157-158.

limited the reach of Tokugawa law to exclude certain status categories, most notably the *eta* and *hinin* outcaste groups.⁴⁷ Tokugawa village law, which is not the primary focus of this work, by the Tokugawa era had developed a more contractual, less ritualistic orientation than the Thai law of sacred centers.⁴⁸

In part, these differences may arise because the Engels focus primarily on a moment of synchronic conflict—contemporary friction between state law and the law of sacred centers—rather than in the changes in either state law or customary practice over time (or, to a lesser extent, across space).⁴⁹ Considering changes within a legal culture over time offers the additional opportunity to expose conflicts that occur within a legal culture and the roles that legal cosmology may play in negotiating these conflicts, as lawmakers confront the inevitable decisions whether and how laws should change with the times and how best to explain why new laws will solve a problem that existing laws cannot. In his study of the social meaning of exile in Heian era Japan,⁵⁰ Jonathan Stockdale addresses questions how historical change impacts legal cosmology by using an explanation drawn from legal cosmology to explain how successive regimes used alternative cosmologies to accommodate changes in belief over time. Stockdale argues legal cosmology provides an answer to a persistent question for Heian era legal

⁴⁷ Nagahara, 386. This exclusion was a mixed bag for the *eta* and *hinin*. On the one hand, they lacked access to Tokugawa justice, while on the other, they were not necessarily subject to Tokugawa punishment, and were referred to their own customary legal authorities. See Amino (1994), 25-30; Groemer, 263ff.

⁴⁸ The seminal English language work on Tokugawa village law and practice is Henderson's *Tokugawa Village Law*. This work provides numerous examples of the charters that Tokugawa villages used to self-organize, see, e.g. Henderson, 43ff. We have much less evidence of the religious cosmology of Tokugawa village law than Tokugawa "state law" offers, and beyond the relationship between compassion and emergency loans of rice in times of crisis, e.g. *ibid.* 89, described in Chapter 4, 228-230, these contracts shed little additional light on these issues.

⁴⁹ In the Engels' description of Thai law, there are echoes of diachronic change, particularly as the law of sacred spaces occurs primarily as a memory, and less so as an active force in contemporary practice. See, e.g., Engel, 160 ("nonstate law exists in vestigial form at best").

⁵⁰ The Heian era, approximately 772-1184 CE, predated the Tokugawa era and some elements of Heian legal cosmology persist into the Tokugawa period, see *infra* 51-52.

scholars: why executions ceased in Japan's Heian period.⁵¹ Before the Heian period, the government's legal codes—the *ritsuryō*—provided the operative laws governing punishment, and these Chinese-inflected codes identified execution as the sole punishment for a variety of serious crimes.⁵² During the Heian period, banishment replaced execution in practice as the most serious legal sanction of the period, even as the *ritsuryō* remained nominally the legal authority governing punishments. Following the Heian, with the rise of the first military government in the Kamakura period, executions again became a common practice.

Stockdale argues that changes in legal cosmology motivated the change in practice that occurred during the Heian period. The *ritsuryō* codes, which served as the constitutional laws of the Heian period, were largely drawn from Chinese precedents⁵³ and reflected the cosmology of its drafters. The *ritsuryō* emphasized symbolic punishment as a means of reflecting the absolute power of the newly centralized government, cast along Chinese imperial lines, which in turn relied upon a cosmology that placed the Emperor at the fulcrum of the universe. The same centralizing vision manifested itself architecturally in the creation of the capital city of Nara according to Chinese geomantic principles.⁵⁴ However, the legal culture of the *ritsuryō* codes reflected the period of their creation—a century before the cessation of executions in the early Heian period. More importantly, the Nara period rulers produced the *ritsuryō* codes as a

⁵¹ Stockdale, 103-107, identifies various answers prior scholars including Ishii Ryosuke and Ishio Yoshihisa have provided, before identifying the work of Rikō Mitsuo to explain this conundrum.

⁵² The *ritsuryō* will be described in more detail in the description of pre-Tokugawa Japanese law, *infra*. Execution was required for those convicted of the *hachigyaku*, or eight principle transgressions. Stockdale, 89-90. See also McCormack, 5.

⁵³ Note, however, that the question of punishments, though certainly Chinese-influenced, was evaluated by the *ritsuryō* drafters in the same manner as other sections of the law. See Henderson, 108.

⁵⁴ Ooms (2012) describes the intentional construction of the new capitol at Nara, at 76-80. Stockdale associates this model with Benedict Anderson's description of the classic dynastic model, see Anderson, 19. Although I suspect this association may merit closer scrutiny, such a task is beyond the scope of this work.

symbolic representation; the drafters adopted severe punishments to demonstrate the authority of the court, with less concern given to their practical application. In the Heian period, rulers were forced to accommodate the *ritsuryō* laws to practical government, an accommodation that led in the civil and administrative context to the production of numerous amendments, called *kyaku* or *shiki*.⁵⁵ In questions of punishment, rather than introduce amendments to the penal codes, in practice rulers chose to impose the punishment of exile rather than execution.⁵⁶ This substitution of banishment for execution, while certainly meaningful to the punished, is symbolically equivalent in a model that places cultural significance on proximity to the imperial center. To explain this conundrum, Stockdale selected from among a number of previous scholars' arguments drawn from legal cosmology to explain this change, including the growing influence of Buddhism; Japanese concerns about ritual impurity associated with execution; and even the unique character of the Japanese people. Stockdale favors Rikō Mitsuo's argument that capital punishment was halted to avoid the creation of wrathful ghosts (*goryō*).⁵⁷ The suspension of executions corresponded reasonably closely with the rise in cultic activity related to *goryō* pacification that occurred around the transition to the Heian period.⁵⁸ In the same way, the rise of the warrior government of the Kamakura shoguns, who had an entirely different legal and social culture, corresponded closely with the reinstatement of execution as a common punishment.⁵⁹ For Stockdale, changes in legal cosmology explain why Heian law, in practice,

⁵⁵ See Ishii (1980), 23.

⁵⁶ While Stockdale focuses on Heian Japan, the replacement of execution with exile was common in Tokugawa Japan as well, see Botsman, 19-20.

⁵⁷ See Rikō, 138. Rikō supports this argument with the compelling point that executions were not entirely abolished, only stopped for high-ranking nobles who were more likely to become *goryō*. Ibid., 166.

⁵⁸ Stockdale, 106.

⁵⁹ Stockdale does not explore the reasons why Kamakura *buke* legal cosmology would be different than the legal cosmology of the Heian, but the reasons are numerous. These would include both cultural factors—a class group associated with war who were more acclimated to violence, and matters relating to a renewed need to project authority—as a government whose primary nominal responsibility was to pacify threats to the state.

moved away from capital punishment and toward the symbolically equivalent but less cosmologically fraught punishment of exile.⁶⁰ The same sorts of arguments could be made to explain why capital punishment returned under the Kamakura shoguns, and indeed why when Tokugawa lawmakers considered capital punishment, consideration of executions often provoked arguments drawn from legal anthropology.⁶¹ Stockdale’s work also highlights the important distinction between the cosmology incorporated into written legal codes and the cosmology that informs lived legal practice. Written codes reflect the fossilized legal cosmologies and intent of the drafters, while those responsible for administering the law are often informed by, or require, different legal cosmologies.⁶² Stockdale’s arguments also show the role that legal cosmologies played in Japanese law prior to the Tokugawa period.

Although I will draw on the work of French, the Engels, and Stockdale, this work looks at legal cosmology differently. I will trace the legal cosmologies of Tokugawa Japan from the point of view of a series of lawmakers over the span of two-hundred years. Each lawmaker offers narratives reliant on legal cosmology as a practice in support of the production or criticism of laws. This means that Tokugawa law was not generally suffused with the noumenal or characterized broadly by any one “legal cosmology.” Instead particular lawmakers who were interested in negotiating the construction of the Tokugawa political order—as that order

⁶⁰ This explanation identifies an important point. The representative, hortatory function of laws—what laws symbolically represent—differs from legal cosmology, which provides an understanding of how the world works to inform how laws should work. While narratives invoking legal cosmologies serve a symbolic, and persuasive function, their persuasive effect lies in whether people believe argument reliant on these cosmologies, not whether they understand what these cosmologies represent.

⁶¹ See *infra*, 174; 278-280 for arguments related to capital punishment during the rule of Tsunayoshi and Yoshimune, respectively.

⁶² While this is not the way in which Stockdale considers the example, the implied criticism of execution in *Hōgen Monogatari* may alternatively be considered a criticism of both ancestral *ritsuryō* legal cosmologies and the emergent legal cosmology of the *buke*. See Stockdale, 107ff.

appeared in the Tokugawa constitutional laws—offered narratives that generally relied on particular religious cosmologies in support of their own particular interests and in the context of their own social and political circumstances.

This work argues that religious narratives were offered tactically in Tokugawa law in furtherance of personal or group interests.⁶³ By describing legal cosmology as a tactic, I do not suggest that lawmakers did not believe in the cosmological accounts they presented, but rather I urge that readers examine critically why lawmakers chose to highlight their understandings of how the world works at a particular moment in service of a resolving a particular practical legal problem. Because lawmakers chose to deploy cosmology as a legal tactic, these narratives were incorporated into the framework of Tokugawa law, a cultural framework that operated according to different rules than intellectual discourse more generally. By identifying how the particular negotiation of competing cosmologies in the legal context differed from broader disputes about Tokugawa political theology, I hope to be able to shed some light on the different rules that applied in the Tokugawa legal context versus those that applied to Tokugawa intellectual culture more generally.

In Tokugawa Japan, arguments relying on legal cosmology rarely went uncontested, either by rivals within the government or by critics outside of government who sought to change the laws in furtherance of their own interests and, too frequently, their own self-preservation. At any given point in time, there were always opposing lawmakers offering conflicting accounts of how

⁶³ De Certeau, 36-38, suggests a focus on the tactics of actors, rather than assuming behavior in accordance with a broader strategy. In this context, a tactic is a “calculated action determined by the absence of a proper locus,” an action taken opportunistically in response to circumstances, in contrast to a strategy, which is based on prior thought, a rational aim, and the authority to project the strategy through a pre-established course of action.

the world works, how people work, and how these accounts should influence law. This means that at any given moment, there were winners and losers. Considering lawmaking as a tactic that interested lawmakers performed introduces the possibility of failure into the conversation of legal cosmology. Failed, unpersuasive narratives played a significant role in the history of Tokugawa law, as arguments about legal cosmology made during Tokugawa Japan were frequently contested or superseded. At the same time, these lawmakers' arguments reflect the role historical circumstances played on the aptness of previous narratives, and they incorporate arguments that respond to previous failed narratives or anticipate the production of future opposing narratives, creating a discourse that operates independently of other intellectual conversations.

Wherever possible, this work evaluates legal cosmology and anthropology from the viewpoints of both lawmakers who supported or wished to improve their standing in the Tokugawa political order and critics of the political order more generally. This means, wherever and to the extent possible, working to find voices of lawmakers that do not arise within the laws themselves or within the government's presentation of Tokugawa law. While critics of Tokugawa law lacked the ability to make their own laws, they could—and did—present competing cosmologies that compelled the lawmakers of the Tokugawa government to respond in kind, and all too often, the influence of these criticisms, particularly when based on alternative cosmological models, have been ignored by previous scholars who have considered the relationship between Tokugawa religion and Tokugawa law.

Myths and Realities of Tokugawa Law

The Meiji Restoration began with a ritual repudiation of the Tokugawa social order and Tokugawa law.⁶⁴ Article 4 of the Charter Oath of 1868 articulates clearly the failure of Tokugawa law and the proposed path forward: “We shall break through the shackles of former evil practice and base our actions on the principles of international law.”⁶⁵ While some scholars infer from both the Charter Oath and the early lawmaking of the early Meiji the principal intent to conform to Western law as a tactic to reverse previous unfair treaties,⁶⁶ and early Meiji law retained notable holdovers from Tokugawa law,⁶⁷ the clearest intent of the early Meiji political leadership was to differentiate itself radically from the prior Tokugawa legal system.

The first generation of professional Japanese historians, including legal historians, came of age in the blossoming of scholarship following the Meiji Restoration. Much early Meiji legal scholarship addressed the importation and adaptation of Western law, and the first generation of Japanese legal historians supported the new political theology of the Meiji Restoration that imagined the “continuing rule of the imperial house” since the age of the gods.⁶⁸ Of this first generation of legal scholars, the most notable figures were Miura Hiroyuki, who founded the field of Japanese legal history at Kyoto Imperial University,⁶⁹ and Nakada Kaoru. Miura and

⁶⁴ Breen, 408-409, identifies accurately the importance of the performance of the Charter Oath of 1868 as a speech act of the same significance as the oaths that bound the *daimyo* to the Tokugawa *shogun*.

⁶⁵ While a close analysis of the ritual significance of the Charter Oath is beyond the scope of this work, it is notable that the Meiji translation of “international law”-- *tenchi no kōdō* (転地の公道) --contains the same combination of heaven and earth that had been the Confucian formulation of sovereignty since Nobunaga.

⁶⁶ See, e.g. Igeta, 73-76.

⁶⁷ For example, the original Criminal Code of 1870 was closely modelled on the punishments of the *Kujikata osadamegaki*, *ibid.*, 85.

⁶⁸ The first of the Japanese legal historians, Miyazaki Dōzaburō, focused his work almost exclusively on ancient law. Ishii (1950), 11.

⁶⁹ On Miura and his beliefs, see Brownlee, 105-106. The pre-war Japanese legal historians’ intellectual and political beliefs were largely consistent with their contemporary culture in their unquestioned support of the cult of the Emperor.

Nakada viewed Tokugawa law as autocratic and regrettable, and the Tokugawa period in general as an era meriting less attention than the medieval period that preceded it (popularizing the use of the term *kyōden*, feudal, to describe the Tokugawa period).⁷⁰ This attitude correlates closely with the attitude of Miura's contemporary, Tsuji Zennosuke, who argued that the religious practices of the Tokugawa period represented the conclusion of a long slide into degeneracy.⁷¹

Ishii Ryōsuke was the pre-eminent figure of the next generation of mid-twentieth century legal scholars. Unlike the pre-war generation of legal scholars, Ishii and his contemporaries no longer looked on the Tokugawa period as an aberration in Japanese history, but they maintained many of the intellectual predispositions of the prior generation. Ishii, for example, divided Japanese legal history into four periods;⁷² he characterized the third of these periods as fundamentally feudalistic and included both the Kamakura and Tokugawa periods within it.⁷³ Ishii acknowledged that the Tokugawa government expended effort in developing narratives that supported Tokugawa rule, but he did not devote any significant attention to exploring these narratives or asking how they changed, or how they functioned.⁷⁴ Most notably, Ishii identified Confucianism as the primary ideological force that was responsible for the maintenance of Tokugawa authority. For Ishii, Confucianism supported an entrenched social order, and this order remained static

⁷⁰ Miura, 135. Miura was particularly notable because his work situated Japanese law within the culture of the period.

⁷¹ See, e.g., Tsuji, 516.

⁷² Ishii, himself, had a particularly idiosyncratic theory of history, which he described as having a “wavelike motion”. (1980), *vii*. The distinctive feature of the Tokugawa era for Ishii was its unique “statist” model of feudalism, but the end of the Tokugawa era was considered to result from the exhaustion of the wave of feudalism, rather than foreign influence.

⁷³ For a description of Ishii's articulation of feudalism, see Ishii (1978), 1-10.

⁷⁴ Ishii (1980), 61,71.

across the breadth of the Tokugawa period.⁷⁵ Ishii's description of a stable, Confucian-inflected Tokugawa rule-by-status became pervasive across a generation of Japanese historians.

The work of other legal scholars of the Tokugawa period like Hiramatsu Yoshirō and Tamamuro Fumio focused on the articulation of the workings and procedures of Tokugawa substantive law, with less focus on the functions of the Tokugawa constitutional laws or the Tokugawa legal culture. In this context, the Tokugawa's bases for lawmaking authority as described in the constitutional laws appear only as an afterthought. Hiramatsu, for example, identified two bases for authority within the formation of Tokugawa law in accordance with different constitutional laws: the status relationship of the Tokugawa as the head of the warrior class (*buke no toryō*) authorized the laws governing the *buke* like the *Buke shōhatto*, and other laws arose from the historical duties arrogated to the *sei daishogun* in the Kamakura era.⁷⁶ Hiramatsu noted that over time, and particularly after the production of *Kujikata osadamegaki*, perceptions of legal authority shifted, but he did not consider in any depth the processes for these changes in perception.⁷⁷ Hiramatsu shared Ishii's belief that Tokugawa legal cosmology relied primarily on the status relationships of primarily Confucian derivation, with appropriate ethical values (for example, of benevolence in government) derived from these status relationships. But he also identified circumstances where other indigenous influences impacted legal culture, particularly in the context of the mourning laws.⁷⁸ Like Ishii, Hiramatsu did not entirely overlook questions of legal cosmology but rather subjugated them to the service of an emphasis on the study of the processes or functions of Tokugawa substantive laws. In his analysis of the system of social

⁷⁵ Ibid., 71.

⁷⁶ These sources of authority and the ways that Tokugawa Ieyasu expanded them are explored in Chapter 2.

⁷⁷ This shift is discussed in Chapter 4.

⁷⁸ Hiramatsu, 7, 40. See also Hirai, 44-61 for an extended discussion of Tokugawa mourning laws.

control established through temple registration, for example, Tamamuro Fumio similarly provided a methodological analysis that focused on how this system functioned to prevent an alternative base of authority—the temple organization—by coopting this organization to its own ends.⁷⁹

Western scholars of Japanese law, from the inception of the field, have consistently minimized the role of legal cosmology and legal anthropology. In part, this bias reflects the predisposition of early legal scholarship towards the study of law as a secular system, independent of broader culture. In part, this bias reflects the pragmatism of this generation of legal scholarship; these scholars focused primarily on the workings of the Tokugawa substantive law to compare these laws with Anglo-American traditions. John Henry Wigmore’s comprehensive twenty volume study of Tokugawa law focused on explaining in exhaustive detail the functioning of Tokugawa substantive law, identifying how various areas of law functioned in connection with one another and how these laws compared with American law. There is virtually no focus on the role of law within society, or of the role culture played in the formation of law.⁸⁰ Works like Wigmore’s sought to flatten the historical contours of Tokugawa law by idealizing a “mature Tokugawa law,” based primarily on the legal practices that developed after the 1742 production of *Kujikata osadamegaki*. The production of such an idealized “Tokugawa law” inevitably reinforces the misinterpretation that Tokugawa law was static.⁸¹ Wigmore paid little attention to legal culture and none to legal cosmology; his commentary beyond the black letter law lay in marveling at the

⁷⁹ Tamamuro (2009), 21-22. As Tamamuro notes, neutralizing the Christian threat was an additional early basis for this system. Ibid, 16.

⁸⁰ See, for example, Wigmore, v.1, 60ff. Because as many as 90% of the legal records from the Tokugawa era were destroyed in the great Kantō fire of 1923, Wigmore’s late nineteenth century work remains valuable for understanding these practices.

⁸¹ This is analogous to reading a grammar of early Modern Japan and assuming that it accurately captured the language of Japan in all times and locations across the breadth of Tokugawa rule.

absence in Tokugawa law of the notion of “rights,” for which reason Wigmore refers to the Tokugawa legal system as the “antithesis of the Anglo-Saxon conception of justice.”⁸² In contrast, Wigmore characterized Tokugawa law as personal and case-based, even given the presence of numerous statutes and precedents. From an anthropological perspective, Wigmore also described Tokugawa law as “essentially feudal in its spirit,” based on his assessment that the government made decisions based on status relationships to the shogun rather than on unchanging legal principles.

The mid-twentieth century western study of Tokugawa law was dominated by Daniel Henderson, and given his close relationship with leading Japanese scholars like Hiramatsu, his work shared the broader intellectual biases in the study of Japan during this period.⁸³ Henderson also assumed Tokugawa society was predominantly status-driven, and that the Tokugawa legal culture reflected firmly established class distinctions by hard-coding “rule by status” into Tokugawa substantive law.⁸⁴ In this context, Henderson gave brief consideration to Tokugawa legal cosmology, with a particular focus on the major law code of the eighteenth century, the *Kujikata osadamegaki*. Henderson described Tokugawa governing cosmology in *Kujikata osadamegaki* as resting on “officially sponsored and societally rooted morality (perhaps “natural law”) of Confucian derivation.”⁸⁵ With this description, Henderson incorporated the assumption that both the cosmos and human society were fundamentally hierarchical, along generally

⁸² Wigmore, v.1, 72-73.

⁸³ Henderson’s studies of the Japanese procedure of conciliation and of the legal contracts of Tokugawa villages remain seminal.

⁸⁴ For a reflection on how sumptuary regulations reinforced the role of status in early Tokugawa law, see Shively (1964) 123ff.

⁸⁵ Henderson (1981) 503.

Confucian lines.⁸⁶ Tokugawa law incorporated an anthropology which assumed that the ruler—the shogun—ruled on the basis of superior morality, and that the “essence” of justice under Tokugawa rule lay in the performance of morality by the rulers who showed benevolence through the issuance of law. Notably, while Henderson’s focus generally remained on eighteenth century law, his characterization of Tokugawa legal cosmology on the whole was largely static and reliant across the breadth of the period on Chinese ideas.⁸⁷

More recently, Haley briefly evaluated the impact of Tokugawa legal cosmology as a potential driver of the development of modern Japanese law.⁸⁸ In this context, Haley described Tokugawa law as fundamentally transitional, “on the edge between a radical break with and a reaffirmation of older forms of tradition.”⁸⁹ While acknowledging that considerable social change occurred during the course of Tokugawa rule, Haley continued to rely on Henderson and Ishii to explain the bases of Tokugawa authority in static terms: “[n]eo-Confucianism served . . . as the primary ideological foundation.”⁹⁰ While he acknowledged the Tokugawa *bakufu*’s look backward to Kamakura law as an alternative precedent, the Tokugawa’s consistent reliance on Neo-Confucianism as a governing philosophy entailed for Haley the issuance of laws with a Neo-Confucian anthropological/cosmological orientation that would “rationalize [the government’s]

⁸⁶ In this description, little consideration is provided to the differences among articulations of Confucianism during the Tokugawa period. On this matter, see generally Paramore (2016), 41-118.

⁸⁷ For another similar example, see Shively (1964), 129-164.

⁸⁸ Haley’s work in this context may be seen as a more nuanced adaptation of Bellah’s *Tokugawa Religion*, in which Bellah focused on the role that Tokugawa Confucianism particularly played on the establishment of conditions for modernity. Bellah, 183-185, e.g.

⁸⁹ Haley (1991), 52. Haley’s *Authority without Power* attempts to trace the development of the modern Japanese legal system from ancient roots. In this context, his focus appears to be on situating Tokugawa law between the medieval laws of the Kamakura shoguns and the Meiji era turn to Western legal traditions. In this context, Haley followed Henderson in placing considerable emphasis on the importance of Tokugawa village legal practices as a basis for the development of modern law. *Ibid.*, 58ff. Given the extensive treatment of this subject by Haley and Henderson, these practices will remain beyond the scope of this work.

⁹⁰ *Ibid.*, 53. Like Steenstrup, Haley suggests that Neo-Confucianism was incorporated into Tokugawa law from an early period, citing to Yamaga Sokō among others.

conduct in terms of a paternalistic benevolence expressed in law.”⁹¹ Like prior scholars, Haley neglects to consider any discontinuity within Tokugawa legal cosmology even as he notes the decline in effectiveness of Neo-Confucianism as a basis to support lawmaking. Haley accurately notes, however, that Tokugawa deployment of legal cosmology founded on the norm of “virtue” encouraged criticism from the common people who questioned whether their rule was, in fact, virtuous.⁹² More recent Japanese legal scholarship has reacted more critically to the totalizing conceptions of Ishii, Henderson and Hiramatsu, but has similarly failed to look closely at the Tokugawa legal cosmology.

Contemporary Western scholarship on Tokugawa law is rare.⁹³ Carl Steenstrup succinctly sums up the paradox that faces the field: “To the average Japanologist, the texts are difficult and often forbiddingly ‘dry.’ To legally trained Japanologists, dealing with past law is a waste of time that could have been spent profitably in the study of modern law.”⁹⁴ One unfortunate result of the limited volume of work in the field is that scholars in related fields of inquiry import into their own work outdated assumptions about Tokugawa law. As we have seen with scholars like Ishii and Henderson above, these assumptions are drawn back in to legal scholarship, reinforcing these analyses. Historians of religion also draw uncritically on Japanese legal sources as a source to validate the ideology of the Tokugawa state. Namlin Hur’s *Prayer and Play*, for example, an otherwise nuanced and excellent study of the role the Asakusa Sensōji temple

⁹¹ Ibid.

⁹² Ibid., 53-54. This history of popular criticism will be described in detail in Chapters 4-5. I will argue that Haley’s gloss of “virtue” as Neo-Confucian in orientation over-simplifies that ideological bases on which popular legal arguments were based.

⁹³ Ruppert, e.g., has noted that Tokugawa laws relating to religion remain somewhat under-studied. Ruppert, 285.

⁹⁴ Steenstrup (2007), 15.

complex played over time on Tokugawa era law and culture,⁹⁵ uses Tokugawa laws to suggest that the Tokugawa government consistently enforced an artificial separation between what Tokugawa leaders believed to be the proper role of Buddhism—“prayer”—from the improper popular interest in “play” at the temples.⁹⁶ Hur’s argument, while accurate in the particular social context of Kansei Edo and Matsudaira Sadanobu’s reforms, sweeps far too generally to cover other Tokugawa lawmakers and their “fit” with other eras within the period. Assuming that Tokugawa law was static, for example, allows Hur to avoid considering whether different forces were at work when Tsunayoshi relied on his *Awaremi shōru no rei* to remove the abbot from Sensōji at the end of the seventeenth century than when Sadanobu tried to purge the temple of entertainment a century later.⁹⁷

Similarly, in a study of the development of the *eta* and *hinin* outcaste groups, Timothy Amos identifies many of the challenges that the Tokugawa *bakufu* faced in establishing legitimacy.⁹⁸ But instead of acknowledging the complexity of approaches various lawmakers attempted to address this persistent question, Amos focuses on genealogical arguments supported by the authority of Tokugawa Ieyasu, essentially a variant of the same argument that Matsudaira Sadanobu proposed in the Kansei era.⁹⁹ Notably, Hur and Amos share the thesis that Tokugawa law fit well with broader intellectual trends, but they draw from radically different

⁹⁵ See, e.g., Hur (2000), 141-143. Sometimes, the errors of attribution from the uncritical use of law are more profound.

⁹⁶ Hur, 118-120.

⁹⁷ *Ibid.*, 233 n.37. Hur argues that Tsunayoshi’s basis for the dismissal of Chuun, the monk in question, was pretextual, at 25-26. However, Tsunayoshi’s claim was that Chuun violated the Buddhist precepts by killing a gatekeeper’s dog (also a violation of Tsunayoshi’s laws). While both served to constrain Buddhist practice, this argument differs radically from the intents and purposes of Sadanobu’s Kansei reforms.

⁹⁸ Amos, 26.

⁹⁹ Amos’s work, while otherwise compelling, has difficulty explaining for the role of Tsunayoshi’s *Shōru awaremi no rei* within his characterization of Tokugawa law for exactly this reason. *Ibid.*, 26-27.

understandings of the purported sources of Tokugawa authority to reach different conclusions about the social structure the Tokugawa intended to promote. This discrepancy arises from faulty assumptions. Assuming that the intellectual currents of law should or can immediately consolidate itself with the broader trends in social thought ignores the very real difference that lawmaking occurs in, and is bounded by, the practical activity of dispute resolution. While Tokugawa lawmakers held political and religious commitments, they usually expressed these commitments tactically in the fairly applied context of justifying Tokugawa constitutional laws. Similarly, because lawmaking always occurs in context, one cannot simply assume that the laws across periods speak with one voice, or that a particular lawmaker speaks for the government as a whole. My work calls into question the notion that a particular law or lawmaker's actions can be relied on uncritically to support totalizing assumptions about the Tokugawa law made for broader historical purposes.

The Received Body of Precedent: a short history of law in Japan before 1600

Tokugawa Ieyasu was granted the title of shogun and the mandate to form a new government in 1603, following a century in which the archipelago lacked a stable, centralized government. Although Ieyasu relied on the Imperial court to bestow a title on him, the emergence of his military government (the *bakufu*) effectively marked the formation of a new state,¹⁰⁰ rather than the transition in governance within an existing state. However, the Tokugawa government was hardly the first government to have ruled Japan; succeeding regimes on the Japanese archipelago had held control over different amounts of territory, reflecting the differing cultures of Eastern

¹⁰⁰ One central distinction of the Tokugawa state in comparison with previous regimes was its ability to function as a single consistent state over a 260-year period.

and Western Honshu,¹⁰¹ and relied on different organizing structures, economies and legal systems for over a millennium before. Nor was the Tokugawa government the exclusive government in Japan; Tokugawa Ieyasu received his title from the Imperial court, and the court, although weakened politically, retained significant symbolic authority. Similarly, the 260 provinces of Japan each had their own ruler, many of whom had developed their own “house codes” during a century of independent rule.¹⁰² From among these prior and concurrent governments, Tokugawa lawmakers had a wealth of precedents for governmental administration, legal norms, and claims for authority that they and the leaders of the provinces would use to forge a new legal culture.

This section provides a historical overview of the legal and religious history of a succession of Japanese eras—the pre- and proto-historical states of Wa and Yamato, the *ritsuryō* state of the Nara and Heian periods, the first warrior governments of the late Heian and the Kamakura periods, the *sengoku* period during which government largely devolved to the provinces, and the rebuilding of a national government during the rules of Oda Nobunaga and Toyotomi Hideyoshi that directly preceded the Tokugawa period. It is beyond the scope of this work to offer a comprehensive overview of the legal systems of each of these periods;¹⁰³ instead, this section will address those elements of these legal systems that would become important to the Tokugawa lawmakers. Because the focus of this work is on the constitutional laws that structured the

¹⁰¹ As Amino has suggested, the difference between these cultures (and which were reflected in the differences in government) include house architecture, patterns of and types of food cultivation, and even potentially ethnic origins. Amino (1990), 59-70.

¹⁰² About one-third of the territory of the provinces was directly controlled by the *bakufu*, and a number of other provincial leaders directly owed their position to the government. The relation between the central state and the provinces (or *han*) is described in detail in Bolitho, 7-9.

¹⁰³ Adequate scholarship, including in particular Ishii and Steenstrup, is available to provide a fairly comprehensive account of the legal systems during each period.

Tokugawa legal order, I will address primarily the systems by which earlier rulers organized the state, including the ways that governing regimes developed and promulgated laws, enforced them, and perpetuated their influence, as well as the dominant religious and intellectual movements of each period and the ways that each governing regime accommodated these movements to justify its own authority and delineate and explain the limits of its own jurisdiction. The *bakufu* in the Tokugawa period reformulated many of the ideological claims of prior states, even as it adapted prior governance models to create a new Tokugawa law responsive to its own unique economic and political circumstances.

Early Japan to the Ritsuryō State

Prior to the advent of historical writing in the beginning of the seventh century, there are few written records from the archipelago from which to draw assumptions about the legal structure of early societies there. Chinese sources from as early as the third century CE identify the delegation from a region called Wa that had consolidated power over surrounding regions. A queen named Himiko ruled this land that lay to the east.¹⁰⁴ The Chinese sources described Himiko as a diviner and medium, and portrayed her role as queen as a function of ritual significance, with support for the day-to-day administration of the state provided by the regent, her brother. Ishii Ryosuke has described the pre-historical society of Wa as “theoretically ruled by the gods”- a period in which religion permeated every aspect of society.¹⁰⁵ While there are

¹⁰⁴ Piggott provides a thorough analysis of the historical record on Yamatai (likely pronounced Yamato) and Himiko (likely pronounced Pimiko). At 15-21.

¹⁰⁵ Ishii also relies upon etymological analysis (particularly of *matsuri*- meaning both worship and govern, and *shiru*, which meant both governing and “knowing the will of the gods”) to support this contention. At 6. Kitagawa also emphasized the role of the shaman in Yamatai society as formative of a persistent ideological reliance on immanent relation with divinity as a basis for government, which has been referred to as the unity of state and religion or *saisei icchi*, see Kitagawa, 18-19.

many reasons to surmise that this portrayal of the government in this period exaggerated the role played by religion,¹⁰⁶ this myth-historic portrayal of early sovereigns served the interests of later rulers by providing an early model for a state whose claim to authority relied on a special relationship between rulers and the local deities of Japan, the *kami*.¹⁰⁷ The close relationship between divine authority and political power continued through the advent of Japanese historical consciousness. The express articulation of this relationship through the portrayal of the Imperial lineage as descending directly from the *kami* comprises the central theme of Japan's earliest histories, the *Kojiki* and *Nihon shoki*.¹⁰⁸

No recorded laws remain from this proto-governmental regime, but later rulers drew two principles from the pre-historic period. First, the performance of sovereignty demanded intense and constant ritual practice. This ritual practice in early history was performed calendrically by the *tennō* in the Nara period and before, but the Emperor has retained an important ritual role even up to modern times.¹⁰⁹ Second, because of the time constraints demanded by ritual performance and perhaps by the need for ritual purity, the administration of government, including the promulgation of laws, was from the earliest times in Japanese history performed independently from the exercise of sovereignty, and without recourse to divine authority. Thus,

¹⁰⁶ Both the Chinese (who wished to emphasize the superstitious nature of their barbarian peripherals) and the later Ritsuryō state, which chose to emphasize the advent of Chinese governing technology, had reasons to exaggerate the role played by religious ideology in the Yamatai state.

¹⁰⁷ The term *kami* and the historical instantiation of *kami* worship represent a complex set of relationships that lie beyond the scope of this work. For a detailed consideration of the role of *kami*, and the ritualized *kami* worship later called Shintō, see Hardacre (2017), 48ff.

¹⁰⁸ *Ibid.*, 69-70.

¹⁰⁹ Consider the rites conducted by the Emperor Naruhito on his ascension to the throne in 2019, see Julia Hollingsworth, "Japan's Emperor has a dinner date with a sun goddess," *CNN* (November 14, 2019), available at <https://www.cnn.com/2019/11/14/asia/japan-emperor-ritual-intl-hnk/index.html>.

while Japanese rulers have frequently been associated with the divine,¹¹⁰ Japanese law and the administration of justice has not necessarily been interpreted as divinely inspired or sacred.

Over the course of centuries, the state known as Wa grew, changed leadership, and came to be called Yamato. The Yamato state continued to emphasize the central symbolic role of a single paramount ruler, but its politics reflected the competition between clan groups called *uji* who sought to gain power by receiving the sanction of other smaller *uji*.¹¹¹ The *uji* organized themselves around the ritual worship of a protecting *kami* (the *ujigami*, or totem of the group), and the idea that particular *kami* would remain responsible for a family would remain relevant up to the Tokugawa period. As conditions within the state stabilized by the middle of the sixth century, power became centralized within the Yamato state among certain stronger *uji*, and with the growing centralization of governance, *uji* within the sphere of influence of the state developed hereditary ceremonial and/or administrative roles on behalf of the government, such that some *uji* and their *kami* assumed a broader significance as protectors of the state more generally.¹¹² At the same time, however, the rise of the *uji* also coincided with the arrival of Buddhism to the archipelago, and ritual practitioners for the *kami* also assumed responsibility for managing the performance of Buddhist rituals on behalf of an increasingly centralized state.¹¹³

The legal trend towards centralization appears most representatively in the early seventh century “Constitution” of Prince Shōtoku (dated to 604CE). The Shōtoku Constitution was a collection of seventeen precepts issued shortly after the adoption of a twelve-tiered hierarchical court

¹¹⁰ See, e.g., Hardacre (2017), 32-34.

¹¹¹ Ooms (2012) describes *uji* as “the social names for officialized lineages” that extended across the archipelago, 8.

¹¹² Steenstrup (2007), 11.

¹¹³ Hardacre (2017), 29ff.

system, based on the Chinese model, that stressed the importance of the centralized government that would later be characterized as imperial rule: “in a country there are not two rulers.” The Shōtoku Constitution provided an important point of reference as an early legal-philosophical work explaining the proper role of statecraft and the importance to the state of maintaining religious and ethical practices.¹¹⁴

Some scholars have minimized the role of the Shōtoku Constitution as a legal reference, noting the considerable emphasis the Constitution places on the avoidance of character traits like resentment and envy and the priority that the work seemingly places on maintaining hierarchical relations in lieu of legal norms.¹¹⁵ However, the Constitution documents the existence of, and promotes, a predictable legal procedure in which the administrators of the state play a systematic role in the resolution of disputes.¹¹⁶ In short, even if the Shōtoku Constitution offered more political guidance than legal guidance, the work has correctly been viewed as a constitutional law that established Japanese legal culture for the period and influenced the periods that followed. For Tokugawa lawmakers, the Constitution provided the paradigmatic template of a constitutional law in which a heroic lawmaker expressly justified the authority of the state to exercise sovereignty based upon the defining cosmology of the era.¹¹⁷

¹¹⁴ For an extended English-language exposition of the Constitution, see Kasulis, 45-71.

¹¹⁵ See, e.g., *ibid.*, 65.

¹¹⁶ See Article 5, in which the Constitution recommends impartiality and the avoidance of bribes in order to maintain social order.

¹¹⁷ This understanding of the didactic role of law was shared for example by Aristotle in the *Ethics*. See *Ethics* 1103a30: “We become just by the practice of just actions, self-controlled by exercising self-control, and courageous by performing acts of courage....Lawgivers make the citizens good by inculcating [good] habits in them, and this is the aim of every lawgiver; if he does not succeed in doing that, his legislation is a failure. It is in this that a good constitution differs from a bad one.”

The Shōtoku Constitution justifies the state’s political organization in at least three ways, making claims that rely on pragmatism,¹¹⁸ natural law, and even prior precedent.¹¹⁹ For its legal cosmology, the text relies on Chinese cosmological and moral models to support an argument for a form of natural law:

Obey the Emperor’s commands. The lord is like Heaven, and the servant is like the Earth. Heaven covers from above, and Earth supports from below. When Heaven and Earth are properly in place, the four seasons follow their course and all of Nature benefits. But if the Earth covets Heaven, Heaven faces ruin.¹²⁰

In addition to these Chinese cosmological influences, the Shōtoku Constitution also recognizes Japanese ritual practices that may best be described as indigenous practices influenced by Chinese Taoism.¹²¹ Similarly, as Buddhism and Chinese cosmological speculation had by this time arrived from the mainland, both of these religious systems appear clearly in the Constitution. The Shōtoku Constitution is notable for its early identification that promoting Buddhism was a duty of the state (in Article 2) on par with its reliance on Chinese and indigenous cultural traditions,¹²² and Tokugawa lawmakers would later look on the Shōtoku Constitution as a template for Japanese cosmological syncretism.

¹¹⁸ For example, Article 1 recommends harmony because it leads to deliberation and ultimately the victory of “reasonableness” (*jiri*).

¹¹⁹ Article 6, however, focuses on the underlying rules that promote the good because that was the law of antiquity.

¹²⁰ Article 3.

¹²¹ See Ooms (2012), at 72 n.81, 142-144. What I refer to as indigenous practices would become by the Tokugawa era associated with the emergent Shintō ritual structure, and later appropriated by *kokugaku* thought. For a comprehensive discussion of this emergence, see Hardacre (2017), particularly 147-176.

¹²² “Honor the three jewels. The three treasures—Buddha, the Dharma, and the Sangha— provide the final return of the four beings and are the apex of belief in all countries.” (篤敬三寶。三寶者佛法僧也。則四生之終歸。萬國之極宗。) trans. author.

While the Shōtoku Constitution shows the Yamato state's intention to import Chinese hierarchical models as part of a program to systematize the competing *uji* into a coherent political system, the first truly centralized state would not arrive until half a century later, with the enactment of the Taika reforms (645-648).¹²³ The Taika reforms radically restructured the state now referred to as Nihon through (among other things) the redistribution of arable land ownership, the imposition of a system of land registration and taxation, and the imposition of a bureaucracy modeled on the Chinese system.¹²⁴ Following the reforms, the imperial lineage assumed a central function of authority over all of the state (including both the nobility aligned with the emperor at court and the *uji* in control of large provinces away from the capitol). The reforms granted the Imperial lineage the right to assess and tax all land held by the *uji* within the state's bounds on the archipelago. Symbolically, the Taika reforms recognized the centralized authority of the Imperial lineage while simultaneously allowing and organizing the private ownership and management of real property for the lesser *uji*.

The Taika reforms also showed the early influence of Chinese models of statecraft within Nihon. The adoption of Chinese-style ranks that appear previously alien to the Japanese aristocracy suggests that its promoters sought the prestige that the Chinese system conferred. The early eighth century marked an apex of Chinese influence on Japanese culture, concurrent with the construction of the new capitol at Nara modeled on Chinese principles of geomancy and the production of the first histories. During this period, the state also issued its first written code—

¹²³ The era name Taika (great change) was selected in honor of the changes of governance that occurred during this period.

¹²⁴ Nihon, though considerably larger, still did not encompass all of the archipelago. The regime remained at war with the Emishi peoples located in Honshu's northeast.

the Taihō code— which was modeled on the Chinese *ritsuryō* model.¹²⁵ The *ritsuryō* codes, described below, draw from Chinese cultural prestige by copying entire sections of Chinese codes, but these models were from the beginning adapted to Japanese cultural expectations and cosmological understandings.

Religious practice continued to play a focal role in Yamato law and the exercise of government. While Ishii has argued that the bureaucratization of the Taika Reforms allowed for the creation of a political class who were less engaged in ritual practice, the position of indigenous ritual practice remained substantial.¹²⁶ For example, one notable administrative difference between Chinese models and Japanese *ritsuryō* was that the precursor to the *Jingikan*, the ministry of rituals, remained a central organ of the state even though there was no Chinese equivalent. The duties of the *tennō* were defined by ritual observance and purifications, and *uji* of ritual practitioners remained particularly influential at court.¹²⁷

The Ritsuryō model

The *ritsuryō* codes, which would provide the backbone of the Japanese legal system through the Nara and Heian periods,¹²⁸ were a collection of written codes drafted on Chinese models and explaining the state's legal principles. The term *ritsuryō* refers to the two sections of each code:

¹²⁵ The Taihō code is not extant, but many of its provisions were expanded or commented upon in the Yōrō code, which became effective in 757.

¹²⁶ Ishii (1980), *viii*.

¹²⁷ Particularly the Nakatomi *uji*, who after aligning against the Soga *uji* (also ritual practitioners) received the Fujiwara name and became the dominant political force in the Heian period. It bears repeating that the *uji* themselves were at least ideologically oriented around their own *kami*. See Grapard, 44 et seq. for additional details on the origins of the shrine of Kasuga, originally the Nakatomi/Fujiwara *ujigami*.

¹²⁸ The Heian period is measured from the transfer of the capitol to Heian (modern Kyōtō) in 794 to Minamoto no Yoritomo's establishment of the first *bakufu* in Kamakura in 1185.

the *ritsu* or criminal laws, which were published first, and the *ryō*, or administrative laws, which governed the administration of government and other matters, including for example, the commercial laws. These legal codes, which remained largely fixed over centuries, were supplemented by the amendments and pronouncements of the *tennō*, collectively called the *kyakushiki*, which had the same force of law, though they could be superseded by subsequent pronouncements.¹²⁹

Within the Chinese legal system, the promulgation of a legal code served both a hortatory and an instrumental role.¹³⁰ Instrumentally, the imposition of draconian penal laws provided both a set of recommended practices and a strong deterrent that belied the weak enforcement ability of the Chinese state. From the hortatory perspective, a code provided a guideline for the promotion of righteous, civil conduct within the understanding of the State. Because the Japanese drafters of the Taihō code and its successors shared both the hortatory and the instrumental goals of the Chinese, the state retained much of the text of the Chinese criminal code. But these codes were not adopted entirely uncritically. Punishments were reduced, which scholars suggest was in keeping with contemporary Japanese practice. Owing to cultural differences between the two societies, the *ryō* were modified more extensively, retaining, for example, the rights of women to ownership of property, and creating the *Jingikan*, the bureaucracy for the performance of rituals, that was absent in the Chinese bureaucratic state.¹³¹

¹²⁹ The *kyaku* referred to formal amendments to the *ritsuryō*, while the *shiki* referred to the pronouncements of the Emperor. Ishii, 23. Where the *kyakushiki* failed to match actual practice, the administration also published *gyōji*, or recognized exceptions, to better manage administration of justice.

¹³⁰ See McCormack, 15. Ryuichi Abe has suggested that the hortatory role of the Chinese legal codes was the feature of the codes most attractive to the Japanese. Abe, 21.

¹³¹ See, e.g., Hardacre (2017), 29-40.

As Stockdale has noted, the legal cosmology of the *ritsuryō* codes was the imported Chinese hierarchy of the mandate of heaven, in which the right of the ruler to rule with virtue is justified by his maintenance of the cosmos.¹³² The legal cosmology of the codes was reproduced in a legal anthropology of archetypal human relationships in which “the correct functioning of each set of relations was portrayed as crucial not just to the proper order of society but to the harmonious functioning of the cosmos as well.”¹³³ This cosmology of harmony supported the understanding that the state serves the people best when centralized under a single leader.

Although the *ritsuryō* remained in force across the Heian period, during this period amendments to the codes, as well as the administration of justice under these codes, already began to diverge from the imported Chinese cosmology. For example, many of the court positions identified in the codes were unfilled by the mid-Heian,¹³⁴ and, as discussed above, for a period of nearly 350 years, in practice, the Imperial court replaced in practice the capital punishment mandated by the codes with the punishment of exile. Rikō attributes this change in punishments to the influence of an alternative, indigenous/Buddhist legal cosmology—the fear of creating angry ghosts (*onryō*) by executing prisoners.¹³⁵

Perhaps the most salient feature of Nara and Heian Japanese religions was the rise to prominence of Buddhist institutions. While the Imperial Court continued to maintain a regimen of strict ritual practice and to assert its legitimacy on the basis of the state cosmology established in the *Nihon shoki*, from the Nara period Buddhist institutions were officially recognized, assimilated and regulated. More importantly, Buddhist temples were granted the lands that they worked (or

¹³² Stockdale, 93-94.

¹³³ Stockdale, 93. But consider Piggott, 232, on the integration of the *uji* into the central state.

¹³⁴ Kuroda (1996), 156.

¹³⁵ Rikō, 138-139.

contracted to have worked) free of taxation. Through this income a patronage network developed between the aristocracy and major temples; and by the late Heian, as income from Buddhist institutions' focal role in finance and interstate commerce grew, the major Buddhist institutions of the period, particularly the Tendai sect headquartered at Enryakuji on Mt. Hiei, came to exercise significant political influence on the national government itself.¹³⁶

Despite this growing influence and the sophisticated religious culture that developed from the increasing affluence of Buddhist temples, the Imperial Court and the aristocracy relied somewhat more on traditional ritual practices and the *kami* than on Buddhist narratives to support their authority to govern.¹³⁷ One intellectual development from the Heian that merits identification is the popularization of Mahāyana Buddhist theories of history, in particular the exploration of the idea that Japan in the late Heian had entered the period of *mappō* (or final dharma).¹³⁸ Under this Buddhist theory of history, following the incarnation of a Buddha, the world progresses through three historical stages, in which the ability of ordinary people to understand the dharma and achieve enlightenment continues to decline. The arrival of the final stage, *mappō*, means that ordinary people will become unable to understand the dharma or to achieve enlightenment without the intervention of a bodhisattva. While the popularization of *mappō* was never complete, and it had limited influence on imperial ideology during the Heian, these theories would have increasing influence and would ultimately form a basis for shogunal rule in the Tokugawa.¹³⁹

¹³⁶ Adolphson (2000), 164, describes the manner in which the Enryakuji monks threatened to take over Kyōtō if its demands were not met.

¹³⁷ The court did assimilate Buddhist ritual activity and influences in addition to their traditional ritual practices, of course. One primary focus of Buddhism in Heian statecraft lay in the performance of tantric ritual for the support of the State, see Bowring, 163-165.

¹³⁸ See, e.g., Moerman (in Adolphson et al, *Heian Japan*), 246.

¹³⁹ Cite to Chapter 2.

While the *ritsuryō* legal material emphasizes the ability of the state to impose its will on the bodies of its citizens through the criminal code and the bureaucratic regulation of the urban aristocracy, the measure of the state's true authority throughout the Nara and Heian periods lay in its ability to assess and collect taxes from the lands at the periphery. The Taika reforms had transferred the preponderance of the landholdings from the larger *uji* to the common people (verified through a system of household registration), while transferring the right to collect taxation on the land from the *uji* to the central government.¹⁴⁰ However, as the need to provide incentives to cultivate new land grew, private (untaxable) ownership of land grew as well, ultimately leading to the creation of the *shōen*, large estates of land outside the taxing authority of the Imperial state. The weakening of the Imperial government as a result of declining tax revenues was both a major result of this legal model and a direct cause of the rise of the samurai class found in Japan's Kamakura period. As the warrior class rose to authority in Kamakura in Japan's east, Imperial authority and *ritsuryō* law remained strong in the area surrounding Heian (modern Kyoto). The rise of a separate samurai government in Kamakura with increasing national influence produced a new set of laws with an alternative legal culture more reflective of warrior values.

The Kamakura period

The *ritsuryō* codes represented a claim by the Emperor and the Heian-based bureaucracy of the aristocracy (the *kuge*) to centralized authority, to a government that they lacked the

¹⁴⁰ The central government also had the right to redistribute real property upon death, leading to an unsustainable system where common people had rights to land that was redistributed every six years. See Ishii, 27-28.

administrative capacity and man-power to enforce. As a result, over time parcels of newly developed *shōen* received state sanction, obtaining the right to self-governance, including both internal administration and internal law enforcement. The owners of these *shōen*, the *ryōshu*, held the right to let these lands to laborers to till; managed the finances of the land and the complex economies that arose in them; and resolved disputes occurring within their bounds.¹⁴¹

The enforcers that the aristocracy sent to manage the affairs of state-owned land gradually allied (and intermarried) with local leaders to produce a new political class, the *bushi* or *buke*- warriors or warrior houses, whose claim to authority rested on their military strength and their ability to enforce laws at the state's periphery. With the defeat of the Taira in 1185, the samurai Minamoto no Yoritomo successfully convinced the other *buke* to bind themselves to his leadership with oaths of loyalty, leading to the establishment of an alternate base of government at Kamakura in Japan's east. Seven years after the effective formation of a rival government, the Kamakura government was formally assimilated into the imperial state and made subject to imperial law when Yoritomo was granted the title *sei-i-tai-shōgun* ("Barbarian-repelling high general"). The title reflects the symbolic role that the shogunate held as a military administration responsible for defending the periphery. Perhaps in deference to this convention, the Kamakura government styled itself as a provisional, military government (a *bakufu*, literally "tent government"), and each succeeding leader sought and received the title of shogun.

¹⁴¹ For a detailed description of the economy in the *shōen*, see Mass, 51-53.

The Kamakura government never possessed a divine mandate to rule¹⁴² but identified three bases for its authority to govern and, particularly, to enact and enforce its own laws. First, the *bakufu* was responsible for maintaining order among the military and the warrior houses, particularly at the periphery and focused outwards. This was a titular role that reflected the reality that the *bakufu* held the preponderant military force throughout the archipelago. This authority was exemplified by the shogun's title as leader of the *buke*, called *buke no toryō*, a position rendered symbolically meaningful by oaths of loyalty taken and retaken by each of the *buke* houses. These oaths created a personal contractual relation between the shogun and each of the *buke* that was private and non-transferable, which meant that each of the *buke* was required to renew these oaths to retain the powers distributed to them by the shogun if they transferred leadership within their own houses. Finally, the Kamakura shoguns were also major landholders and patrons of commercial endeavors (including, for example, the China trade conducted primarily by the "five mountains" Zen monasteries that the *bakufu* patronized),¹⁴³ which provided the *bakufu* with the economic power to support its military and administrative operations. This economic role also gave the *bakufu* a responsibility to promote and protect commerce within its sphere of influence.

During the Kamakura period, there were competing claims to jurisdiction. The Imperial government in Heian retained jurisdiction over matters in the Kansei region and administered disputes occurring on land held by the court. In these matters, *ritsuryō* law as amended over time (referred to as the *kugehō*) continued to apply. The *bakufu* made laws (referred to as *bukehō*) governing its own lands and those *shōen* that were owned by retainers subject to oaths

¹⁴² This was retained by the Emperor. It is important to note, though, that the authority to rule was always different in practice from the authority to govern, and within governing to issue laws.

¹⁴³ Collcutt (1981), 76-78.

of loyalty.¹⁴⁴ *Bukehō* was very different from *kugehō*, as was most apparent in its restoration of more draconian punishments—notably execution and, more pointedly, the ability to execute an entire clan for the crimes of one member—and its treatment of the property rights (*onkyū*) granted directly by the shogun to his subjects, particularly the development of various yield rights (*shiki*) subdivided within a particular *shōen*.

Bukehō was a distant descendant of the *ritsuryō* and the customary laws that had grown out around it. However, this law also included periodic codifications, most notably the *Goseibai shikimoku* (御成敗式目 - lit. “Laws and Regulations for Judgments,” also called the *Jōei shikimoku*, or Record of Laws from the Jōei era), which was issued in 1232, a generation after the beginning of Kamakura *bakufu* rule. The *Goseibai shikimoku* provided an essential precedent for the lawmaking of the Tokugawa shoguns, most notably Yoshimune, who sought to mirror their authority to the early Kamakura shoguns.¹⁴⁵ Unlike the *ritsuryō*, *bukehō* was designed to serve as an aid to *bakufu* adjudication, resulting in codes that were more instrumental than symbolic, and the Kamakura *bakufu* placed considerable emphasis on effective adjudication of claims. This emphasis reflects the extent to which the *bakufu*’s claim to authority rested upon its effectiveness as an administrator. This emphasis resulted in sustained *bakufu* concern over the recording and adjudication of property succession and increasing enforcement against the rise in forged documents governing land succession.¹⁴⁶

¹⁴⁴ In addition to these, those *shōen* which continued to self-govern retained their own jurisdiction (referred to as *honjo hō*). The *honjo hō* became a primary resource for those *sengoku* leaders who would develop their own codes. Steenstrup (1991), 83.

¹⁴⁵ Discussed in greater detail in Chapter 4, *infra*, 250-251.

¹⁴⁶ Steenstrup (1991), 100-101.

Consistent with the invocation of limited authority through which the Kamakura *bakufu* established the validity of its laws, the *bakufu* made relatively little use of religious ideology to support its lawmaking. While Yoritomo has been described as a frequent visitor of temples and shrines,¹⁴⁷ apart from seeking the traditional apotropaic rituals blessing the state from Buddhist temples,¹⁴⁸ the early *bakufu* did not rely explicitly on narratives drawn from Buddhist ideology.¹⁴⁹ *Goseibai shikimoku* reflects elements of a Kamakura legal cosmology, however, as the work places a priority on Buddhist ritual performance as a means to protect the state.¹⁵⁰ But instead of establishing a relationship reliant upon the temple infrastructure as a matter of law, the *bakufu* established economic, patronage-based relationships with Zen temples.¹⁵¹ In contrast, the religious narrative of indigenous Japanese traditions remained associated with the Imperial court and was largely inaccessible to the *bakufu*.

During the Kamakura period, a number of new religious sects emerged in Japan, including particularly the Pure Land and Nichiren Buddhist sects. The *bakufu* did not patronize or encourage these groups, but as the ability of the *bakufu* began to wane, the sects grew in influence. While some elements of these groups supported the *bakufu* and the state, the emerging orthodoxy within each sect argued that their adherents' duty lay primarily to a bodhisattva or text, respectively, rather than to the imperial court or *bakufu*.¹⁵² As a result, these groups (particularly their most radical elements) would become an intellectual and political

¹⁴⁷ Collcutt (1996), 90ff.

¹⁴⁸ For a description of Buddhist rituals conducted for the protection of the state, see Kitagawa, 125. See also Kuroda (1983), 12.

¹⁴⁹ But see the *Gukanshō*, an early Kamakura era history that justified *bakufu* rule from the perspective of Buddhist history. See, e.g. Brown, 418-419. This work, however, was arguably produced to promote the political fortunes of one lineage of the Minamoto, and it did not reflect the dominant ideology of the *bakufu*.

¹⁵⁰ See *infra*, 251.

¹⁵¹ Collcutt (1981), 98-99.

¹⁵² Tsang, 66-72.

competitor, and accordingly a threat, to the dominant religious narrative that the Tokugawa *bakufu* put forward at the beginning of the seventeenth century.

The Muromachi and Sengoku periods

In 1333, the Emperor Go-Daigo attempted to reassert direct imperial rule of the entire archipelago from his nominal administrators, the Kamakura *bakufu*. Although Go-Daigo's direct rule in Heian lasted for only three years before Ashikaga Takauji reasserted the authority of the *bakufu* by force and Go-Daigo was forced to flee south, the succeeding two hundred and fifty years represented a decline in the centralized authority of the Japanese state. The fifty-year period of split rule initiated by Go-Daigo, now known as the “Northern and Southern Courts” period, led to confusion in authority and frequent levies by the *bakufu* and the courts to support ongoing violence. After the Ashikaga reunified the Imperial Court in 1392 and re-established *bakufu* government in Heian, order was re-established for a time, but the centralized *bakufu* increasingly lacked the ability to enforce its laws beyond the region surrounding the capitol.

During this period, the lack of effective means to enforce law led to the re-imposition of strict penalties, including the punishment of families for the crimes of a family member and the re-introduction of systematic torture to gain confessions in legal actions. Further, the *shōen* system deteriorated following the repeated incursions permitted by the *shugo*—the local representatives of the court— and the *bakufu*. The ineffectiveness of *bakufu* authority led to further unrest in the

periphery, and the later Tokugawa leadership remembered this Muromachi period¹⁵³ as a period of failure in the central government to be avoided.

Following the 1467 Onin rebellion, a dispute for succession that arose in Heian and weakened the *bakufu*, many of the *shugo* responsible for the periphery established their own autonomous rule in their provinces. This period, in which there was no dominant government across the archipelago, has been called the Sengoku (“warring states”) period. Although there was little effective central authority during the Sengoku period, this era marked a watershed for legal innovation. Many of the warlords during this period developed their own “house codes,” rules of laws which the soldiers loyal to the warlord were obligated to follow and enforce.¹⁵⁴ Drawing on Kamakura *bukehō*, these house codes were supported by oaths of loyalty from retainer to warlord, and the substantive laws themselves were often drawn from customary laws like the *Goseibai shikimoku*.¹⁵⁵

The State Builders

The emergence of a new national government from the mass of local warlords began in earnest with Oda Nobunaga’s consolidation of power in the mid-sixteenth century. Oda rose to power on the basis of his military and later political acumen. Unlike the *bakufu* who preceded him, or the Tokugawa who would ultimately succeed him, Oda initially made no claim to authority to rule. He administered his state using the tools most familiar to a Sengoku warlord. He depended

¹⁵³ Named after the region of Heian where the *bakufu* established its headquarters.

¹⁵⁴ For an extended exposition of the *Jinkaishū*, the house code of the Date family, see Kobayashi., 45-47.

¹⁵⁵ Steenstrup (1991), 104.

upon the laws established within his own domain's house code and relied primarily on private relationships solidified by oaths of loyalty in the selection of his administrators.¹⁵⁶

After he had solidified his power, Oda began to lay the groundwork for a more systematic claim to authority. He aggressively popularized Chinese norms of statecraft, portraying himself as the ruler under heaven (rather than the *tennō*) whose authority to rule was demonstrated by the peace that he created on the archipelago.¹⁵⁷ Oda viewed the temple establishment as a political threat and attacked the Buddhist organizations that had been military and political rivals in his rise to power, most notably razing the temple complex at Mt. Hiei. But Oda did show some interest in the arrival of Christianity at mid-century, and he adopted the popular mythology of the period, where convenient, building for himself a temple where he expected to be worshipped as a living *kami*, or *daimyōjin*. This tradition of self-deification had its roots early in the Kamakura period, but Oda, Toyotomi, and particular Tokugawa Ieyasu would aggressively embrace the practice, which became increasingly prevalent throughout the Tokugawa era, even where it was technically illegal.

After further consolidating the archipelago following Oda's assassination, Toyotomi Hideyoshi set about state-building in earnest. Despite never assuming the title of shogun, Toyotomi differed from Oda in his interest in building institutions to control all of the archipelago. Toyotomi is deservedly renowned for his legal innovations—the restriction of weaponry to samurai, the large-scale cadastral surveys (the first in over a century), and the implementation of

¹⁵⁶ Ibid., 102-103.

¹⁵⁷ Ooms (1985), 35-36. Oda's reign was unfortunately short, however, so there is little reason to believe that Oda's ideology broadly reflects the legal culture of the period.

castle-towns, which detached samurai from the landholdings from which they could draw independent resources.¹⁵⁸ In addition to these measures, Toyotomi also assumed control of foreign policy (including both the conduct of diplomacy and his ill-fated Korean expedition) and established the basis of an administrative state that would be assumed by the Tokugawa.

Although Hideyoshi had begun to establish the administrative and social structures¹⁵⁹ that would be used by the Tokugawa *bakufu* to govern the state, he did not effectively establish either the grounds for his government's legitimacy or an effective plan of succession. Like Oda, Hideyoshi constructed a personal shrine and assumed the title of a *daimyōjin*; he had also begun to engage with the imperial court to obtain official court ranks for himself and his son, despite his lack of warrior lineage. But Hideyoshi failed to establish a formal claim to authority, and the laws which he promulgated were issued piecemeal, in response to disputes, rather than systematically. The development of a bureaucratic claim to authority over the nation was an innovation that remains with the Tokugawa shoguns.

The Tokugawa Bakufu and its Rivals

At the beginning of the seventeenth century, when Tokugawa Ieyasu and his allies defeated the Toyotomi and began to create new administrative structures to govern the archipelago, Ieyasu had available the legal structures, models, and recorded precedents of the prior governments. Of course, Hideyoshi, Nobunaga, and the other *sengoku* warlords also had the same precedents at

¹⁵⁸ See Berry, 99ff. Hideyoshi's influence on Tokugawa Ieyasu's lawmaking is discussed extensively in Chapter 2.

¹⁵⁹ In particular, Hideyoshi is notable for laying the groundwork for the stratified class system associated with Tokugawa Japan, see *ibid.*, 119-121.

their disposal. Tokugawa rule continued for more than two-and-a-half centuries, despite the sometimes decades-long periods of ineffective leadership. One element of the Tokugawa government's success in maintaining stable rule lay in forming a new legal order that relied on a set of constitutional laws to establish and maintain a relatively stable balance of power among competing political forces. The Tokugawa constitutional laws relied for their authority on narratives of legal cosmology that explained this authority over an extended period and offered a path to reinterpretation of the laws during moments of crisis.

At its outset, the Tokugawa faced political threats from three sides: the other warrior clans, the Imperial court (and its supporters), and the temples. The mandate of the Imperial court had long been associated with the worship of the *kami*, and the temples laid claim to the Buddhist promise to protect the realm. But the *buke* initially had no narrative of cosmological promise to rely on. The need to justify its authority over its rivals created a void that demanded narratives. In this respect, from the early Tokugawa period lawmakers relied on religious narratives asserting new legal cosmologies, particularly in re-establishing the legal relationship the Tokugawa government held to the Imperial court or to temples and shrines. Tokugawa lawmakers generally provided these religious narratives where their insecurity was greatest—in those circumstances where its claim to authority was weakest. For this reason, as I will discuss in the chapters that follow, the Tokugawa government was more likely to rest its authority—over the warrior families¹⁶⁰ or village actors or participants in legal disputes—on claims of legal anthropology

¹⁶⁰ The Tokugawa government did use implied narratives that relate to proper conduct, particularly in Article 1 of the *Buke shohatto*, described in Chapter 2 below. These narratives continued to change in interesting ways. However, this description was unrelated to a claim of legitimacy.

and the nature of interpersonal relationships, as a means to support their dispute resolution activities, rather than on broad narratives that relied on legal cosmology.

Politically, the Tokugawa response to the challenges of its rivals was to assimilate and subordinate the holders of alternate forms of traditional and religious authority—the Imperial court and the Buddhist institutional infrastructure—into its loose confederate model. While the court and the Buddhist temple structure were given considerable autonomy to govern their own activities, they remained largely economically dependent on the *bakufu* and subject to government administration. In exchange for legal autonomy, however, the Tokugawa government assimilated the narratives of these institutional actors into the *bakufu*'s own persuasive narratives provided to justify the validity of Tokugawa law. In instances where religious sects or other groups refused to align with the administration's hegemonic reconfiguration of nature, the government excluded and repressed them vigorously. As the following chapters show, intellectual tension remained between Buddhist groups and the Tokugawa state that flared periodically across the period.

Structure of the Dissertation

The chapters that follow will evaluate Tokugawa legal materials—with a focus on the regulations and decrees issued by the Tokugawa government, but also the works of private citizens that explore, contest, and sometimes even attempt to impersonate Tokugawa laws—to identify and analyze the varying narratives that authorized the Tokugawa practice of lawmaking and the ways in which these competing parties used alternative legal cosmologies and

anthropologies to support their interests. In particular, this dissertation focuses on the ways that lawmakers drew on understandings of human beings and the nature of things from the religious traditions on the archipelago (and, sometimes, in opposition to Western Christianity) to promote or corrode the authority of the Tokugawa state to make laws. While this description appears to focus on synchronic debates—that is, conflicts between interested parties at a particular point in time—, this work also traces debates that occurred among interested parties over the course of two centuries of Tokugawa rule. Over the first two hundred years of Tokugawa rule successive leaders attempted to use a series of different cosmologies—drawing on both Buddhism and Confucianism, and many variants of each—to naturalize the authority of the Tokugawa government to issue and enforce laws. At the same time, competing interest groups like the Buddhist establishment, regional leaders, and common people ranging from the leaders of peasant uprising to the urban literati created, reframed and recycled other or earlier cosmologies to undermine the *bakufu* or to criticize its interpretation or enforcement of Tokugawa laws.

Lawmakers invoked cosmologies and anthropologies most often in a particular legal context: to justify laws that constituted the foundation of Tokugawa government. While a naive analysis of legal cosmologies and anthropologies might position the narratives as a reflection of popular cosmological or anthropological understandings—a would-be “popular” religious tradition—, interested lawmakers used these narratives intentionally to serve specific purposes, including establishing the limits of Tokugawa authority, seeking to use law to inculcate moral virtues or as an alternative expression of virtue, and ultimately positioning religious cosmologies as a tool for the emerging conflict between the social classes. Across this period, even as many of the substantive Tokugawa laws remained largely static, the legal cosmologies and anthropologies

found in Tokugawa constitutional law were in near-constant flux and near-constant conflict. And while general trends in the Tokugawa law generally shared a relationship with broader trends in Tokugawa intellectual history—as, for example, the dominant legal cosmology of the *bakufu* drew first on Buddhism and then on Confucianism—this relationship was neither absolute nor inevitable. During the periods studied in the following chapters, Tokugawa law represented an alternative conversation to other modes of intellectual debate, one with its own history, internal logic, and contestatory patterns of change.

Chapter Two explores the formation of the Tokugawa legal system under Tokugawa Ieyasu and his heirs Hitetada and Iemitsu. Surrounded by potential rivals to their military, political and intellectual authority, including the imperial court, other regional warlords, and the Buddhist establishment, Tokugawa Ieyasu and his heirs expanded the bases of their political authority beyond historical precedents asserted by the earlier Kamakura and Ashikaga governments to form a truly national government. A national government demanded laws of general applicability across the archipelago, and Tokugawa Ieyasu's *bakufu* was obliged to provide alternative narratives to explain the necessary expansion of legal authority by his government in the first decades of the seventeenth century. Influenced by his Buddhist monk administrators Sūden and Tenkai, the constitutional Tokugawa laws relied on a new articulation of the Japanese national character (*kunigara*- 国柄) drawn from the syncretic tradition of the *sankyō* to support their claims to make and enforce laws. Of these initial constitutional laws, the most unprecedented legal claims were found in the *Kuge narabini kinjū shohatto*— laws the *bakufu* issued to regulate the conduct of the Imperial court and, by so doing, to eliminate the authority of their primary symbolic rival to issue laws governing the archipelago. While *Kuge narabini kinjū*

shohatto required the most nuanced argumentation, and the laws governing the warrior households (the *Buke shohatto*) had the most lasting influence on the economics and policies of the Edo period, the cosmological and anthropological narratives justifying these laws were explained most clearly in another edict—*Bateren tsuihō no fumi*—the edict expelling Jesuits from the archipelago. This chapter will examine closely the structure of the arguments presented in this edict to substantiate the *bakufu*'s claim to internal jurisdiction, a claim that is based on the cosmological vision that imposed on the shogun a soteriological duty to protect the nation by protecting its national character against all threats, including the threat most particularly represented by alien Christianity.

Chapter Two considers how the construction of the *kunigara* found in *Bateren tsuihō no fumi* influenced the production of the later, constitutional laws of the Tokugawa legal and social culture—*Kuge narabini kinjū shohatto* and *Buke shohatto*. This chapter will also consider the ways in which, even in the face of a totalizing claim to authority by a hegemon with unprecedented military power, the legal cosmology articulated by Sūden faced immediate contestation from within and without. From within, Sūden's rival Tenkai proposed a strategy for the deification of Tokugawa Ieyasu as *Tōshō Daigongen*, the Great Avatar of the Light of the East. From without, the Buddhist establishment constituted a challenge that was expressed in the "Purple Robe Incident." These challenges to Sūden's legal cosmology suggest that even in the early Tokugawa period, laws and legal culture were not completely coordinated, not entirely successful, and certainly not yet sedimented. However, the early Tokugawa lawmaking efforts of Ieyasu and his successors were undoubtedly impactful, as Tokugawa Ieyasu would become a culture hero and divine *kami*, the constitutional laws issued by Ieyasu would become the

framework for all future Tokugawa lawmaking, and many of the narratives that were introduced to authorize Tokugawa lawmaking—and to criticize it—would recur in the centuries to follow.

Chapter Three evaluates the developments in Tokugawa legal culture over the latter half of the seventeenth century and the early eighteenth century, from the rule of the fourth shogun Ietsuna to that of the seventh, Ietsugu. The conventional account of this period holds that by this time the administrative structures of the Tokugawa state had reached maturity, and the archipelago had benefitted from nearly a century of stability. As a result, the period at the heart of this chapter, the Genroku, is portrayed as a period of optimism and, ultimately, excess. Scholars and contemporary critics offered as an example of this irrational exuberance the legal excesses of the fifth Tokugawa shogun Tsunayoshi's Edicts of Compassion (*Shōrui awaremi no rei*), a series of edicts issued from 1684-1701 that took seriously Buddhist ideals of the protection of all living things. The *Shōrui awaremi no rei* has been described alternatively as a well-intentioned ideal that later Tokugawa scholars—particularly Confucian scholars influenced by Ogyū Sorai—used as a scapegoat for the following era's economic ruin.

In contrast to this account, Chapter Three, by looking at the rapidly changing legal cosmologies proposed under the shoguns Ietsuna, Tsunayoshi, and Ienobu, identifies a “double transition” that occurred in Tokugawa legal culture. This double transition appears most clearly in the differences in the cosmological and anthropological narratives that the lawmakers acting under these shoguns provided to explain the duty of the ruler and the proper role of law. Different narratives were presented in the period of consolidation of the Tokugawa heritage under Ietsuna; the broad Buddhist-accented reforms made by Tsunayoshi; and, quickly thereafter, the counter-

reforms proposed by Arai Hakuseki under the rules of Ienobu and Ietsugu. While the shifts in legal cosmology and anthropology during this period were profound—highlighted by the stark contrast between Tsunayoshi's *Shōrui awaremi no rei* and Hakuseki's revisions to *Buke shohatto*—these reforms represent similar attempts that respond differently to tightening fiscal conditions and increasing unrest that emerge following the Genroku era. The shared desire of Tsunayoshi and Hakuseki to broaden the lawmaking authority of Tokugawa law in the face of changing social and economic circumstances without fundamentally changing the substantive Tokugawa laws led to each offering new legal cosmologies and anthropologies that justified a claim to broader authority.

The differences among legal cosmologies found in this period obscure a fundamental methodological similarity among them all: in an effort gain the benefit of the emergent hero-worship of Tokugawa Ieyasu, each succeeding shogun sought to use legal cosmology differently to redefine how the cult of Ieyasu should be incorporated into Tokugawa lawmaking practice. Each successive lawmaker also offered a response that differed from the legal cosmology offered by Sūden and Ieyasu. Ietsuna sought to establish the newly-created *honmatsu* administrative system and reimagined Ieyasu's concern about Christianity and other teachings which threatened the state as fundamentally aligned with Ietsuna's desire to establish rigid sectarian divisions of doctrine. Tsunayoshi promulgated laws that established unprecedented levels of social control, and the shogun emphasized the soteriological Buddhist elements of Ieyasu's laws that served essentially the same purpose. And Arai Hakuseki sought to legitimate broad shogunal authority by reconceiving the shogun as a Chinese king and the bases for Tokugawa law as existing according to Confucian relationships, and by reconfiguring Tokugawa Ieyasu's constitutional

law the *Buke shohatto* to support exactly the sort of Confucian originalism that Hakuseki espoused. While the lawmakers shared a similar methodology, it would be too simple to describe the differences between Ietsuna, Tsunayoshi, and Hakuseki as a clash between Shintō, Buddhism, and Confucian cosmologies. During this period, there was no established orthodoxy, and the laws proposed by each lawmaker relied on their idiosyncratic visions. By their lawmaking, Hakuseki and Tsunayoshi were each trying to fundamentally rethink the role of religion in shaping Japanese society. At least in part because of this transformative intent, the cosmologies of both Tsunayoshi and Hakuseki were quickly challenged and ultimately abandoned by Yoshimune, the shogun whose long rule immediately followed.

Chapter 4 turns the focus to Yoshimune's career of legal reforms. Yoshimune attempted to fundamentally reframe Tokugawa law by abandoning legal cosmology as an authorizing mechanism. In contrast to the shogun who preceded him, Yoshimune presided over a three-decades-long rule in which Yoshimune served as the primary ruler and lawmaker. Over the course of his rule, and in response to significant crises, Yoshimune further systematized Tokugawa laws and standardized Tokugawa legal processes. At the conclusion of his rule, Yoshimune collected his body of work in an attempt to make the most radical shift in the history of Tokugawa law. By recharacterizing his laws into the *Kujikata osadamegaki* law manuals, Yoshimune sought to present a new set of constitutional laws and by so doing move from reliance on legal cosmology as a way to authorize Tokugawa law to a self-authorizing justification based on the ability of the shogun and *bakufu* law to provide the fair and enforceable administration of justice.

This chapter evaluates the *Kujikata osadamegaki* as Yoshimune's totalizing conceit, an eighteenth-century equivalent of Ieyasu's self-*kamification*. In this conceit, Yoshimune consciously sought to eschew legal cosmology and legal anthropology as authorizing techniques, arguably to blunt the impact of the aggressive deployment of critical counter-narratives of "virtue" offered alternatively by the common people and by renegade *daimyō* like Tokugawa Muneharu. As demonstrated by the first censorship laws issued by the *bakufu*, Yoshimune recognized that his government no longer held a monopoly on the production and deployment of cosmology, and he sought to respond to this threat by changing the game. However, a close reading of *Kujikata osadamegaki* reflects the many lingering traces of legal cosmology and legal anthropology that remained even in this work, proving that even Tokugawa law's deepest foray into Ogyū Sorai's rationalism remained supported by embedded cosmological assumptions that were hard to excise, particularly in the face of legal insecurity.

Chapter Five presents the final series of legal reforms that I will evaluate: the Kansei reforms that Matsudaira Sadanobu issued at the close of the eighteenth century. One of the Tokugawa era's most prominent intellectuals, Matsudaira Sadanobu, produced the Kansei reforms as an alternative response to an economic crisis like that faced by Yoshimune. But where Yoshimune sought to eliminate arguments based on legal cosmology or anthropology in favor of functionalist arguments, Sadanobu took the opposite approach. Not only did he return to reliance on legal cosmology, but he expressly designated a particular cosmology—based on Zhu Xi Confucianism as Sadanobu claimed it was interpreted by the Hayashi school—as the "orthodoxy" of the *bakufu* in the *Igaku no kin*, the "Prohibition of heterodox teachings." This chapter outlines the crises that brought about the Kansei reforms and the arguable necessity to

position Sadanobu as a counter-reformer, given the abject failure of Yoshimune's successors to meet the model of fair legal administration that he had envisioned and the ever-decreasing ability of the Tokugawa government to control the narrative of legal cosmology in the face of an increasingly urbanized, educated population.

Chapter Five evaluates the legal cosmologies and anthropologies that appear in Sadanobu's lawmaking, focusing on the ways that Sadanobu consciously sought to reimagine the memories of both Yoshimune and Ieyasu in a way that he hoped would sustain Tokugawa authority and Tokugawa rule. The central premise of the *Igaku no kin*, and Sadanobu's Kansei reforms more generally, lay in the reimagination of Hayashi Confucianism as the cornerstone of Tokugawa rule. This characterization sought to position the Kansei reforms as a fundamentalist movement, reforming the government policies of liberalization that had occurred in the prior thirty years as out of keeping with a Tokugawa legal cosmology that had (according to Sadanobu) consistently relied on Hayashi policies. In this context, Chapter 5 considers the surprising effectiveness of Sadanobu in recharacterizing the entire Tokugawa legal tradition as fundamentally Confucian in a manner that later samurai and legal scholars would adopt uncritically for over a century. At the same time, this chapter explores the ways that Tokugawa legal culture had become an alternative medium of popular discourse. It does this by looking at the ways that lawmakers outside of government sought to present legal cosmologies in support of alternative, critical reflections on Tokugawa law ranging from explanations of popular unrest, to contemporary popular satires, to the unusual case of the Buddhist-inflected legal apocrypha the *Tokugawa seiken hyakkajō*. This contrast suggests that even during the period in which Tokugawa legal cosmology was

supposedly at its most absolute and doctrinaire, there was a flood of alternative voices seeking to coopt and recharacterize the nature of Tokugawa law.

This dissertation will conclude by reflecting briefly on the influence of the various, changing narratives that justified and supported Tokugawa lawmaking. The final chapter will consider the extent to which these changes influenced, and were influenced by, broader social changes, and conversely, the extent to which these changing narratives, especially as proposed and supported by interested actors engaged in an ongoing war of ideas, reinforced and extended these social changes. In this context, I will emphasize that Tokugawa law, while inextricably linked to broader trends in intellectual history, provides a distinct, alternative narrative that moves with its own logic and according to its own mechanisms. As a tactical response to immanent, concrete problems, Tokugawa lawmakers often invoked cosmological and anthropological arguments that were at odds with dominant cultural norms, rather than reflecting them. Yet because of the recurrent nature of these arguments, and the flexible ability of certain themes—most notably the legacy of Ieyasu—to reimagination, Tokugawa law served as a fertile breeding ground for intellectual speculation within the broader public. The conclusion will offer a caution against the uncritical representation of Tokugawa law--by historians or scholars of religion--as fundamentally Confucian, and particularly against the depiction of the legal cosmologies and anthropologies found in Tokugawa law as a direct representation of any overarching political theology of the Tokugawa state.

CHAPTER II FORGING TOKUGAWA LAW

The Tokugawa period began in 1600 with Tokugawa Ieyasu's military victory at Sekigahara.¹ This victory established that Ieyasu and his supporters held preponderant military force on the archipelago and allowed him to become regent to Toyotomi Hideyori, the young heir to Ieyasu's predecessor, Toyotomi Hideyoshi. Following this victory, Ieyasu began to lay the groundwork for the re-establishment of a national government under a form of military rule that had fallen dormant for nearly a century. The government of the warrior class, the *bakufu*, was first established in the twelfth century when the first of the Kamakura warlords were granted the traditional title *seii taishogun* ("Chief General for Repelling Barbarians") and entrusted to protect the state against the incursions from the foreign periphery. During the Tokugawa period, the political and legal structure of the new *bakufu* that the Tokugawa leaders created would remain in power through a two hundred fifty year "great peace," an incredible persistence that remains the crowning achievement of the Tokugawa shoguns.²

But for Tokugawa Ieyasu at the outset of his rule, there could be no guarantee that he or his successors would have the political or martial skill to craft a government capable of exerting national influence similar to the Kamakura model. Toyotomi Hideyoshi held similar aspirations, but ultimately neither consolidated a stable national government nor protected his chosen successor. When Ieyasu formally accepted the title of *seii taishogun* in 1603—a title that Hideyoshi neither sought nor was offered—there is no indication Ieyasu expected or planned for

¹ The Tokugawa Period is also called the Edo period because the Tokugawa moved their capital to Edo (later renamed Tōkyō). This period is often accounted to begin in 1603 when Ieyasu accepted the title of shogun.

² Scholars have portrayed Tokugawa law as largely static in large part because of the persistence of Tokugawa rule. See, for example, Steenstrup, 118-121.

further duties preventing foreign incursions. Instead, Ieyasu likely saw the title as a means to instantiate his aspiration to *de facto* sovereignty across the archipelago by gesturing to the style of national administration the Kamakura *bakufu* had provided centuries before. Ieyasu had mustered enough influence to assume the title of shogun and, more importantly, would soon start his own dynasty by transferring the title of shogun in 1605 to his son Hidetada without incident.

Even as he assumed the mantle of shogun, Ieyasu faced the challenge of effectively forming a new government; the archipelago had not benefited from effective centralized rule for over a century.³ Although Ieyasu had a more viable pedigree than Hideyoshi,⁴ the Tokugawa lacked a unified claim to make and enforce laws across the entire archipelago, or even across different classes of people. The Japanese had a memory of the exercise of sovereignty—*kōgi* (公儀 *lit.* public duty) was the term most closely associated with this responsibility.⁵ But for Ieyasu, facing new and more difficult challenges of reestablishing a national government, there was no readily established political order available that would offer the *bakufu* the authority to administer the *kōgi* instead of the various political rivals that Ieyasu and his predecessors had subdued by force.

At this time there was similarly no single obvious legal or customary precedent to afford the Tokugawa rulers with the authority to make the laws they would need to govern the entire

³ Arguably, the earlier *bakufu* and imperial court never attained authority over the periphery in the manner in which the Tokugawa would eventually assert. But, because of the Tokugawa *bakufu*'s own limitations on influence at its periphery, it is more reasonable to assert that no state prior to the Meiji held effective sovereignty over the entire archipelago.

⁴ Hideyoshi was the son of a groom who rose to dominate the archipelago by virtue of his talents, but never had the social pedigree to receive hereditary positions from the Court. The Tokugawa were minor nobility who established a (possibly fabricated) claim to descent from the Kamakura leaders.

⁵ Asao has made the closest study of *kōgi* as used in the Muromachi period, (1988), 89ff. For a description of the etymology of the term, see Susser, 132. See also Katsumata (1985), 119-124.

archipelago as a single state. But the problem for the Tokugawa was not that there was no law; the problem was that there were too many possibilities for what Tokugawa law could be. In addition to *kōgi*, the Tokugawa had a number of competing customary or precedential bases on which to claim their authority to administer justice, but none of these were free of historical weaknesses or challenging entailments. Tokugawa Ieyasu had numerous different claims to personal authority over varying groups. The task of the first Tokugawa shogun was meld varying precedents and claims to authority over different groups and territories into a coherent legal order.

To perform this work, the first three Tokugawa shogun developed and articulated a narrative of authority to make and enforce new laws of general applicability across the archipelago and all its people. This narrative of authority needed to assimilate rivals with potentially credible counter-claims to authority like the Imperial Court, the leaders of other powerful provinces,⁶ and the Buddhist temple establishment. In this task, Ieyasu and his son Hidetada enjoyed a number of advantages that their predecessor warlords and would-be-statebuilders Oda Nobunaga and Toyotomi Hideyoshi lacked. Foremost among these was a weakened set of political rivals, including an Imperial court unable to assemble itself as a viable rival to govern; following the elimination of the Toyotomi in 1615, the lack of an obvious military rival; and a set of religious rivals (ranging from the major temples, to the new religious movements like the pure-land informed *ikki*, to the growing Christian presence in Japan) that the military labors of Nobunaga and Hideyoshi had largely decimated.

⁶ Throughout the Tokugawa period, the Tokugawa clan directly held only about a quarter of the territory of Japan. The remainder of this territory (which I will call the provinces (*han*)) was held by a collection of other warrior leaders, often called the *daimyō*. The confederate system of government by the Tokugawa *bakufu* and the local *han* is often called the *bakuhan* system.

Hideyoshi had produced a series of innovative policies that would form the framework of a national bureaucracy and lay the groundwork for social stability. Ieyasu supplied the ability to enforce these policies supported by his own additional claims to authority. Within the traditions of the warrior class, Ieyasu was *buke no tōryō*, the leader of the clans to whom was owed a duty of loyalty. As *seii taishogun*, he had received the blessing of the court to take all necessary actions to address foreign threats. And as a hegemon responsible for rebuilding the temple establishment, Ieyasu had asserted the right to adjudicate their disputes. The thorniest question that remained was to provide a justification to exercise laws that governed the Imperial court.

Tokugawa Ieyasu and his successors succeeded in marshaling these advantages to overcome internal and external challenges and establish their great peace in large measure based on their early attempts to rebuild a political order and establish a set of laws that centralized limited national lawmaking power exclusively in the hands of the *bakufu*, while decentralizing matters outside their effective control to the provinces.⁷ Ieyasu's claim to become the exclusive national lawmaker (and to exercise veto authority over the laws established at the *han*, village and social group levels) depended on a narrative that explained persuasively why an autocratic military clan with no national governing experience should be trusted to make and enforce laws for the benefit of all. Yet the *bakufu* needed to retain control over the *han*, and for this reason, the Tokugawa sought to develop arguments in support of this claim.

This chapter analyzes how the first three Tokugawa shoguns used legal cosmology and anthropology drawn from Japanese religious traditions to forge these disparate customs and

⁷ This political system, often called the *bakuhan* system to reflect the dual authority of the *bakufu* on the one hand and the provinces (*han*) on the other. For a description of the system, see Hall (1991), 150ff.

precedents into a comprehensive narrative that supported their authority to make new laws. At the center of this strategy was the deployment by Ieyasu of a new narrative that imagined a metaphysical Japanese national character (*kunigara*- 国柄), with a unique cosmology at its heart. The Tokugawa's central claim to lawmaking authority lay in the consistent vision that the shogun had a soteriological duty under all circumstances to protect the nation by protecting its national character. This vision appeared primarily in the constitutional laws Tokugawa Ieyasu and his immediate successors issued and relied, as a matter of first principle, on a cosmological reconstruction of state authority that transferred from the imperial court and all rival claimants to the Tokugawa government the authority to make laws and other decisions that would protect the *kunigara*.

The evolution of Tokugawa lawmaking strategies during this early period provides evidence of the intentional adoption of this new strategy. This chapter will describe this evolution by focusing on three phases of Tokugawa lawmaking: (1) the initial decade of Tokugawa lawmaking, in which Ieyasu and Hitetada sought primarily to administer justice pursuant to their customary claims to authority, as shown through the example of laws governing temples and shrines; (2) the articulation of a new claim to authority through the issuance of three constitutional proclamations by the *bakufu* during the years 1614-1615— *Bateren tsuihō no fumi*, a directive that reinforced the expulsion of the Jesuits from Japan; *Buke shohatto*, the set of rules governing the conduct of warrior families; and *Kinchū narabini kuge shohatto*, the set of rules governing the conduct of the Imperial court and the nobility; and (3) the subsequent expansion of Tokugawa lawmaking by Hidetada and his son Iemitsu that established the Tokugawa legal order in reliance on these three constitutional proclamations.

This chapter provides a close reading of the three constitutional proclamations issued in 1614-1615 to consider how the *bakufu* formulated its claims to lawmaking authority. Although all three directives were drafted by the same author, the monk-advisor Ishin Sūden, these texts differed in style, structure, and rhetorical thrust. This is because each relied on different claims to authority to support their promulgation. Because of these differences in style and structure, some scholars have even questioned whether all three could be called laws equally.⁸ This chapter argues that despite these dissimilarities, each of the constitutional laws provides a strand of a coherent argument that supports the Tokugawa's emergent claim to govern, but that the differences in these text suggests that the Tokugawa law of this period was still emerging and was not yet mature or static. While a close reading of these proclamations shows a system of lawmaking that remains incompletely coordinated, these three proclamations do consistently present an argument for broad Tokugawa authority that would provide the basis of what would become the Tokugawa law.

The primary evidence of this new paradigm relied on the authorizing claims that were explicit and implicit in these directives. Through a close reading of *Bateren tsuihō no fumi*, this chapter will explore the cosmological narratives that Ishin Sūden introduced to create a coherent set of legal arguments drawn from a seemingly disparate group of precedents. Relying on the adoption of the shogunal title, Ieyasu's persuasive narrative contrasted the *kunigara* with alien threats and explained the importance of Tokugawa lawmaking primarily as a means eliminating the sustained internal threat posed to the *kunigara* from alien influences. In this narrative, the role of the alien was played foremost by Jesuit Catholicism, and more broadly with other religious movements that

⁸ See, e.g., Screech, 11, arguing that *Bateren tsuihō no fumi* was not a law.

placed loyalty to their beliefs above loyalty to state. Yet this formulation had difficulties; Japan already was a region that held multiple doctrinal traditions (*kyō*, 教, lit. teachings), including the *sankyō* of Buddhism, indigenous ritual traditions that were beginning to be called Shintō, and Chinese intellectual traditions. The creation of an external other required a narrative that imagined the three traditions that had existed in Japan longest—Buddhism, Chinese thought, and Shintō—as a syncretic whole, eliding over the emerging differences between these teachings. While the articulation of the *sankyō* was absent expressly in *Buke shohatto* and *Kinju narabini kuge shohatto*, the conceptual framework of a unified, syncretic *kunigara* that required *bakufu* protection provided key support for the claims for the authority to adjudicate what the proper role for the Tokugawa’s ideological rivals within this imagined national character in the latter two proclamations. Through the frame of this initial narrative offered in support the constitutional laws issued during this formative period, this chapter introduces practices that the *bakufu* would consistently use to support persuasive claims to authority⁹ and situates these claims within the intellectual milieu of the period.

The arguments provided in *Buke shohatto*, *Bateren tsuihō no fumi*, and *Kinchu narabini kuge shohatto* created a space for Tokugawa lawmaking that was meaningfully different than the administration of government that had occurred before the production of the three proclamations, and it laid the groundwork for significant expansions of lawmaking authority under Iemitsu. However, from the beginning, the social acceptance of these cosmological narratives was mixed, as we will see from the contested afterlife of Sūden’s arguments found in competing arguments

⁹ This chapter will also look briefly at the *jiin hatto*, the decisions governing temples and shrines, which formed a final leg of the Tokugawa constitutional laws.

made by his rival Tenkai and challenges from the temple establishment and the imperial court.¹⁰ While Sūden's cosmological arguments effectively justified the Tokugawa to make new law,¹¹ Sūden's rivals never wholly ceded to him or the government the ability to characterize the *kunigara*. This contestation provided an opportunity for future shogun to import new persuasive narratives into Japanese law.

This chapter will proceed in three parts. To lay the foundation for the lawmaking practices adopted by the Tokugawa, I will first outline the political, intellectual and social forces that set the limits of possibility for early Tokugawa lawmaking. These will include with particularity the most important legal and cultural antecedents that would shape the first proclamations of the early Tokugawa leadership. Next, this chapter will introduce the concepts that provided the narrative justification for Tokugawa lawmaking. In this context, this chapter contrasts the early legal engagements between Hideyoshi and the Tokugawa with regional leaders and temples that established the bases of sovereignty over these organizations with the later promulgation and reception of *Buke shohatto*, *Bateren tsuihō no fumi*, and *Kinchu narabini kuge shohatto*. Focusing principally on *Bateren tsuihō no fumi*, where the *bakufu* articulates expressly its cosmological

¹⁰ In the interest of space, this chapter does not devote considerable space to either: (1) the formalisms used to authenticate and validate *bakufu* proclamations; or (2) the legal institutions responsible with lawmaking responsibilities. With regard to the former, these formalisms have been addressed comprehensively by other scholars, and for present purposes, it suffices to note that certain formalisms, like the issuance of proclamations under the red seal of the shogun, carried considerable weight to establish binding intent. With regard to legal institutions, this omission is in contrast a matter of circumstance. This formative period had not yet produced stable legal institutions. Although Hideyoshi had begun the process of establishing a new administrative structure, this structure had not yet created legal professionals. During these first few decades of Tokugawa rule, justice was rendered largely *ad hoc* by the shogun and his senior advisors, and there was no class of trained legal professionals. The growth of the class of legal bureaucrats will be discussed in Chapter 4 as it reached its full articulation in the early eighteenth century. Other studies provide more detail about the general use of these formalisms, as well as the use as the Tokugawa period progressed of administrative writing style—*sorōbun*.

¹¹ This authority appears in the customary adoption of these laws. With the appointment of each new shogun, the *Buke shohatto* was reissued, in many cases with only minor changes. Similarly, the laws governing temples and shrines, the *Jiin shohatto*, were reissued with only modest changes in 1635 and 1665. Both of these examples are explored *infra*, 146-147 and 160-161.

narrative supporting the authority to issue new law, this chapter will show how the arguments articulated in that proclamation served as an intellectual bridge that made possible the subsequent promulgation of other new laws, most notably *Buke shohatto* and the *Kinchū narabini kuge shohatto*, and, later, to the lawmaking of Iemitsu. To show the direct results of the narrative presented in *Bateren tsuihō no fumi*, this chapter provides a close reading of this regulation and a recapitulation of the idiosyncratic arguments that Ishin Sūden provided to accompany its promulgation. This chapter concludes by analyzing the promulgation of *Buke shohatto*, the *Kinchū narabini kuge shohatto*, and, more briefly, the laws of Iemitsu, as well as the reception of these laws by their intended audiences and more broadly by Tokugawa society during this transitional period.

Sources of Tokugawa Authority

Tokugawa Ieyasu sought first to establish his personal authority to govern by deploying the political tools that had been available to warrior hegemons since at least the beginning of Kamakura-era warrior rule.¹² First among these was assuming the title of *seii taishogun*, which established a formal relationship between Ieyasu's government and the Imperial Court. Ieyasu then established a customary "lord-servant" relationship with the other warrior families by demanding personal oaths of loyalty.¹³ These first nods to tradition sought to transmute Ieyasu's military dominance to the political sphere, but owing to the period of over a century of shogunal

¹² The Kamakura era began in 1192 with the appointment of Minamoto no Yoritomo as shogun. This marked the first occasion of warrior government and would serve as a reference for the Tokugawa leaders during the seventeenth century.

¹³ See Ishii, 60.

impotence,¹⁴ the effectiveness of these precedents as authorizing tactics for administration of justice had declined. In addition, the unstable political circumstances of this transitional period and Ieyasu's new, broader goals of organizing a single government across the archipelago demanded new laws and new justifications to authorize them. This section provides a brief review of the political and legal antecedents on which Tokugawa Ieyasu relied to form a Tokugawa legal system. When viewed in light of these new needs, the techniques and tactics that Tokugawa Ieyasu drew from prior shoguns and the warrior tradition provided a necessary, but not sufficient, component of the Tokugawa lawmaking process.

The political dynamics of Ieyasu's rule

During the Sengoku era, the century-long period of civil war that preceded the military conquests of Oda Nobunaga, the Japanese archipelago lacked effective central leadership, and a weakened *bakufu* governing from Kyoto held little authority over regions outside of its sphere of geographical influence. Following Oda Nobunaga's decade-long series of military victories, which were in turn reinforced by those of Toyotomi Hideyoshi and Tokugawa Ieyasu, military hegemony gradually reasserted political power outside of the regions under these leaders' direct control. Hideyoshi particularly established the foundations of a central government, complete with a collection of five co-regents who were to succeed Hideyoshi.¹⁵

¹⁴ Following the end of the Onin rebellion in 1477, prior Ashikaga *bakufu*'s range of effectiveness was limited to the capital at Heian. Ibid. Ooms (1985), 26-29, provides a helpful description of Oda and Hideyoshi's attempt to reassert central government.

¹⁵ Berry, 131-139.

When Hideyoshi died in 1598 with his heir still a young child, the co-regents quickly returned to war. Tokugawa Ieyasu, formerly a deputy of Hideyoshi's, consolidated his military authority at Sekigahara, defeating his former comrades. By so doing, he assumed the title to one longstanding, if unofficial, source of customary authority—he had become the *buke no tōryō*, or leader of the warrior houses. In 1603, Ieyasu sought and obtained the title of *sei taishogun* and, by so doing, received a second authorizing mandate—the mandate of the Imperial court to protect the nation. To all contemporary audiences, Ieyasu had recaptured the same set of claims that had sustained the Kamakura and Ashikaga *bakufu*.

Sei Taishogun and the Mythic Tennō

Ieyasu began his formal rule in 1603 by assuming the title of *sei taishogun*, but he ended his formal rule just two years later by passing the title to his son Hidetada.¹⁶ The imperial investment of the title of shogun to the Tokugawa clan marked an expansion of the imperial mandate granted to both Oda—who received various court ranks, but never sought or received the rank of shogun—and Hideyoshi, who only assumed the title of *kanpaku*, “imperial regent”. By becoming shogun, Ieyasu assumed a title that had a precedent for exercising broader powers to make and enforce laws, particularly laws governing the defense of the state.¹⁷ In the Kamakura era, the Imperial court granted the shogun the authority to defend the State. Court and *bakufu* alike subsequently interpreted this authority to extend to promulgating internal laws governing matters like

¹⁶ When Ieyasu stepped down and allowed Hidetada to become shogun in 1605, he allowed Hidetada to assume certain of the functions of the shogun, including the use of the Edo castle. However, Ieyasu remained de facto ruler from his castle at Sumpu until his death in 1616. Hidetada continued this tradition of “hidden” rule by transferring the title of shogun to his son Iemitsu in 1623, though Hidetada continued to remain active politically until at least 1631.

¹⁷ Note, however, that Hideyoshi had arrogated to himself similar rights by assuming the title of *Kanpaku* (regent), rather than shogun.

international trade and martial conscription.¹⁸ The Kamakura *bakufu* also asserted the right to issue its own criminal laws and punish lawbreakers.¹⁹ As shogun, Ieyasu and later Hidetada began to issue regulations, conduct international diplomacy, and generally hold the *bakufu* out as the premier holder of sovereign authority. This authority, though clearly the shogun's in theory, was somewhat murkier in practice. For, although Hidetada as shogun issued proclamations with the vermilion seal, Sūden's diaries show that Hidetada was frequently found at Ieyasu's residence in Sumpu consulting his father on the policies the government ultimately issued.²⁰

Ieyasu's assumption of the title of shogun also came with a set of political and ideological drawbacks. The title of shogun was granted by the Imperial court, and the delegation of authority was limited in scope. While the court remained fairly impotent under Ieyasu,²¹ the threat remained in theory that a future Imperial court would interfere with the *bakufu* to restrain its mandate. In this context, the memory of the fourteenth century Emperor Go-Daigo's fight to reclaim direct imperial rule had not been forgotten.²² Although the Imperial court and the nobility maintained little economic or military power at the beginning of the seventeenth century, the court retained significant social and religious prestige.

¹⁸ Mass (1979), 15.

¹⁹ See *supra*, 57-58.

²⁰ See *infra*, 107-108 for a description of this practice in the drafting of *Bateren tsuihō no fumi*.

²¹ See Butler (2002), 169 et seq. for a discussion of the court's reliance on the Tokugawa to resolve internal scandals, for example between the *tennō* and his courtiers in the "Crisis of 1609."

²² In the early fourteenth century, the *tennō* Go-Daigo plotted multiple times to re-assert Imperial rule from the Kamakura *bakufu*. Go-Daigo eventually asserted his own authority, which provoked a crisis in succession leading to a split in Imperial authority between two courts (often called the Northern and the Southern). While Go-Daigo's Southern Court eventually fell to the Ashikaga *bakufu* in 1371, the arguments provided by imperial loyalists in favor of Go-Daigo (for example, Kitabatake's *Jinno Shōtōki*) would remain influential in the construction of Imperial claims to sovereignty. See Brownlee (2011), 86 (use of Kitabatake's work by twentieth century nationalists).

The court's most potent source of religious prestige rested in the body of the Emperor- the *tennō*. The *tennō* was understood to be an immanent *kami*, or source of divine power, situated at the nexus of a web of ritual practice that sustained the state both politically and metaphysically. The ritual responsibilities accorded to the *tennō* precede recorded history²³ and both of the first written histories of Japan, the *Kojiki* and *Nihon shoki*, present claims of the divinity of the Imperial lineage.²⁴ In the period preceding Tokugawa rule, the arguments introduced by Yoshida Kanetomo as Yuiitsu Shintō developed a systematic reformulation of the Imperial court's historical claim. Developed in fifteenth century by the Yoshida clan, Yuiitsu Shintō (sometimes also called "Yoshida Shintō") provided the first arguments that presented the worship of the *kami* as a comprehensive cosmological system, situating the *kami* in relation to bodhisattvas, buddhas and other supernatural figures of the Japanese imaginary. Within this formulation, the *kami* as instantiated deities served as the present, visible foundation for a broader cosmology that identified the present *kami* with the distant and ultimately otiose Buddhist figures. The *tennō*, of course, was the most present, most visible human *kami* and remained at the center of the Shintō universe.²⁵ Yuiitsu Shintō also described the workings of the *kami* with reference to Chinese *yin/yang* cosmology in a way that Sūden would later use as a model.²⁶

By the early Tokugawa period, Yuiitsu Shintō had become influential among intellectuals as a way to explain the relationship between Buddhism, Confucianism and Japanese indigenous traditions. In articulating Yuiitsu Shintō, Yoshida Kanemoto did not intend to produce a totalizing

²³ Even the first historically recorded leader, the Empress Himiko, arguably engaged in ritual practices. See Ambros (2015), 12-13.

²⁴ These myth-histories were commissioned by the Imperial Court. Ooms (2009), 39.

²⁵ As described *infra*, however, other major figures also became lesser *kami*, like *daimyōjin* or *daigongen* on their death. For a description of the origins of this practice, see Rambelli (2006), 317-319.

²⁶ For a description, see Scheid, 120ff.

understanding of Japan's religious practices; his purpose was to promote Shintō over Buddhism by rearticulating the relationship between *kami* and Buddhas, arguing that the *kami* were the locus of divinity that was later manifested as traces in India and later Japan as the bodhisattva.²⁷ Yuiitsu Shintō invested the authority to rule centrally within the body of the Emperor and entrusted the Emperor with the authority to make law in a manner that superseded the dharma.²⁸ Imperial authority relied on the activities of the Yoshida-influenced *jingikan*— the ministry of shrines.

Under the Yuiitsu Shintō formulation, the Emperor held the sole mandate to govern but had the power to delegate to others the duty of administering the State. This split of authority from administration provided a convenient justification for the growth of *bakufu* authority in the Kamakura era.²⁹ Under this division of responsibilities, the warrior-government of the Kamakura *bakufu* assumed the initial duty to protect the borders of the state, an important role when the effective span of control of the Heian government had not yet encompassed even the breadth of the island of Honshu. Because of the imminent threat of incursions, the *bakufu* were able to exercise significant administrative control over the operations of the state. Under the same formulation, though, the shogun had no direct authority to rule, which left the act of making new laws in an ambiguous position. The intertwined issues of the scope of the Tokugawa government's authority to govern, and its proper relationship with the *tennō*, would come to play a dominant role in *Bateren tsuihō no fumi* and in *Kinchū narabini kuge shohatto*.

²⁷ As such, Yuiitsu Shintō proposed the inversion of the traditional Japanese conception of *honji suijaku*, which characterized the *kami* as the manifestations of cosmic buddhas and bodhisattvas that predated them. See Teeuwen and Rambelli, 1.

²⁸ See Scheid, 125.

²⁹ See *supra*, 57.

Buke no Tōryō and the Sengoku Kahō

The legal and political traditions of the warrior families since the Kamakura period dictated that all warrior families owed a strict duty of loyalty to the *buke no tōryō*, the leader of the warrior houses. This duty was explained by the rigidly hierarchical relations between lord and retainer and arose from *realpolitik*; the strongest military leader was uniquely positioned to protect his retainers and to award them spoils, but to do so he needed and demanded absolute loyalty. However, the authority of the *buke no tōryō* was passive, a retainer's duties did not arise unless and until called upon by the lord. Following Sekigahara, Ieyasu was in position to assume the role of *buke no tōryō*, and from this point, Ieyasu began to act like a ruler. However, it was not until 1611 that Ieyasu would call upon the *daimyō* using this authority. In 1611 (and again in 1612 and 1615) Ieyasu asserted his role as *buke no tōryō* by demanding direct pledges of personal loyalty by each regional leader and formalizing a private basis for relations between these leaders and Ieyasu.³⁰

While oaths between lords and retainers were fairly common,³¹ Ieyasu's pledges of loyalty were unique in their geographic breadth; no prior shogun had demanded pledges from warrior houses across the archipelago. They were modeled foremost on oaths required by Hideyoshi of Ieyasu and other regional leaders, and more generally on a particular set of historical precedents—the Sengoku-era house codes (*kahō*, 家法) issued by regional warlords to their retainers.³² The *kahō* were the set of legal precedents that were most familiar to Ieyasu, as his family issued a house

³⁰ See Asao, 261-262. Throughout the Tokugawa era, sovereignty over a particular region (*han*) was guaranteed by a note of investiture delivered personally by the Shogun. See Steenstrup, 111.

³¹ There is some ambiguity around the understood efficacy of these oaths. Generally, the oaths themselves appear to be backed by social sanctions, Sūden in his description of Japanese law suggests that oaths are made to the *kami*, suggesting that the risk of divine retribution on oathbreakers.

³² See e.g., Katsumata (1982), 257. For an introductory discussion of the house codes generally, see Haley 47-49.

code to govern the samurai under the lands they controlled. House codes arose indirectly from the codes governing the samurai class established by the Kamakura *bakufu*, under which the warrior family subordinate to the shogun pledged strict oaths of loyalty to the shogun.³³ Under the Sengoku house codes, the entire territory subject to the local warlord's authority came under the scope of these house codes,³⁴ and the local warlord in effect became the primary source of law in the territories where he could enforce his codes.

While the primary purpose of the house codes remained to establish discipline and order among the warlord's *samurai* retainers, certain house codes also included rules for economic organization and even moral guidance. The inclusion of ethical or moral principles provided a secondary justification for the authority of the warlord to apply this law to his subjects.³⁵ However, these codes never solved, nor sought to solve, the challenge of establishing an alternative narrative of political legitimacy, and these codes did not generally offer cosmological narratives. Instead, the warlords issued the house codes to better administer their holdings and, by so doing, grow them. The Sengoku house codes relied for their justification on the ability of the warlord to enforce them, and more abstractly, on their own functional effectiveness as a means of social organization.³⁶ Within this context, their very functionality became a fundamental justification for the ability to

³³ While the focus of this section lies on the house codes enacted by the Sengoku warlords, from the establishment of the Kamakura *bakufu* onwards, the *bakufu* had allowed local rulers considerable autonomy and gave credence to local custom and local and regional pronouncements in the adjudication of legal disputes. See Mass (1979), 48ff. From this context, the Sengoku house codes, while more detailed than their Kamakura era precedents, maintained a similar position within the legal structure in the *Sengoku* and after that local customs and laws had in the Kamakura era.

³⁴ See Katsumata and Collcutt, 118-119.

³⁵ Haley suggests that the introduction of moral instruction provided evidence of the early re-introduction of Chinese political thought, and arguably Neo-Confucian thought, into *Sengoku* political and legal dialogue, 49. While Ooms (1985) provides a more thorough analysis of Nobunaga's appeal to the mandate of heaven, 34-39, reading this set of justifications backwards into previous house codes seems unwarranted, particularly because key terms like *tenka* or the mandate of heaven, rarely appear in these codes.

³⁶ Steenstrup, 104-105.

make laws, whether described as a demonstration of the mandate of heaven or just because well-designed laws led to holdings that were easier to administer.

Ieyasu, in drawing on the house codes as a basis for his lawmaking efforts, again sought to establish strict bonds of loyalty. However, the geographic expanse of his holdings and the complexity of managing them strained the effectiveness of direct oath-making. Ieyasu faced the problem of effective enforcement, and his inability to enforce even one oath would weaken the effectiveness of all the others. Ieyasu reinforced the oaths that he had demanded by asserting the Tokugawa government's authority to replace the leaders of regions under their control with new leaders drawn from Tokugawa relations and allies, as well as to transfer among and within regions the rights to allocation of wealth, particularly the right to collect rice from fields and villages. This reshuffling occurred frequently during the period between 1603 and 1615 when Ieyasu was solidifying his power.³⁷ Between the loyalty of newly appointed relations and the loyalty demanded by pledge, the *bakufu* extended its effective reach of authority, but in a way that was fundamentally unstable beyond the lifetime of the *buke no tōryō*—Tokugawa Ieyasu—making them, in effect, a form of private law. Under the nascent system, Ieyasu's fundamental rights to enforcement lay in the rights granted by arrangements made between himself as *buke no tōryō* personally and the various leaders who had bound themselves, rather than on publicly accepted laws validly issued and enforceable on all.³⁸ However, the system of legal authority Ieyasu established by these personal bonds granted

³⁷ Bolitho (1974) 4-5. Ambros (2008), 62ff, provides one example of the ways in which land yield was reallocated in favor of political allies at a local level in the temple context.

³⁸ While I have emphasized the political rights established by private law, even rights as established as various rights to property shared a private law basis, needing to be re-established with the succession of each new shogun. Underlying the private law nature of these relationships, of course, lay hundreds of years of precedent to support the rights of each of the parties to assert rights as private right holders, as well as certain status relationships that had developed initially from Chinese models. See Steenstrup, 116.

Ieyasu lawmaking authority, and Ieyasu would use this authority to establish a system that would become fundamentally public with the issuance of *Buke shohatto*.

Hideyoshi's Innovations

While Tokugawa Ieyasu's desire for external validation of his authority to govern is clear, his immediate predecessors Oda Nobunaga and Toyotomi Hideyoshi did not appear similarly concerned by the lack of an explicit Imperial mandate. While his authority to issue laws may have been uncertain, Toyotomi Hideyoshi instituted a number of legal changes that would provide a stable foundation to Tokugawa rule.³⁹ Ieyasu and his successors enforced these precedents like other prior laws, and by so doing, Hideyoshi's laws also became part of the settled precedent of the Tokugawa state.

Like Ieyasu, Hideyoshi aspired to govern the entire archipelago, although his ambitions were ultimately frustrated by more daunting political realities and his failed campaign to invade Korea. Hideyoshi began to make laws initially by sending private directions to different leaders that were construed as enforceable primarily by the use of the *shuin* (vermilion seal).⁴⁰ Over time, Hideyoshi's proclamations moved from resolving particular problems to proclaiming

³⁹ For all his military success, Oda Nobunaga spent fairly little time governing his holdings. So, despite their differences in orientation, Toyotomi Hideyoshi provided the most direct precedent to Tokugawa Ieyasu.

⁴⁰ Due to the variety of the proclamations among the *shuinjō*, Berry has suggested of Hideyoshi's lawmaking, "the word 'law' must be used with hesitation." 102. While all materials issued under Hideyoshi's red seal certainly do not meet contemporary standards of lawmaking, these materials often address matters of legal significance, such as establishing property rights and duties for the samurai class. And, like the Tokugawa and as described in more detail herein, the later regulations provide clear precedents for subsequent enforcement. A more exhaustive consideration of whether Hideyoshi's proclamations constitute a system of laws unto themselves is beyond the scope of this work. This work emphasizes instead that some of these proclamations would serve as precedents on which the Tokugawa laws were based.

changes of general, and extremely far-reaching, applicability. Because this pattern of lawmaking mirrored the later development of Ieyasu's lawmaking, Hideyoshi's laws ultimately had a significant impact both on Tokugawa society and the lawmaking practices that the Tokugawa *bakufu* later adopted.

From the beginning of his regency, Hideyoshi asserted the right to speak for the "nation" (*koku*, 国) of Japan.⁴¹ Notable examples of this were found in diplomatic correspondence, particularly in interchanges with those Western nations who assumed that the ruler shared the same model of absolute kingship then found in Europe, implying the sole authority to speak on behalf of the nation. In his diplomatic messages, and again in the 1587 law *Bateren tsuihō no rei*, Hideyoshi communicated to foreign sovereigns and the Jesuits (as well as the foreign trade ships that he assumed they represented) as the single authoritative voice on behalf of Japan and its territory.⁴²

Hideyoshi also proclaimed and enforced laws applicable across Japan. Perhaps the most sweeping of these laws was the 1588 proclamation of a sword hunt (*katanagari*), which banned the possession of swords by non-samurai. This proclamation was not merely hortatory; it was enforced by Toyotomi's armies, who travelled across the archipelago collecting weapons.⁴³ The sword hunt was a success for the Toyotomi government, both practically and in terms of projecting authority.⁴⁴ In a direct benefit to the Tokugawa, the proclamation significantly reduced the risk of armed unrest from the farmers by taking many of their weapons, relieving the

⁴¹ Berry, 102ff.

⁴² Diplomatic correspondence sent by Hideyoshi has been collected as early as 1583. See Nagura (1976), 29-35.

⁴³ For more detail, see Berry, 102-106. Hideyoshi did not create the notion of a sword hunt, but his was the most sweeping and effective in Japanese history.

⁴⁴ See *ibid.*, 106.

warrior class of a risk that had been significant since early in the century.⁴⁵ Hideyoshi posed the *katanagari* as a national law of general applicability, and in this context, the sword hunt regulation was also notable because it included Hideyoshi's articulation of a cosmological narrative, a valuable precedent on which Ieyasu would build. Hideyoshi justified the sword hunt as a means to honor the Buddhas, as Hideyoshi claimed that the swords captured in the sword hunt would be melted and made into a *daibutsu*—a giant statue of the Buddha that traded on the belief that the veneration of the Buddha was essential for the protection of the nation and the soteriological protection of the people.⁴⁶

Because it reinforced the class distinction between samurai and other social groups, the sword hunt introduced social and class formations that the Tokugawa would reinforce. Two other Toyotomi laws worked similarly: the requirement that samurai move from their lands and live in central “castle-towns” within each province,⁴⁷ which separated the samurai from the land, put their resources under *daimyō* control, and stimulated a new urbanism; and his initiation of the cadastral surveys (the *taikō kenchi*), which from 1583 on had the effect of tying farmers to their lands while stabilizing tax revenues and stimulating economic production by providing an incentive to place more fields in circulation.⁴⁸ These laws were generally accepted within Japanese society; there are few examples of samurai resisting the move from their lands, and while there were limits on the ability to fully enforce either the *katanagari* or the *taikō kenchi*,

⁴⁵ Tsang (2007) describes in great detail the *ikki* movements of the sixteenth century and the effects of the sword hunt on destroying *ikki* political power, 243. See also Walthall, 19-48.

⁴⁶ “The swords and short swords collected in the above manner will not be wasted. They will be used as nails and bolts in the construction of the Great Image of Buddha. In this way, the farmers will benefit not only in the life but also in the lives to come.” The *daibutsu* was never actually constructed. See Berry, 102-103.

⁴⁷ Iemitsu would later strengthen this regulation by limiting the number of castle towns per province to one.

⁴⁸ *Ibid.*, 120-121. Neither of these statutes, however, contained any significant justification by Hideyoshi explaining his basis for issuing them or his authority to issue them. Arguably, however, as leader of the warrior class, he needed no justification to reorganize, at least, the living arrangements of samurai.

there were few armed farmer revolts in the early Tokugawa period and farmers benefited from the cadastral surveys to defend their claims to their property.

Ieyasu did not re-promulgate any of these regulations, but he did continue to enforce them and use these laws as a basis for later administration. Later in the Tokugawa era, each would be accepted as precedents within the Tokugawa political system. The Tokugawa treatment of these laws both shows how the Tokugawa assimilated existing legal precedent (even if the precedent was of questionable authority) and provides a counterpoint to emphasize how differently Tokugawa Ieyasu treated the Christian question.

Bateren Tsuihō no Rei

Jesuits first arrived in Japan in 1543, and in the decades that followed had met with an uneven reception. Some regional warlords were receptive, and some were suspicious. Hideyoshi, in turns, was both. At first solicitous of the Jesuits, political events led him to change his perspective, and in 1587, Hideyoshi issued an edict expelling the Jesuits— *Bateren tsuihō no rei*. Although scholars continue to disagree about exactly what problem *Bateren tsuihō no rei* was issued to solve,⁴⁹ Hideyoshi likely perceived in the Jesuits an intellectual and social threat similar to the threat he had eradicated from Japanese temples, but one that was balanced by the benefits of Western trade.

⁴⁹ Diaries from the period suggest Hideyoshi's dissatisfaction with the behavior of Christian converted *daimyo*, including destroying temples and shrines and forcibly converting their subjects to Catholicism. See Boxer, 144. Based on the record, we cannot clearly distinguish whether this dissatisfaction arose from the destruction of Japanese religious traditions, out of the political concern over forcible conversions, or out of fear of the foreign resources supporting the Catholic converts.

*Bateren tsuihō no rei*⁵⁰ is composed of only five articles, and addresses Christianity directly in only the first three. Nonetheless, the edict provided a clear legal precedent for further proscription of Christianity. Because of its relationship to Ieyasu's *Bateren tsuihō no fumi*, explored in more detail below, this section provides further detail on this proclamation. *Bateren tsuihō no rei* opens by justifying the expulsion of the *bateren* by offering a cosmological argument: "Japan is a land of the *kami*, and it is very evil that the *bateren* have come to spread a false teaching (*jakyō*-邪教)." According to this description, the islands of Japan are the *shinkoku* (land of the *kami*), a place of unique cosmological significance where the *kami* are immanent. The Catholics' offended the *kami* by spreading a teaching that dishonored the *kami*. Although this statement makes intuitive sense, its argument was question-begging. Japan had welcomed foreign religious traditions for nearly a millennium, and its indigenous traditions had combined with Buddhism (mentioned explicitly in the fifth article) without major social or cosmological disruption.⁵¹

For Hideyoshi, the problem caused by the Jesuits was social, not cosmological. The second and third articles of the regulation provided the meat of Hideyoshi's arguments against the Jesuits, arguing that Christian converts had destroyed temples and shrines by stirring up the common

⁵⁰ The titular difference between the two texts is suggestive of the stylistic difference in the works. The *rei* in *Bateren tsuihō no rei* is (令) meaning law or regulation, while the *fumi* in *Bateren tsuihō no fumi* is (文) meaning writing, a more open-ended, philosophical term. The *rei* is written in a form stylistically similar to other regulations of the period, while the *fumi* is not.

⁵¹ The term *jakyō* had been in active use for hundreds of years as a polemic term, for example by Zen schools to differentiate their practice from other forms of Buddhism; Dōgen used the term to describe Buddhist eternalism, for example, in *Bendōwa*. *Shinkoku* was also a frequently used term in the medieval period, but over the course of the seventeenth century, use of the term waned.

people in an unacceptable manner.⁵² Their conversion practices, and the spreading of false teachings, were disrupting the social order.⁵³ This claim established a basis for jurisdiction over the Jesuits; Hideyoshi had granted the Jesuits (and converted *daimyo*) the rights to incomes from land, and on this basis, the Jesuits were bound to accept Hideyoshi's justice. Having resolved that the Jesuits had violated their deal with Hideyoshi, the third article reiterated that Jesuit proselytization had created the problem and provided a fitting punishment. All Jesuits must leave Japan within twenty days, and anyone helping the Jesuits would be punished severely. In the final two articles, however, Hideyoshi continued to promote the Portuguese trade with Japan by welcoming commerce and allowing non-merchants who did not interfere with the *kami* and the Buddhist *dharma* to enter Japan freely.

Hideyoshi never enforced *Bateren tsuihō no rei* aggressively.⁵⁴ Of the 120 Jesuits then known to be in Japan, only three left within the six-month period following its promulgation.⁵⁵ Perhaps because Christians toned down their missionary activities, even as the ban on Christianity remained in place, another decade would pass (and another political intrigue arise) before Hideyoshi resorted to violent action against the Catholics. *Bateren tsuihō no rei* provided the legal and rhetorical precedent for the suppression of Christianity but failed to provide a guide to its execution.

⁵² There is some irony in this argument, as Hideyoshi had personally destroyed far more temples than the Jesuits were claimed to have.

⁵³ Josephson has sought to identify *jakyō* with the Christian term heresy, placing the interfaith discourse between Japanese traditions and Christianity as ones understood as eliminating internal disagreement rather than building a broader analytical category of "religion" that would accommodate both traditions. At 22-42. As I will discuss *infra*, I fail to find this argument compelling in part because of the undue deference this argument grants to the emic choice to link or decouple various traditions within the concept of heresy.

⁵⁴ In part, this was a result of heavy lobbying by the Jesuits and their pretense at discontinuing activities in Japan. See Yamamoto, 256.

⁵⁵ Boxer, 149, notes, however, that Hideyoshi did recover Jesuit properties and impose a steep fine on the Church.

Through regulations like the cadastral surveys and the reorganization of castle towns, Hideyoshi began to spur the development of a social structure that could be effectively managed centrally.⁵⁶ Hideyoshi also issued broader, national laws and exercised a manner of national sovereignty within a limited context, particularly around the defense of the nation, whether against external threats (the Jesuits) or through limiting internal strife through the confiscation of weaponry. However, in comparison to Ieyasu's later formulations, Hideyoshi's lawmaking was humble in justification. Even in the *katanagari* and *bateren tsuihō no rei* where cosmological claims were made, Hideyoshi sought to support his claims largely on functionalist terms, claiming that the actions he proposed were directly necessary means to keep the peace. This limited recourse to administrative prerogative would be continued early by Tokugawa lawmaking, particularly in his letters to temples and shrines, but would ultimately prove insufficient to create general lawmaking authority.

Tokugawa Lawmaking

Early Tokugawa dispute resolution- Jiin hatto

The first proclamations issued by the Tokugawa generally followed the pattern set by Hideyoshi by remaining narrowly directed at a single official or group and focusing on the adjudication of disputes within the bounds of existing customs or laws, rather than on the proclamation of new laws. Over the first decade of Tokugawa rule, as Ieyasu became more established in his authority to govern, his proclamations became progressively broader and more dispositive in

⁵⁶ Ravina (1999), 23, however, describes the limitations of the *bakufu* system and the strong controls retained by *daimyō*, particularly at the periphery.

scope. The early Tokugawa directives to various temples and shrines—which are collectively often referred to as the “laws governing temples and shrines” (*jiin hattō*)—provide a representative example of the evolution of Tokugawa Ieyasu’s dispute resolution, highlighting both the nature and pace of the development of a new style of lawmaking. The *jiin hatto* were not the only regulations proposed during this period,⁵⁷ but they provide a representative pattern of the development of lawmaking during the first decade of Ieyasu and Hidetada’s rule.

The *jiin hatto* have been called one of the three primary threads of Tokugawa Ieyasu’s lawmaking, and the manner in which the laws governing temples and shrines were treated as a separate judicial function remains consistent across the Tokugawa period. Following the issuance of Ieyasu’s *jiin hatto*, later shogun consolidated the laws governing temples and shrines into a single proclamation- the *jiin shoshi hatto*,⁵⁸ and later, by the mid-eighteenth century, into a separate legal administrative structure which would run through the *bakufu* liaison to each sect, the *firegashira*- and ultimately to the *jisha bugyō*, the administrator of temples and shrines.⁵⁹ Perhaps owing to the manner in which they were combined by later shogun into a single code, Ieyasu’s *jiin hatto* have been treated within previous scholarship as a fairly uniform set of laws, despite the fact that they were issued piecemeal over a decade-long period.⁶⁰ As this section will

⁵⁷ Similar to temples and shrines, Ieyasu and Hidetada also issued a series of ordinances to the Imperial Court. These initial regulations are discussed in Takagi, 137, and Ooms (1984), 53, and at greater length in Butler (1994), 509-515, although Butler raises some question whether the 1603 proclamation cited by Takagi actually was authorized by Ieyasu. The proclamations followed a similar pattern of moving from the resolution of particular issues to more general resolutions providing broader guidance on the proper relationship between court and *bakufu*.

⁵⁸ For purposes of continuity, I examine the *Jiin shoshi hatto* in Chapter 3, at 160ff, to show the continuities found in the fourth shogun Ietsuna’s lawmaking.

⁵⁹ This alternate administrative structure is noted in the *Kujikata osadamegaki*, which touches only indirectly on temples and shrines. I analyze this work in Chapter 4.

⁶⁰ See, e.g., Tamamuro (1971), 19.

suggest, the reading of these proclamations as a consolidated product obscures a decade of development of Tokugawa lawmaking.

Tokugawa Ieyasu began issuing written orders upon becoming shogun in 1603. From the beginning, Ieyasu assumed responsibility for adjudicating disputes that claimants brought to him for resolution. Among these first materials Ieyasu produced were proclamations that adjudicated disputes within and among temple complexes.⁶¹ Because the warlords before Ieyasu had largely destabilized the temple infrastructure, there was no national authority to adjudicate disputes among these groups, and there was no sectarian infrastructure to adjudicate matters internally.⁶² Groups petitioned the relatively uncertain authority of the shogun to resolve their disputes, despite the fact that the shogun had no historical basis to issue regulations governing these previously quasi-autonomous social actors.⁶³ As a result, the earliest orders issued by Ieyasu to petitioning temples were crafted as private arrangements between the shogun and each temple, similar to the oaths of loyalty Ieyasu would seek from rival political leaders.

The first two *hatto* promulgated in 1603 resolved disputes between rival factions in major temple complexes.⁶⁴ In the *hatto* to Mt. Koya promulgated in 1603, for example, Ieyasu resolved a

⁶¹ Readers unfamiliar with Japanese religions might be surprised that disputes arose within temple complexes. However, these complexes, often located on a significant mountain pilgrimage site, housed many different religious practitioners conducting very different types of practices, including both established Buddhist temples sometimes associated with different traditions, loosely affiliated mountain ascetics (*yamabushi*), and local spiritualists. It was also common for these sites to include both Buddhist temples and Shintō shrines, often maintained by the same professionals. For a more detailed description of multiple concurrent practices at religious sites during this period, see, for example, Thal (2005), 206; Ambros (2008), 211 (Oyama); Grapard (1992), 247 (Kasuga).

⁶² The destruction of the major temple complexes of the sixteenth century is discussed *supra*, 62.

⁶³ On the relationship between *bakufu* and major temples, see also Collcutt, 117-119. During the Kamakura and Ashikaga periods that preceded the Tokugawa, the *gozan* or Five Mountain Zen temples received support and favor from the ruling *bakufu*, but the temples were largely left to administer their own disputes.

⁶⁴ See Tamamuro (1971), 24-25, 44.

dispute between scholar-monks, on the one hand, and mountain ascetics, on the other, by dividing up the religious territory and rituals among the two groups.⁶⁵ These two *hatto* were among the few issued prior to the appointment of Ishin Sūden, a monk who had previously served as the abbot of the Rinzai Zen temple Nanzenji, as lead advisor on these matters in 1607. Upon Sūden's appointment as Ieyasu's secretary, Sūden assumed responsibility for drafting *hatto* to temples, and the pace of their promulgation increased dramatically. Under Sūden, thirty-three more *hatto* were issued prior to the 1614 promulgation of *Bateren tsuihō no fumi*, Ieyasu's banishment of the Jesuits, and the last proclamation Ieyasu would make regarding religious organizations.

Among the *hatto* issued before and after Sūden's appointment, there are some continuities, but a trend emerged under Sūden towards administrative consolidation and politicization that culminated in *Bateren tsuihō no fumi*. In the early *hatto*, in addition to resolving disputes within temples, the proclamations exhort monks at temples to continue textual study and ritual practice instead of engaging in military or economic activity. These exhortations defined the political and economic role temples would play under Tokugawa rule. Each *hatto* required that temples no longer threaten military or civil order by forbidding temples from quartering warrior-monks or monks who had been expelled from other establishments.⁶⁶ In addition, with certain limited exceptions,⁶⁷ all *jiin hatto* issued before 1614 focused on regulation of the administration of Buddhist temples and the assimilation of these organizations into an emergent Tokugawa

⁶⁵ Ibid. Mt. Koya is the primary ritual site for the *Shingon* (Japanese esoteric) school of Buddhism, but also housed ascetic monks unrelated to the school. In much of the Buddhist world fees for the performance of rituals was a significant temple revenue source. This is particularly true for esoteric schools, whose ritual practice was far more time and labor-intensive than others.

⁶⁶ See Tamamuro (2004), 154ff.

⁶⁷ The *chokkyo shie no hatto* issued just six months before *Bateren tsuihō no fumi* notably stripped the Imperial court of the authority to grant abbotships in seven notable temples. See *ibid.*, 38.

administrative structure by appointing lead temples to manage the affairs of smaller temples of the same sect.

Following Sūden's appointment, these regulations moved from resolving disputes brought to them from temple complexes to addressing progressively larger organizations. For example, *hatto* issued in 1613 addressed regional associations of *Shingon* and *Tendai* temples, rather than the individual temples within these groups. As time went on, the *hatto* became more aggressive politically. Later *hatto* standardized the rules for the appointment of leadership positions, generally based on years of study, in an apparent attempt to prevent the purchase and sale of positions by the aristocracy, a practice which had entrenched relations between influential temples and imperial families and often were a source of wealth for the aristocracy. Coupled with the transfer of authority to grant abbotships found in the 1613 *shie hatto*,⁶⁸ the later *jiin hatto* limited the authority of the Imperial court over Buddhist temple organizations.⁶⁹ However, the *hatto* took no position on matters of doctrine, and they granted no meaningful preference among the established schools of the period.⁷⁰

Temples styled their request for *hatto* as an elective petition for authorization by the *bakufu*. In fact, the *hatto* were often not issued unilaterally; leading temples seem to have taken an active

⁶⁸ This regulation will be discussed in greater detail further in this chapter, as it formed the basis for the first significant challenge to Tokugawa lawmaking authority, the 1627 Purple Robe Incident.

⁶⁹ Ooms (1985), 171 and Tamamuro (1971), 20.

⁷⁰ The *hatto* did grant preferences among religious professionals across class levels, though. A 1613 *hatto*, for example, forced the assimilation of the *yamabushi*, a sect of mountain ascetics as a subsidiary of the *Shingon* school. This favored the *Shingon* temple establishment, which was led primarily by nobles and samurai over the *yamabushi*, who were generally hereditary families of common people. See Earhart, 19. Similarly, the *honmatsu* system of temple administration generally favored urban temples administered by the nobility over poorer, rural temples or pilgrimage sites.

role in negotiating the language found in these regulations.⁷¹ This structure was similar the system of private ordering that bound *daimyō* to the shogun during the same period. Perhaps because of the elective, quasi-contractual nature of these arrangements, the *bakufu* made no effort to provide a justification for authority for the *hatto* they issued. Yet at the same time, because temples required the authorization of the shogun to validate their right to income streams from local villages, the *bakufu* retained real power over these organizations.

Even as the breath and political purpose of the *hatto* shifted, the form of the *hatto* remained constant. Each *hatto* was styled as a private arrangement between a major temple or temples and the *bakufu*. This nominal continuity belied a broader difference. The initial *hatto* were initiated by competing religious practitioners, and this trend of adjudicating disputes brought by rival claimants would continue across the Tokugawa period. By as early as 1613, though, the *bakufu* had begun to issue regulations if nominally at the behest of a temple or organization to establish a structure among temples more favorable to the *bakufu* and to the main (*hon*) temples that requested the *hatto*.

Tokugawa Ieyasu's cosmological narrative - Bateren tsuihō no fumi

As the Tokugawa increasingly restructured the political environment toward greater stability, they continued to face the thorny challenge of the appropriate treatment of the imperial court.

While the Emperor and the court lacked *de facto* ability to make new laws or enforce their

⁷¹ For example, Williams, 33-34, details the negotiation between Soto Zen temples and Sūden over the issuance of the 1612 Soto Zen *hatto*. Sūden used drafts provided by the temples as the text of the legislation finally promulgated.

statements, the precedents from the Kamakura era granted to the court certain established duties to make new laws and enforce laws in Kyoto.⁷² The lack of central authority in the preceding Sengoku period and the successive efforts of Oda and Hideyoshi to fashion new narratives for authority had done little to undermine this authority.

For the Tokugawa to succeed in asserting general authority to make laws—that is, authority not bounded within the traditional purview of the shogun of protection of the people from external threats—they would need a new authorizing narrative. This narrative would need to provide a justification why the *bakufu* should issue laws, and it should present an explanation that would destabilize the authority vested traditionally in the Emperor. The most comprehensive exposition of this narrative came in the apotheosis of the *jiin hatto*, the 1614 law expelling the Jesuits from the archipelago, called *Bateren tsuihō no fumi*.⁷³ Although the “problem” of the Jesuits was not new—Hideyoshi had first “expelled” them in 1587—the Tokugawa treated the question of governing external political groups as a novel question of law. From this perspective, *Bateren tsuihō no fumi* posed a different, fundamental legal question: who had the authority to issue new laws to address emerging issues?

⁷² In the Kamakura period, the *bakufu* addressed this issue by promulgating the *Goseibai shikimoku*, a code that was styled as a guidebook for courts administering justice. See Ueki, 1-10. An English translation of *Goseibai shikimoku* is available at Hall (1906), 1-44.

⁷³ There is some scholarly argument whether *Bateren tsuihō no fumi* should be treated as a law. Screech, 9, for example, thinks that a genre analysis recommends the work as a polemic instead of a law. This set of arguments has been bolstered by the apocryphal (and apparently lost) set of rules that were purportedly provided with the regulation to explain the enforcement of *Bateren tsuihō no fumi*. Satow (1877), 43-45 provides a translation of these lost materials (with a description).

Based on the comparison with Hideyoshi’s 1587 edict *Bateren tsuihō no rei* and the instability of legal institutions and customs, I argue that the writing was intended to function as law. However, for the purposes of establishing a narrative to justify law making, the distinction is secondary. For, the writing fulfilled the instrumental legal role of expelling Jesuits (and unlike Hideyoshi’s edict, it was actually enforced).

In *Bateren tsuihō no fumi*, Ishin Sūden unsurprisingly situated the authority to issue new laws squarely within the traditional mandate of the *bakufu*. Crucially, Sūden provided a narrative justification underlying this mandate that naturalized *bakufu* legal authority within a trusted cultural structure, the shared cosmology of the “three teachings” (*sankyō*), a combinatory amalgamation of Buddhism, Chinese thought and Shintō. This section describes the issuance of *Bateren tsuihō no fumi*, then analyzes the narratives provided in this first Tokugawa constitutional law.

The Promulgation of *Bateren tsuihō no fumi*

Bateren tsuihō no fumi need never have been issued. Hideyoshi’s previous edict expelling the Jesuits, the 1587 *Bateren tsuihō no rei*, remained in effect, although it had never been aggressively enforced. For all its flowery language, *Bateren tsuihō no fumi* failed to add any new restrictions, or even provide any enhanced penalties, to those provided in Hideyoshi’s proclamation. And despite speculation, the immediate causes for the promulgation of *Bateren tsuihō no fumi* are ultimately uncertain, as no reliable record remains.⁷⁴

The promulgation of *Bateren tsuihō no fumi* occurred at a moment of particular anxiety within the *bakufu*. When Tokugawa Ieyasu assumed power in 1603, his only potential political rivals were the Toyotomi clan, who were then led by Toyotomi Hideyori, a child of ten. By 1614, Hideyori had reached maturity and the Toyotomi had begun to restore the strategically important

⁷⁴ Screech has suggested that the writing arose as a result of English anti-Jesuit agitation to the *bakufu*. Screech, 8. To put this argument in context, the Jesuits were expelled from the British Isles in 1611 (three years before the edict), following half a century of intrigues against the British throne. In this context, Screech interpreted *Bateren tsuihō no fumi* politically rather than legally, as a treatise “providing a theorization of the sacred life of the state.”

Osaka castle—the locus of prestige for the clan. The restoration of this castle, located at the heart of the state’s economic bread-basket, was a (perhaps unintentionally) provocative act that led directly to the Tokugawa’s siege of Osaka in late 1614.⁷⁵ The siege would last two seasons, starting in the winter of 1614 and concluding the following summer. Perhaps unsurprisingly for such an endeavor, the preparations for the siege were a long time in the making. British mercantile records suggest that Ieyasu began purchasing all available British armaments in June 1614.⁷⁶ As they prepared for the siege, the *bakufu* suspected that Jesuit sympathies lay with the Toyotomi. These suspicions were seemingly borne out following the winter stage of the siege when rumors flew that the Jesuits had helped Hideyori escape. Additionally, there is visual evidence that Toyotomi combatants brandished Christian flags and iconography.⁷⁷ In this context, one potential impact of *Bateren tsuihō no fumi* was the internal political advantage the Tokugawa would gain by reducing the availability and influence of a potentially powerful ally of the Tokugawa’s rivals. Ieyasu may also have sensed the benefit to replacing the proclamation issued by the Toyotomi with one of his own.⁷⁸

Perhaps for these reasons, *Bateren tsuihō no fumi* was produced in haste. The official chronicle of the *bakufu*, the public diary of Ishin Sūden—drafter of *Bateren tsuihō no fumi*—provides the only extant account of its composition.⁷⁹ On the evening of the twenty-second day of the twelfth

⁷⁵ Sūden and Razan both had major roles in formulating the ideological justification for the siege. This justification, which appears forced to modern ears, famously relied on an interpretation of the inscription the Toyotomi had placed on a temple bell to be mounted in the Castle.

⁷⁶ Screech, 17.

⁷⁷ *Ibid.*, 19.

⁷⁸ This seems somewhat less compelling, however, as a number of Hideyoshi’s other innovations (described *infra*) remained in force and were never superseded.

⁷⁹ A transcription of the entry is available in Shimizu, 285.

month of Keicho 18,⁸⁰ Sūden was summoned to an audience with Ieyasu and Hidetada, the current shogun, at Ieyasu's residence in Sumpu. Ieyasu advised Sūden that the *bakufu* wished to expel the *bateren*, and Sūden was directed to compose a document (*fumi*) to that effect. Sūden drafted a version of the regulation on the night of the twenty-second, presented the resulting regulation to the Tokugawa for review on the twenty-third, and the final document was issued under Hidetada's seal on the twenty-fourth. Sūden did not note whether Ieyasu requested any changes to the edict, nor whether any were made.

As a proclamation, Sūden drafted *Bateren tsuihō no fumi* in a style markedly different than both prior and subsequent laws. Unlike prior proclamations like Hideyoshi's *Bateren tsuihō no rei*, there were no proscriptions set forth succinctly as a series of rules. Instead, the work was composed in a philosophical manner, which some scholars have criticized as long-winded and disorganized: “[t]here is no organization in its reasoning, its wording lacks refinement, it is wordy and its focus obscure, it packs a weak punch because the same things are repeated . . . in no way can it be called a fine piece of writing.”⁸¹ Unlike other proclamations, which were produced in the administrative shorthand commonly referred to as *sorōbun*, the writing was produced in *kanbun*, Chinese literary style. This choice has also been interpreted as an attempt to substantiate the theoretical or philosophical nature of the contents, rather than merely providing clerical direction. These stylings have caused some to question whether the proclamation could even be called a law.⁸²

⁸⁰ *Keichō* 18 corresponds to 1613 on the Western calendar. However, because the Japanese calendar was lunar, the end of the twelfth month of the calendar actually occurred in early 1614.

⁸¹ Nakamura, 649, cited in Shimizu, 286. See also Tokutomi, 123. Arai Hakuseki, on the other hand, praised the laws for their “literary” quality.

⁸² Screech argued that using *kanbun* rather than *sorōbun*, the grammar of administrative proclamations, indicates the author's desire to create something other than a legal pronouncement. Screech also noted that its lack of a clear recipient distinguishes it from other legislation of the period. Screech, 8.

The distinction between “law” and “pronouncement” is unhelpful in this context. While this proclamation is significantly different in style than both prior and subsequent proclamations, the state of Tokugawa lawmaking remained nascent at this period. As the consideration of the legal antecedents to this proclamation show, many of Ieyasu’s previous forays into adjudication and institution building were fundamentally private and localized. This proclamation, in contrast, was not directed at a particular recipient, it was meant to be of general applicability. Tokugawa Ieyasu also wished to distinguish this lawmaking from the precedent provided by Hideyoshi.

Instead, one must consider the manner in which this proclamation was received and promulgated to better understand its full significance as a foundational Tokugawa law. Like other proclamations, *Bateren tsuihō no fumi* was authenticated with Hidetada’s shogunal seal,⁸³ suggesting that its contents bore the weight of the shogun’s authority. Further, the text ordered all officials to distribute the proclamation widely in a manner similar to later laws of general applicability. Finally, the law was quickly and efficiently enforced. The Jesuits were expelled from Japan, as were thousands of their supporters. This last factor suggests most dramatically that in the unsettled legal culture of this period, the formalisms associated with legal language and style were less important than the clear intent of the issuer.

The use of stylistic elements like the *kanbun* does suggest a difference in rhetorical inclination from that seen, for example, in the *jiin hatto*. The choice of *kanbun* allowed the author to work allusively in the proclamation but provided fewer grammatical cues to differentiate the matters

⁸³ The use of the seal has been generally regarded as the authoritative indication of *bakufu* intent to be enforced. See, e.g., Laver, 11.

addressed in the text. This has led to the criticism that the proclamation itself is repetitive. Despite this, scholars have identified breaks in the text that address different thematic points, particularly oscillating between discourses on religious ontology and discourses on law and political philosophy. The narrative that these discourses weave is described below.

Key Themes

Claims that *Bateren tsuihō no fumi* is repetitive are accurate, but incomplete. In comparison with other regulations, *Bateren tsuihō no fumi* is significantly longer and more theoretical, reinforcing a series of themes that could have been articulated in a single sentence.⁸⁴ Sūden lays out his argument in a repetitive, contrapuntal fashion—first presenting a philosophical thesis, then relating this point to the political need to expel the Christians. This repetition is not sloppy; its tripartite form works effectively to reinforce the narrative that serves as the fundamental purpose of the work. This narrative emphasizes that the cosmos, the nation, and each individual citizen depends on the authority of the *bakufu* to issue laws that promote an ordered society.

The idea of the *sankyō icchi* (“three teachings, in unity”- 三教一致) provides the theoretical glue that connects the authority of the *bakufu* to the well-being of citizens, the nation and ultimately the cosmos.⁸⁵ Described simply, *sankyō* provides an interpretive paradigm which recognizes unities within three distinct intellectual traditions (in this case Buddhism, Shintō and

⁸⁴ In fact, in Iemitsu’s *Buke shohatto*, issued in 1625, the Tokugawa laws governing warrior houses, and as a result, many of the *han* subservient to the *bakufu*, the prohibition on the *bateren* was repeated in a single sentence. See *Buke shohatto*, art. 15.

⁸⁵ This methodology has also been referred to as *sankyō icchi* (三教一致), three teachings in union.

Song Confucian traditions), usually to the exclusion of a fourth set of ideas.⁸⁶ While this paradigm had a long history of use in both China and Japan, Sūden's reintroduction of the framework in *Bateren tsuihō no fumi* sought to reconfigure Japanese religion in the Tokugawa period by relying on the syncretic cosmology that the paradigm afforded him.

The *sankyō* paradigm was first articulated in China as early as the fourth century C.E. to frame relations between the Chinese Buddhist, Daoist and Confucian thought,⁸⁷ and the use of the *sankyō* framework had come to Japan as early as the seventh century. Antecedents for its use have been suggested, for example, as early as the Shōtoku constitution of 604. In Song China, Zhu Xi's metaphysical reinterpretations of Confucian thought borrowed this interpretive style to identify Confucian metaphysics with other elements within the Chinese tradition like Daoist *Ching* and Ch'an Buddhist cosmology.⁸⁸ In Japan during the same period, the culturally ascendant "Five Mountains" Zen temples incorporated a similar articulation of the *sankyō* to bolster its cultural prestige,⁸⁹ while scholars promoting the emergent Yuiitsu Shintō theology from Japan's indigenous traditions had begun to adopt and redeploy the same framework to their own ends.⁹⁰ There is additional evidence that *sankyō* thought remained in use in other early Edo texts.⁹¹

⁸⁶ Ketelaar has noted that the core of *sankyō* interpretation lies not in the identification of elements of three traditions, but in the distinction of this identity from other traditions. In addition to the Buddhist/Daoist/Confucian comparison frequent in China and the comparison found in *Bateren tsuihō no fumi*, in Meiji discourse *sankyō* arose again to explain the similarities between Christianity, Buddhism and Confucianism (as opposed to Shinto).

⁸⁷ For a description of the use of *sankyō/sanjiao* in China, see Gentz, 536-537. Gentz refers to the State use of *sanjiao* in this period as "regulated pluralism", and I would argue that the regulated pluralism described therein provides an analogous model to that which Sūden sought to embrace.

⁸⁸ Gernet, 300.

⁸⁹ See Paramore (2015), 30-36.

⁹⁰ Teeuwen and Rambelli, 40.

⁹¹ Hanada (2012), 72-74, finds a forerunner for the use of *sankyō* in the *kanzensho* (works on promoting the good), as well as in the adoption of these works in Yuiitsu Shintō.

While scholars have argued whether *sankyō* represents true syncretism,⁹² in *Bateren tsuihō no fumi*, Sūden uses this paradigm to create a second order conceptual category of teachings (*kyō*) which was composed of three distinct traditions: Japanese *kami* worship, Chinese *yin/yang* intellectual traditions, and Buddhism, which the Japanese associated with India.⁹³ This second order category provides an irenic, systematic and uniquely Asian cosmology, which Sūden associates with the ultimate nature of things. This *sankyō* cosmology remains expressly at odds with the Western understandings of the *bateren*, whose theories were regarded as unnatural and, as such, an imminent threat to the natural order. The teachings of the *sankyō* are constitutive of the “national character” (*kunigara*), the category that Sūden used to unify Ieyasu’s constitutional laws.

The Cosmology of the sankyō in Bateren tsuihō no fumi

Bateren tsuihō no fumi begins with a generative cosmology, establishing a fundamental identity of the underlying grounds of existence among the *sankyō*.⁹⁴ This ground was the same whether described by traditional Chinese *yin-yang* cosmology, Japan’s nascent *kami* metaphysics, or Buddhist cosmology. This articulation presented certain obvious challenges; during the previous centuries many of these traditions had sought to differentiate themselves conceptually from one

⁹² Gentz, 539-541, argues that consistent with the rational-choice model of religious selection that *sankyō/sanjiao*, rather than providing true syncretism of teaching (by suggesting that all *sanjiao* lead to the same ultimate truth, e.g.), was strictly a discursive representation that in fact supported a state monopoly on religious practice.

⁹³ Ketelaar, 24 n.62, has noted that one consistent use of *sankyō* ideology is to identify three by exclusion of a fourth. In Meiji era discourse, for example, Christianity replaced Buddhism, and Buddhism was excluded as a form of ethical religion. For a description of how this ideology influenced the Japanese formation of religious studies as a discipline, see Isomae (2002), 24.

⁹⁴ My translation of *Bateren tsuihō no fumi* is included as Appendix A.

another.⁹⁵ Sūden's aim within the work was to provide a rubric to efface these differences and recapitulate a common substrate. The cosmological argument at the heart of the *sankyō* depends on a series of linguistic puns that in turn rely upon two additional philosophical principles which form the substance of Sūden's uniquely Japanese *sankyō* metaphysics: *shinkoku* and *tōzen*.

Shinkoku—the land of the *kami*—is the religious belief in Japanese exceptionalism, that Japan as a nation of the *kami* has a uniquely privileged relationship to the ultimate nature of things.⁹⁶ This privileged relationship to the *kami* expresses itself most clearly by the immanence of the *kami* in Japan; conceptually, Japan may be seen to be *shinkoku* because only in Japan did its people experience an immanent relationship with *kami*.⁹⁷ The idea that Japan held a privileged place in relation to the *kami* is arguably the crux of Japanese religion. Both the *Nihon shoki* and the *Kojiki*, Japan's originary myth-histories, relate the creation of the archipelago by the *kami* and credit intercession by the *kami* as the formation of the imperial lineage. In the medieval period, Kitabatake Chukafusa used the term *shinkoku* in the first sentence of his *Jinno Shotoki* (1341) to situate the archipelago in a privileged position in the universe, and the imperial line in a privileged and inseparable position within this metaphysics.⁹⁸ Most on point, protection of the *shinkoku* formed the basis of Hideyoshi's 1587 *Bateren tsuihō no rei*, the immediate antecedent to *Bateren tsuihō no fumi*.

⁹⁵ Most obviously in this context, Yuiitsu Shintō defined itself metaphysically in opposition to syncretic *honji suijaku* Buddhist traditions by situating the *kami* as the generative force of existence, rather than the dharma. Similarly, Chinese Zhu Xi traditions had begun to increasingly define their own metaphysics in opposition to Ch'an, a trend that would continue throughout seventeenth century Japan. See *supra*, 87-88.

⁹⁶ Kuroda (1975), 262ff.

⁹⁷ The notion of immanence as the heart of Japanese exceptionalism, and by association the unique identifier of Japanese religions may be found most exhaustively in Kitagawa, 11ff.

⁹⁸ Similarly, Breen and Teeuwen, 220, noted that *shinkoku* was invoked in Yoshida Kanetomo's fifteenth century *Shinto Teii* to the same end.

In its opening article, *Bateren tsuihō no rei* invoked the term *shinkoku* to establish Japan as the land of the immanent *kami*, in direct contrast to the otiose god (“*daiusu*”) of the *bateren*. Hideyoshi’s position was clear— Japan was the land of the *kami* and the incursion and proselytization of the *bateren* disrupted the land socially and metaphysically. Yet Hideyoshi did not consider the implications of this articulation, nor did he consider the question of the relationship between the *kami* and the other non-indigenous traditions of Japan— Buddhism and Chinese thought.

In *Bateren tsuihō no rei*, Christianity was a heresy brought from abroad, the veneration of the *kami* represented Japan’s indigenous tradition. However, Hideyoshi’s argument would have placed the other transmitted intellectual traditions in Japan—Buddhism and Confucianism—in an ambiguous position. This was perhaps by design, as Hideyoshi shared Oda Nobunaga’s antagonism to the major temples of the period and had only a desultory interest in letting them reorganize. But by 1614, after numerous Buddhist temples had been reintroduced into the Japanese legal and social order through the *jiin hatto*, Sūden had no interest in simply rehearsing the same argument.⁹⁹

For Sūden, the concept of *tōzen* (東漸), the eastward progression of the dharma, plays the mediating role. This construction relies, at its heart, on the progressive teleology of Buddhism. Within East Asian Buddhist thought, particularly as incorporated in the justification for the transfer of Buddhist ideas from India to China, the idea formed that the nature of the

⁹⁹ Sūden was also the *bettō*, leader, of Nanzenji, a major Zen temple located in Heian. The naturalization of the transmission of Buddhism within a comprehensive cosmology also served to de-privilege the notion of the temporal primacy of the *kami*, which lay at the heart of Yoshida Shinto.

transmission of the dharma lay in its gradual expansion eastwards.¹⁰⁰ As Japan lies east of China, and as the cultural transmission of Buddhist works from China lay at the heart of Japan's intellectual history, the naturalization of this process of knowledge transmission, particularly to a location as privileged as Japan, rang true and was subsequently adopted.

Sūden, as a leader of a major Buddhist temple, had an overriding interest in resolving the position of Buddhism and Chinese thought within the Japanese metaphysical imagination, while at the same time extending Hideyoshi's ban on Christianity. Despite his Buddhist background, Sūden sought to place Indian Buddhists and Chinese Confucianists on the same footing- as invited guests of the Japanese *kami*. The *kami* did not seek merely the *dharma* but also the teachings of Confucius, suggesting an anticipated openness to all elements of the *sankyō* equally. *Bateren tsuihō no fumi* accomplishes this delicate balancing act by applying the concept of *tōzen*.

The structure of *Bateren tsuihō no fumi*

In its first two sentences, *Bateren tsuihō no fumi* engages *Bateren tsuihō no rei* and the Japanese exceptionalist tradition by again referring to Japan as *shinkoku* (神国), the land of the *kami*,¹⁰¹ while clarifying that this *shinkoku* was not a world apart, but instead merely fixed as an exceptional space within the Chinese *yin yang* cosmology. The law situates the universe within the cosmology of *yin* and *yang*, in the established Chinese pattern (“With *yang* as our father and

¹⁰⁰ For a more comprehensive discussion of *tōzen*, see Kuwabara, 293-334.

¹⁰¹ This term could also be translated as a “holy land,” in part because *kami* may be translated either to refer to discrete supernatural figures or to the quality of the sacred, in the Durkheimian sense. While either translation would serve a similar political theological purpose, the reliance on *honji suijaku* identification between *kami* and bodhisattva within the regulation makes the “land of the *kami*” the better translation.

yin as our mother, people are born in the world in between. In these three powers, everything is fixed.”¹⁰² In this context, the *kami* (神) are identified with the Chinese term *shen* (神), which represents “the unfathomability of *yin* and *yang*,” which Takagi has suggested positions *kami* as “the mysterious *agency* that lies at the base of all things and governs their changes.”¹⁰³ In this context, the *kami* hold the privileged position of the motive force in the universe, and one which in Japan may be viscerally immanent: “In the five parts of the body, the six sense objects, and the arising of movement and rest, there is not a moment when *kami* is absent. *Kami* is not to be sought somewhere else. All people have it, in each person it is made whole. This is the body of *kami*.”¹⁰⁴

By situating *shen/kami* as an active metaphysical agent whose role accommodates both Chinese and Japanese cosmological speculations, Sūden provides a necessary link to Buddhist scripture. After noting that Japan had also for at least a millennium considered itself a Buddhist land, *Bateren tsuihō no fumi* immediately draws upon syncretic *honji suijaku* theories to establish an association between the *kami* and the buddhas.¹⁰⁵ Within this set of ideas, which remained

¹⁰² This reliance on Chinese cosmology also recapitulates the ground of disputation that formed the center of the intellectual debate between the Christians and the Japanese Court depicted in *Hai yaso* and Jesuit works of the time, which each relied on differing understandings of science to substantiate their arguments. See *infra*, 119-120.

¹⁰³ Takagi, 63. For Takagi, the purpose of this equivalence was political: “In [*Bateren tsuihō no fumi*], the view of Japan as a land of the gods functioned as an ideology meant to give the impression that the order based on military might was supported by customs that went back to the creation of Japan by gods and Buddhas.” Ibid. While the ideological basis for the use of this term doubtless played a role, particularly viewed in context of the use of this terminology by Hideyoshi in diplomatic materials thirty years earlier, I will argue that the greater weight of the *kami/shen* triple identification is to create a conceptual category more meaningful for internal ideological purposes than for foreign saber-rattling.

¹⁰⁴ For an extended meditation on the role of immanence within the Japanese religious imaginary, see Kitagawa, 11ff.

¹⁰⁵ *Honji suijaku* is a term for a set of ideas that arose in Japan in the late Heian and early Kamakura periods. According to this body of theory, the Japanese *kami* represented immanent manifestations of eternal and cosmic buddhas and bodhisattvas who predated them. As such, the buddhas/bodhisattvas represented the source or originary essence (*honji*-本地) from which the *kami* appear as immanent traces (*suijaku*-垂迹) which may be experienced by Japanese people. The argument relied originally on the notion of *upaya samutpada*, the Mahayana

largely accepted during the early Tokugawa period,¹⁰⁶ *kami* and Buddhas were identifications of one another, and were difficult to differentiate in practice.

For this reason, it was perhaps sufficient for *Bateren tsuihō no fumi* to nod at the tradition by referring to Japan as both the “land of the remaining traces of Amaterasu and the home of Dainichi.” Within the *honji suijaku* ideology, the sun goddess Amaterasu and great sun buddha Dainichi are expressly linked as essence and trace manifestations in a manner that would have been obvious to the educated Japanese of the period.¹⁰⁷ To support the *sankyō* synthesis of the three traditions more concretely, Sūden turns to the Lotus Sutra for support: “The various world-saving Buddhas live in powers of great spirit. To please sentient beings, they manifest the immeasurable power of spirit.”¹⁰⁸ In each sentence, “spirit” uses the character 神, identical to *shen/kami*. To summarize his argument, Sūden concludes by expressly promoting the equivalence of the three teachings, “like two sides of an equation.”

The treatment of *shen/kami* as an active metaphysical element then incorporates the progressive *tōzen*. Because the *kami* represent the motive force of the universe, this provides an opportunity

Buddhist argument that the Buddhas would use expedient means appropriate to each particular circumstance to ultimately lead all people to enlightenment. See generally Teeuwen and Rambelli, 1.

¹⁰⁶ N.b., however, that Yoshida Kanetomo’s reformulation of traditional Japanese ritual, which has come to be called Yuiitsu Shintō, inverted the traditional notion of *Honji Suijaku* by considering the *kami* to hold the original ground from which the Buddhas and Bodhisattvas were to emanate in India. See Scheid, 120ff. As discussed above, Yuiitsu Shintō was particularly influential in sixteenth century Japan and in particular in the intellectual circles that formed the Tokugawa administrative leadership. Maruyama, 152.

¹⁰⁷ Rambelli, 33, notes the association at Mt. Hiei, Ise and other locations had been made as early as the fourteenth century between Amaterasu and Dainichi.

¹⁰⁸ Quotation from Ch. 21 of the Lotus Sutra. In this context, the translation of *kami* becomes especially difficult, as the text implies the equivalence with the Japanese *kami*, but the Chinese translation of the Lotus Sutra uses *shen*. In Chinese, the translation for *shen* may also be given as “transcendent” as in the translation of the same text from the Chinese: “The buddhas, world-inspirers, Abiding in their great *transcendent* powers, Manifest this immeasurable power in order to gladden sentient beings.” Kubo and Yuyama, 272 (emphasis added).

to consider the regularity of this motion, and Sūden avails himself of this opportunity. Immediately following the identification of *kami* with the powers of the Buddhas, Sūden introduces *tōzen*. Yet, instead of taking the traditional course of describing the power underlying *tōzen* as the workings of the Buddhist dharma, Sūden redefines this power as reliant in equal measure on the dharma and the *kami*. Sūden describes the transfer of knowledge eastward to Japan as a process initiated by the Japanese and aided by the *kami*: “monks and ordinary people each receiving aid from the *kami* sailed across the great ocean and came to far away China seeking the dharma of the Buddhist teachers and the teaching of the way of benevolence.”¹⁰⁹ As described above, Sūden’s unique depiction of *tōzen* works equally for Chinese traditions as Buddhist ones. In addition, the concept of *shinkoku* played an active role in the perpetuation of *tōzen*; it is because of the exceptional nature of Japan that the dharma continued to flourish in Japan while it withered elsewhere: “The prosperity and vigor of the dharma far surpasses other countries. Can’t it be that this is the eastward progression (*tōzen*) of the dharma?”

By the unification of the *sankyō*, Sūden works to exclude Catholicism. His description of the natural order of *tōzen*, a teleological process dependent in equal measure on the constant push of the dharma and the insistent pull of the immanent *kami*, contrasts with the first description of the Jesuits: “but lately Christian conspirators have by chance come to Japan.” The qualifier “by chance” (*gyūni*) emphasizes the distinction between Christianity and the *sankyō*. The former appeared without invitation of the *kami* and represent a catastrophic threat; the latter occurred within the natural order, as represented by *shen*, the *kami*, and the dharma.

¹⁰⁹ The “way of benevolence” refers to Chinese teachings, and particularly the Confucian classics. In Chapter 3, I will describe the general identification between benevolence (*jin*) and Buddhist compassion (*karuna*), found for example in the works of Sūden’s near contemporary Fujiwara Seika.

Sūden's characterization of the nature and relation of the *sankyō* merits closer consideration. Sūden nominally seeks a strongly ecumenical symmetry, where the three teachings not only can be reconciled with one another but are ultimately indistinguishable from one another. For example, the exact language of Sūden's description of the relationship between Amaterasu and Dainichi reflects a symmetric middle. In the writing, Japan is both the land of the traces of Amaterasu, a traditional Buddhist *honji suijaku* formulation, and also the original source of Dainichi, a formulation more characteristic of the Yuiitsu Shintō inversion of *honji suijaku*. In *Yuiitsu Shintō Myōhō Soshu*, Yoshida Kanemoto had previously adopted the *sankyō* paradigm to enplace Shinto at the heart of the three teachings, arguing famously that Shinto was the root, Confucianism the branch, and Buddhism the flower of the *sankyō*.¹¹⁰ Sūden eschewed this sectarian competition—and with it the predominant use of the *sankyō icchi* paradigm throughout medieval Japanese Buddhism to organize hierarchies. The ideological work being done by the *sankyō* in Sūden's text lay not in sorting out priority among the three teachings, but in organizing them against the implied fourth—Catholicism.

Catholicism provided a perfect foil for Sūden and the Tokugawa. Although the tenets of Christianity were generally poorly communicated (if not intentionally downplayed for the Japanese audience),¹¹¹ contemporary works like Fukansai Habian's *Myōtei Mondō* and Hayashi

¹¹⁰ See Ueda, 171.

¹¹¹ In Fukansai Habian's *Myōtei Mondō*, for example, Fukansai provided those arguments in favor of Christianity that Fukansai found most compelling—both personally and in his capacity as a missionary—and that afford the greatest contrast with Japanese traditions, including, for example that *Daiusu* substantially exists as “one creator of heaven and earth” who remains responsible for the destiny of the world. Baskind, 312-316. And, as Paramore (2009), 28, notes: “Habian uses Confucian terms, comments favorably on Confucianism's ethical outlook, and uses logical structures and terms that were current in contemporaneous Confucian writing.” However, central tenets of Christian doctrine that may have been inconvenient or appalling to the Japanese, including the virgin birth and the crucifixion, seemingly vanished from Fukansai's description. Elison, 143.

Razan's *Hai Yaso* portrayed Christianity as radically ontologically incompatible with other Japanese thought, including Buddhism, Confucianism and Shinto. Christianity was a slightly unusual "incompatible", however, because as Tokugawa retainer Hayashi Razan's *Hai Yaso* vividly depicts, Christian apologists had meaningful public debates with Buddhist and Zhu Xi Confucian interlocutors.¹¹²

These contemporary apologetics provide a valuable reflection on the cosmology of *Bateren tsuihō no fumi*, as they describe the debate between the Asian traditions and Christianity as framed primarily between Chinese and Western traditions of knowledge and cosmology. In *Hai Yaso*, the interlocutors Hayashi and Fukansai first debated about Western science, which both parties seem to admit as a proxy in value for Western religions.¹¹³ Fukansai uses Western geography to argue that the world is round, and that Heaven lies above earth and hell below. Hayashi counters with arguments from the Chinese tradition to refute both these arguments, and the Japanese audience favors Chinese science (in the form of Confucian and *yin/yang* cosmology) to Western geography.¹¹⁴ Hayashi argues that Chinese astronomy represents the movements of the heaven much more accurately than Western astronomy does and that the

¹¹² In his discussion of *Hai Yaso*, Paramore (2009), 68-70, presents arguments to suggest that this work was in fact produced much later than 1606. Regardless of the date of actual production of the work, contemporary Jesuit accounts also record the existence of debates with Buddhist authorities. See Elison, 154. Of course, in contrast, Christian sources relate the tale of a debate between a Christian apologist (probably Fukansai) and a master of Nichiren Buddhism, in which the tables are turned, and the Buddhist scholar loses his temper and ultimately his wits. Ibid.

¹¹³ A century later, for example, Japanese scholars like Arai Hakuseki in *Seiyō Kibun* had grown to endorse Western geography as more valuable than Chinese geography, even though Japanese scholars did not adopt Western medical science until the work of Sugita Genpaku half a century following. See generally Jansen, 92-93.

¹¹⁴ Hayashi argues, for example that there must be an East and West, particularly because there is an established North and South, while Fukansai agrees that North and South are fixed, but that East and West vary by position. Elison, 150. These points of geography are emphasized in additions to the text as dispositively antithetical to Sino-Japanese understandings of cosmology, which privileges movement and rest to roundness. Ibid., 152-153.

totems of Western science that Fukansai presented (the prism and the magnifying glass) were just tricks used to dazzle common people.

In this context, the cosmological narrative that Sūden uses to introduce *Bateren tsuihō no fumi* drew upon a current intellectual concern where real disagreement seemed to exist—the chasm between Catholicism and the *sankyō*. And given the technological strength of the Jesuits, their potential as a political adversary provided the issue of expulsion with real political import.¹¹⁵

Yet, as the remainder of *Bateren tsuihō no fumi* suggests, the greater thrust of this cosmological introduction was to describe the unity of the Japanese cosmological tradition (*sankyō icchi*), and draw from this unity the authority, and necessity, for the Tokugawa to issue laws of general applicability across the archipelago to protect this tradition. In this context, Sūden’s argument for unity of the *sankyō* echoes as an argument for unity of the *bakufu*’s internal political rivals (Ieyasu’s intended audience) against the Christians.

After distinguishing Catholic Christianity from the *sankyō* on metaphysical terms, Sūden turns to the differences among these teachings in relation to law. Sūden argues that the defining characteristic the *sankyō* share is adherence to rule of law imposed by the state: “Criminals who have committed the five heinous crimes or the ten evil acts are abandoned by the *kami*, the buddhas, the three jewels, the heavens and all beings.”¹¹⁶ This passage announces a shared

¹¹⁵ The political nature of *Bateren tsuihō no fumi*’s Jesuit panic may be found in the description of their proselytization: “They also have spread their false teaching, and they have misled people from the true schools. They want themselves to be sovereign by changing the central government.”

¹¹⁶ In making this argument, Sūden elides over troubling elements of each tradition. These include those Buddhist groups who placed the *dharma* over the law of the state; the Confucian tradition that endorsed the overthrow of a leader who has lost the mandate of heaven (e.g. Nakai, 60); and the Yoshida Shinto preference for the Emperor as law-giver over the *bakufu*, Scheid, 221.

moral/juridical foundation among Shinto, Buddhism and the Chinese traditions, as each equally held certain crimes to be evil, and condoned the state's authority to punish lawbreakers.

More particularly, this section argues that for reasons of doctrine the Tokugawa *bakufu* must act punish lawbreakers, as the failure to do so would disrupt society. Sūden does not distinguish whether his Japan describes a political unit or a cultural one, but his supporting examples suggest that Sūden most narrowly focuses on the Japanese state as a law-giver, and that he positions the *bakufu* as the authorized legislator within the ambit of these Japanese religious traditions. Sūden provides the example of Japanese criminal procedure to prove a shared reliance on both Chinese legalism and Japan's indigenous traditions.¹¹⁷ In particular, Sūden argues that Japanese traditional punishments are based on the norms of the Chinese legal code,¹¹⁸ while its norms of oath-taking, which are central to the determination of truth in contested cases, rely on oaths made to the *kami*.¹¹⁹ Sūden follows the discussion of the religious roots of Japanese legal traditions by integrating them with Buddhist philosophy.

Sūden situates the baseline for Japanese penal ideology in the karmic residue of past bad acts: due to “remnants of longstanding evil, it is hard to escape disaster.” Under this articulation,¹²⁰ people are driven by the karmic residue of prior bad acts, and as a result, they are far more likely

¹¹⁷ On this point, see Maruyama, 7 and Steenstrup, 111.

¹¹⁸ Steenstrup adopts this articulation of Tokugawa penal law by arguing that during this period “law and morality were one.” at 151. In truth, as we have seen above, the Japanese in practice did not always adopt the strict punishments articulated by the Chinese Legalists. See *supra*, 30-31.

¹¹⁹ This argument appears fairly accurate as a description of medieval Japanese criminal procedure. For other examples of oaths issued to the *kami* and their prevalence, see Liscutin, 197.

¹²⁰ Shinto does not hold a formal view of karma, but rather contemplates the condition of *tsumi*, or crime, which leads to a state of *kegare* (impurity). Similar to removing bad karma, in Shinto *oharae* ritual strives to remove impurity. See Kasulis, 47. However, this decontextualized description of Shinto practice under-estimates the intrinsically linked histories of Shinto and Buddhist thought, such that the difference between the two concepts should not be over-construed.

to commit future bad acts than good acts. For this reason, the state has a duty to intervene to punish the wicked and promote the good not merely because this behavior fosters a well-functioning society, but because it enhances the soteriological chances of its subjects. To reiterate this point, Sūden invoked a vision of the afterlife shared among the *sankyō*, in which all Japanese subjects will be judged by Yama, the god of the dead imagined as common to the Chinese, Indian, and Japanese traditions.¹²¹ Sūden argued that neither the Buddhas nor an individual's ancestors can help those subjects who stand to be judged before Yama, so the best chance its subjects will have in the afterlife lies in the State's intervention to enforce laws promoting good conduct.

After the *sankyō* has been unified in support of *bakufu* laws, Sūden contrasts Catholicism by portraying the *bateren* as willful lawbreakers. The *bateren* violate the *sankyō* by slandering the dharma; causing people to doubt the *kami*; and upsetting those who pursue Confucian norms of morality. This description accords with the contrast between the traditions found in contemporary polemics like *Myotei Mondō* and uses a methodology familiar to his contemporary intellectuals from Japanese Christian proselytizers like Fukansai.¹²²

The heart of Sūden's legal argument rests on his description of Christian worship, which he depicts as the willful adoration of law-breakers. He describes Jesus on the cross as a "lawbreaker" and Christian worshippers of the cross as people who apologize to the lawbreaker

¹²¹ The deployment of Yama (jp. *Emma*, ch. *Yen* 閻魔) in this context is effective, because the deity has retained the mythological role of judge of the dead at the gates of hell (jp. *jigoku*) in all three cultures. For a comparative study of some of the differences between these characteristics, see generally Mao (1997).

¹²² Elison cites Jesuit missionaries who described Fukansai as more learned in Buddhist scriptures (and willing to cite their inconsistencies) than his Buddhist combatants. At 163.

for the poor treatment he has received in punishment.¹²³ This is a particularly apt comparison for Sūden, because in Japan crucifixion had already become a common punishment for grievous crimes.¹²⁴ Viewed in contrast with the Japanese tradition, the Catholics present the ultimate other, a group that holds the lawbreaker above the law and upends the good karmic intentions of the State. On this basis, Sūden again predicts that Christianity will “disease” the land and bring down divine retribution if the state does not immediately expel the Jesuits, or even if they are given just one small plot of land to operate.

The crucifixion provides a rhetorical focus to Sūden’s thesis that Japanese society reflects the natural order of things, as established by the cosmology of the *sankyō*, and the incursion by the Jesuits into Japanese society will disrupt its appropriate flow, and in turn, threaten the stability of society. Because the properly functioning society encourages the proper conduct of its citizens, a state has a moral duty to actively police moral behavior as a means to protect the soteriological prospects of the people. The authority to issue laws rests on the authority of these religious traditions, and at the same time, individual soteriology relies on the promulgation and enforcement of virtuous law, creating a mutually reinforcing relationship. This mutual reinforcement provides a broader platform for Sūden to explain the need for the *bakufu* to issue new laws generally in the face of a pressing political/ soteriological threat.

¹²³ Yamamoto, 258, also has noted that contemporary Jesuits urged Christians to revere criminals who had been ordered executed by the *bakufu*, suggesting that this passage reflects both on Christian doctrine and contemporary Christian practice. The description of apology appears, in this context, to be a Japanese misinterpretation of the physical practice of prostration as a form of prayer.

¹²⁴ See Chapter 4 for a broader description of Tokugawa era punishments. More generally, Japanese punishment in this period emphasized the public, exemplary nature of the process through an emphasis on *migoroshi*, public shaming, see Ishii, 79.

Sūden closes by arguing that the Jesuits pose a clear and present danger that only the imposition of something very much akin to martial law may resolve.¹²⁵ The lawmaker under the Japanese system of martial law would be the *bakufu*, and Sūden concludes with an argument that naturalizes *bakufu* issuance of laws through an analogy to the human body. Sūden describes the mandate of the *bakufu* to protect the national character (*kunigara*-国柄) in terms analogous to the proper treatment of the human body: “Now those blessed to have received heaven’s imperial mandate, as lords of this land of the Sun, this is the time to protect the national character (*kunigara*) in Japan.” Citing Confucius, the text follows: “Your body, your hair and skin you receive from your parents. Bravely avoiding injury is the beginning of filial piety.” Sūden then connects this quote to the Shintō belief that to treat one’s body properly is to respect the *kami*. To link these ideas to statecraft, Sūden turns to the relationship between macrocosm and microcosm as found in the Buddhist Lotus Sutra: “when the land is wealthy, the people are calm. The Lotus Sutra says, ‘If you are tranquil in this world, in later lives you will be treated well.’” These set of analogies, which are arguably somewhat forced, are sedimented by two final, related statements. At the personal level: “By quickly driving away the *bateren*’s evil teaching, increasingly we will prosper from the true dharma.” Similarly, at the state level, “although the world has already passed into the degenerate age, perpetuating the way of the *kami* and the Buddhist dharma still provides benefits and is good government.” The protection of the body is the equivalent to the protection of the nation, and particularly the *kunigara*.¹²⁶

¹²⁵ A modern parallel to Sūden’s argument may be found in Carl Schmitt’s *Political Theology*, where Schmitt supports decisive executive authority in the event of the “exception,” which manifests itself particularly in the state of emergency. Schmitt, 7-12.

¹²⁶ Picken describes *kunigara*, a term found as early as the *Man’yōshū* as the character of the people, the cultural analogue to the political term *kokutai*. At 69-70.

Sūden's conclusion provides the most explicit justification of Tokugawa authority to make new laws of general applicability. The law describes the Tokugawa first in this section as recipients of "Heaven's imperial mandate" (*ten no chōmei*-天之詔命). This characterization is a portmanteau, combining two related, but not synonymous terms: the mandate of heaven (*tenmei*-天命), a term from the Confucian tradition which implies the grant of the right to govern in accordance with the natural order; and the imperial command (*chōmei*-詔命), which previously referred to a command of the Imperial Court. Sūden further modifies this command by describing its breadth: "as lord of the land of the Sun." The term "land of the sun" (日域) is not the common title for Japan;¹²⁷ even in the introduction, the term *Nihon* was used. Here, the use of the character for boundary or border (域) suggests the traditional role of the shogun, as lords or protectors of the boundaries of Japan. Yet the reference to the *bakufu* as a protector of the borders of Japan is primarily symbolic; the threat to Japan from the *bateren* lay in their attack on the national character. Sūden seeks through the writing to expand the mandate of the *bakufu* beyond the military protection at the periphery of the state to the broader responsibility for its cultural heritage. At the same time, he has arguably made a sharper move, expanding the mandate of the *bakufu* from the imperial mandate to protect the national borders to the mandate of heaven to protect the national character.

In *Bateren tsuihō no fumi*, the Tokugawa *bakufu* provided an extended argument in support of its authority to make new laws. Rather than relying on the bald assertion of prior *buke no tōryō* or political discourses on a well-managed state found in the early Neo-Confucian discourse of

¹²⁷ Though it does appear poetically at least in the *Heike monogatari*.

Fujiwara Seika and Hayashi Razan, Sūden's preferred cosmological narrative relied on a novel articulation of natural law- explaining first the nature of things and arguing that the *bakufu*'s exercise of lawmaking authority was the necessary consequence to maintain the natural order of things, the "mandate of heaven."

Yet within this view of the order of things, there was an implicit instability in both nature and in governance in accordance with the mandate of heaven. As the threat posed by the *bateren* demonstrated, the failure of the *bakufu* to meet its responsibility to issue and enforce laws promoting the natural order would precipitate the destruction of the ordered state, and from there inevitably to calamities and natural disasters. In this cosmic drama, the *bateren* played the necessary role of the identifiable other. The threat posed by the *bateren* clearly was external, so the authority of the *bakufu* to expel them was clear.

Reception of Bateren tsuihō no fumi

While Sūden described the threat posed by the *bateren* as a cosmic opera, his use of *sankyō icchi* also suggests a political parable. Under this interpretation, the elements of the *sankyō* may be seen represent the internal political powers within Japan that Sūden and Ieyasu anticipated would be the primary audience for the new laws- the samurai, the court, and the temples. *Bateren tsuihō no fumi* argues that these powers face the imminent threat of external assault and argues that a united front to repel the external threat will provide the best defense. More importantly, the law presents the argument that lawmaking by the Tokugawa against this external threat effectively protects all of Japan's political institutions.

When evaluated through this reading, *Bateren tsuihō no fumi* was broadly effective. The law, which was broadly distributed across the archipelago, met with broad compliance. In 1614 alone about 400 *kirishitan* were deported, and at least another 50,000 were forced to renounce Christianity.¹²⁸ Equally importantly, both Buddhist intellectuals and the blossoming group of Confucian scholars published works supporting the *bakufu* and opposing the *bateren*.¹²⁹

More generally, the Christian threat remained a powerful mobilizing force politically across the seventeenth century. Kiri Paramore has noted the surprising persistence of the prohibition on the *bateren* and the militant exclusion of Christianity through the latter half of the seventeenth century—long after any meaningful missionary activity had occurred in Japan.¹³⁰ The *bateren* remained a *bête noir* within Tokugawa legal and political discourse long after they had faded away in political significance because of their strong symbolic relationship, which in turn provided a justification for the making of laws with internal application to protect the *kunigara* within the *bakufu*'s narrative of authority.

Yet as described below in *Buke shohatto*, Sūden also suggests that the threat he associates with the *bateren* was not limited to external invasion, but also explicitly implicated the internal decay that would result from any attack on the *kunigara*, the national character. In this respect, the *bateren* symbolize not just of foreign incursion, but of internal threats to the *kunigara*, as identified by the *bakufu*. These internal threats include the obvious, like the internal religious

¹²⁸ Hur (2007), 48-49.

¹²⁹ Hayashi Razan's anti-Christian polemics have been discussed above, but the works of prominent Buddhists like Suzuki Shōsan and Takuan provide other examples of this phenomenon. See Paramore (2009), 61-64.

¹³⁰ Ibid. 73ff.

objectors of the *jōdōshinshū* and *fujufuseshū*, but more broadly could include anyone who tried to reframe the *kunigara*. The notion that the *bakufu* generally, and Ishin Sūden particularly, had the authority to constitute the *kunigara* was more controversial.

In *Bateren tsuihō no fumi*, Sūden promotes a vision of a naturalized Japanese religion couched within the framework of the *sankyō*. For Sūden, teachings that met certain characteristics (consistent cosmogony, shared moral/ethical values and, significantly, acknowledgement of the primacy of state authority over religious authority) were acknowledged to be appropriate religious practices in Japan, and as such appropriately part of the *kunigara* and subject to protection and promotion. Sūden's foundational assumption within this narrative was that the *kunigara* should reflect elements of each of the *sankyō* without prioritization. The *bakufu*'s duty was to promote all traditions within the *sankyō* without discrimination or hierarchy.¹³¹

This perspective ultimately failed to gain traction even within the inner circle of the Tokugawa's closest advisors. The internal denouement of Sūden's ideas began as early as 1616, during a series of arguments between the monk-advisors Bonshun (a Shintō advisor) and Tenkai (a Buddhist) over the proper ritual practice to accompany Tokugawa Ieyasu's burial.¹³² Bonshun and Tenkai argued over the proper rites and treatment to accord to Ieyasu following his death,

¹³¹ As Tamamuro (1971) notes, it is also fair to suggest that *Bateren tsuihō no fumi* articulated Shinto within the Yoshida formulation. However, the vision of each tradition found in *Bateren tsuihō no fumi* is notably non-sectarian. Most obviously, Zen traditions are particularly deemphasized in this construction.

¹³² Bonshun (with whom Sūden sided) and Tenkai disagreed over the nature of *kami* Ieyasu would become, a *daigongen* or a *daimyōjin*. The *daimyōjin*, favored by Sūden and Bonshun, was the more exalted position within the Yoshida Shinto hierarchy and had a longer set of historical antecedents, including most recently Hideyoshi, who had become *Hokoku Daimyōjin*. The *daigongen*, favored by Tenkai, offered the benefit of protection to the Tokugawa clan (*uji*), however, rather than to a particular geographic space. This event is described in greater detail in W.J. Boot at 146ff. Ooms also addresses this incident and tries to locate its relevance to Iemitsu's development of his own personal authority. See Ooms, 58-60.

most notably over which manner of *kamification* was most appropriate for the shogun. Whether Ieyasu would become a *kami* following his death was apparently never in dispute. Both Oda Nobunaga and Toyotomi Hideyoshi had proclaimed that they would become *kami*,¹³³ and Tokugawa intended to follow suit.¹³⁴

After a number of pleas to Hidetada made by both parties, the shogun Hidetada ultimately accepted Tenkai's arguments. Boot suggests compellingly that Hidetada may have found the *daigongen* favored by Tenkai to be more preferable particularly because of the Tokugawa political need to distance themselves from the Toyotomi. However, equally importantly, the *daigongen* was found within the Tendai pantheon favored by the Tendai monk Tenkai. Thus, Tenkai's victory was a victory for the Tendai sect and one that signaled Tenkai's ascendance as an adviser on religious matters. This led in turn to the construction of Nikko as the figurative home to *Tōshōgu Daigongen*, a coup that provided considerable resources and prestige to Tenkai's Tendai sect, and later to an edict on mourning drafted by Tenkai that memorialized these rites for shogun more generally.¹³⁵ Tenkai's arguments were strongly sectarian; they would benefit Tendai temples economically (Nikko) and Tendai-oriented rites ideologically through promotion of the *Sanno Ichijitsu* ceremony used in the burial ritual over that of the Yoshida Shintō. As Tenkai's influence grew, this sectarianism would carry the day. *Hatto* issued by Iemitsu and the shogun who succeeded him promoted Tenkai's vision of Buddhist sectarian contestation. At the same time, competition grew between the Buddhists and other intellectual traditions.

¹³³ In each case, shrines were constructed to this effect, see *ibid.*, 39, 49.

¹³⁴ Boot provides considerable detail on Hideyoshi's deification, 154-158, while Ooms addresses Oda's intentions, at 35-38.

¹³⁵ The *Tōshō daigongen bukkyiryō* (1638). See Hirai, 47.

Establishing the Tokugawa Hegemony: The Buke shohatto and the Kinchū narabini kuge shohatto

The two most important laws of the period, the *Buke shohatto* and the *Kinchū narabini kuge shohatto*, demonstrate the extension of the theory of lawmaking Sūden proposed *Bateren tsuihō no fumi*. The Tokugawa *bakufu* issued these constitutional laws within ten days of one another and nine months after *Bateren tsuihō no fumi*, during the period immediately following the Tokugawa's conclusory summer siege of Osaka in 1615. *Buke shohatto* and the *Kinchū narabini kuge shohatto* represent the Ieyasu's articulation of how he would rule over his political rivals—the other *daimyō* and the Imperial court. While these proclamations differ in many ways, both in their own ways reflect the influence of *Bateren tsuihō no fumi* and rely on the earlier proclamation's key arguments.

Buke shohatto and the *Kinchū narabini kuge shohatto* present a study in contrasts. Their contrasting styles reflect the still-emergent assimilation of different claims to authority available to the Tokugawa and, with *Bateren tsuihō no fumi*, provide a reminder that legal formalisms of Tokugawa law remained inchoate. Flush from their victory at Osaka, the Tokugawa were preeminent among the warrior houses, and the *Buke shohatto* was issued to the warrior houses in a confident style within the ambit of the customary authority of *buke no tōryō*, more similar structurally to edicts of Hideyoshi, and more generally of the house codes that the warlords were most familiar. In contrast, *Kinchū narabini kuge shohatto* was issued to the Imperial court and the nobility, and the proclamation represented a potentially significant incursion by the *bakufu*

into the powers of another rival claimant with equal claim to the *kunigara*. For *Kinchū narabini kuge shohatto*, Sūden needed, and provided, nuanced argumentation more similar to *Bateren tsuihō no fumi*.

Buke shohatto

The Tokugawa's victory over the Toyotomi clan at Osaka reaffirmed that the Tokugawa were the leaders of Japan's warrior class, the *buke no tōryō*. From the beginning of warrior rule at the inception of the Kamakura, the *bakufu* demanded oaths of the other leading samurai.¹³⁶ On the basis of both the customary relations of master and retainer and the authority drawn from their oaths, the *bakufu* appeared confident of its authority to issue regulations to the *buke* concerning samurai conduct. *Buke shohatto* became a symbol of authority over the *daimyō*, but reminiscent of the irenic view of *Bateren tsuihō no fumi*, this charter also guaranteed the *daimyō* significant autonomy within their own lands. Over the course of the Tokugawa era, each of Ieyasu's successors repromulgated the *Buke shohatto* upon their appointment in a manner that reaffirmed this charter. However, these repromulgations would provide new legal and ideological direction; for example, Tokugawa Iemitsu released a *Buke shohatto* on his appointment in 1632, and another in 1635 with substantive legal changes.¹³⁷ Despite its importance as a symbol of Tokugawa authority, these repromulgations also suggest one limitation of *Buke shohatto*, as a

¹³⁶ See Steenstrup, 76-80 for more details on the initial grants of authority that the Kamakura *bakufu* allotted to themselves.

¹³⁷ As will be discussed in Chapter 4, Arai Hakuseki drafted the 1710 version of the *buke shohatto*, but the subsequent re-promulgations issued by each successive shogun followed the *tenna* (1683) version issued by Tsunayoshi, not the 1710 Hakuseki draft. See Hall (1911).

latter-day vestige of the customs of *buke no tōryō*, the authority of the law was fundamentally tied to the person of the shogun and was not obviously transferable to the broader *bakufu*.

Reflecting the longstanding customary authority the *buke no tōryō* held over the warrior houses, Sūden drafted the *Buke shohatto* without extensive argumentation. The 1615 *Buke shohatto* returned to Ieyasu and Hideyoshi's early style of announcing short, clear rules governing samurai conduct and the lines of jurisdictional authority between the *bakufu* and the *daimyō*.¹³⁸ The most notable ideological statement found in *Buke shohatto* lay in its first article, where the Tokugawa anticipated the transition of the samurai from warlords to peace-time rulers by demanding that the warrior class cultivate both martial and cultural arts in equal measure.¹³⁹ Following this introductory article, the proclamation granted the *daimyō* broad authority to rule their own lands, but at the same time, expressly restricted interaction among the *daimyō* and structurally limited their activities. Structural restraints on *daimyō* collusion included the obligation of the *daimyō* to serve the *bakufu* in Edo, an obligation that Tokugawa Iemitsu formalized into the *sankin kōtai* system of alternative residence in Edo and their home territories when Iemitsu re-promulgated the laws in 1635. Flush from their victory in Osaka, and the issuance of *Bateren tsuihō no fumi*, the 1615 *Buke shohatto* did not address Christianity or reinforce the expulsion of the Jesuits. This would also change in Iemitsu's 1635 reissuance of the law, where Iemitsu introduced the prohibition on Christianity in the text of the proclamation itself.¹⁴⁰

¹³⁸ Notable in this context were limitations on marriage among the *daimyo*, sumptuary provisions governing dress, and limitations on gambling and drinking.

¹³⁹ “Both cultural (文) and martial arts (武) should be cultivated together”.

¹⁴⁰ “The Jesuit sect is to be strictly prohibited in all the provinces and in all places.” There is no clear evidence why the 1635 edict reinforced the ban on the Jesuits when the 1615 ordinance had not, but one must consider both that *Bateren tsuihō no fumi* was fresh in Sūden's mind in 1615, but largely forgotten by the drafters of the 1635 re-promulgation. At the same time, the ideological need to support *bakufu* authority, less necessary in 1615 at the height of Tokugawa military authority, had again become necessary in 1635.

Despite significant changes in style and structure between the two laws, reflections of *Bateren tsuihō no fumi* reappear in *Buke shohatto*. The primary similarity lies in the foundational first article in *Buke shohatto*. By demanding the warrior houses to practice both the cultural arts and the military arts equally, Ieyasu creates a cultural space for the samurai to serve as arbiters of the *kunigara*. The proclamations both also focus on threats to the *kunigara*, though *Buke shohatto* expands the range of this threat in a way *Bateren tsuihō no fumi* could not. In the course of prohibiting private meetings in *Buke shohatto*, Sūden broadened the use of the term conspirators (*totō*-徒党), a neologism first used in *Bateren tsuihō no fumi* to describe the Jesuits, to include all conspirators. Sūden equates any private meetings among *daimyō* or even ordinary samurai to the type of external threat to the state found only in the *bateren* just months before.¹⁴¹

While Sūden only infrequently lapses into philosophical arguments in *Buke shohatto*, he does so again where the customary authority of the *bakufu* has been stretched to its utmost. For example, *Buke shohatto* outlaws private marriage agreements among *daimyō*; all marriages between samurai families required approval of the *bakufu*. This prohibition was largely unenforceable even when proposed, and would weaken further over time,¹⁴² but the proclamation argues that the value of the provision lay in the ability to control the foundation of troubling alliances or the consolidation of wealth in groups other than the Tokugawa house. Sūden again alludes to the risk of conspiracy (again *totō*) through marriage but reinforces this provision with reference to

¹⁴¹ See Screech, 9.

¹⁴² By Iemitsu's 1635 revision (which lacks Sūden's literary allusions), the prohibition on private marriage was limited to families with income over 10,000 *koku*, generally major *daimyo*. This provision was further refined in future editions (particularly Arai's 1710 draft), suggesting the continued concern over the proper limits of *bakufu* authority over marriage.

the blending of *yin* and *yang*, and by quoting the *Odes* and the *I Ching*. This use of literary arguments to reinforce his argument reinforces the tension in the text between an assertion of authority beyond customary bounds and the need to protect the *kunigara* from internal threats.

Kinchū narabini kuge shohatto

In contrast to *Buke shohatto*, the *Kinchū narabini kuge shohatto* shows Ishin Sūden's return to rhetorical handiwork. Issued ten days after the *Buke shohatto*,¹⁴³ *Kinchū narabini kuge shohatto* proposes standards of protocol for the Imperial court and the noble families in considerable detail, addressing topics ranging from the appointment of court positions and succession within the nobility to the ceremonial robes of the *tennō*.¹⁴⁴ Sūden presents many rules governing proper court behavior using short, direct language, in a manner similar to *Buke shohatto*. Yet these rules are supported by explanations, in which the *bakufu* often adopts surprising deference to court traditions. In providing direction on the proper conventions for selecting era names or of allowing families to address their own internal promotion tactics, the proclamation defers to tradition: “the procedure laid down in the old regulations of our court should be followed.”¹⁴⁵

¹⁴³ The date of issuance of the regulation proves somewhat misleading as to its time of gestation, which scholars have suggested took as long as five years. Butler (1994), 537. However, the timing of its promulgation even more important, as it reinforces the hegemonic position of the *bakufu* following the fall of the Toyotomi. Also, while issued within days of one another, the two regulations are technically from different eras, as the *Genna* era was announced between the promulgation of the two. Further consideration may be given to the import of the choice of the era name on the decision to issue *Kinchū narabini kuge shohatto*.

¹⁴⁴ Arts. 9-10. As Lee Butler has described, the regulation was not the first to address the *kuge* (this first happened as early as 1603 and occurred with some frequency in the years following), but was the first to include provisions relating to the *tennō*. Butler (1994), 511-522. While the translations of *Kinchū narabini kuge shohatto* are my own, I am indebted to Butler (1994) on the antecedents to the 1615 regulation, which remains well supported by the evidence. In particular, Butler should be consulted with reference to those matters in dispute among members of the nobility that gave rise to particular provisions of the *Kinchū narabini kuge shohatto*, which unfortunately remain beyond the scope of this work. For example, see matters relating to the division and authority of various court ranks, *ibid.*, 541-554.

¹⁴⁵ Article 9.

This deference to the traditions of the imperial court again arguably reflects *Bateren tsuihō no fumi*'s desire to present a respectful relationship between court and *bakufu*.

However, this same recitation of what constitutes a cultural tradition should be viewed as a challenge; by validating the tradition of the court, the *bakufu* assumes the broader role of arbiter of traditions that go to the heart of the national character. Moreover, Sūden's deference to tradition poorly conceals the overt assumption of authority entailed by the issuance of the proclamation. Fundamentally, there was no precedential authority that would allow the *bakufu* to bind the nobility or the Imperial Court.¹⁴⁶

Ieyasu's ambition may be measured particularly by his treatment of the role of the Emperor. *Kinchū narabini kuge shohatto* mirrors *Buke shohatto* by articulating principles of prescribed conduct for the court, but unlike the samurai who are told to practice both literature and military arts, the Emperor "should focus on learning alone."¹⁴⁷ Like *Buke shohatto*, the first article of *Kinchū narabini kuge shohatto* is critical. The first article addresses the role of the Emperor, and here Sūden again reverts to rhetoric. He argues that learning (*gakumon*- 学問, the craft of scholarship) is the greatest accomplishment of the Emperor, but blames the warlike history of the archipelago for the historical failure to of the court meet its duty: "because the rules have never been learned and the ancient ways were not studied, the great peace (*taihei*-大平) has never

¹⁴⁶ This is not to say that Tokugawa Ieyasu personally had no stake in imperial matters. As part of his broader engagement with the Court, his granddaughter was married into the court, and his great-granddaughter became the *tennō* Meisho, the first female *tennō* in a millennium, see *infra*, 142.

¹⁴⁷ Article 1. Author's translation. quoting the *Kinbishō* of Juntoku, a *tennō* from the early Kamakura era. Notably, this period was one that Ieyasu and Sūden sought to analogize to the early Tokugawa period.

been realized.”¹⁴⁸ This statement provides both a justification for the rule by the *bakufu*—because the court historically has been unable to deliver the great peace— and for the limited role of the Emperor—to continue his or her ritual practice in order to deliver the great peace.¹⁴⁹ Sūden substantiates this argument by providing examples of proper types of scholarship for Emperors, like composing *waka*¹⁵⁰ and studying the political writings of previous Emperors. He concludes by citing one of these writings, the Emperor Juntoku’s *Kinpishō*: “The *tennō* should focus on learning alone.” Butler has suggested, based primarily on the political content of works like the *Kinpishō*, that this provision was first opportunity afforded the shogun to address the proper role of the Emperor,¹⁵¹ and the authority over government that the proclamation does allocate to the Emperor relate primarily to administering the conduct of actors at court, not administering the needs of the state.

In *Kinchū narabini kuge shohatto*, Sūden also returns to the cosmological rhetoric he deployed in *Bateren tsuihō no fumi* in support of the ordered state, although the theme of protection of the *kunigara* has been recoded with the idea of deliverance of the *taihei*, the great peace. To displace the Imperial court to a secluded, subsidiary position on matters of government, Sūden relies heavily on a shared body of custom, suggesting that the proper role of the Emperor is to serve as a culture hero, an immanent instantiation of the *kunigara* for the benefit of the people. To this end, Sūden helpfully provides a series of models in previous docile emperors that may be used for the purpose of embodying the national character, to wit those found in the the *Jōgan seiyō*,

¹⁴⁸ Article 1.

¹⁴⁹ This provision also notably shows how early in Tokugawa rule the *bakufu* would look at provision of *taihei* as the measure of effectiveness of *bakufu* rule. Cf. Ooms (1985), 43-49.

¹⁵⁰ Notably, the Buddhist Sūden describes *waka* as “lying words”, in contrast to Buddhist realities.

¹⁵¹ In contrast, the 1613 regulation governing the *kuge* (nobility) addressed this issue directly, without addressing the *tennō*. Haley, 54.

the *Kanpyō yuikai*, and the *Gunsho chiyō*. While the import of Sūden's seclusion of the Imperial court from matters of governance may have been obscured within his series of literary references and arguments from custom, provisions later in the text demonstrate the work's intended impact on imperial power.¹⁵² In Article 11, the proclamation demands that the orders of the key liaisons of the *bakufu*, including the *buke tensō* and the *bugyō*, must be followed, regardless of one's rank. Similarly, Article 16 strips the Emperor of their historical right to bestow the *shie* (purple robe) of leadership to monks residing at certain major temples sponsored by the court. Instead of allowing the court its discretion to grant purple robes, the provision enacts restrictions on grants based on the talents and experience of candidates. These provisions, when first enforced a decade later, served to validate the political power of the *bakufu* over the court.

Reception of Kinchū narabini kuge shohatto

Although Sūden's role as an advisor diminished within the *bakufu* following the death of Ieyasu, his public role in the production and implementation of regulations remained prominent through the end of Hidetada's rule. Yet, Sūden's arguments for *bakufu* rule over the court at Kyoto rested on shakier ideological ground. While *bakufu* authority remained dormant, these arguments were not tested, but when the *bakufu* sought to enforce its rights, they provoked a challenge. The first significant challenge to *bakufu* lawmaking authority arose in the 1627 Purple Robe Incident.

¹⁵² These characterizations have been described in superlative terms by scholars, are summarized in Butler (1994), 511.

The Purple Robe Incident was a challenge by the Buddhist establishment (particularly from influential Rinzai Zen priests), and indirectly by the Imperial Court, to the restrictions found in *Kinchū narabini kuge shohatto* prohibiting the nobility from appointing monks to administer certain influential temples. As a matter of custom, administrators at major temples in Kyoto were installed in their position directly by order of the Emperor and were granted the right to wear purple robes in recognition of this honor. Temples benefited from the prestige and economic benefits associated with Imperial patronage, and because abbots often came from noble families, the ability to grant the purple robe provided the Imperial court with a mechanism for internal control of important temples.¹⁵³ Over time, this cozy arrangement became subject to abuse, particularly because the position of administrator (*bettō*) actually played no operational role in the management of temples. This meant that more and more positions (and robes) were sold to “absent abbots” and to candidates who lacked any qualifications to serve as senior temple priests, generating income for the court with no benefit to the temples.

Ieyasu first attempted to curb these abuses by restricting the ability of the court to appoint *bettō* in the 1613 *Chokkyo shie no hatto* (Law on the grant of purple robes). This regulation provided more stringent standards for the appointment of abbots at seven major Rinzai Zen temples, and the *hatto* required that these temples consult with the *bakufu* about candidates prior to appointment. This prohibition was reinforced in 1615 in the *Kinchū narabini kuge shohatto*, and in another *hatto* issued to the Rinzai sect in 1615.¹⁵⁴ In the text of these regulations, Sūden

¹⁵³ Butler (1995), 524-525, describes the political impact of the initial Tokugawa edicts stripping the court of this authority. For the abuses associated with “absentee” appointments, see Collcutt, 234. The Rinzai tradition was most closely associated with this practice largely because the major Rinzai temples (the Five Mountains) received the most significant imperial and shogunal patronage during the medieval period.

¹⁵⁴ Williams (2009), 35. This latter regulation, the *hatto* sent to the Rinzai Daitokuji and Myōshinji temples, particularly emphasized that absentee appointments not be made absent extraordinary circumstances.

claimed that standards of transmission had fallen into decline and characterized these proclamations as reforms to reinforce the standards of learning associated with the title of *bettō*. Despite these proclamations, the court continued to grant and, petitioners continued to accept purple robes, both at Rinzai and other Buddhist temples. In 1627, following more than a decade of tacit acceptance Hidetada and Sūden took forceful action against the practice, issuing a new order stripping the ranks, titles, and robes from monks awarded by the court after the 1615 regulations. This action impacted over 150 monks of the Rinzai, Sōtō, and Jōdō traditions.

As a result of this edict, the sitting emperor Go-Mizunō reportedly requested that certain of the more eminent monks impacted to provide arguments in opposition to the order. Six Rinzai monks, most notably including Takuan Sōkō—an eminent monk of the period—and fellow monks from the leading Rinzai temple of Daitokuji, presented a formal protest to Hidetada's order.¹⁵⁵ This was the first formal challenge to a Tokugawa law.

The response of the Rinzai Zen monks Takuan and Gyokushitsu was both a political and ideological protest. The monks challenged the Tokugawa politically, by protesting the annulment of their grants, and religiously, by claiming that the Tokugawa lacked authority to make laws governing doctrinal traditions. This challenge was particularly pointed legally, since the monks' argument rested on the claim that the *bakufu* had no authority to regulate the conduct of temples in the way they did in the *Kinchū narabini kuge shohatto*. This argument was also a proxy argument on behalf of the Imperial court, for the ultimate import to *Kinchū narabini kuge*

¹⁵⁵ Williams (2009), 36. See also Haskel, 79-80; Tsuji, 8:260 et seq.

shohatto was far more significant—the affirmation of *bakufu* political authority over the nobility and ultimately the *tennō*.

Politically, the monks lay on shaky ground. They had no vocal supporters within the government or among the *daimyō*, and the *bakufu* acted decisively in response. As a result of their protest, these monks were called to Edo¹⁵⁶ and confined in residence in Edo while the *bakufu* officials considered the matter. Although the monks subsequently presented a formal letter of apology and sought to make amends, they were steadfast in their personal appearances before the court of the right of their position. The *bakufu* response to the temples and their monks was telling. After some internal disagreement,¹⁵⁷ many of the monks whose position had been annulled were regranted their titles. However, those monks who were most vocal in their disagreement with the *bakufu* were exiled.¹⁵⁸ The message of the *bakufu* was clear. While the government could be reasonable in the provision of titles, it would not be equally merciful to monks who questioned the political dynamics of the temple-state relationship.

The ideological fight between the Daitokuji monks and the *bakufu* ended more equivocally. The monks presented the argument that Daitokuji's *bettō* were all qualified by their own measure—their appointment standards conformed with customary standards and with the precepts of the Zen tradition, which notably contemplated the personal transmission of enlightenment by a

¹⁵⁶ In future years, litigants would be restricted to Edo during the term of their dispute, but this was not yet a procedural norm.

¹⁵⁷ Rinzai Abbot Sūden and Hidetada supported stricter punishment, potentially including banishment of Go-Mizunoo, while Tenkai and others advised for the more lenient punishments that were ultimately given. Haskel, 82.

¹⁵⁸ Exile was the most severe punishment that could be meted out to a monk. See Chapter 4 for a description of mid-eighteenth-century punishments for more detail.

master who was the sole arbiter of readiness.¹⁵⁹ Because their customary standards better aligned with their doctrines, they argued, the *bakufu* must allow temples to make their own decisions about appointments. This argument was substantiated both by extensive recitations of doctrine and by Takuan's personal reputation, which was already significant. The argument did not address the propriety of Imperial appointments, and it did not question *bakufu* authority to regulate temples. But the argument struck at Sūden's narrative by suggesting that each sect should be an arbiter of its own traditions, rather than allowing the *bakufu* to dictate the *kunigara*.¹⁶⁰

The monks' arguments struck at a weakness in Sūden's theory; under Sūden's argument, the *sankyō* represented the full expression of the *kunigara*, yet the monks had made a strong case that their articulation of their own tradition, not Sūden's, better reflected established national customs. Negative public reaction to Takuan's punishment demonstrated the damage to Sūden's conception of *bakufu* as a religious authority by Takuan's arguments. Contemporary popular accounts of the incident laid blame on Sūden while continuing to show popular support for Takuan.¹⁶¹

The Purple Robe Incident was the first notable legal challenge to Tokugawa authority to make laws governing the Buddhist establishment and the Imperial court. The most significant act of

¹⁵⁹ For a summary of this argument, see Haskel, 79-81. Takuan noted, most effectively, that many of the Japanese Zen patriarchs had not studied for the thirty-year period mentioned in the 1615 *hatto*. These arguments called into question Sūden's knowledge and interpretation of the tradition and of Zen practice, and Sūden particularly urged harsh punishment.

¹⁶⁰ This argument left open, and implicitly ceded to the *bakufu*, the ability to ensure that standards temples set for themselves had been met. This would allow the *bakufu* to retain the approval rights that it sought for its political purposes.

¹⁶¹ See Haskel, 84; Tsuji, 8:236.

protest associated with the affair was the abdication of *tennō* Go-Mizunō that followed Takuan's punishment,¹⁶² but his ambivalent act of protest ultimately served to reinforce the Tokugawa narrative. By abdicating and devoting himself nominally to culture work, the Emperor reinforced the point that he had no power or authority to enforce his orders (in this case, the grant of *shie*), and that he and the Imperial Court best served the nation by preserving its aesthetic and cultural traditions. The dissent of the Daitokuji monks was more effective in questioning elements of the narrative established by the *bakufu* to arbitrate the *kunigara*, and this dissent apparently garnered some sympathy. However, their arguments to tradition did not strike the core argument Sūden made for Tokugawa lawmaking—that the shoguns by issuing laws had the ability to protect the people—but instead at Sūden's characterization of the *kunigara*. Arguably for this reason, the decision to exile Takuan and Gyokushitsu, while criticized, did not generate significant popular protest.¹⁶³ The successful resolution of the Purple Robe Incident supported to the authority of the Tokugawa to serve as undisputed lawmakers across the archipelago, but showed that the temple community were not convinced by those elements of Sūden's narrative that envisioned the Tokugawa as the absolute authority in identifying the *kunigara*.

Iemitsu's lawmaking

¹⁶² Upon the announcement of the punishment of exile and with no prior notification, Go-Mizunoo abdicated the throne in favor of his five-year-old daughter Meisho—who was the great-granddaughter of Ieyasu. The *tennō*'s action was likely designed to embarrass the *bakufu* by suggesting that the *tennō* was a Tokugawa puppet, and perhaps ultimately to provoke a crisis of governance. See Tamamuro (1987), 24; Tsuji, 8:244. The Empress Meisho was the first female Tenno in almost a millennium. Abdication was not itself unusual, though, Go-Mizunoo's father and predecessor Go-Yozei also abdicated in 1610 under Ieyasu, though Go-Yozei's abdication was not politically inspired.

¹⁶³ The third of the Daitokuji monks, Kogetsu, apologized to the *bakufu* and was allowed to retain his position.

Together with the collected *Jiin hatto*, which established the relationship between the *bakufu* and the major temples and shrines, the promulgation of *Buke shohatto* and *Kinchū narabini kuge shohatto* were the laws that forged the initial structural basis for the Tokugawa polity. The three sets of regulations situated the potential political rivals to the Tokugawa—other daimyo, the court and the aristocracy, and the temple system—in positions subordinate politically, legally, and even soteriologically to the *bakufu*, with established roles and duties necessary to maintain an orderly state which would rely on a unique national character that the samurai would sustain. Perhaps to reinforce the continued relevance of these regulations, the *Buke shohatto* and *Jiin hatto* were regularly reissued upon the appointment of new shoguns.¹⁶⁴ Yet the *Kinchū narabini kuge shohatto* was never repromulgated, despite the Tokugawa history of resolving disputes among members of the court.¹⁶⁵

The lawmaking authority established by Sūden under Ieyasu and Hidetada became the model for subsequent lawmaking conducted by their successor, Ieyasu's grandson Iemitsu, who became shogun in 1623 and assumed real power following Hidetada's death in 1632. Iemitsu expanded the lawmaking activity of the *bakufu* by building upon the constitutional framework of his predecessors while remaining within the pattern of authority that Ieyasu had established.

Iemitsu's repromulgation of the *Buke shohatto*, for example, broadened the duties of the *daimyō* to include the establishment of *sankin kōtai*—the broad system of alternate attendance in Edo that would become the economic and political heart of the Tokugawa era polity— but it

¹⁶⁴ For dates of promulgation of the *Buke shohatto*, see *supra*, 132-133. The *Jiin hatto* were repromulgated by Iemitsu in 1635 that established the *honmatsu* system of central and affiliated Buddhist sects, and again most notably in 1665 and 1683, as discussed in Chapter 3.

¹⁶⁵ Butler (1994), 508. Butler emphasizes the limited importance of the *Kinchū narabini kuge shohatto* as a document in contrast to the political realities of the relationship. *Ibid.* at 510. I concur with this view in practice, but I contend that in measuring the representation of authority that the Tokugawa sought to establish both contemporaneously and for the future, the regulation remains a focal communication.

remained formally the same as the laws that Ieyasu promulgated two decades before. Iemitsu followed *Bateren tsuihō no fumi* by reinstating the expulsion of the *bateren* in *Buke shohatto*, as well as by issuing a third, final expulsion of the *bateren* in a separate order. Iemitsu also followed *Bateren tsuihō no fumi*'s strategy of unifying by legislating against an perceived external threat by producing the more comprehensive limitations on national trade and foreign migration that became known as the *sakoku* policy.¹⁶⁶ While the influence of this policy was overstated in later scholarship, the announcement of these limitations in 1635 represented a broad expansion of Tokugawa law.

These latter two major changes ultimately made in 1635 relied for their justification on the same fear of foreign incursion and the need to reinforce Japanese cultural unity found in Ieyasu's initial proclamations. Iemitsu's expansive lawmaking provided an unambiguous statement that the claim of authority made first under Ieyasu would continue through the rule of Iemitsu.¹⁶⁷ Similarly, and consistent with the development of the *jiin hatto* into a set of comprehensive laws, Iemitsu continued to issue rulings addressing the major temples that would come to establish the *honmatsu* system of temple regulation, and later internal social control. Iemitsu also began to issue regulations that took a more assertive role in addressing the Japanese economy.¹⁶⁸ Yet through all these actions, Iemitsu remained reliant on the same justifications to the precedent set by Ieyasu and Hidetada. Iemitsu broadly expanded the bounds and scope of Tokugawa power,

¹⁶⁶ See, e.g., Laver, 5. In his analysis of the *sakoku* laws, Laver emphasizes the importance of viewing these laws as a means for establishing *bakufu* control over the Western periphery of the archipelago- enhancing the importance of the argument for national unity. See generally Toby, 12-18, on the extent to which trade under *sakoku* was broader than previously characterized.

¹⁶⁷ This does not suggest that the content of the laws remained the same. As described variously herein, Iemitsu changed the *buke shohatto* to enhance *sankin kotai* and to limit restrictions, like the restriction on marriage without prior approval, that were becoming unenforceable. He also systematized sets of laws, like the laws governing temples, into an identifiable system. However, the justifications for this lawmaking remained unchanged.

¹⁶⁸ See Ooms, 143-151.

but he notably made few arguments to support these claims beyond those which Sūden had supplied decades before. In this regard, Iemitsu's course of lawmaking conduct substantiated the success of the initial Tokugawa claims to lawmaking authority and suggested broad acquiescence to Sūden's articulation of the locus of this lawmaking authority in the need for the *shogun* to protect the people by protecting the *kunigara*.

Conclusion

Over the first three decades of Tokugawa rule, the shoguns Ieyasu, Hidetada, and Iemitsu increasingly needed to consolidate the authority of a military government transitioning to a rule in peacetime. As a consequence, the *bakufu* needed to create new laws to facilitate this transition and address the needs of a changing society. Ieyasu at first relied to varying degrees on the authority found in different customary roles to adjudicate disputes. These customary claims included *buke no tōryō* to govern the conduct of the other samurai; the role of the shogun as defender of the nation against external threats; and the tacit authorization granted to the *bakufu* by willing parties to adjudicate their disputes, for example among claims of competing *daimyō* or temples. In the earliest period of Tokugawa rule, this piecemeal approach sufficed.

The elimination of the rival Toyotomi provided the Tokugawa with the opportunity (and perhaps suggested the need) to forge these various sources of lawmaking authority into a consistent narrative. The Tokugawa pursued this opportunity immediately but were wary of intellectual challenges in those constitutional laws where their new lawmaking most stretched their customary authority. In these situations, the *bakufu* established the practice of drawing on

cosmological narratives to justify their broadened claims. This narrative appears in its fullest form in *Bateren tsuihō no fumi* to explain the expulsion of the Jesuits, and more broadly to explain the *bakufu* claim to make new laws. The underlying tenets of this narrative reappeared in important ways in *Buke shohatto* and again in *Kinchū narabini kuge shohatto*.

Looking across the three laws, Sūden's cosmological narrative may be briefly summarized:

- Japan is a special place, the nation of the gods (*shinkoku*) that has a distinct and consistent national character (*kunigara*);¹⁶⁹
- This Japanese *kunigara* is different from and at odds with Western culture, emanates from the very nature of things, and is described by the *sankyō*, which represent three customary loci of political power, the samurai, the imperial court and the temples.¹⁷⁰
- Despite its totalizing nature, the national character is under continuous threat both from within and without from conspirators (*totō*).¹⁷¹
- Damage to the national character would have profound political, soteriological and cosmological implications.¹⁷²
- Within the *kunigara*, each constituent of the political body has a specific role to play.

The *tennō* is the personification of the *kunigara* responsible for study and ritual conduct in accordance with the established traditions of the state but sequestered from administration of government. The *bakufu* is responsible to protect the nation and the

¹⁶⁹ This claim is found in both the *Kinchū narabini kuge shohatto* and in *Bateren tsuihō no fumi*, although it is spelled out most explicitly in the latter text.

¹⁷⁰ *Bateren tsuihō no fumi* presents this argument as its core thesis, and the same concepts are reiterated in the two latter regulations.

¹⁷¹ *Bateren tsuihō no fumi* and *Buke shohatto* both emphasize the threat of conspirators.

¹⁷² *Bateren tsuihō no fumi* and *Kinchū narabini kuge shohatto* both make this point in different ways; the former explicitly argues these points, while the first Article of the latter regulation reminds us that *tennō* who fail to meet their obligations fail to produce the harmony of the *taihei* "Great Peace".

national character and to do so may issue and enforce laws and regulations that promote an ordered state. By so doing, the *bakufu* realizes the great peace promised by the ritual expression of the *kunigara*, which may also be described as the mandate of heaven and the natural order of things. Subservient these bodies are the imperial court, the warrior rulers of the provinces, and the temples and shrines, each of whom owe a duty to the *bakufu* to follow and support the law for the good of the state and its people.

While the major proclamations that formed the basis for early Tokugawa lawmaking reflected a consistent and sustained narrative, Tokugawa lawmaking practices had still not yet coalesced. During this first period of Tokugawa rule, the norms of dispute resolution continued to develop, and the substantive authority assumed by the *bakufu* grew to cover a broader number of matters. By the death of Iemitsu, it was not yet clear how broad the Tokugawa claim to authority would ultimately grow. The differing styles adopted in *Bateren tsuihō no fumi*, *Buke shohatto*, and *Kinchū narabini kuge shohatto* provide a reminder that assimilating existing customary precedents into a new style of lawmaking was a continuous process. This process of assimilating to a new legal culture involved a broader group of actors than the shogun and his advisors, and relied from an early period from the acquiescence and sometimes active participation of other political actors, including the *daimyō* who swore oaths to the shogun and the temples who brought their claims to the shogun to adjudicate. In the first years this process was voluntary and generally operated smoothly, but as early as Iemitsu's rule this process remained subject to contestation.

Following the issuance of the constitutive laws described above, Sūden's portrayal of the shogun as protector of the *kunigara* succeeded among the other powers of the time in justifying the enhanced lawmaking authority of the Tokugawa government.¹⁷³ However, Sūden's argument that the *bakufu* held the right to define the *kunigara* did not meet with the same broad acceptance. The initial *bakufu* formulation of Japanese traditions met with resistance from both internal challengers within the *bakufu* leadership and the major temples who were the first vocal external critics of the government in the form of the 1627 "Purple Robe Incident."¹⁷⁴ The only of element of Sūden's narrative that the political *sankyō* could agree on was the exclusion of foreign intellectual influences. While this dissensus did not impact Tokugawa lawmaking authority, these episodes showed from the beginning of the Tokugawa rule the power of external lawmakers to destabilize Sūden's totalizing claims in ways that would provide opportunities for future shogun to replace Sūden's narratives with their own.

Until the rule of Tsunayoshi at the end the seventeenth century, the daimyō, the court and the temples generally followed and supported the constitutional laws of the early Tokugawa shoguns even as the substantive laws evolved in ways that reinforced Tokugawa authority. As Tokugawa Ieyasu particularly became increasingly treated as a culture hero and divine *kami*, these early precedents would continue to grow in symbolic importance. Later reliance on these early laws of Tokugawa suggests that the early Tokugawa may have done their job too well in presenting their claim to authority. Yet despite this claim, a close reading of the lawmaking of

¹⁷³ Arguably, because of the increased authority *daimyō* were afforded to govern their own lands, Ieyasu's regulations were generally accepted. See, e.g., Brown, 35-36.

¹⁷⁴ For a comprehensive description of the Purple Robe Incident, see Williams (2009), 35-37.

this period contests the characterization that Tokugawa law was from the first consistent and coherent.

CHAPTER III GROWING PAINS- IETSUNA TO IETSUGU

By 1639, when the third shogun Iemitsu issued a series of new laws monopolizing foreign trade, the Tokugawa *bakufu* had established the basic contours of a political system that persisted across the breadth of Tokugawa rule. The central government controlled most national economic and diplomatic activities, including the issuance of currency and the mining of precious metals, foreign trade, diplomatic missions, and intra-domain transit.¹

However, the constitutional laws that supported this political system were still few in number and limited in scope, both practically and by design. The shogun established the terms of their authority over other samurai leaders of the provinces in the *Buke shohatto*, which Iemitsu enforced in practice with the establishment of the alternative residence (*sankin kōtai*) system and the threat of removing samurai from the lands granted to them. With the *Kinchū narabini kuge shohatto*, as well as by superseding rights previously arrogated to the court, the Tokugawa maintained de facto control over the Imperial court.² The Tokugawa government established its authority over temples with the issuance of the *Jiin hatto* and enforced this authority through the creation of an administrative structure for the regulation of temples and shrines, the *honmatsu* system, managed by a *bakufu* administrator the *jisha bugyō*. Iemitsu reinforced the ban on Christianity established in *Bateren tsuihō no fumi* in his *Buke hatto*. These handful of constitutional laws constituted the most significant of the generally applicable laws.³

¹ In the medieval period, foreign trade most often within the ambit and control of the temple network, was defined particularly the *Gozan*, the five most influential Zen temples. Collcutt (1981), 101-102.

² See, e.g., Williams (2009), 35-41.

³ The government issued somewhat more orders, but these were often applicable primarily to individuals or smaller groups.

Ieyasu exercised restraint in extending his authority beyond the bounds of personal control in a manner consistent with the custom for shogun since the Kamakura era.⁴ *Bakufu* law applied directly only to those territories the Tokugawa directly controlled. In the *Buke hatto* and subsequent rules, the *bakufu* made clear that its regulations governed only that territory under direct *bakufu* rule,⁵ although the *bakufu* demanded that the leaders of provinces controlled indirectly by the shogun (known as the *fudai* and *tōzama daimyō*) adopt only laws consistent with *bakufu* law in their own territories. Similarly, the Tokugawa administered the villages and urban groups like the *eta* and *hinin* as bodies corporate, granting them the ability to self-regulate at the cost of joint responsibility to meet the government's tax and labor obligations.

While this system of limited jurisdiction maintained the piece for much of the seventeenth century, by the end of the century social and economic challenges had begun to emerge that demanded decisive action to maintain a viable state. The fifth and sixth shoguns Tsunayoshi and Ienobu⁶ faced a government edging towards insolvency that remained responsible to support of an entire social class of recently-urbanized samurai. To confront these challenges, the two shogun asserted more direct authority within the Tokugawa government and sought greater control over the *daimyō* and the common people across the archipelago. However, Ieyasu's limited assertion of jurisdiction guaranteed that interested individuals and groups outside of the central government would also begin to shape Tokugawa law by leveraging the ambiguities found in the interstices of the system.

⁴ See Mass, 50-52, for early constructions of Kamakura shogunal authority.

⁵ Depending on the period, this constituted only a quarter of the territory of the archipelago.

⁶ Tsunayoshi was the brother of the childless Ietsuna, and he ruled from 1680 to 1709. Ienobu was Tsunayoshi and Ietsuna's nephew, the son of their elder brother Tsunashige.

Tsunayoshi and Ienobu pursued similar lawmaking strategies to address the crises that they faced. However, the two offered radically different justifications to support these strategies. In particular, these justifications relied on competing cosmological narratives. Both Tsunayoshi and Ienobu claimed that their narratives were consistent with the early Tokugawa leaders, but each shogun offered a radically different understanding of the world and human behavior.

The early Tokugawa leaders argued that the primary duty of *bakufu* was to protect the state from alien threats—imagined cosmologically as a defense of the *kunigara*, or national character. The first shogun justified their authority and the extensive system of internal control that they enacted as a response first to threats from without, represented by the incursion of alien teachings like Christianity, and later by threats from within like heretical teachings and internal conspiracies. While critics of this new formulation questioned the authority of the *bakufu* to define the essential nature of particular traditions, the government encountered no widespread dissent to its construction of authority at a time when the nation as a whole was rebuilding. This would change with the laws of Tsunayoshi and Ienobu.

This chapter analyzes the ways in which lawmakers experimented with alternative narratives supporting Tokugawa lawmaking during the fifty-year period from the beginning of the rule of the fourth shogun Ietsuna and ending with the death of the child-shogun Ietsugu. During this period there was a double transition in Tokugawa legal cosmology. The Tokugawa government proposed a series of different narratives to assert increasingly broader claims to authority over the course of this period, moving from (1) the sedimentation of a valorized Tokugawa “tradition”

under Ietsuna, who purported to sustain the traditional arguments for Tokugawa authority while actually subtly shifting these narratives to address emerging threats; to (2) the reforms to Ieyasu's model made by Tsunayoshi, who enacted a radical interpretation of Ieyasu's cosmological narratives in support of a broader bid for centralized authority; followed quickly by (3) the counter-reforms against the laws of Tsunayoshi proposed under Ienobu by Arai Hakuseki and continued through the rule of his minor son Ietsugu. This rapid transition from reform to counter-reform appears most visibly in the comparison between two sets of laws authorizing *bakufu* lawmaking authority that were released in relatively quick succession- Tsunayoshi's *Shōrui awaremi no rei* (生類憐みの令—the Edicts of Compassion for Living Things, issued from 1682-1705) and Arai Hakuseki's rejection of these edicts through the 1711 revisions to *Buke shohatto*, in which Hakuseki promoted an alternative basis for authority that he explained more fully in his autobiography, *Oritaku shiba no ki* and in *Shinrei kukai*, his primer on the 1711 *Buke shohatto*.

Tsunayoshi and Ienobu each relied on new legal cosmology and legal anthropology to support definitive action taken to reassert control by the Tokugawa state. Each of these narratives relied upon and sought in its own way to remain loyal to the cult of the founder Tokugawa Ieyasu. Tsunayoshi sought to preserve Ieyasu's vision of the nation by proclaiming laws which would inculcate the syncretic Buddhist/Confucian virtues that he associated with Ieyasu, while Hakuseki sought to use Confucian ideology to legitimize a broader, king-like claim to authority by replacing the reliance on individual virtues with an legal anthropology based on the duties associated with the Confucian five relationships. The two lawmakers articulated dramatically different visions for the operation and legitimacy of the state, but they shared with Ietsuna the

need for narratives to reimagine both the nature of things and the recent Tokugawa past.

Although often overlooked as a lawmaker, Ietsuna was the first to reimagine Tokugawa rule, projecting an image of stability and consistency of administration that the early shogun had never achieved. Given the varying descriptions of it provided by Ietsuna, Tsunayoshi, and Arai Hakuseki, by the end of the seventeenth century, the myth of Tokugawa Ieyasu as lawmaker had become a pervasive, if very pliable, signifier.

The facile association of Tokugawa lawmaking with the expanding cultural influence of Confucian scholarship has long obscured the tumultuous ideological foment of late seventeenth century Tokugawa lawmaking. Tsunayoshi's reforms have often been described as a short-lived Buddhist "intervention" in a trend towards greater Confucian influence over law, and Arai Hakuseki's response as a Confucian restoration.⁷ Yet neither Tsunayoshi nor Hakuseki's thought⁸ may be so simply described, in part because neither during this period nor before was there was a single established Buddhist or Confucian orthodoxy.⁹ Tsunayoshi's lawmaking represented a cogent, if highly impractical, extension of the syncretic ideology of Ieyasu and Ishin Sūden. In contrast, Ienobu's reforms of Tsunayoshi's laws, particularly as influenced by Arai Hakuseki, reclaimed the mantle of the founder Ieyasu's legacy even as these laws largely eschewed Tsunayoshi's and Ieyasu's description of virtuous rule. While Hakuseki seized on the opportunity to reject an unpopular former ruler, Ienobu's response to Tsunayoshi's policies was not simply as a rejection of Tsunayoshi, but represented a different attempt to justify a necessary

⁷ For examples of this simplification, see Steenstrup, 121. See also Bodart-Bailey (2006), 128-143, and Nakai (1998), 214-218 (detailing conflicts with other Confucian scholars).

⁸ For more biographical information on Arai, see Nakai (1998), 25-46.

⁹ Though arguably Ietsuna sought to imagine such an orthodoxy to reinforce his narrative of stability. Instead, there were many "permitted" Buddhist sects, each which had its own set of teachings permitted under the *jiin shohatto*, see *supra*, 99-100. Among Confucian scholars, the Hayashi school aspired to orthodoxy, but Hakuseki was among the most virulent critics of the school, see, e.g., Arai (1979), III, 186-188 (hereinafter "*Oritaku*").

change the scope of shogunal authority in a manner more consistent with changing social understandings of the nature of things that had evolved away from the seventeenth century world view that placed humans within a broader web of compassion and towards a Confucian-influenced world view that prioritized human relations.

Tsunayoshi's and Hakuseki's legal cosmologies were as idiosyncratic to their own beliefs as the ideas of Sūden a century before them. Perhaps because of the idiosyncratic nature of each lawmaker's legal cosmology, both of their reforms faced immediate resistance from contemporary critics and were rather quickly abandoned by subsequent shogun. The rapid succession of changing legal cosmologies demonstrates clearly the emergence of competing viewpoints both within the Tokugawa government and between the government and its critics.

Iemitsu to Ietsuna: Imagining Tokugawa stability

Beginning in Iemitsu's final decade in power and spanning the nearly thirty-year rule of his son Tokugawa Ietsuna, the Tokugawa government enjoyed two generations of relatively quiet consolidation. During this period,¹⁰ the *bakufu* repeatedly emphasized the stability of Tokugawa rule.¹¹ The lawmaking conducted under Ietsuna normalized Tokugawa lawmaking authority by reimagining the upstart Tokugawa clan as stable and necessary even as it pivoted the Tokugawa law towards a series of new threats.¹² Under Ietsuna, the government initiated a series of

¹⁰ Ietsuna became shogun on the death of Iemitsu when he was only 10. His rule was supported early by Iemitsu's former advisors in the high council, the *rōjū*. See Totman, 126.

¹¹ See Ooms (1985), 55-56 (focusing particularly on the reissuance of *Buke shohatto*).

¹² As this Chapter will describe, however, the shogun following Ietsuna changed the *Buke shohatto* in small, but meaningful ways.

ritualistic re-articulations of authority that provided the basis to reimagine Tokugawa rule as natural and inevitable. The cornerstone of this sedimentation of Tokugawa authority was the reissuance of the constitutional laws of the Tokugawa rule upon the ascension of a new shogun. The government reissued both the *Buke shohatto/shoshihatto*, governing the samurai, and the *Jiin shohatto*, governing temples and shrines, to celebrate the beginning of Ietsuna's rule and remember Ieyasu's lawmaking achievements. Yet, Ietsuna's modest shifts to the narrative supporting shogunal authority also provided a precedent to modify the Tokugawa legal system that would, by the end of the seventeenth century, support Arai Hakuseki's reimagination of the laws first established by Tokugawa Ieyasu.

Tokugawa Ietsuna was just ten when he became shogun in 1651, and during the first decade of his rule, power remained in the hands of the same senior advisers who had supported his father Iemitsu. As a result of this decade of regency, the committee of senior advisors known as the *rōjū* became a powerful bloc inside the Tokugawa government, with its leader sometimes rivalling the shogun himself. While over time the *rōjū* would differ from the shogun on policy priorities, under Ietsuna this leadership was more restrained in expressing its independence. As regents for Ietsuna, the *rōjū* maintained and reinforced Iemitsu's policy innovations, particularly the policy of *sankin kōtai*, the requirement of alternative residence that required regional leaders to travel for part of each year to Edo. During the 1650's, the *rōjū* also addressed a series of crises, including years of drought (1649-1652); attempted coups against the government made by samurai displaced by Tokugawa policies eliminating their masters' holdings;¹³ and the Meireki

¹³ These attempted coups, most notably Yui Shōsetsu's *Keian jiken*, are described in more detail *infra*.

fire of 1657 that consumed much of Edo.¹⁴ In these uncertain times, the *rōjū* had little time or inclination to revisit the narratives supporting the shogun's authority.¹⁵

Although the narratives supporting Tokugawa lawmaking during Ietsuna's rule remained stable, the intellectual climate had become more charged. Scholars like Hayashi Razan and Gahō, Yamazaki Ansai, Nakae Toju, Kumazawa Banzan, and Yamaga Sōko vied for influence inside and outside the government. While these scholars are all generally described as a “Confucianists,” philosophical differences among them were fierce.¹⁶ The Hayashi, who consistently sought to align themselves as closely as possible with the governing Tokugawa, argued bitterly against Yamaga and Kumazawa by associating their activities with anti-government revolts, deviant Buddhism, and even indirectly with Christianity.¹⁷ Yamazaki was very influential with the *rōjū* and disdainful of the Hayashi.¹⁸ Following the *Keian jiken*—the first attempted coup by disenfranchised *ronin* led by Yui Shōsetsu—Hayashi Razan claimed that the lead plotters were influenced by ex-Christians and scholars of *heigaku* (military studies) like Yamaga Sōko.¹⁹ While using the Christian threat and the attempted coup to smear his intellectual rivals was typical of the Hayashi and consistent with the need to protect the *kunigara*, Hayashi's attribution of the intellectual influence of the coup to the “Zen witch Soshin”, the

¹⁴ In addition to killing an estimated 108,000 residents and nearly bankrupting the *bakufu*, see Bodart-Bailey (1998), 46, the Meireki fire also consumed much of the administrative materials of the *bakufu*, including records of previous judicial decisions and land transfers. Totman, 126.

¹⁵ Ooms (1985), 56-57. Please note that outside advisors like the Hayashi did make pains during this period to associate their thought with the *bakufu*.

¹⁶ For a description of these battles, see Yamashita, 4. Scholarship on Shintō was also present within these dialogues, though Shintō and Confucian thought during this period were often closely aligned with one another. See Hardacre (2018), 245-250 for an extended discussion.

¹⁷ Paramore (2010), 91-98.

¹⁸ See Ooms (1985), 202ff.

¹⁹ *Ibid.*, 91. Notably, both Kumazawa and the Hayashi had begun by this period to associate Buddhism with Christianity as a source of anti-government sentiment.

head of the shogun's women's quarters and a former concubine of Hidetada's, also suggests that as early as this period there was insecurity about dissenting voices—particularly female voices—within the Tokugawa regime who possessed enough influence to become subject to Hayashi polemic.²⁰

Ietsuna reached majority in 1661, and in the years that immediately followed the new shogun undertook a series of ceremonial actions. Echoing Iemitsu, Ietsuna formally re-issued the *Buke shohatto* in 1663,²¹ the *Shoshi shohatto* in the same year, and the *Shōshū jiin hatto* in 1665.²² These reissued proclamations did not tread significant new substantive legal ground.²³ Rather than using new arguments to redefine the basis upon which his authority to govern rested, the government under Ietsuna²⁴ sought instead to reinforce the shogun's authority to rule by performing the same actions that Iemitsu had before previously, creating what would subsequently be described as the “traditional” actions of the new shogun.²⁵ By electing to reenact the constitutional laws that Iemitsu had initiated, rather than to make any significant

²⁰ For evidence of Hayashi Razan's misogyny towards Soshin as a contributing factor, see Paramore (2010), 91-92.

²¹ See Ooms (1985), 225, noting that the *rōjū* and particularly Hoshina Masayuki were more responsible for the law.

²² The *Buke shohatto* governed the behavior of samurai generally; the *Shoshi shohatto* governed the conduct of the Tokugawa *hatamoto*, or senior samurai; and the *Jiin shohatto* governed the conduct of temples and shrines, particularly relating to the *honmatsu* system. See, e.g., Tamamuro (2009), 18.

²³ These re-promulgations were not entirely consistent with the 1635 issuances. Instead, each of the revised laws covered largely the same ground, with minor modest modifications to address changing circumstances. For example, the *Buke shohatto* of 1663 permitted the use of cargo boats for intrastate commerce. Hall (1911), 319. Most notably, on the same day Ietsuna also forbade *junshi*, the practice of samurai committing suicide following their master's death. *Ibid.*

²⁴ Given the substantial involvement of the *rōjū* and particularly Hoshina Masayuki in all government, this work will generally describe lawmaking under Ietsuna as reflective of the interests of both the *rōjū* and the shogun. See Hardacre (2018), 145-147; Ooms (1985), 225.

²⁵ The term sedimentation as used in this section relies on the description of sedimentation of ideas found, for example, in Mouffe: “practices that conceal the originary acts of their contingent political institution and which are taken for granted, as if they were self-grounded.” Mouffe (2007). In this context the continued rearticulation of the *buke shohatto* and *jiin hatto* seeks to engage in that form of concealment of the contingency of their formulation by Ieyasu.

changes in the substantive law, Ietsuna and the *rōjū* elected to sediment the narratives of lawmaking authority that Ieyasu had established.

The government's lawmaking conservatism under Ietsuna was a conscious choice; during his Ietsuna's rule, his government innovated in judicial procedure and the administration of government. In lieu of redefining the nature or substance of *bakufu* lawmaking, Ietsuna and the *rōjū* focused on identifying the duties of administration more closely, adding substance to what during Iemitsu's rule had sometimes been little more than a brittle assertion of authority.²⁶

During the Kanbun era (1661-1673), the *bakufu* established a separate structure to hear legal disputes and began to record decisions of the *bakufu* and its separate legal officials.²⁷ Through routinizing the adjudication of disputes, the Tokugawa laws also began to incorporate the interventions of non-state actors, the litigants. Ietsuna supplemented these bureaucratic innovations by performing a nationwide series of inspections by *junkenshi* ("viewing tour inspectors"), another activity originally initiated by Iemitsu in 1633. Luke Roberts has described the visit by the *junkenshi* as "a drama of submission by Daimyo to Tokugawa ruling authority."²⁸ By ordering the *junken*, Ietsuna reinforced the myth of active Tokugawa administration that had originally been established by Ieyasu, and in his organization of the *junkenshi*, by making efforts

²⁶ Another, less charitable, theory regarding the increase in institutionalization occurring during this period was that Ietsuna's personal weakness as a ruler required the increase in authority granted to institutional functions. See e.g. Tsuji (1979), 30, cited in Bodart-Bailey (1998), 48.

²⁷ Hiramatsu, 10. Please note that the formation of the *Hyōjōsho*, while notable as a legal measure, had no implications on the balance of power. The majority of the body were the members of the *rōjū*.

²⁸ Roberts, 56. Formal visits by *junkenshi* continued throughout the Tokugawa era, albeit with some decline into ritual formalism. Roberts contends that from Iemitsu's establishment of the practice onward the primary emphasis of the practice was always the ritual submission of the daimyō, rather than the actual inspection of real conditions in the provinces. Ibid, 58. Regardless of the merits of this claim, the *junkenshi* provide another example of a formal process of reinforcing Tokugawa governing authority that were initiated by Iemitsu and rearticulated by Ietsuna without further substantiation. For a more detailed description of the inspection process by the *junkenshi*, see Handa (1993).

to improve the diligence of his inspectors, Ietsuna again empowered new lawmakers to authorize, but not criticize, the Tokugawa laws in practice.²⁹

Lawmaking under Ietsuna: The Shoshū Jiin Hatto

The 1665 revisions to the *Jiin shohatto*, renamed the *Shoshū jiin hatto* (諸宗寺院法度, Law regulating temples and shrines of various sects), provide a useful example of how Ietsuna's government reissued old laws to reinforce the dominant narrative of Tokugawa authority while increasing in practice the level of *bakufu* social control afforded by these laws. The *Shoshū jiin hatto* also shows that Ietsuna sought to reimagine the temple administrative structure and history of religious practices to discourage innovation in religious narratives—whether through new teachings or new practices—that could give rise to arguments that would challenge this authority. By so doing, the *Shoshū jiin hatto* also shows the ways that Ietsuna shifted the focus of Tokugawa law without shifting its legal cosmology.

In 1635, Iemitsu reissued the various *jiin hatto* to consolidate the major temples and shrines into formally recognized sects. In keeping with Tenkai's conception of Japanese traditions,³⁰ the administrative system that Iemitsu expanded placed considerable emphasis on dividing the temple establishment by ensuring that every temple fell within a sect (*shū*- 宗), or major

²⁹ In Iemitsu's case, the *junkenshi* seemed largely orchestrated to find nothing. Under Ietsuna, although significant amounts of complicity remained, and although the *bakufu* stifled authentic dissent by prohibiting local citizens to make law claims, the *bakufu* sought to give the *junkenshi* a more authentic investigative role. Roberts, 59-67.

³⁰ In contrast with the syncretic and ecumenical Japanese religion favored by Ishin Sūden in *Bateren tsuihō no fumi*, Tenkai favored the segregation of Japanese traditions on strong sectarian lines, even if no such sect structure had previously existed in practice. See *supra*, 131.

interpretive school of Buddhist thought.³¹ The most prominent temples associated with each sect became responsible for sect administration and management and control of the sect's subsidiary temples, a system accordingly called the *honmatsu seido* (root and branch system).³² The *honmatsu seido* provided many benefits to the *bakufu*. It created a web of administrative bureaucracy that reached to the village level that supplemented and supported the minimal samurai administration. The system placed administrative duties on a small set of powerful temples whose loyalty could be assured by placing family members of loyal retainers in leadership positions. The system also steered Japanese Buddhism towards a *de facto* set of orthodoxies that favored religious teachings which fit neatly into identifiable and dependable categories, while suppressing alternative forms of religiosity.³³ While Tenkai, and later Ietsuna, portrayed this policy as a modest shift in support of doctrinal purity, describing disfavored practices as “mixed up,”³⁴ this state-enabled rise in sectarianism was a new and radical intervention into Japanese Buddhist practice.

³¹ Prior to the *jiin hatto*, the notion of a “sect” existed, but was vague at its edges. For example, the Rinzai Zen lineages thought of themselves as a distinct way of teaching Buddhism, and these lineages developed their own internal administrative structures. However, At Rinzai temples prior to the Tokugawa period, it was not unusual to see Rinzai controlled temples housing monks who practiced different variations of Buddhism. See, e.g., Ambros, 94-97, describing the various teachings at Ōyama, a popular pilgrimage site. One of the reforms within the *honmatsu* system was to attempt to reduce this “mixing” of teachings and limit the teachings taught at a temple to a particular sect.

³² *honmatsu* (本末), which means “root and branch” is a descriptive term, expressing the administrative structure of the system. Each of the *shū* had a few (1-2) *hon* or central temples that were responsible for the administration of the sect. Under these *hon* temples were the *matsu*, or branch, temples. These temples were subject to the *hon* temples on administrative matters. This system diverged from the structure of Japanese Buddhism before the Tokugawa most notably because it placed larger temple complexes, particularly those of pilgrimage sites, that had previously been more or less independent under the administration of a central sect.

³³ Tamamuro (2009) 22-24. From this period, I will refer to the authorized teachings of these sects as Buddhist orthodoxies, and any “mixed teaching”, as a heterodoxy.

³⁴ *Midareru* (乱れる).

As the *honmatsu* system matured, lead temples took control over dispute resolution among the temples and monks under their control. As a result, the number of *hatto* issued under Iemitsu slowed considerably, as shown below:

Period	<i>Jiin hatto</i> promulgated
<i>Keichō</i> - <i>Genna</i> 1 (1603-1615) (<i>Ieyasu</i>)	44
<i>Genna</i> 2- <i>Kanei</i> 11 (1616-1635) (<i>Hidetada</i>)	11
<i>Kanei</i> 11- <i>Keian</i> 3 (1635-1651) (<i>Iemitsu</i>)	6
<i>Joō</i> - <i>Kanbun</i> 4 (1651-1661) (<i>Ietsuna</i> regency)	23

However, during the decade of Ietsuna's regency (between 1651-1661), the number of sectarian disputes for the government to resolve began to creep up again. While the records of many of these disputes are lost,³⁵ the changes made in the *Shōshū jin hatto* reflect the concerns of this period.

Ietsuna's 1663 *Shōshū jin hatto* addressed most issues relating to doctrinal disputes by reinforcing the regulatory authority of the established sectarian order. The text of this law is made up of nine provisions that relate to the relationship among temples. The law follows with five supplementary provisions, which govern the behavior of monks within these temples.³⁶ The administrative provisions of the *hatto* reinforce the sectarian divisions and the chain of authority that defined the *honmatsu* system at the administrative level, and the orders governing monastic

³⁵ While many of the records of the *bakufu* from this period were recorded and survived through the Meiji period, most of the legal decisions of the *bakufu* were lost in the Kantō earthquake of 1923. See Hiramatsu, 22.

³⁶ My translation of the *Shōshū jin hatto* appears as Appendix B to this work.

conduct reinforce the same chain of authority at the personal level. *Shoshū jiin hatto* begins by emphasizing that the practices of each sect³⁷ should not be mixed and reinforcing that monks who practice “mixed” practices must be disciplined. To become the head monk of a temple or sect, a candidate must understand the practices of the sect and guarantee, more importantly, that “neither new rites shall be established nor strange *dharma* preached.”³⁸ This provision effectively proscribed the evolution of religious practice or the creation of new traditions in the service of enforcing sectarian purity.

Shoshu jiin hatto reinforces the ban on doctrinal innovation at the administrative level by proscribing any mixing of doctrine within³⁹ the *honmatsu* system. The *hatto* also prohibits temples from competing for supporting families (families who are registered with a temple and provided temples with the majority of their economic support)⁴⁰ and from supporting disputes or conspiracies.⁴¹ In the same vein, temples and shrines must report any Christian activities or activities by other outlawed sects.⁴² Taken as a whole, these provisions reinforced the cosmological narratives the *bakufu* had developed throughout the half century of Tokugawa rule by placing its focus again on the *bakufu*’s responsibility to protect the *kunigara* from further conspiracies and Christian plotting.

³⁷ *Hōshiki* (法式)- literally dharma and rites. Instead of sect (宗), we might equally have used the term “lineage”. However, by this period and following Iemitsu, the administrative division among the lineages more expressly resembles a sectarian split.

³⁸ See Appendix B.

³⁹ A more aggressive interpretation could also be “rebellion against.”

⁴⁰ See Hur (2007), 228.

⁴¹ *Tōto*, the same term that was previously coined to describe the activities of the *bateren* in Japan. See *supra*, 134-135.

⁴² Described as “the arrival of those who do not follow the national law/*dharma*”, reflecting a mixture of Buddhist law (*dharma*) and the law of the nation (*koku*).

Perhaps owing to the lack of any crisis to resolve, the *hatto* does not itself break any new narrative ground with its proscriptions,⁴³ but by positioning the Tokugawa government's new drive for doctrinal purity alongside the by-now largely rhetorical concern about Christian meddling⁴⁴ Ietsuna incorporates new legal content within the cosmological framework first established under Ieyasu. In *Shoshū jūin hatto*, Ietsuna seeks to read the new concern for the "mixing" of teachings into Ieyasu's as equivalent to the other threats to the *kunigara*. This push towards doctrinal purity represents a noteworthy shift in focus towards Tenkai's sectarianism, and away from the syncretic justifications that Sūden had used to support *bakufu* rule. Without acknowledging this significant change, legal cosmology shifted the conception of protecting the *kunigara* to include restricting the formation of new ideas that could challenge the *bakufu*.

Given the government's increasing paranoia against new heterodoxies, one might anticipate that the Buddhist discursive milieu during this period within the temple establishment was rich with new and dangerous ideas. Yet during this period the new Buddhist voices that did appear were assimilated into the *honmatsu* establishment, not suppressed. These new traditions most notably included the arrival of Yinyuan Longqi (jp., Ingen Ryūki) from Ming China in 1654 and with him the Ōbaku Zen tradition,⁴⁵ as well as the work of doctrinally independent Japanese monks like Bankei.⁴⁶ Neither the founders of the Ōbaku sect nor Bankei were subject to censure by the *bakufu*. Instead, the *bakufu* actively supported the expansion of the Ōbaku sect and its

⁴³ This is not to say that these proscriptions lack ideological content. The restriction against new rites or articulations of the *dharma* particularly asserts a position with regard to the nature of the teaching that arguably had a significant impact on the practice of Buddhism in Japan in the eighteenth and nineteenth centuries.

⁴⁴ As Ietsuna experienced in the *Keian jiken* a decade before, however, conspiracies remained a real concern.

⁴⁵ For an in-depth discussion of the arrival of Ōbaku Zen to Japan and its reception by the Tokugawa state, see Baroni, 24ff.

⁴⁶ D.T. Suzuki was most influential in reintroducing the relevance Bankei's practice and teachings to a modern audience. See Suzuki (1942).

integration into the *honmatsu* system.⁴⁷ Nor was syncretic Buddhism aggressively suppressed; syncretic teachings continued unabated at pilgrimage sites throughout the century.⁴⁸ As before, *bakufu* paranoia continued remain focused on the repression of Catholicism,⁴⁹ the *fujufuse* sect of Nichiren Buddhism, and other minor teachings that had become known as doctrinally impure.

Where lived practice belies the law, other forces may be at work. In this case, the scrutiny nominally directed at the Buddhist temple establishment may instead have reflected a concern over the more chaotic and intellectually open growth of Confucianism during the period. While the schools of Hayashi Razan and Yamazaki Ansai retained, and increasingly consolidated, the favor of the government by articulating a Confucian orthodoxy that was unfailingly supportive of the government and critical of Buddhism,⁵⁰ scholars working for various *daimyō* reflected the uneven social conditions in their *han* by introducing new ideas that the *bakufu* considered subversive. Perhaps arising out of concern over the influence of military scholarship in fomenting the *Keian* uprising, both Kumazawa Banzan⁵¹ (in 1654) and Yamaga Sokō⁵² (in 1665) faced political censure, and ultimately exile, for their teachings. In each circumstance, the *bakufu* were primarily critical of the novel or syncretic nature of each scholar's writings. In both Buddhist and Confucian traditions in this period, greater political stability provided the

⁴⁷ Baroni, 185-187.

⁴⁸ See, for example, Thal (2005), 56ff (Konpira); Ambros, 199-207 (Ōyama).

⁴⁹ During this period the Christianity had a presence in Japan, there were pocket communities of Christians uncovered throughout the seventeenth century, see Boxer, 396-397, but one may fairly say that Christianity had no further direct influence on Japanese intellectual discourse. For further discussion of the influence of Christianity as an imagined threat, see Paramore (2010), 78-102, described in Chapter 2.

⁵⁰ For an extended discussion particularly of the role of Ansai in shaping Tokugawa Neo-Confucian ideas of government, see Ooms (1985), 178ff.

⁵¹ Owing to the breadth of this survey, this work cannot offer a more thorough explanation of the Confucianism of Kumazawa. McMullen (1999) provides a comprehensive analysis of his thought.

⁵² While Yamaga was trained as a Confucian scholar of the Hayashi school, his writings veered increasingly from the views of the Hayashi school. See Uenaka, 128-129.

opportunity for a flowering of new thought, but in each case, both the *bakufu* and lineages supportive of *bakufu* authority worked actively to suppress doctrinal or sectarian innovation.

The government's concern over intellectual innovation may have also reflected a broader concern in the Tokugawa government about a loss of control of the periphery. Through the ability to compel attendance in Edo by *sankin kotai* and ultimately to manage succession by controlling marriage and inheritance, the *bakufu* maintained control over provincial governors. But the central government still lacked the manpower and effective ability to directly enforce laws at any level below the *daimyō*. This necessary decentralization led to an increase in self-government at the village level,⁵³ and more broadly to greater variety among governing philosophies and management styles across different provinces.⁵⁴ Because much of the legal and administrative activity at the provincial level during this period relied on the Tokugawa constitutional laws for its legitimacy, the substantive laws from this period lack the same concern for ideological justification that appeared in constitutional proclamations.⁵⁵ The *bakufu* struggled with a the problem of legitimacy more than the provincial and village-level administrators who retained the day-to-day authority to resolve disputes. However, the variety of different legal regimes, and particularly of the quality of administration of these regimes, became one of the larger drivers of social instability in the period. When faced with poor local government, villagers and lower ranking *shogun* increasingly vacated their home provinces and moved to areas that provided greater opportunity, either other provinces that were managed more effectively or, more frequently, the growing urban centers like Edo. This rapid increase in

⁵³ Henderson's *Tokugawa Village Law* (1970b) provides the most comprehensive summary of village lawmaking, see particularly 9-21, though this work includes few sources dated prior to Tsunayoshi's rule.

⁵⁴ See, e.g., Bolitho, 48-66, for a description of various governing processes at the provincial level.

⁵⁵ See Henderson (1970b), 22ff, for examples of village charters, and Hall (1968b), 115ff for examples of *han* codes.

urbanization, and the problems and opportunities it created, became increasingly apparent during the rule of Tsunayoshi.

Tsunayoshi and the *Shōrui Awaremi no Rei*

In the summer of 1680, Ietsuna died without an heir, and a day later his younger brother Tsunayoshi succeeded him as the fifth Tokugawa shogun.⁵⁶ Tsunayoshi's succession was controversial; he was the first shogun who was not the previously designated heir of his predecessor. As the third and youngest son of Iemitsu, Tsunayoshi could hardly have expected to become shogun at all. He became a viable candidate for succession only two years earlier in 1678 when his older brother Tsunashige died.⁵⁷ Sakai Tadakiyo, the long-serving leader (*tairō*) of the *rōjū* recommended that instead of transferring to Tsunayoshi rule should return to the Imperial lineage, a recommendation that would have triggered the *bakufu*'s first succession crisis.⁵⁸ However, these intrigues were frustrated by Ietsuna's legal adoption of his younger brother, conducted in the dead of night, that left Tsunayoshi as the acknowledged heir to succession.⁵⁹

⁵⁶ As an intriguing personal character who presided during the Genroku era, one of Japan's most renowned periods of cultural renaissance, Tsunayoshi has been the subject of significant biographical study. Bodart-Bailey (2006) provides the most comprehensive English language apology for Tsunayoshi, but Shively (1970) provides an interesting counterpoint. Tsukamoto (1998) provides significant research on Tsunayoshi as well, often in distinction to the previous scholarship of traditional historians including Tsuji Tatsuya, Tsuji Zennosuke, and others.

⁵⁷ There has been speculation that Tsunashige committed suicide as a result of mounting debts. See, e.g. Bodart-Bailey (2006), 73-74. This speculation has supplemental support from Kaempfer (who wrote decades later) but is neither conclusive nor impossible.

⁵⁸ *Ibid.*, 75. Sakai was also involved in some capacity in Tsunashige's death, leading some scholars to suggest possible conspiracy theories at play. See Tokutomi v.17: 256-257. Following Tsunayoshi's succession, Sakai resigned from the *rōjū* and was retired by Tsunayoshi soon after and died under uncertain circumstances within the following year. Bodart-Bailey (2006) attributes this speculation to controversies over Tsunayoshi's anticipated policies, 74-75, but contemporary works of the period are less clear, though all are deeply interested either in favor of or in opposition to Tsunayoshi.

⁵⁹ This adoption was performed without witnesses, and there is question whether it actually occurred. *Ibid.*, 76. However, this legal fiction met the norms of succession and was affirmed by the *rōjū*.

While Tsunayoshi owed his appointment to the intrigues of the *bakufu* bureaucracy, and particularly to the support and intervention of other senior councilors like Hotta Masatoshi,⁶⁰ he would ultimately seek to replace the active role of the *rōjū* had played under Ietsuna with his own direct oversight of the government, particularly in the articulation of policy. Scholars have suggested various theories to explain why Tsunayoshi asserted himself aggressively in the pronouncement of laws and policies. These theories vary widely, from Tsunayoshi's age upon succession⁶¹ and his Confucian education, which differed from shoguns appointed before him in its emphasis on philosophy rather than the military arts;⁶² to the influence of merchant class thinking and Buddhist religiosity through the dominant influence played by Tsunayoshi's mother.⁶³ To each of these, we should add the exigencies of the economic and social circumstances of the period, described in more detail below.

Tsunayoshi was a polarizing figure in his own time, and he has polarized subsequent historians. Because of the ample biographical material available, this work will not speculate in detail on why Tsunayoshi chose to act directly to develop policy. Instead, this work focuses primarily on how Tsunayoshi intervened in Tokugawa lawmaking, and, more broadly, on the relationship between his laws and the intellectual discourse of the period. As James Murdoch has colorfully described, scholarship was a vocation for Tsunayoshi: "Tsunayoshi aspired—and not altogether vainly—to distinction in the role of his own court preacher. . . . He was thus free to devote himself to what were really the preoccupations of his life. These were scholarship in all its

⁶⁰ Masatoshi was subsequently appointed to lead all government activities and served as the head among equals until his assassination in 1684.

⁶¹ See, e.g. Tsukamoto, 279-287.

⁶² See, e.g. Tsuji (2006), 428-429.

⁶³ Bodart-Bailey (2006), 29-32. This argument presents a second instance in which strong women were accused of using surreptitious influence on official policy in favor of Buddhism—and particularly of Buddhist "superstition".

forms, but more particularly Chinese classics and philosophy, and later, divination and debauchery.”⁶⁴

Tsunayoshi’s *Shōrui awaremi no rei*, a series of laws issued between 1682-1705, played the primary role in Tsunayoshi’s expansion of Tokugawa law into private conduct. The *Shōrui awaremi no rei* are commonly described as focusing on the treatment of animals and other living creatures, but more importantly, these laws encapsulate Tsunayoshi’s unique legal cosmology.⁶⁵ Two notable features of these laws serve both as their justification and defining characteristic: Tsunayoshi’s support for cultivating the quality of *jin* (仁, variously translated as “benevolence”, “humanity”, or sometimes simply “love”);⁶⁶ and his demand that society show compassion for all living things (生類憐れみ, *shōrui awaremi*) and maintain a compassionate spirit (慈悲の心, *jihi no kokoro*). Tsunayoshi deployed these terms not merely rhetorically, but out of a theory of statecraft that perceived the proper duty of the ruler to inculcate these virtues. Tsunayoshi believed that the most effective way to govern the state was through the inculcation of benevolence and compassion among the people. Rather than a sign of madness as later critics have argued, this conception of government was a naïve, radical, but intellectually consistent expansion of Sūden’s worldview that viewed humans as actors responsible to sustain and protect all living things, with the shogun playing the unique role in inculcating these virtues in the common people. This section analyzes the roots of these concepts in Chinese philosophy and

⁶⁴ Murdoch, Vol. 3, 214.

⁶⁵ In reality, as described below, these laws (while often touching on the treatment of other living things) addressed a broader swath of topics, including concerns like abandoned children. For a systematic description of the laws, see also Nesaki (2005); Itakura (2006).

⁶⁶ Consider Itō Jinsai’s seventeenth century definition of the term as love that originates from a genuine heart, particularly the affectionate and genuine love of other people. See Blocker and Starling, 94-95 (quoting Itō, *Love*).

Buddhism, their development in seventeenth century Japanese thought, and how Tsunayoshi understood and deployed them, as articulated through the *Shōrui awaremi no rei*.

The Economic and Social Climate

Over the latter half of the seventeenth century, social demographics, economic conditions, and the fiscal position of the *bakufu* had all changed markedly. Although many of these changes began or intensified during Ietsuna's rule, Tsunayoshi inherited the responsibility for addressing them. Arguably, Tsunayoshi's policies in turn exacerbated these pressures. By the beginning of Tsunayoshi's rule, the *bakufu*'s dwindling finances threatened to precipitate a crisis. While the population on the archipelago had remained artificially low during the sixteenth century as a result of the century's prolonged warfare, the peace of the first half-century of Tokugawa rule led to a dramatic increase in productivity, as much more land returned to economic production.⁶⁷ At the same time, Ieyasu and his heirs significantly increased the rate of extraction of precious metals (particularly silver from the mines on Sado island), and used these resources to support foreign trade.⁶⁸ These economic factors collectively led to significant government surpluses during the first half-century of Tokugawa rule and the establishment of large currency reserves in the Tokugawa treasury.

⁶⁷ Totman, 140-141.

⁶⁸ Ieyasu notably nationalized the minting of coins, Bodart-Bailey (2006), 202. See also Tashiro, 97, who discusses the trade in silver from Tsushima province to Korea.

But by mid-century, growth in agricultural productivity had declined⁶⁹ and production of bullion from the mines had slowed to a trickle.⁷⁰ Throughout Ietsuna's reign, the Tokugawa government steadily spent down currency reserves that previous shogun had built up, and *bakufu* spending expanded dramatically after the Meireki fire of 1657, which consumed sixty percent of Edo and required an unprecedented amount of capital investment to rebuild.⁷¹ Tsunayoshi sustained the *bakufu* treasury but exacerbated the overall economic impact of these policies by increasing and formalizing the process of extracting gifts from the *daimyō* during the first years of his rule.⁷² These actions, supplemented by new sumptuary regulations Tsunayoshi promulgated in 1683 at the beginning of his rule,⁷³ reinforce the notions that the central government's fiscal circumstances were poor and improving the government's fiscal condition was a concern of the *bakufu*. At the same time, the sumptuary regulations acknowledge that the circumstances of the samurai who relied on the *bakufu* for support were also in decline.

The dramatic rise in urbanization presents another aspect of the changing economic circumstances. By 1800, five to seven percent of the Japanese population had moved to urban areas, an increase of 400% in areas with more than 10,000 inhabitants.⁷⁴ Toyotomi Hideyoshi's dislocation of samurai to castle towns and the Iemitsu's imposition of *sankin kōtai* both

⁶⁹ Ravina, e.g., shows the impact of this decline by mid-century at the *han* level, as Yonezawa had to change exchange rates to increase revenue by 20% in 1656 to offset revenue losses, and production of flax was effectively flat from the mid-seventeenth century, 78-83.

⁷⁰ Bodart-Bailey (1998), 45-46.

⁷¹ *Ibid.*, 46. Coaldrake has also noted the impact of the *furisode* fire on Tokugawa law, including notably the prohibition against tile roofs. See Coaldrake, 253.

⁷² Seigle (2016), 127. This increase supports the notion that the *bakufu* was in poor financial shape from the beginning of Tsunayoshi's rule, but Tsunayoshi's actions arguably further strained the already financially challenged samurai. Tsunayoshi also radically increased the practice of removing *daimyō* from their lands and confiscating their yields, arguably to the same ends. See Fujino, 1-64.

⁷³ Shively (1964), 123-164. Takekoshi, v.2, 200-201.

⁷⁴ Rozman, 285. See also Rubinger, 82, who notes that by 1720, Edo's population had reached one million, despite declining from 300,000 to 200,000 in the 1657 Meireki fire.

promoted the development of urban areas, but neither alone explains this pattern of dramatic growth. Instead, escheatment of samurai and limited opportunities in rural areas, exacerbated by strict laws of succession and the inability to sell real property, drove increasing numbers of people to larger cities.⁷⁵ This rise in population density increased urban problems like fires, crime, and, in Edo at least, a profusion of wild dogs roaming the streets.⁷⁶ The wild dogs of Edo would become a particular preoccupation of Tsunayoshi's, leading to his nickname the "dog shogun" (*Inutaka*).

The growth of cities also led to significant social changes that impacted these problems. The most obvious of these was the increase in wealth of the merchant class. Merchants, who occupied the lowest position in the Hideyoshi's articulation of status (*shi, no, ko, sho*), became increasingly important to cities as the need to import and distribute food and supplies into urban areas demanded both their expertise and their capital.⁷⁷ Lower ranking samurai increasingly became debtors to the merchants, as these samurai were paid a fixed annual salary according to their rank and position that did not increase in accordance with changed economic circumstances.⁷⁸ The rise in the fortunes of urban merchants and artisans also led to a dramatic

⁷⁵ Thomas Carlyle Smith hypothesizes five factors that drove the development of urban areas during this period: (1) dislocation of samurai to castle towns, (2) gathering of merchants in castle towns, (3) restrictions on artisanal practices outside of towns, (4) overall rapid population growth and the ability to feed large urban areas due to expansion of arable land, and (5) a period of peace and order. 18-19. Of these, certainly items (3)-(5) were predominant in the move to rapid urbanization.

⁷⁶ Bodart-Bailey (2006), 151-153. These problems did not, apparently, include sanitation or waste disposal problems. See Hanley (1987), 8-14.

⁷⁷ In addition, temples and shrines, which had previously played a significant role in financing merchant ventures, were precluded from these activities by the early Tokugawa through the *jiin hatto*. See *supra*, 57.

⁷⁸ This salary, payable in rice, did not increase commensurate with inflation, leading to the risk of penury that led to the death, for example, of Tokugawa Tsunahige.

rise in literacy and numeracy throughout the urban population, and eventually across the archipelago.⁷⁹

This increase in literacy in turn supported the development of a lively publishing industry, as well as an increasing interest in diverse forms of education. In addition to traditional education that occurred in Buddhist temples, there was a proliferation of instruction of education offered by Confucian scholars (*jusha*). Demand for Confucian education allowed these scholars to break free from their traditional patrons—first the temples and shrines, then later in the seventeenth century, the *daimyō*. These were among the many changes that supported a flowering of culture in the Genroku era, and a subsequent flowering of political criticism and diversity in intellectual development, particularly within the field of Confucian scholarship.

The Roots of Shōrui Awaremi no Rei

One representative law of the *Shōrui awaremi no rei* issued by Tsunayoshi from 1687 concludes: “It is crucial that people behave not just toward dogs, but equally to all living things, with the compassion that arises from the compassionate spirit.”⁸⁰ A later order issued to the magistrates of Edo explains, “Even if [the Shogun] did not issue orders concerning compassion, officials should bear in mind that the people should become benevolent and that their intentions should become gentle.”⁸¹ These statements encapsulate the principal concern of *Shōrui awaremi no*

⁷⁹ Rubinger, 82-85.

⁸⁰ “犬ばかりに限らず、惣じて生類、人々慈悲の心を本といたし、あはれみ候儀肝要の事。” Available in *Tokugawa Jikki* 5:598. All translations are the author’s unless otherwise noted.

⁸¹ Order no. 508, in Ishii (1981), 248. This order suggests that even during Tsunayoshi’s lifetime the Japanese considered the *Shōrui awaremi no rei* as a distinct body of laws.

rei—demanding from the people compassionate treatment towards all living things. These policies were a departure from Ieyasu’s samurai value of *bu* (military arts), as found in *Buke shohatto*, which associated *bu* particularly with hunting.

In the years following Tsunayoshi’s rule, Tokugawa writers like Dazai Shundai lampooned *Shōrui awaremi no rei* particularly because the demands for compassion the law demanded towards animals resulted in the death, banishment and imprisonment of hundreds of people.⁸² They were feared because of the punitive nature of these laws against human criminals. While some scholars question the actual extent that these laws were enforced,⁸³ the Tokugawa government intended that even selective enforcement have a strong symbolic impact. To provide one extreme example, in 1702 a veterinarian to the shogun found that one of his ducks had been killed by a neighbor’s dog. Acting in anger, the veterinarian crucified the dog on his neighbor’s fence. As a result of his actions, the *hyōjōsho* ordered the veterinarian to commit *seppuku* and announced that all people should observe the *Shōrui awaremi no rei*.⁸⁴

In addition to complaints of cruelty towards humans, Tsunayoshi’s critics also suggested that Tsunayoshi misunderstood—or misrepresented—both Buddhist values and Confucian virtues. Dazai Shundai’s *Sanno Gaiki* parodied Tsunayoshi for his misinterpretations of Confucian doctrines.⁸⁵ Despite later criticism, Tsunayoshi’s policies, however out-of-step with the eighteenth century, did not reflect a “misinterpretation” of either Buddhism or Confucian

⁸² Arai Hakuseki, discussed below, focused particularly on the ostensibly cruel enforcement of these promulgations. See *Oritaku*, II, 94-95. Over the past generation, changing opinions have led to more favorable assessments of a number of Tsunayoshi’s policies. See generally Bodart-Bailey (2006), 128, for a short summary of these.

⁸³ Bodart-Bailey (1985) provides an extensive overview of the extremely limited evidence of enforcement, 178-181.

⁸⁴ *Gesoku Kakyū Bushi*, 130, cited in Bodart-Bailey (1985), 180.

⁸⁵ See Bodart-Bailey (2006), 253.

doctrine, and were not radically incommensurate from the policies of Ieyasu. Instead, they reflected particular elements found each tradition that were natural, if radical, expansions from the legal cosmology Tsunayoshi inherited from Ishin Sūden. Tsunayoshi's understanding of compassion (*jihī*) was consistent with other elements of seventeenth century Buddhism, and Tsunayoshi's understanding of *jin* relied on accepted, if contested, schools of Confucian political philosophy from the same period. The error of the *Shōrui awaremi no rei* lay in legal practice, not legal cosmology; by providing all substantive laws, not just constitutional laws, with cosmological justifications, Tsunayoshi threatened to turn the Tokugawa laws into religious laws in a way that was unacceptable to Japanese society.

Compassion

Compassion (*jihī*, skt. *karuṇā*) has as expansive a history in the Japanese Buddhist as in India or China. For present purposes, I will focus on how the term was commonly understood in Genroku Japan. The Brahma Net Sutra (*Bonmyōkyō*, *Brahmajāla Sūtra*), commonly read in the Genroku era,⁸⁶ provides a valuable point of entry. The Brahma Net Sutra expounds on the ten major and forty-eight minor bodhisattva precepts. First among these is the precept to protect all living things. The sutra explains: “Bodhisattvas should give rise to an enduring attitude of *compassion*, an attitude of reverence and obedience, and devise skillful means to *save and protect all sentient beings*.”⁸⁷ The first precept establishes a relationship between compassion and the protection of all living things and incorporates a prohibition against killing. The Lotus

⁸⁶ de Visser (1935), 575-576, provides examples of commentary on the text in the seventeenth century. The *Bonmyōkyō* also served as the basis for Buddhist initiations in Japan during this period and before, making the text central in the understanding of Japanese Buddhism.

⁸⁷ Muller and Tanaka, 44.

Sutra reinforces this relationship, consistently associating the virtue of compassion with “all living things” (*shōrui*).⁸⁸ The primary valence of the use of compassion in these sutras remains the importance of showing compassion to all living things as a precondition to the bodhisattva path. The connection between compassion and humane treatment of animals and other living creatures continued at least through the seventeenth century; the work of the noted seventeenth century monk Suzuki Shōsan reflects on the same relationship.⁸⁹

Still, shogun are not bodhisattvas, and as Tsunayoshi himself famously noted, “in the purest water, fish cannot exist.”⁹⁰ In the context of political philosophy, the term compassion often played a different role. Ichijō Kaneyoshi’s fifteenth century essay on political philosophy *Bunmei Ittoki*, produced to instruct the shogun Ashikaga Yoshihisa, argues that a ruler should govern with compassion (*jihī*). *Bunmei Ittoki* uses animals to analogize to a ruler’s compassionate duty to his subjects: “Tame a bird or animal as a pet, and you will come to feel compassion for it. How much more so should you bestow pity on all men! This indeed is the way of the benevolent lord.”⁹¹ Kaneyoshi compares governing with compassion to the Confucian virtue of benevolence (*jin*) and argues that the exposition of this Confucian value is merely another way to express compassion. Kaneyoshi’s argument is entirely consistent with Tsunayoshi’s identification of benevolence as a guiding virtue in the *Shōrui awaremi no rei*.

Humaneness/Benevolence (*jin*)

⁸⁸ See, e.g., ch. 12 “With regard to all living beings one should think of them with great compassion.”

⁸⁹ See, e.g. Suzuki, 39-40 (“Lord Sakyamuni feels compassion to the beings of the three worlds like they were his only son”). If anything, this relationship has become even stronger over time and is endemic in contemporary Buddhism. Suzuki notably shared Tsunayoshi’s belief that strict criminal penalties were entirely consistent with this position, see Botsman, 43.

⁹⁰ See Bodart-Bailey, 101, citing Hotta, *Yogen Roku*, 38.

⁹¹ Ichijō, 87-88 (Carter trans.).

As Kaneyoshi describes in *Bunmei Ittoki* compassion (*jihī*) and benevolence (*jin*) were connected to one another throughout the medieval period and much of the seventeenth century. *Jin* represents one of the five constant virtues in Confucian thought, and no work of Confucian scholarship could avoid discussing the meaning of this somewhat open-ended concept.⁹² However, this term was used in different ways by three seventeenth century scholars whose work was most influential on Tsunayoshi: Fujiwara Seika, Hayashi Razan and Itō Jinsai.⁹³

Fujiwara Seika, a former Buddhist monk and early advisor to Tokugawa Ieyasu, most explicitly identified *jihī* and *jin*: “benevolence means treating others compassionately.”⁹⁴ However, Fujiwara provides limitations on the nature of both *jin* and *jihī*, suggesting that neither require “unnecessary” kindness or compassion. Consistent with the early seventeenth century syncretic traditions we have seen previously in the works of his near-contemporary Ishin Sūden, Fujiwara also explicitly includes compassion as a hallmark of the Shintō tradition.⁹⁵ In contrast to Kaneyoshi, in Fujiwara’s work *jin* and *jihī* are exclusively human-facing virtues, and he relegates the treatment of non-humans to a secondary status.

⁹² In a mashup of empty signifiers, *Analects* XII.1 describes *jin* as “overcoming selfishness and returning to propriety.”

⁹³ Fujiwara and Hayashi were both bureaucrats in service of Tokugawa Ieyasu, Fujiwara the master and Hayashi the student. Hayashi, however, founded the first school of Chinese learning to be sponsored by the *bakufu*, and the Hayashi school, which was formally established as a *bakufu* institution by Tsunayoshi, is perhaps most representative of the mainstream, pro-*bakufu* Tokugawa Confucian thought. Itō represents a fundamentalist divergence from the Hayashi school, arguing for a return to the original texts and away from the mediation of Song Chinese analysis (Zhu Xi or otherwise).

⁹⁴ Fujiwara, 300 (Tucker trans.).

⁹⁵ *Ibid.* “The sun goddess is compassionate toward the myriad peoples of all-below- heaven.” “Japan’s Shinto also considers rectification of the mind and compassion towards all as ultimate concerns.”

Hayashi Razan's interpretation of *jin* further divorces *jin* from compassion towards animals and identifies benevolence as a human-oriented virtue. For Hayashi, *jin* represents the innately human need to treat others as ourselves, similar to the Kantian categorical imperative. Hayashi's paradigmatic example is the instinctive human desire to save a child one hears trapped in a well.⁹⁶ In this context, *jin* relates primarily towards the treatment of humans. Hayashi reinforces this interpretation by providing the example of killing rats. While he cautions that killing rats by itself is not humane (*jin*), he argues that if one deliberates and determines that by so doing one will eliminate evil, then killing rats is a humane act.⁹⁷ In this context, he argues that it would be a mistake to equate humaneness with non-humans: "[t]o think that humaneness [*jin*] consists only of compassion [*jih*] is to think simply of "small humaneness." To admonish one evil person and thus provide for the goodness of myriad others is "great humaneness.""⁹⁸ This argument for the greater *jin* as a justification for effective government by means of harsh punishment provides the backbone for the Confucian support for Tokugawa *bakufu* lawmaking throughout the Tokugawa era, and perhaps helps to explain why the Hayashi school became synonymous with the *bakufu*-supported Confucian "mainstream."

Writing half a century after Hayashi's work was published, the scholar of ancient studies (*kōgaku*) Itō Jinsai disputes that *jin* is an innate human trait at all. For Itō, *jin* is a concept pertaining to human virtue. *Jin*, while essential, remains subordinate to love: "Love is the substance of the benevolent person's mind."⁹⁹ In this regard, *jin* is a quality of the human mind,

⁹⁶ Hayashi understands that not all people will actually save such a child; people's minds are twisted by other concerns. His point instead is that all people will have at least the instinctive desire to do so.

⁹⁷ Ibid.

⁹⁸ Ibid. 309 (Tucker trans.).

⁹⁹ Itō, 122.

and not a primary ethical category at all. Writing almost a century after Fujiwara, Itō's work shows the divide that had arisen over the century between *jin* and *jihi* in Chinese-oriented thought, as well as the further distance between *jin* as a virtue among human relations and focus of compassion (*jihi*) on the relationship between humans and non-humans. Itō's need to recharacterize *jin* also provides a reminder of the extent to which Tsunayoshi's rule had made the idea of benevolence a significant intellectual concern.

Tsunayoshi's Shōrui Awaremi no Rei

Like the early laws governing temples (*jiin hatto*), the *Shōrui awaremi no rei* were not a single legislative proclamation, but instead reflect a series of more than one hundred sometimes marginally-related laws issued over the course of more than a decade. While these laws often related to the humane treatment of animals, the particular subject-matter of these laws were diverse, ranging from the registration of all dogs in Edo; restrictions on sport-fishing (limiting fishing to professional fishermen only); prohibiting training dogs, cats or rats for spectator sports; prohibiting the abandonment of sick horses; limiting various types of fish from the diet and even preventing infanticide by the registration of young children.¹⁰⁰ The invocation of *jihi*, and often *jin*, as a primary justification for the issuance of new laws is the shared common feature of the *Shōrui awaremi no rei*.

Perhaps because of the broad swath of behavior they encompassed, the *Shōrui awaremi no rei* have been the subject of study and commentary almost from the death of Tsunayoshi. Arai

¹⁰⁰ Nesaki provides the most detailed analysis of the social impacts of these categories, most notably abandonment of horses, 167-188, and enforced vegetarianism, 189-199.

Hakuseki stressed the arbitrary and capricious enforcement of these laws, and popular eighteenth century works like Dazai Shundai's *Sannō Gaiki* mocked Tsunayoshi for their issuance. Early Meiji scholars lampooned these laws to criticize the cruel punishments¹⁰¹ associated with Tokugawa "feudalism", and later scholars even speculated that Tsunayoshi had suffered from mental illness. More recently, scholarly opinion has shifted, and Tsunayoshi's laws have found greater favor. Beatrice Bodart-Bailey provides the most comprehensive defense of these laws,¹⁰² arguing *contra* traditional explanations that the regulations were issued "based on rational, political considerations." These considerations included the need to account for the social and economic changes associated with increased urban life, like the uncontrolled population growth of dogs in Edo.¹⁰³ Bodart-Bailey argues that the laws were not as cruel to humans as commonly portrayed, particularly when compared with the draconian punishments associated with many other offenses during the Tokugawa era.¹⁰⁴ The issuance of these laws represents Tsunayoshi's struggle to impose autocratic rule in the face of an increasingly entrenched bureaucracy dominated by the same senior councilors who controlled Ietsuna.

Compared with laws like *Bateren tsuihō no fumi*, which advocated for the five traditional Chinese punishments,¹⁰⁵ the *Shōrui awaremi no rei* proposed punishments that were no stricter than were common for the period. Under Ietsuna, the punishments associated with all but the

¹⁰¹ Cruel punishments to humans, that is. Early Meiji legal scholarship retained the Confucian bias towards differentiating between human-human and human-non-human relations.

¹⁰² Bodart-Bailey (1985), 187-189. See generally Nesaki (2005).

¹⁰³ *Ibid.*, 187. Bodart-Bailey focuses on relations between commoners and lower ranking samurai. In particular, she stresses that lower ranking samurai represented the most vocal critics of the laws, at the same time that they were suffering the brunt of the social and economic dislocations associated with the rise of urbanization and increase in the fortunes of the merchant class.

¹⁰⁴ *Ibid.*, 188. Bodart-Bailey's argument is strongly supported by numerous other sources from the period and is fairly compelling. For other examples, see Nesaki, 166.

¹⁰⁵ Branding, cutting off the nose, cutting off the feet, castration and death. See *supra*, 122-123.

most common misdemeanors were banishment or death.¹⁰⁶ Bodart-Bailey offers compelling evidence that ties the changes brought about by rapid urbanization to the need for the issuance of many of the edicts, particularly those laws regarding humane treatment of dogs that otherwise drew the most scrutiny. However, as the *bakufu* bureaucracy grew and its ability to enforce judgments became less sporadic, the number of people within the reach of the *bakufu* to police and punish certainly had increased.¹⁰⁷ For this reason, by Tsunayoshi's time the need for dramatic measures as a deterrent may have lessened.

Even sympathetic studies that provide the practical reasons why these laws were issued fail to adequately explain why Tsunayoshi consistently invoked compassion and humaneness to justify his actions. The *Shōrui awaremi no rei* were not the only laws that Tsunayoshi issued. To look at one familiar example, when Tsunayoshi issued his own *Buke shohatto* in 1683, he chose not to justify these laws with reference to humaneness or compassion.¹⁰⁸ When the shogun issued his first set of sumptuary regulations at around the same time, Tsunayoshi saw no need to frame these laws around the need to support compassion and humaneness.

In the *Shōrui awaremi no rei*, Tsunayoshi included hortatory language that required that citizens act towards all living things with compassion and benevolence under threat of imprisonment or death. By making the need to act with compassion a personal duty, the *Shōrui awaremi no rei*

¹⁰⁶ Steenstrup, 151-152. These punishments though onerous were less stringent than the punishments announced in the Ashikaga period, when the practice of punishing entire families for the crime of a member was common.

¹⁰⁷ Note however that even as late as the end of the eighteenth century, execution and banishment remained the dominant forms of punishment even for relatively minor offenses. See, e.g., Botsman, 107.

¹⁰⁸ Indeed, Tsunayoshi in the *Buke shohatto* appears more consistent with Ietsuna in his desire to further reinforce the effective authority of the *bakufu* by expanding its bureaucracy. His only substantive change to the laws were to eliminate the private rights of samurai to bring lawsuits and add more consistent judicial processes, sending disputes first to the *bugyō* and finally to the *hyōjōsho* (the ministry of justice). See Hall (1911), 269ff.

significantly expanded Tokugawa legal authority over the common people and across the archipelago. As a result, the *Shōrui awaremi no rei* reflects a similar shift in legal cosmology and anthropology. As a work of legal cosmology, Tsunayoshi presents a new narrative about the “nature of things” in a way that explains how the laws he made necessarily relate to the nature of things.¹⁰⁹ This relationship between law and cosmology also necessarily demands a reconsideration of anthropology. To explain the necessity of new laws, Tsunayoshi’s new laws tell a different story about how law impacts human development. The key goal of Tsunayoshi’s legal cosmology and anthropology was to present a narrative that rings true to his or her audience to show why the new law was necessary.

A close analysis of various *Shōrui awaremi no rei* supports this theory. Taking as an example the 1687 law described above that required the registration of mothers and young children, Tsunayoshi justifies the mandate of compassion for all living things as a means to inculcate compassionate minds in the people. While at first glance there may seem to be little nexus between compassion and the registration of mothers and their children, the purpose of this registration was to deter the practice of infanticide (*sutego*- literally “thrown away children”), which was all too common during this period, particularly in rural regions. Yet it was particularly important that Tsunayoshi provide an argument in support of this law because, although there were previous calls to end the practice of *sutego*,¹¹⁰ Tsunayoshi’s registration proposal was qualitatively different. By proposing a registration system that could be performed in conjunction with the increasingly well-established *terauke* registration system performed by

¹⁰⁹ This depiction accords with what Henderson has described as a consistent desire in Tokugawa law to abide by a “Japanese form of natural law”, Henderson (1987), 109.

¹¹⁰ See, e.g., Bodart-Bailey (1985), 169, providing examples.

temples, Tsunayoshi's edict was not merely hortatory. His laws held out the real possibility of enforceability. The mandatory registration of infants in rural provinces thus represented a broad expansion of actual *bakufu* authority, and Tsunayoshi likely anticipated resistance from local leaders responsible for enforcing these provisions. As with previous expansions of *bakufu* authority, Tsunayoshi added a narrative to justify how the new law fell within the shogun's customary responsibility.

The primary narrative that Tsunayoshi presents across the *Shōrui awaremi no rei* is that the shogun must govern in a manner that instills compassion for all living things (*awaremi shōrui*). Tsunayoshi's argument that the duty of the shogun is to inculcate compassion in the minds of the people is a direct descendant of Sūden's argument in *Bateren tsuihō no fumi* that in a degenerate age the state must play a soteriological role to protect the people. Rather than couching the argument strictly in cosmological terms, however, Tsunayoshi reframes the narrative in anthropological terms.

In the *Shōrui awaremi no rei*, Tsunayoshi makes the Aristotelian argument that humans have the capacity to habituate virtues, and one role of law is to inculcate those virtues that are constitutive of a compassionate society.¹¹¹ By governing in accordance with these standards, the government will cause the people to develop a compassionate heart (*jihī no kokoro*), and people will in turn begin to treat all living things humanely (with *jin*). Humane treatment begins with non-humans but moves naturally towards humans and the less fortunate. Hotta Masatoshi described

¹¹¹ *Nicomachean Ethics* 1103b.1, "lawgivers make the citizens good by training them in habits of right action—this is the aim of all legislation, and if it fails to do this it is a failure; this is what distinguishes a good form of constitution from a bad one."

Tsunayoshi's mindset by quoting the response Tsunayoshi gave him to the question whether to treat street children humanely: "why should a truly benevolent man ask whether a matter is great or small?"¹¹² Tsunayoshi's narrative of compassion lies intellectually within the understanding of the proper relationship between humans and their world as outlined in the Buddhist tradition, and in particular with the syncretic tradition of the early seventeenth century epitomized by Fujiwara Seika and Sūden, who found alignment between Buddhism and Confucianism by equating the duties of *jishi* with those of *jin*. Tsunayoshi's understanding of compassion likely resonated with readers trained or culturally oriented towards the Buddhist way of thinking.

As a new lawmaking practice, however, Tsunayoshi's soteriological vision demanded closer scrutiny. Because he used Buddhist values to support a broad collection of new substantive laws and resisted legal cosmology in constitutional laws like the *Buke shohatto*, critics resisted what they may have perceived at least as a category error in Tokugawa lawmaking and may even have perceived the first steps to establish Tsunayoshi as a Buddhist ruler (*hoō* or *cakravartin*) and the *bakufu* as a Buddhist state. Creating a Buddhist theocracy would be consistent with, though far exceed, the direction taken by Ieyasu's *kamification* in establishing Ieyasu as a manifestation of the Medicine Master Buddha (*Yakushi*).¹¹³ But the Buddhist *dharma*-king had a decidedly mixed valence in Japanese history. While the quasi-mythical Prince Shōtoku advocated for government in accordance with Buddhist principles, the only historical instance when a non-Emperor sought to assume the role of *hoō* was the monk Dōkyō in the eighth century.¹¹⁴

¹¹² Hotta, 30-31 (Bodart-Bailey trans.).

¹¹³ Boot (2018), 333-334.

¹¹⁴ See Bender, 138-142; Ooms (2014), 198-200.

Dōkyō's brief kingship repudiated in his own time with a mytheadrama surrounding the *kami* and viewed subsequently as a usurpation.

Japanese philosophers have long wrestled with the notion of governing according to Buddhist law because of the vagaries of how a Buddhist government would operate in practice. In “Shinran and Dōgen”, twentieth century philosopher Watsuji Tetsurō compared the ideals of compassion expressed by the founders of two seminal Japanese Buddhist lineages— Shinran's Pure Land Buddhism, and Dōgen's Sōtō Zen. After noting that these two thinkers both relied on the ideal of compassion,¹¹⁵ Watsuji identifies the problem both have with addressing the theodicy. He notes that, “[f]or the Buddhist, the problem is not the degree to which one is able to alleviate the troubles of all sentient beings, but rather the degree to which one embodies *within oneself* the Buddha's intention to alleviate the suffering of all sentient beings.”¹¹⁶ Keeping this orientation in mind, Watsuji argues that neither founder offered a political solution to the problem of evil because the Buddhist tradition is fundamentally ambivalent: “[o]ne might supposed the compassion of the absolute not only forgives all but also never causes suffering. On the other hand, might one not also suppose that when human compassion forgives all, it might be in error, and through its errors couldn't it trod on justice?” Watsuji quotes Dōgen to underscore the ambiguities with using compassion as a legal principle: “How am I supposed to know whether one side is or the other side is in the right?”¹¹⁷ Added to the concerns that Tsunayoshi may have sought to install himself and his successors as *cakravartin*, these inherent

¹¹⁵ For those keeping track at home, Shinran's compassion is the compassion of the Bodhisattva towards all living things in which “all is forgivable”, and Dōgen's compassion is the compassion of the human seeker giving body and self to all living beings in pursuit of the dharma.

¹¹⁶ Watsuji, 68.

¹¹⁷ Ibid., 69.

interpretive difficulties in using compassion as the centerpiece of a legal anthropology highlight the kinds of concerns that arose from the expansion of *jihi* in Tokugawa law in the *Shōrui awaremi no rei*.

Confucian scholars, not the Buddhist establishment, made the most pointed claims against Tsunayoshi's claim to authority. In part, these criticisms repudiated Tsunayoshi's interpretation of *jin*. While Tsunayoshi characterized benevolence as a virtue that was best reflected through an inter-relationship with all living things—treating all living things like we do humans—in a manner reflective of Kaneyoshi and more closely with the thought of Fujiwara Seika, later *jusha*, particularly the Hayashi lineage and scholars of *kōgaku* like Itō Jinsai and later Ogyū Sorai, contested Tsunayoshi's perspective. These lineages viewed *jin* as a virtue to be measured among humans or found within the human heart not to be extended to all living things.

Confucian understandings of the role of *jin* in lawmaking differed even further. Tsunayoshi held the idiosyncratic understanding that his duty was to govern to instill benevolence in the hearts of the people, even if his laws led to results that were cruel towards people who broke his laws. This understanding conflicted with an alternative understanding of benevolent government, in which the measure of the measure of a ruler's benevolence was whether he treated his people with mercy, particularly in times of hardship. The deterrence-heavy scheme that Tsunayoshi adopted to inculcate the virtue of humaneness in the people represented the epitome of inhumane treatment by a ruler of his subjects.¹¹⁸ These disconnects go some way towards explaining why

¹¹⁸ While the emphasis on deterrence may have conflicted with Confucian understandings of virtuous government, this strategy was not at odds with classical Chinese legalism or the Chinese legal codes which informed Japanese criminal law. As Sūden had noted a century before, the penalties provided in these codes were uniformly severe. See *supra*, 122.

Tsunayoshi's laws failed to achieve lasting support from subsequent Confucian-oriented scholars.

Tsunayoshi's failure to persuade Confucian scholars underscores the rift that had emerged between Buddhist and Confucian schools of thought over the course of the seventeenth century. Confucian scholars of the period like Yamazaki Ansai and Itō Jinsai portrayed Buddhism as a fundamentally passive drain on society because temples and monks received large economic stipends without producing anything. Confucian scholars differentiated their thought from Buddhist thought by contrasting the Buddhist concern for enlightenment/cessation with the Confucian prioritization of human affairs in this world. Criticisms like Ansai's were based on the argument that Buddhism was ultimately renunciatory and, at least in Japan, primarily idealist in orientation,¹¹⁹ while Confucian traditions affirmed the fundamental reality of the human world and prioritized ethical engagement. Viewed from the perspective of Confucian thinkers like Arai Hakuseki or Dazai Shundai, Tsunayoshi's edicts represented the most impractical qualities of the Buddhist worldview. To promote the soteriological benefits offered to those who showed compassion towards non-humans, Tsunayoshi's laws had the present result of cruelty in this world to the humans that violated them.

However, Confucian scholars' criticisms of the cosmology and anthropology found in *Shōruī awaremi no rei* were neither the only, nor even the most important jurisprudential argument during this period. During the rule of Tsunayoshi, scholars outside the government began to

¹¹⁹ See, e.g., Ooms (1985), 202 for a description of Anzai's arguments against Buddhism found in *Hekii* (Against Heresies). There is every reason to argue that the Confucian portrayal of Buddhist philosophy is both interested and, in the case of many Buddhist sects (particularly Sōtō Zen), arguably entirely inaccurate.

engage more directly on the role of law and to consider those situations where law and duty might conflict. The Akō vendetta provided the pivotal moment when many of these questions came to a head.¹²⁰

In 1701, at an event hosted by the *bakufu*, Asano Naganori, the lord of the Akō province attacked Kira Yoshinaka, Tsunayoshi's master of ceremonies. Tsunayoshi ruled that Asano's actions violated *bakufu* law and ordered Asano to commit *seppuku* and stripped his family of their lands. Now masterless, a league of Asano's former retainers made a pact to kill Kira to avenge his death,¹²¹ and a year later fulfilled this pact, then were captured and ordered by the *bakufu* to commit *seppuku*. The extreme actions of Asano's retainers captured the popular imagination, and many viewed the retainers' actions as the epitome of the Confucian value of loyalty to their master. The role of Tsunayoshi and the state lay in a more ambivalent position, as *bakufu* law played a pivotal role in the drama by dispossessing the samurai and later by mandating their death. Because unsanctioned revenge killings were illegal under *bakufu* law,¹²² the Akō incident raised the legal and political question of which duty rightfully should prevail—duty to the master or duty to the state?

Perhaps because of this conundrum, Confucian scholars debating the affair reflected frequently on Tokugawa law (for Buddhists, there was no legal conundrum at all because the duty of loyalty

¹²⁰ The Akō vendetta (also called the *chūshingura* in honor of the forty-seven loyal samurai) is a seminal symbol of Tokugawa culture. The events of the vendetta have been retold in countless plays, stories, and movies. For a comprehensive English language evaluation of the Akō vendetta and its historical, political and philosophical significance, see Tucker (2018).

¹²¹ Notably, the pact the samurai pledged argued that their actions were cosmologically required (*tenmei*).

¹²² Under Tokugawa law, samurai were allowed to seek revenge killing, but only with the express permission of the *bakufu*, which was not in this case sought or granted. See McMullen (2003), 293 (citing proclamations).

identified by the Confucianists was ultimately illusory).¹²³ These scholars took strong, and often conflicting, positions on the question. Muro Kyusō articulated the pro-retainer position, arguing that the actions of the *ronin* were righteous, “something akin to civil disobedience.”¹²⁴ Ogyū Sorai and his followers (most notably Dazai Shundai) took the opposite position,¹²⁵ arguing that the revenge of the retainers was wrong because it was not conducted immediately. Satō Naokata most aggressively took the legalist position, asserting that the revenge was, in effect, a direct assault on the shogun, which was unquestionably wrong. Perhaps because he had the privilege of writing safely thirty years removed from Tsunayoshi’s rule, only Dazai Shundai directly questioned whether Tsunayoshi’s lawmaking was itself moral. However, each scholar other than Satō effectively weakened the ability of the *bakufu* to establish legal cosmology by questioning whether *bakufu* law was necessarily co-extensive with Confucian duties.

The criticism of Tsunayoshi’s *Shōrui awaremi no rei* by Confucian scholars and the government’s response to the Akō vendetta both represented challenges to the legal cosmology articulated by the *bakufu* from the time of Ieyasu. Scholars like Ogyū Sorai sought to move Tokugawa law from a syncretic orientation that relied on Buddhist cosmology for its intellectual foundation to one in which the very nature of things was, at best, contested. The transition from a world-view oriented towards Buddhist soteriology to a one oriented towards practical action and the traditional Confucian reliance on the five relationships quickly made its way into *bakufu* policy through the work of Arai Hakuseki in the laws he drafted on behalf of the succeeding

¹²³ Notably, Buddhist temples were supportive of the *ronin* at the time, giving them shelter for a period before the State demanded their imprisonment.

¹²⁴ Tucker, 126. Asami Keisai took an even stronger position, placing loyalty as universally more important than filial piety. McMullen (2003), 302ff.

¹²⁵ Tucker questions whether Sorai himself took the strong positions associated with him, *ibid.* 130-131, however there is no question that his followers wished to attribute this position (particularly as outlined in the “memorandum on law”) to Sorai. See also McMullen (2003), 299-301.

shogun Ienobu and Ietsugu. Hakuseki's practical view of the role and authority of the shogun did not differ from Tsunayoshi, but the narratives he provided in support of shogunal autocracy differed significantly.

Arai Hakuseki and Ienobu's Counter-Reforms

Tokugawa Tsunayoshi had two sons, but each died young during the early years of his rule. The Tokugawa *bakufu* knew for a decade prior to Tsunayoshi's death in 1709 that his heir would come from a collateral line. Tokugawa Tsunatoyo, *daimyō* of the province of Kofu and son of Tsunayoshi's older brother Tsunashige, was the most logical choice to succeed. While his selection as heir was not without its own intrigues,¹²⁶ Tsunayoshi formally adopted Tsunatoyo in 1704—five years before Tsunayoshi's death. Upon Tsunayoshi's death, Tsunatoyo succeeded him as the sixth Tokugawa shogun without incident and was renamed Ienobu.

Ienobu was forty-seven years old when he succeeded Tsunayoshi. Like his uncle Tsunayoshi, Ienobu was raised outside of Edo and the *bakufu* power structure. Unlike Tsunayoshi, Ienobu had been responsible for the administration of an important province for more than two decades,¹²⁷ and he spent a further five years in the shogun's castle in Edo being groomed to be heir to Tsunayoshi. When his turn came, Ienobu should have been well-prepared to assume

¹²⁶ See Nakai, 50-51 for a short description of Tsunatoyo/Ienobu's somewhat irregular upbringing and the circumstances surrounding his appointment as heir. Arguably the election to adopt Ienobu as heir was made by Tsunayoshi and his administrators for financial reasons. Upon the adoption, Kofu province, a wealthy province allotted 350,000 *koku* annually, was returned to the *bakufu* as shogunal land. When Ienobu succeeded Tsunayoshi, the land was provided to Yanagisawa Yoshiyasu (Tsunayoshi's most senior retainer), with an annual allotment of 150,000 *koku*.

¹²⁷ During this period, Ienobu generally remained in Edo, and the *bakufu* consistently adopted a closer-than-ordinary level of scrutiny over the administration of the province.

control of the *bakufu*. However, Ienobu was not suited to govern by temperament. From the beginning of his short rule, he focused his attentions on his own entertainment, from the patronage and performance of Nō drama to a series of concubines and nights spent in the pleasure district of Yoshiwara.¹²⁸

Although he was not interested in governing personally, Ienobu followed Tsunayoshi's example by further promoting direct shogunal control over the *bakufu* and limiting the role of the *rōjū*. Ienobu exercised authority through his *sobayōnin*, Manabe Akifusa, which reduced the authority of the now-hereditarily-chosen council of senior ministers. Akifusa was the most prominent of a band of retainers loyal to Ienobu that he brought with him from Kofu. These retainers would serve as his primary administrators in the *bakufu*. Perhaps the most famous of his retainers was Arai Hakuseki, a teacher who had lectured Ienobu weekly since 1694.¹²⁹ Hakuseki was a comparatively late addition to Ienobu's cadre of retainers, and he lacked the distinction in birth that merited a high position in Ienobu's administration. Still, Ienobu, Akifusa and the senior ministers frequently sought his advice and quite often followed it. As a result, Hakuseki wielded considerable influence during Ienobu's short rule, although his influence was informal. Due to the persuasiveness of his reasoning, Hakuseki was particularly influential on lawmaking and legal decisions.

Ienobu's decision to entrust his senior advisors with administrative matters proved wise as he became ill just three years after his appointment and died the next year. Ienobu's rule passed by

¹²⁸ Nakai, 49-52.

¹²⁹ Hakuseki never held a senior position among the Kofu retainers, and was not a significant threat to exercise governing power. In his role as instructor, however, Hakuseki gave weekly lectures to the adult Ienobu for over a decade, and he was undoubtedly intellectually influential on the shogun before and during his rule.

descent to his three-year-old son, renamed Ietsugu. During the short period of Ietsugu's rule, the state was governed by a regency controlled by Ienobu's former retainers, primarily Akifusa. There were few changes in policy during the Ietsugu's rule, and Ietsugu's tenure was as short as his father's, lasting only three more years. When Ietsugu died young and without a direct heir, the Tokugawa were forced to draw an heir for the first time from the collateral Tokugawa lines known as the *gosanke*. Tokugawa Yoshimune, previously the *daimyō* of Kii province, succeeded Ietsugu and would rule with distinction for more than thirty years.

While Ienobu and Ietsugu's rule was short in comparison to Tsunayoshi and Yoshimune, this period was noteworthy for the changes that occurred in policy. Certain of Ienobu's policies anticipated many of the innovations Yoshimune would later produce.¹³⁰ There were also some notable substantive legal changes during this period—most notably the abrogation of the *Shōrui awaremi no rei*—but most of the substantive laws of the seventeenth century remained intact, as did the administrative structures that supported them. The most profound transition that occurred during this brief period lay in the shift in legal anthropology. In this context, Arai Hakuseki played a particularly prominent role on the basis of his eloquently presented, if idiosyncratic, understandings of the bases for authority of *bakufu* lawmaking. The descriptions Hakuseki provides of his advice to Ienobu and his senior administrators also offer a valuable window into the development of law and legal practices by non-*bakufu* lawmakers during this period.

The Political and Economic Climate under Ienobu and Ietsugu

¹³⁰ These innovations are the subject of Chapter 4.

During this short transitional period of rule, there were also many problems. Tokugawa finances had not markedly improved during the free-spending Genroku period. Tsunayoshi had taken steps to mitigate the government's fiscal distress including rescinding the estates of more than forty *daimyō*, which returned their annual stipends to the *bakufu*; enacting sumptuary reforms and more closely regulating the process of gift giving; limiting somewhat the extravagances of the *bakufu*;¹³¹ and most notably, beginning the process of debasing existing currency.¹³² However, because currency debasement did not change the salaries provided to samurai (which were paid in rice allotment), samurai who relied, directly or indirectly, on the *bakufu* for their income faced increasing financial difficulty.

Because Tsunayoshi's actions failed to stabilize *bakufu* finances, the rules of Ienobu and Ietsugu were focused on efforts to restore fiscal stability. The fundamental policy debate during this period was whether to continue the policy of currency debasement that had begun under Tsunayoshi and his chief financial advisor Ogiwara Shigehide. The need for additional austerity measures remained clear; samurai debts remained high and their ability to exchange their rice allotment for currency continued to weaken. But further debasement was practically difficult because there was literally too little precious metal remaining in the treasury to mint more currency. The mines of Sado had been largely depleted, and the foreign trade over the past century had exported Japanese precious metals in exchange for Chinese and Western luxury goods. The *rōjū* were still influenced by Ogiwara and favored further currency devaluations to

¹³¹ This limitation remains a matter of debate, or perspective. Tsunayoshi certainly continued to spend extravagantly personally. However, he limited costly state obligations, including ending the annual pilgrimage to Nikko to visit the tombs of Ieyasu and Iemitsu. Bodart-Bailey (2006), 186-187.

¹³² The debasement of Japan's currency was impacted by reducing the silver content in its coinage. This debasement quickly led to commensurate inflation. However, because the samurai were overwhelmingly debtors to merchants, rapid inflation reduced the real impact of their obligations and afforded samurai some financial relief.

sustain the economy in its current state and protect the interests of wealthy samurai. Arai Hakuseki led the opposition to these reforms, arguing that instead of issuing more currency, the state should limit foreign trade in Japanese precious metals, implement further austerity measures and sumptuary reforms, and generally keep a tighter watch on the *bakufu* bureaucracy, which Hakuseki argued was irredeemably corrupt.¹³³ While Ogiwara successfully introduced three more devaluations, by the end of Ienobu's rule he had been forced out, and Ietsugu's successor Yoshimune would eventually introduce reforms that reflected Hakuseki's influence.¹³⁴

During Ienobu's rule, the *bakufu*'s fiscal difficulties were compounded by the need to recover from natural disasters, including the Mito-sama fire of 1704¹³⁵ and the eruption of Mt. Fuji in 1707. Peasant complaints, unrest, and revolts had begun to be a factor,¹³⁶ but their frequency and severity had not risen to the level that they would reach following famines later in the eighteenth century.¹³⁷ Much of the dispute resolution throughout this period remained at the village level,¹³⁸ and villagers acted collectively in support of their needs even in the disputes between villagers and outsiders like shrines and the state.

Despite these economic and social stresses, the rich cultural life that had flowered in the Genroku continued after Tsunayoshi's death. Urban population growth slowed, but urban centers

¹³³ Arai's depiction of these events is found in *Oritaku*, II, 167-174.

¹³⁴ The Kyōhō reforms will be discussed in greater detail in Chapter 4.

¹³⁵ Described in *Oritaku*, I, 82-83.

¹³⁶ For example, Hakuseki describes in *Oritaku shiba no ki* the resolution of a dispute between the village of Yase and Mt. Hiei over firewood collection rights, *Oritaku* II, 122-123.

¹³⁷ Steele et al, 362.

¹³⁸ Henderson remains the most comprehensive source of contractual materials at the village level. While the majority of these contracts date to the latter half of the eighteenth century, earlier contracts remain from the Genroku on. Many of these contracts again are made between the village as an entity and other villages or merchants. See, e.g., Henderson (1974), 60-61.

remained populous and literate. The samurai population had become increasingly dependent on cultural literacy to conduct their duties within the state bureaucracy, and the merchant and artisan classes increasingly had begun to create institutions to provide them with the basic and applied education necessary to succeed in an increasingly complex economic environment.¹³⁹ For both samurai and merchants, Confucian scholars supplanted Buddhist monks in providing basic education to the urban population. Arai Hakuseki's upbringing provides a representative example of the educational opportunities available to ordinary samurai of the period.

The Education of Arai Hakuseki

Much of what is known of Arai Hakuseki's early life and education comes from his own autobiography, *Oritaku shiba no ki*. Perhaps because of the exhaustive nature of this work compared to the biographies of his contemporaries, Hakuseki's account has been widely studied both by later Tokugawa scholars and contemporary researchers.¹⁴⁰ While there is reason to question some of the particulars of Hakuseki's account, like the accuracy of Hakuseki's description of his ancestors, his description of his Confucian education illuminates the changing norms of learning at the end of the seventeenth century. In contrast to his predecessors in *bakufu* politics, Hakuseki was largely self-educated, and the education he did receive came from a different set of sources.

¹³⁹ See Najita (1987), 62-70.

¹⁴⁰ Contemporary scholarship has made an effort to read the text more critically, particularly as relates to Hakuseki's depiction of the controversies of the period in which it was written. See, e.g. Nakai, 212ff; Bowring (2017), 271-272.

Although he was born a samurai, Arai Hakuseki's family circumstances were modest. The Arai served as retainers¹⁴¹ for a series of minor provincial leaders, principally Tsuchiya Toshinao of Kazusa in his youth. In Tsuchiya's service, Hakuseki was taught to read, but beyond this, the favor of his employer determined his educational possibilities. Perhaps owing to these circumstances, Hakuseki's early education was spotty, though he claims to have received the favor of lord Tsuchiya. Hakuseki had the time and opportunity to master calligraphy through his own assiduous practice, but he had only primers and, later, rudimentary materials to work with. He was able to listen to commentaries on the *Taiheiki*, a fourteenth century historical epic, but had no direct access to histories or written works as a youth. He was also taught poetry in passing, and he subsequently claimed to be a rival of the Zen poet Basho before he gave up the practice.¹⁴²

Hakuseki described his parents as Buddhists, but he never received instruction from Buddhist schools. As a result, Hakuseki displays a limited understanding of Buddhist doctrine,¹⁴³ particularly in contrast with earlier *bakufu* advisors like the monks Sūden and Tenkai or even early *bakufu* Confucian advisors like Hayashi Razan and Fujiwara Seika. In lieu of a classical Buddhist education, Hakuseki first learned about philosophy at seventeen when he had the opportunity to read the seventeenth century scholar Nakae Toju's *Okina Mondō*.¹⁴⁴ After reading this work, he explained: "though I resolved henceforth to apply myself to the Way

¹⁴¹ His father ultimately earned the role of *metsuke*, a position of responsibility, but not high rank. *Oritaku*, I, 40.

¹⁴² *Ibid.*, I, 59; Nakai, 92.

¹⁴³ Hakuseki's writings rarely stray into Buddhist doctrine. He addresses Buddhism in his works primarily in its role as a social institution. See, e.g., *Oritaku*, I, 40-55. See also Paramore (2010), 110.

¹⁴⁴ *Oritaku* I, 61. Nakae's work was a notable, if eccentric source of knowledge. Unlike the main line of Tokugawa *jusha*, Nakae was an early proponent of Wang Yang Ming rather than Zhu Xi. Tucker (1988), 58.

[Confucianism], there was no one to teach me.”¹⁴⁵ Hakuseki was at first an autodidact, a circumstance to which he attributed some of his later challenges.¹⁴⁶

In addition to reading Nakae Toju, Hakuseki later obtained and read the works of notable Zhu Xi scholars, and he later thoroughly consumed the “Four Books” and “Five Classics” that constituted the Confucian canon. A decade later, at twenty-seven, Arai began the formal study of Confucianism by becoming the disciple of the noted Confucian scholar Kinoshita Jun’an.¹⁴⁷ Under Kinoshita, Hakuseki quickly proved his proficiency in the Chinese classics, which Hakuseki argued were sufficient to guide policy. As he explained to the leaders of the Kofu clan when he sought a position as a retainer, “The Way of the Sages, as regards the control of self and the government of men, is contained in the Four Books, and if this is followed in principle and action, nothing more is needed.”¹⁴⁸

Hakuseki had a practical orientation towards knowledge. His reading of Chinese philosophy focused on how these works could be used to answer practical questions.¹⁴⁹ The majority of his writing on the classics focused on practical matters—a stance that was honed by Hakuseki’s duties as a lecturer. As instructor for Tsunatoyo (later Ienobu), Hakuseki prepared an estimated 1,300 lectures over a period of nineteen years, ranging from the classics, to Neo-Confucian

¹⁴⁵ *Oritaku*, I, 61.

¹⁴⁶ “More important, if, at the age of seventeen when I first became interested in Confucianism, I had had someone to instruct me, I should not have been as I am now.” *Oritaku* I, 63.

¹⁴⁷ Kinoshita Jun’an was a teacher from the lineage of Fujiwara Seika.

¹⁴⁸ *Oritaku*, I, 74.

¹⁴⁹ While the focus of Arai Hakuseki’s philosophy has been on the Confucian classics, Hakuseki also had some interest in Chinese legalist scholars. Henderson (1970) has noted that Hakuseki ordered a number of Chinese legal reference works for the *bakufu*, 29-31. This influence is perhaps surprising given the emphasis that the legalists placed on punishment to drive deterrence. See generally MacCormack, 188.

commentaries, to discussions of Chinese and Japanese history.¹⁵⁰ At Ienobu's direction, Hakuseki produced additional written works, most notably *Tokushi Yoron*, his study of the history of the Japan, which was a work of considerable political significance.

Hakuseki's education, though suggestive of his considerable talents and energy, drew from the same materials available to his peers—lower and middle ranked samurai of the late seventeenth century. By this time, literacy had spread broadly, and there were increasing opportunities for formal and informal learning like the lectures that Hakuseki listened to in his youth. Familiarity with the Chinese classics served as a minimum standard for appointment and increasingly as a barometer of intellectual capability. At the same time, education remained informal, with access to available literature spread unevenly. While the number of scholars were increasing, there were still a limited number of schools and teachers in comparison to the number of samurai. The schools that existed to serve working samurai were administered increasingly by Confucian scholars rather than by the Buddhist establishment.¹⁵¹ These social circumstances would come to influence both Hakuseki's own perspectives and his understanding of the audience for the laws he would propose under Ienobu and Ietsugu.

Arai Hakuseki and Tokugawa Legal Culture

¹⁵⁰ *Oritaku*, I, 74-75.

¹⁵¹ In part, this social change of broad intellectual significance arguably had antecedents in Tokugawa law. As the samurai were displaced from their lands under Hideyoshi and Ieyasu, the wealth of these families moved from real property rights to rights in a rank-based stipend. Children of these families who became monks generally forfeited their rights to these stipends, while those who became *jusha* did not, arguably leading to a preference to careers like medicine or Confucian scholarship.

In addition to the late and informal start to his scholarly career, Arai Hakuseki was held back by the fact that he was not a “people person”. Although he claimed to be a favorite of Tsuchiya Toshinao, Hakuseki and his father were dismissed from service by Tsuchiya’s heir following his death.¹⁵² Hakuseki spent half a decade in the service of the Hotta family while Hotta Masatoshi served Tsunayoshi, but acknowledged that this period of service was also not a good fit. He sought and obtained release from this service before becoming a student of Kinoshita Jun’an, through whom he was ultimately introduced to the leaders of Kofu. However, even under Ienobu, Hakuseki was not an administrator; he served as a teacher, advisor, and often a critic of other advisors.

Why have scholars focused on Hakuseki’s descriptions of his own achievements foremost, rather than attributing the responsibility for the Tokugawa legal reforms of this period to Ienobu, Manabe Akifusa, or other member of the *bakufu* leadership of this period, on the one hand, or Hayashi Nobuatsu, Muro Kyusō, or other leading scholars of the period, on the other? While Hakuseki’s influence on *bakufu* policy has often been accepted uncritically, by his own account his recommendations were often not immediately accepted, when they were accepted at all.¹⁵³ His campaign against Ogiwara Shigehide required the greater part of two years and at least three memoranda to demand Shigehide’s resignation. On final reflection, we have no extrinsic evidence that Hakuseki’s counsel, rather than some other intervening cause, led to Shigehide’s departure. Hakuseki was only one voice of many influencing the policies of the *bakufu*. The

¹⁵² The heir, Tsuchiya Yorinao, was dispossessed of his estates due to mental issues three years later, which allowed Hakuseki to honorably seek other service. Nakai, 27.

¹⁵³ Nakai, 52-53, 58-70, provides a detailed explanation of the limits of Hakuseki’s authority, concluding that Hakuseki retained persuasive authority when teamed with Manabe Akifusa, who relied both on his counsel and his support to outwit the *rōjū* led by Ogiwara under Ienobu. When Akifusa became *de facto* regent under Ietsugu, however, Hakuseki’s control lessened until under Yoshimune he retired from active service of the *bakufu*.

Hayashi school was consulted regularly on questions of policy and protocol, although Hakuseki never failed note those occasions when his criticisms of Hayashi Nobuatsu's faulty reasoning led to the adoption of Hakuseki's proposals.¹⁵⁴ Hakuseki's frequent sparring with the Hayashi provides one explanation of the deference granted to Hakuseki's thought—he was not an unprincipled apologist for the *bakufu* like the Hayashi school, but he retained the access to the *bakufu* that Itō Jinsai and Ogyu Sōrai lacked. Hakuseki's writings offer a mediating perspective between government and the intellectual community that he achieved as an influential public intellectual under two weak shogun.

The combination of Hakuseki's obvious intellectual talent and itinerant history explain both the fields where he was able to gain influence in the court as well as the limits of this influence. During this period, there were few legal professionals¹⁵⁵ and no formal legal training. In this void, Hakuseki flourished as an advisor in a field that benefited from practical advice on dispute resolution. Hakuseki was also influential in matters of protocol and related matters that relied on his ability to offer historical analogies. In matters of both law and protocol, Hakuseki's writings suggest that the standard practice inside the *bakufu* was to solicit opinions from different advisors, then select the solution that they found most compelling.¹⁵⁶ Hakuseki reports with satisfaction many instances in which his reasoned arguments prevailed over leaders of the *rōjū* like Ogiwara Shigehide and rival Confucian scholars like Hayashi Nobuatsu.

¹⁵⁴ A representative example of this phenomenon is Hakuseki's lengthy and often-quoted historical analysis of the historical impropriety of the selection of the *Shōtoku* era name on the ascension of Ietsugu as shogun, see *Oritaku*, III, 195-197. This analysis was provided to counter a proposal made by the Hayashi to change the era name at the beginning of Ietsugu's rule.

¹⁵⁵ There were samurai within the *bakufu* who served as assistants to the *hyōjōsho* who were responsible for administering disputes. See Steenstrup, 156.

¹⁵⁶ It is not immediately apparent given the limits of Hakuseki's work and the available evidence whether these arguments were judged more on their intellectual merits or political merits.

Hakuseki's Jurisprudence- The Ichijo-in Matter

Hakuseki's description of his resolution of legal disputes provides useful information about the legal process during this period. Hakuseki offers a valuable description of the growing role that litigants and other non-governmental lawmakers had begun to play in shaping Tokugawa law in practice. During this period, petitioning parties were expected to provide both reasoning and documentary or physical evidence necessary to support their positions in disputes of fact.¹⁵⁷ From petitioners' arguments and evidence, the *bakufu* would render a judgment. Hakuseki's recollections show both how his innovations influenced the practice of Tokugawa decision-making and the ways that Tokugawa legal discourse diverged from philosophical debate.

In *Oritaku shiba no ki*,¹⁵⁸ Hakuseki describes a dispute between two abbots under the jurisdiction of Kōfukuji temple at Nara, one of the primary temples of the Hossō (*yogacara*) Buddhist sect. The dispute was first brought to Tsunayoshi, and a resolution had already been proposed. Unfortunately, Tsunayoshi failed to formalize the decision prior to his death, and Ienobu inherited the duty to ratify it. Ienobu sought Hakuseki's advice to confirm the previously-proposed decision made sense.

The underlying dispute between the abbots had roots reaching as far back as the 1580's, beginning from an alleged promise by Tokugawa Ieyasu to provide resources to a youth named

¹⁵⁷ This evidence was primarily documentary, particularly records of contracts or grants by the shogun. However, in boundary disputes, physical evidence of boundary stones was also relevant. See *Oritaku*, II, 172-173.

¹⁵⁸ *Ibid.*, II, 119-122.

Konoe Takataka. Takataka was the son of Konoe Sakihisa, a warlord ally of Tokugawa Ieyasu. According to the Kōfukuji monks, Ieyasu promised Takataka the resources to restore Kōfukuji when he was a visitor to Sakihisa in Kyōtō during the fighting following the death of Oda Nobunaga. Takataka would later become an abbot of the Ichijo-in, a branch temple of Kōfukuji. When Ieyasu ultimately became shogun, he allegedly presented Takataka with a decree which stated that Takataka's descendants should have annual rights to administer an allocation of funds to be used to support scholarship conducted at Ichijo-in.

A century later under Tsunayoshi, the Imperial court issued a decree which granted the abbot of Ichijo-in the right to administer the entire Kōfukuji complex. However, at the same time the *bakufu* granted the abbot of the branch-temple Daijo-in, who also happened to be Tsunayoshi's consort's brother, the right in turn to manage Ichijo-in. The abbot of Daijo-in sought as a part of this grant the rights to the funds originally promised by Ieyasu to Ichijo-in. The question, in short, was whether the right to these funds travelled with the temple or with the Konoe family.

The Tsunayoshi *bakufu* reached the decision to provide these funds to Daijo-in (Tsunayoshi's faction) immediately before Tsunayoshi's death. However, Ienobu's father-in-law happened to be a descendant of Konoe, and the Konoe clan took advantage of the changed circumstances to again press the claim that Ieyasu's grant superseded Tsunayoshi's decision to transfer to Daijo-in the right to administer Ichijo-in, including the rights to the funds in question.

On the face of it, both the politics and the existing precedent seemed to favor the Konoe. Ienobu had a personal interest in preferring the claim of his father-in-law's clan. Within Tokugawa

governing philosophy a promise made by the founder Ieyasu also apparently would have superseded a later decision by Tsunayoshi. But Hakuseki reviewed the documents and statements submitted to the *bakufu* and reached the opposite conclusion. As a result of Hakuseki's reasoning, Ienobu reopened the matter, and the parties presented their arguments a second time. Upon reconsideration of materials submitted by the two temples, the Konoe envoys fared worse, then subsequently became ill and died. Hakuseki visited Nara to render his decision, and Hakuseki's judgment was approved by Daijo-in, and ultimately also by the monks of Ichijo-in. This decision did not make Hakuseki a friend in the Konoe, but Hakuseki claimed that Ienobu was not deterred by the feelings harbored by his father-in-law.

Hakuseki reasoned that the timeline provided by the Konoe was unreliable, because to reach their conclusion one would need to assume that Ieyasu had made his initial promise to Takataka in 1586. This would have been impossible, since existing records of Takataka's elder brother indicated that Takataka was at least ten years older than the narrative provided by the Konoe suggested, and there was no indication that Ieyasu visited Konoe in Kyōtō in the mid-1570's, a period in which he was engaged in wars in Tōtōmi province. Moreover, the Konoe failed to produce an original copy of the imperial decree that they claimed Ieyasu had granted. Finally, Hakuseki argued that policy favored resolution in favor of Daijo-in, both because a decision in favor of the Konoe would raise questions about the undue influence of the Konoe family and would give rise to unending acrimony between the two branch temples.¹⁵⁹ In short, Hakuseki's practical reasoning, not Confucian norms or the Buddhist traditions, played the most significant role in evaluating the merits of these arguments.

¹⁵⁹ Also, though unspoken in Hakuseki's account, supporting Tsunayoshi's decision would reinforce shogunal authority to arbitrate these claims, rather than providing an opening to the Imperial court.

To resolve this dispute, Hakuseki relied on: (i) an analysis of the petitions submitted, supported by judicial notice of the historical circumstances that surrounded these materials; (ii) a close review of the documentary evidence provided in support of the petitions; and (iii) consideration of the public policy implications of judicial decision-making. Although Hakuseki emphasized the importance of practical reasoning in resolving legal disputes, the facts of the case suggest that other legal strategies often weighed heavily on proceedings during this period. Considerable deference was given to precedent, particularly precedent that related to the decisions of Tokugawa Ieyasu. While not dispositive, a grant by Ieyasu would have held greater significance than a subsequent grant by later shoguns. The parties to the case—particularly the Konoe—clearly believed that leveraging personal relationships and political considerations would sway the decisions rendered by the *bakufu*. Left unsaid was the role bribery played as a method to generate the necessary political support for a petition. While Hakuseki opposed bribery, he reports that the practice remained commonplace during this period. His memorandum-writing campaign against Ogiwara Shigehide included numerous allegations that Ogiwara and his officials took bribes,¹⁶⁰ and Hakuseki describes the practice of bribery in the government procurement process, including both “gifts of anticipation” provided before a contract is issued and additional gifts provided after the contract award, so that a contract that would cost less than 100 *ryō* to build in the private sector could not be built by the *bakufu* for less than 10,000 *ryō*.¹⁶¹

Arai Hakuseki's Legal Cosmology

¹⁶⁰ *Oritaku*, III, 222-223.

¹⁶¹ *Ibid.*, III, 265-266.

Although Hakuseki devoted considerable attention to resolving ordinary legal disputes, he also spearheaded a series of broader legal reforms intended to overturn policies implemented under Tsunayoshi. The day after the announcement of Tsunayoshi's death, Arai Hakuseki began his campaign against what he perceived to be Tsunayoshi's excesses. When he was first called to meet with Ienobu's senior councilor Manabe Akifusa, he brought a short list of three priority items: the repeal of the *Shōrui awaremi no rei*; the repeal of the policy of currency debasement; and the termination of Tsunayoshi's proposed rebuilding of the shogun's castle.¹⁶² While these particular concerns were likely shared by many other samurai within the government—as well as by other lower ranking samurai like Hakuseki—the speed these reforms were adopted reflects the varying degree of influence Hakuseki held over legal and political matters.

Arai Hakuseki's reforms of currency debasement took the longest time to mature.¹⁶³ Hakuseki began fighting to end currency debasement at the beginning of Ienobu's rule and continued across the entire period of his service. Hakuseki was primarily concerned with the impact of debasement policy on samurai like him,¹⁶⁴ but his own statements in *Oritaku shiba no ki* also focus more generally on urban artisans, the *chōnin*.¹⁶⁵ Although Hakuseki initially sought to blame currency debasement on Tsunayoshi, because Ogiwara Shigehide remained influential over the *rōjū* and continued to promote the need for further debasements during Ienobu's rule, Hakuseki's vitriol eventually shifted to Shigehide. A similar pattern occurred with regard to the castle construction; Hakuseki began by blaming Tsunayoshi for over-building, but as the *rōjū*

¹⁶² *Oritaku*, II, 93.

¹⁶³ The currency reform debates have been extensively analyzed, and I will focus for this work solely on their relationship as a reform of Tsunayoshi's policies. For those seeking further discussion of the reforms generally, Nakai has provided the most comprehensive analysis in English, 97-106.

¹⁶⁴ See Maruyama, 178; Bodart-Bailey (2006), 199-200.

¹⁶⁵ *Oritaku*, II, 98.

expanded their own construction plans Hakuseki again shifted his polemic towards Shigehide. Neither of these contested political reforms were immediately successful.

In contrast, the *Shōrui awaremi no rei* lacked a constituency beyond Tsunayoshi, and Hakuseki succeeded in changing these laws quickly. Within months of Hakuseki's proposals, the *Shōrui awaremi no rei* were removed from the list of criminal acts that *daimyō* were required to prosecute, effectively abrogating them. While the *Tokugawa jikki* provides no explanation why the *bakufu* no longer enforced these laws, Hakuseki promoted a general amnesty that would reduce the unnecessary suffering inflicted on those punished under the laws. Hakuseki's preference for a general amnesty is telling; while he clearly saw Tsunayoshi's laws in practice as punitive to the samurai, he did not seek to question the authority of the shogun to issue laws.¹⁶⁶ Hakuseki situated the problem of the *Shōrui awaremi no rei* as one of over-enforcement, "Their fathers and mothers, sisters and brothers, wives and children were turned adrift in untold thousands."¹⁶⁷ Yet despite Hakuseki's arguments, no general amnesty was granted.¹⁶⁸

In addition to the repeal of the *Shōrui awaremi no rei*, Hakuseki also reframed the *Buke shohatto* in a way he hoped would fundamentally change the duties of the samurai to the state. Like all shogun from Iemitsu onwards, Ienobu promulgated his own version of the warrior code within a year of the beginning of his rule. Arai drafted the text, and in contrast to his predecessors, Ienobu's *Buke shohatto* differed significantly from its predecessors in its expression of legal

¹⁶⁶ On this point, see Nakai, 133.

¹⁶⁷ *Oritaku* II, 106. According to the available evidence, the answer to this question seems to have been none. While there are limited examples of exile, and even sentences of death, in relation to the *Shōrui awaremi no rei*, the actual punishments imposed appear to have been far more lenient. See Bodart-Bailey (1985), 176-177. This practice is consistent with other contemporary laws, which promised draconian punishments that were not routinely enforced, leaving wide discretion to the *daikan* responsible for meting out judgment. See Arai, *Tokushi Yoron*, 430.

¹⁶⁸ A broader, general amnesty for all of Tsunayoshi's laws was provided a month following.

anthropology. The *Buke shohatto* remained a fairly sparse set of laws, but Hakuseki supplemented his revision with a primer (*Shinrei kukai*- Primer to the new laws) that explained the work to samurai who may have been less familiar with the laws. In the first provision of *Buke shohatto* and in *Shinrei kukai*, Hakuseki's made changes to the *Buke shohatto* that were arguably the most extensive since Iemitsu, in part at least because Ienobu seems to have intended that the laws would be applicable both to *daimyō*—samurai responsible for large provinces— but also to the *hatamoto*, or samurai directly pledged to the shogun.

Hakuseki shifted the cosmological emphasis in his *Buke shohatto* away from Ieyasu's marriage of cultural and military arts (*bun* and *bu*) and towards Confucian values, particularly the values he derived from the Confucian classics. In the first article of this constitutional law, Hakuseki expands on Ieyasu's original directive that the *buke* should pursue both *bun* and *bu* by adding that the *buke* remain should also remain mindful of the proper human relationships¹⁶⁹ and they should maintain perform their duties (*rei*) properly.¹⁷⁰ This language is a departure Tsunayoshi's issuance of the *Buke shohatto*, which had added the duties of loyalty and filial piety. While both of iterations of the law code reflect a growing Confucian influence, Tsunayoshi relied on abstract philosophical principles, while Hakuseki replaced these with concrete, identifiable principles. In contrast to Tsunayoshi, whose laws were supported by cosmological speculations (influenced both by Buddhism and Confucianism), Hakuseki offered a legal anthropology relying on understandings of human nature articulated in the Confucian classics.

¹⁶⁹ The traditional human relations that must be maintained under Confucian thought are ruler-subject; father-son; husband-wife; elder brother-younger brother; friend-friend.

¹⁷⁰ The term *rei* (礼) means generally to proper codes of conduct and patterns of ritual behavior and is one of the five Confucian values. *Rei* also encapsulates the proper performance of duties in accordance with the five relationships. See, e.g., Kaibara Ekken, *Yamato Tokkun*, 48(a).

The text of *Buke shohatto* reiterates Hakuseki's legal anthropology. Article 8 of Hakuseki's code restores a provision from Ieyasu's *Buke shohatto* that prohibited samurai from gambling and having drinking parties with one another. In a departure from the 1615 code, Hakuseki associates this behavior with a failure to heed proper Confucian duties (again *rei*, from Article 1), and Hakuseki also identifies the risk that drinking parties will lead to gossip and discussions about government policies, which "have a negative effect on general social behavior."¹⁷¹

Another new point of emphasis for Hakuseki lay in ensuring that the *daimyō* met their duties to the people. Hakuseki added civilian responsibilities to the military duties of the warrior houses by adding an article that provided: "All officials, great or small, or others in posts of command, must take care not to abuse their authority to hurt other people, or take advantage of their public position to gain private benefit."¹⁷² Kate Nakai argues that these provisions reinforce the broad authority that Hakuseki believed the shogun should hold over the *daimyō*.¹⁷³ But Hakuseki also clarified a question of legal jurisdiction in a way that increased the authority of the provinces; where previously the *daimyō* and a representative of the *bakufu* were to resolve intra-provincial disputes, under Hakuseki's revision, these matters were left to the exclusive jurisdiction of the *daimyō*. Similarly, the Tokugawa government was previously responsible for adjudicating disputes among villages within a province, but Hakuseki admonished provincial leaders with jurisdiction over the disputes to work matters out amongst themselves unless both villages asked for the *bakufu* to intercede.

¹⁷¹ *Buke shohatto*, art. 8. Hakuseki's *Buke shohatto* appears in *Tokugawa kinrei kō*, v. 1, 67-70. An English language version of the order is available at Hall (2011), 269-311.

¹⁷² *Buke shohatto*, art. 6.

¹⁷³ Nakai, 207-208. As Nakai states, one goal of the revisions to the *Buke shohatto* was to expand the central authority of the Shogun *vis a vis* the *han*. Nakai also makes the broader contention that while Hakuseki and Tsunayoshi shared an affinity for a broader mandate for personal shogunal authority, they understood the proper conduct of the ruler differently.

Hakuseki remained deeply concerned with the protecting samurai finances. *Buke shohatto* reiterated sumptuary provisions issued previously (particularly those surrounding dress and the size of the entourage who attended the *daimyō* during *sankin kōtai*) and continued to limit the capital improvements that were allowable on provincial castles. Hakuseki also continued his campaign against Ogiwara by adding an explicit provision banning bribes. In the event that a matter required the government, the *hatto* requires that the petitioner pursue proper channels and the appropriate official address the petition “on its merits.”¹⁷⁴

The legal analysis that Hakuseki provided to Ienobu and the *bakufu* show that he sought to change how the government conducted the practical business of lawmaking. His efforts to abrogate the *Shōrui awaremi no rei* and revise *Buke shohatto* show that Hakuseki also wanted to change how the Tokugawa justified their lawmaking. The question remains of what relationship Hakuseki’s two interests held to one another—did Hakuseki seek to change how the Tokugawa thought about law to improve practical lawmaking; or did Hakuseki resolve practical disputes in order to show that his Confucian-inflected legal anthropology worked better in the real world?

The descriptions Arai Hakuseki provided of his internal conflicts with other members of the *bakufu* bureaucracy and the legal reasoning that he offered to support his detailed arguments presents a complex picture of Hakuseki’s understanding of *bakufu* lawmaking practices. Nakai argues that Hakuseki did not adhere consistently to any of the established Confucian lineages,

¹⁷⁴ *Buke shohatto*, art. 7.

particularly with regard to metaphysics.¹⁷⁵ Instead, Hakuseki sought to rely on a “authentic” Confucianism¹⁷⁶ that he found in the Confucian classics. For Hakuseki, authentic Confucian modes of statecraft presupposed an absolute ruler who held the “mandate of heaven”—a cosmological notion—but assumed that the ruler would maintain the mandate of heaven only so long as he continued to meet his duties to provide for the people.¹⁷⁷ From these philosophical commitments, Nakai argues that Hakuseki sought to radically reconfigure the role of the Tokugawa government relative to the provinces by reimagining the shogun in the role of an absolute monarch with the ability to exercise direct and absolute authority over all the provinces of the archipelago. Certain of Hakuseki’s actions favor this interpretation. Hakuseki sought to align government administration more closely along the lines of traditional Confucian mode of rule. By abrogating the *Shōrui awaremi no rei*, Hakuseki started the transition from Tsunayoshi’s vision of a paternalistic government concerned with promoting public morals to a government that realized the Confucian ideal that the role of the ruler is to serve the needs of the

¹⁷⁵ Nakai, 80. Nakai argues that Hakuseki “showed little interest in the questions of the metaphysical structure of the universe, the origin and composition of the Way, man’s nature, or the relationship between the people and the Way that, from the Song on, have served as the arbiters to distinguish one category of Confucianism from another.” Ibid. Contra Nakai, Hakuseki does not question a set Confucian ethical and metaphysical norms. However, as discussed in this section, he adopts these norms uncritically in his work and relies upon them as the basis for the legal arguments he makes.

¹⁷⁶ Ibid. 92ff. In this context, “authenticity” differs notably from “orthodoxy”; authenticity relates to a reliance of the essence of Confucian thought, consistent with what is set forth in the Confucian classics. Orthodoxy relates to consistency with one of the Confucian traditions that were pursued in Tokugawa Japan. This distinction lies at the root of the persistent criticism by Hakuseki of the Hayashi school and the recommendations of *bakufu* advisor Hayashi Nobuatsu.

¹⁷⁷ See Nakai, 182-183 (“From Confucianism, Hakuseki derived two principles which had a fundamental impact on his approach to the symbolic definition of shogunal authority. One was the belief that the ruler should exercise a comprehensive and unambiguous authority over the realm; the other was the conviction that ceremonial practices and protocol—what Confucians referred to as *rei*—were a primary means of clarifying and sustaining that authority.”). As Nakai further notes, the adoption of these Confucian norms gave rise to significant challenges in the *bakufu* context. Most notably, even in China these doctrines lacked any clear explanation for how the mandate of heaven transferred across dynasties, and when attempted to be grafted onto the Tokugawa example, the autocratic responsibilities demanded of the ruler meshed imperfectly with the decentralized confederacy anticipated by Ieyasu. See Nakai, 299-339.

people.¹⁷⁸ In Article 6 of Hakuseki's *Buke shohatto*, the shogun demanded of all *daimyō* that they discharge their responsibilities faithfully and without favoritism.¹⁷⁹

Nonetheless, Hakuseki's recommendations did not change the ultimate parameters of *bakufu* and shogunal authority; they merely provided a different explanation for essentially the same authority. By abrogating the *Shōrui awaremi no rei* rather than repealing it, Hakuseki did not dispute that Tsunayoshi had the authority to promulgate the edicts. Similarly, by reinforcing in the *Buke shohatto* that the *daimyō* and officers of the *bakufu* should discharge their duties responsibly in the service of the people, Hakuseki did not change the nature of these duties, but only identified the manner in which duties must be performed. Rather than reforming the nature of *bakufu* authority from the role Tsunayoshi had asserted, Hakuseki instead ratified the strong model of shogunal authority Tsunayoshi originally envisioned within the jurisdictional framework laid out by Ieyasu.

Isomae Jun'ichi's description of Hakuseki's method of historical reasoning provides a useful analogy to Hakuseki's jurisprudence. In his analysis of Hakuseki's *Koshitsū*— a comparative study of Japan's national myths the *Nihon shoki* and *Kojiki*— Isomae argues that Hakuseki pioneered of a rationalist, comparativist critical approach to the Japanese study of myths.¹⁸⁰ While dissecting Japan's foundational myths, Arai used documentary and physical evidence from the archaeological record and contemporary Chinese texts, as well as comparative evidence between the two works, to reach the radical conclusion that Japan's *kami* were not gods at all,

¹⁷⁸ Nakai, 133-136, citing Tsukamoto (1998) to the point that Tsunayoshi sought “to bring the rest of nature as well as the human world under the sway of the shogun's civilizing influence.” 134.

¹⁷⁹ *Buke shohatto*, art. 6.

¹⁸⁰ Isomae, 86-91.

but merely reifications of great people whose history had been obscured by the absence of written culture on the archipelago.¹⁸¹ *Koshitsū* displays an extreme example of Hakuseki following a rationalist, textualist approach regardless of the political implications of his reasoning.

In his approach to jurisprudence, Hakuseki similarly adopted a maddening mix of astutely critical and naively noncritical reasoning. Returning to the dispute at Kōfukuji, Hakuseki was willing to scrutinize the narrative accounts offered by the litigants for logical inconsistencies with the accepted historical record in a way that exceeded the rigor of any previously recorded administrator. He also showed a willingness to “read against the grain” of an established narrative that favored powerful interests, whether they be the Konoe clan or the Imperial court. At the same time, Hakuseki relied uncritically on written documentary evidence, particularly evidence that had been blessed by Tokugawa Ieyasu.¹⁸² Hakuseki’s analytical approach did not change who made legal decisions were made in Tokugawa Japan,¹⁸³ but he provided new, more effective analytical principles for administrators to use to improve this process. Hakuseki’s practical legal reforms also opened the Tokugawa legal process to a broader range of voices, since even politically insignificant petitioners gained a greater opportunity for success if they had arguments, and documentary evidence, to support their positions.

¹⁸¹ Ibid., 87. Hakuseki’s historical rationalism does not entirely meet with our standards of rational analysis, though. As Isomae notes, while Hakuseki treated myths critically, he accepted uncritically the written descriptions of “historical” figures within the text. 91. This mixture of uncritical reliance on documentary evidence with critical analysis of narrative accounts mirrors what we will see in Hakuseki’s legal analysis.

¹⁸² The case I cited is representative, but not the only example of this characteristic. In an inter-village boundary dispute, Hakuseki took into consideration the presence of physical evidence in the form of boundary stones dug up to support one party’s arguments. Hakuseki did scrutinize this evidence, however, out of concern that the litigants may have buried the boundary stones intentionally to support their position.

¹⁸³ One change to the process which Hakuseki strongly advocated was the elimination of bribery during the conduct of legal proceedings. It remains unclear, however, how successful Hakuseki was in effecting this proposed reform.

On the basis of these examples, Arai Hakuseki's primary motivation does not seem to be the radical reform of the *bakufu* legal order in the service of a single dominant ideology. Instead, Hakuseki appears more focused on reforming Tokugawa lawmaking practices and the day-to-day practice of dispute resolution. Hakuseki spent much of his efforts identifying ways to make Tokugawa law work more effectively in practice. One of Hakuseki's primary duties was to provide the shogun and his *sobayonin* with practical advice on how to address particular disputes, and within the practice of adjudication, this meant recommending more rigorous analytical processes to improve decision-making and placing a greater emphasis on government that was unbiased and responsive to the people. Hakuseki's abrogation of *Shōrui awaremi no rei* may be explained as a reform of the faulty legal practice of supporting substantive laws with broad claims that relied on legal cosmology. In the constitutional laws like *Buke shohatto*, Hakuseki offered a legal anthropology based on concrete principles—the five relationships—that he believed would be more effective in practice to justify the existing authority of the *bakufu* to make laws. Hakuseki's production of *Shinrei kukai* to explain Ienobu's *Buke shohatto* provides the most tangible evidence that he believed that his changes to the Tokugawa's foundational laws required at least some additional justification. However, Hakuseki operated more effectively as a critical thinker, focused on exposing the inconsistencies within existing narratives, than as a synthetic thinker who could establishing his own systematic theories.

Hakuseki believed that constitutional laws like the *Buke shohatto* demanded additional narrative justification in order to work practically. Hakuseki also clearly believed that the legal cosmology that Tsunayoshi offered to support substantive laws was not effective as a basis for

government. In place of Tsunayoshi's narrative, Hakuseki offered his own replacement. One pillar of this narrative relied on Confucian originalism. While the Hayashi articulated a vision of proper statecraft that relied on Confucian thought mediated through the Song scholar Zhu Xi, Hakuseki preferred to focus on the Confucian classics. As the *Buke shohatto* made clear, Hakuseki believed in a performative ethics where the ideal management of the state relied each member of society performing their duties appropriately within the rubric of the five Confucian relations. This reliance on clear, identifiable relationships contrasted with Tsunayoshi's understanding of Confucianism, which focused on inculcating abstract virtues like benevolence and humaneness. Hakuseki's worldview was concrete and anthropocentric; in matters of statecraft, he was interested in the concrete ways that humans interacted with one another.

Hakuseki's thought tended more naturally to analogy to historical precedent than to metaphysics. However, Hakuseki did not support the more radical historicism that his near-contemporary Ogyu Sōrai would promote just years later. For Hakuseki, the five relationships were important because they offered most effective means of governing, although it is likely that Hakuseki also believed the "way of the sages" reflected the actual conditions of reality.¹⁸⁴ For Hakuseki, the way of sages as practiced in the imagined Confucian golden age was not important because this was the period in which the Confucian relations were developed, but instead because people in this period lived in harmony with a natural order of things that Hakuseki naively believed was accurately reflected in the Confucian classics.¹⁸⁵

¹⁸⁴ Najita (1998), LVI.

¹⁸⁵ Hakuseki's focus on the Confucian classics also suggests a continuation of the policies of Yamazaki Ansai to the next generation of Tokugawa leaders. See Ooms (1985), 198-200.

In an interesting, if hard-to-reconcile twist to Hakuseki's promotion of originalist Confucianism as the basis for government, Hakuseki also valorized the historical precedent of the founder, Tokugawa Ieyasu.¹⁸⁶ Consistent with the political climate of the period, and while not explicitly calling Ieyasu a Confucian, Hakuseki argued that Ieyasu governed with the same attributes that he attributed to the Way of Sages. This comparison extended expressly to Ieyasu's laws, particularly those laws that were composed in literary Chinese like *Bateren tsuihō no fumi*. Given his obvious philosophical differences with Sūden's narratives, Hakuseki recharacterized the success of Ieyasu's laws, arguing that they succeeded because they set forth government "on literary principles",¹⁸⁷ which is to say in accordance with the Confucian principles Hakuseki applied to the *Buke shohatto* and other texts. By so doing, Hakuseki sought to interpret his changes to *Buke shohatto* as a return to the meaning of Ieyasu's original work.¹⁸⁸ In this respect, Hakuseki's method of *bakufu* lawmaking relied nearly as much on his recharacterization of Tokugawa Ieyasu as on the merits of the Confucian worldview.

Conclusion

Over the second half of the seventeenth century, the cosmological narratives that supported Tokugawa Ieyasu's rule came under increasing pressure. The fourth shogun Ietsuna sought to grow the prestige of Ieyasu and retain Ieyasu's general cosmological framework, but Ietsuna began to reframe Ishin Sūden's taxonomy of threats to the *kunigara* to extend beyond foreign conspirators to include intellectual innovators. As political crises increased, Ietsuna's successor

¹⁸⁶ For an extensive discussion of the creation of the cult of Ieyasu, see Ooms (1985), 59-66.

¹⁸⁷ *Oritaku*, II, 114.

¹⁸⁸ See Nakai, 291-292.

Tsunayoshi remained faithful to Ieyasu's cosmological vision of the soteriological duty that the state owed to its people, but circumstances compelled Tsunayoshi to extend this narrative in the practice to authorize significantly broader number of substantive laws. Tsunayoshi's strategy of using laws to inculcate the virtues of compassion and benevolence across society sought to preserve all living things but proved to be an impractical strategy to protect the fundamental welfare of the people. Tsunayoshi's tactic of applying cosmological narratives to substantive laws also proved impractical as a basis to justify a broader mandate to rule.

Arai Hakuseki sought to sustain Tsunayoshi's broader lawmaking authority on the basis of an entirely different, Confucian-oriented narrative. Although he claimed to remain consistent to Ieyasu, Hakuseki's legal anthropology bore little resemblance to the justifications provided by Ieyasu and Tsunayoshi. Hakuseki's narrative situated the authority of the shogun squarely within the image of a monarch as described in a worldview inspired by the Confucian classics. Where Tsunayoshi's envisioned humans as responsible to act with compassion within a broader system of all living things, Hakuseki focused exclusively on the Confucian five relations, and accelerated the trend toward the Confucian interpretation of humans as distinct from non-humans under the law.

From Ietsuna to Ietsugu, the myth of Tokugawa Ieyasu increasingly gained stature as Ieyasu was remembered as a heroic founder and infallible lawgiver, even as the cosmological narratives that originally supported Ieyasu's approach were stretched and ultimately discarded by later lawmakers to adapt to changing circumstances. Ietsuna, Tsunayoshi, and Hakuseki each sought to justify their interventions by identifying them with the laws of Ieyasu, as for each of these

lawmakers, the appropriation of the memory of Ieyasu was necessary to address the inconsistency and messiness associated with actual government. While Ietsuna was largely faithful in his narratives, and Tsunayoshi retained Ishin Sūden's fundamental cosmological framework, Hakuseki recharacterized Ieyasu as a Confucian sage. In this regard, there is a strong claim that Hakuseki is the source of the myth that Tokugawa shoguns from Ieyasu onward relied primarily on the Confucian social structure. But Hakuseki believed that the identification of Ieyasu as a Confucian ruler was essential to support the authenticity of Hakuseki's legal cosmology. In this respect, Hakuseki's narrative is no less idiosyncratic than Ishin Sūden's identification of Buddhist and Confucian values, or Tsunayoshi's unique conflation of Buddhist *jihi* and Confucian *jin*.

Hakuseki's need to offer reforms that justified Tsunayoshi's assertion of authority show that, by the early eighteenth century, the Tokugawa law had become subject to the influence of stakeholders outside the government. The Akō conflict placed in stark relief the role that criticism from the world of Confucian scholarship had in undermining state authority. While various actors who had become critical of Tokugawa lawmaking were often voiceless—like the vague threat of Buddhist/female influence that appears in the criticisms of the Hayashi and Dazai Shundai—Hakuseki's reliance on the cult of Ieyasu for justification suggests that Hakuseki understood that his Confucian narrative alone would not be compelling to all audiences. From this period onward, a conflict had begun in earnest among various voices who would attempt to define Tokugawa legal cosmology.

CHAPTER IV YOSHIMUNE'S REPRESENTATION OF TOKUGAWA LAW

It is a general rule that, from ancient times, those who preached the way and established doctrines always attributed the authenticity of their way and doctrines to their ancestors, but they tried always to go further beyond theorists who preceded them. And people in later times have always been confused because of their failure to recognize this.

-Tominaga Nakamoto, *Okina no fumi*

By the beginning of the eighteenth century, social and economic conditions in Tokugawa Japan increasingly drove the need for change. For an autocratic regime that had criminalized innovation and suppressed the free flow of ideas, the struggle to adapt to these changes was at times dizzying and oppressive. Under the shogun from Tsunayoshi to Ietsugu, the Tokugawa government explored a variety of new policies to alleviate pressures caused by a rapidly urbanizing society. Yet, the Tokugawa government remained plagued with the concern that they needed to project additional authority to make and enforce the legal changes necessary to solve these problems. Tsunayoshi and Hakuseki each provided alternative legal cosmologies drawn from their own interpretations of Buddhist doctrine and originalist Confucianism sought to authorize their respective reforms. For different reasons, neither of their narratives found support from the growing number of different groups speaking from both inside and outside the government.

When more severe economic pressures that threatened to overwhelm the state in the Kyōhō period just a decade later,¹ the eighth shogun Yoshimune offered yet another set of reforms. Yoshimune was already as an experienced provincial administrator when he became shogun, and he brought a sensibility that was different from his predecessors. After experiencing the failures

¹ The Kyōhō era spanned from 1716-1736, the first two decades of Yoshimune's rule.

of his predecessors, Yoshimune took a different path. Yoshimune eschewed traditional cosmological narratives as a basis for authority and replaced these narratives with new historical claims that emphasized his Tokugawa heritage. Eschewing the overtly philosophical rhetoric preferred by Tsunayoshi and Ienobu, Yoshimune projected a pragmatic approach to governance. And in contrast to his predecessors, Yoshimune favored decentralization over direct shogunal rule.

Yet over his thirty-year rule, Yoshimune was extremely active, issuing hundreds of laws that initiated transformative economic and social changes. By so doing, Yoshimune succeeded in re-establishing stability and building a more comprehensive administrative structure. Yoshimune's laws, when described collectively, came to be known as the Kyōhō reforms. The Kyōhō reforms responded to many of the economic stresses that had plagued the samurai class over the previous fifty years, including currency debasement and inflation; the excessive cost of maintaining (and supporting) *sankin kōtai*; and the problems associated with samurai debts to merchants and, more broadly, the shift in economic power from the samurai to the urban merchant class over this period. In addition to these economic measures, Yoshimune enhanced existing judicial institutions like the *hyōjōsho*, provided more transparent judicial procedures, and increased transparency in governance more generally. As Henderson has noted, the major innovation represented by the *Kyōhō* reforms lay not in the substance of the individual laws, but in their collective promulgation as the start of a transition to a systematic judicial process.²

² Henderson (1970), 23.

There were multiple reasons why Yoshimune elected to move away from legal cosmology as an explanatory practice. The Kyōhō reforms were issued piecemeal over two decades—often in response to economic and social shocks—so, Yoshimune may have found difficulty in identifying a new constitutional law to organize all the changes or single unifying thread in these disparate works. At the same time, the increasing dissensus in political philosophy created a number of alternative voices who presented philosophical, and sometimes legal, arguments critical of Tokugawa authority. Rather than offering his own governing philosophy within his laws, Yoshimune actively suppressed both supportive and critical works that sought to define benevolent lawmaking as a virtue of the shogun. Instead, Yoshimune attempted to transition the foundation for *bakufu* authority from an authority ordained by the cosmos to one which relied on his historical claims of effective government. Through his reforms, Yoshimune made the argument that the legitimacy of the *bakufu* should be measured foremost by the ability that shogun like Ieyasu and himself had demonstrated to offer impartial justice. In short, Yoshimune sought to change the narrative for Tokugawa authority from the broader, if more subjective, claim of saving the people by protecting the *kunigara* to the narrower, but more objective, claim of offering the people fairer and more predictable administration of justice.

To demonstrate this shift, Yoshimune concluded his rule by offering his own law code. During the last decade of his rule, Yoshimune led the production of a set of legal manuals called the *Kujikata osadamegaki*. These manuals collected selected laws of the Kyōhō reforms along with a handful of proclamations of Yoshimune's predecessors, compiled these with recommendations for punishments based on past precedent, and issued them as a “private” guide to his government's judicial bureaucracy and the provinces to guide their administration of justice.

The *Kujikata osadamegaki* provided Yoshimune's symbolic recapitulation of the legal system he had fashioned.³ By creating *Kujikata osadamegaki*, Yoshimune offered to future Tokugawa administrators a system of laws that Yoshimune believed would serve as a concrete representation of Tokugawa authority. The manuals adopted a different style of lawmaking and presentation that reflected Yoshimune's desire to excise the ineffective legal cosmologies of his predecessors. Yoshimune's system of justice, as represented in *Kujikata osadamegaki*, justified itself only when absolutely necessary, and at such times more frequently by proclaiming the instrumental value of a stable, limited administration that was more responsive to the *daimyō* and the common people.

Because of the totalizing conceit of the *Kujikata osadamegaki*, and perhaps because of the cumulative social impact of the economic and social changes introduced by the Kyōhō reforms, scholars following legal historian Ishii Ryosuke identified the promulgation of the manuals as a turning-point in Tokugawa law.⁴ These scholars characterize the system of laws described in *Kujikata osadamegaki* as the “mature” Tokugawa law, a legal system that was grounded in established judicial processes, incorporated new limitations on *bakufu* bureaucratic power, and seemed, most of all, based on secular rationalism instead of cosmological speculation. Although this reading grants *Kujikata osadamegaki* just the sort of afterlife that Yoshimune most desired, *Kujikata osadamegaki* did not *reflect* a mature system of judicial administration—though

³ For a discussion of the production of law codes as a symbolic representation of authority in another context, see Hough's description of the production of early Anglo-Saxon law codes, 9-10 (“The-law codes do not represent legislation in the modern sense, but served a symbolic purpose, establishing the role of king as law-giver.”). See also Slanski, 97, describing the *Stele of Hammurabi* as “the public dimension of the Mesopotamian state's commitment to justice,” a characterization that also aptly describes *Kujikata osadamegaki*. The *Kujikata osadamegaki* is available in *Tokugawa kinrei kō Koshu* v. 1-4 (1895). There is no English translation available of Volume I, although Volume II was translated in Hall (1913), 683-804, and all translations are the author's.

⁴ See, e.g., Ishii (1980), 80; Steenstrup, 120.

Yoshimune undoubtedly improved judicial procedures. Instead, it *projected* Yoshimune's imagined model of administration, which served as the linchpin of Yoshimune's personal narrative of authority.

In spite of Yoshimune's intentions, *Kujikata osadamegaki* retains traces of the religious ideological appeals of his predecessors, often in telling places. While Yoshimune focused on the symbolic representation of his legal system *in toto* to proclaim his authority in action, the beliefs of shogun from Ieyasu onward were not entirely discarded. In part because of Yoshimune's clear desire to couch his laws within the guise of customary precedent, references to Confucian and Buddhist cosmologies remain, as does the authority of Tokugawa Ieyasu described as a *kami Tōshōgu daigongen*. These traces emerge at points of anxiety where the bounds of *bakufu* truth were at their weakest, for example the limits of jurisdiction between the shogun's government and the temples, and they also may be inferred from the choices Yoshimune made as to which laws to canonize and which punishments to promote—which inevitably reflect Yoshimune's implicit articulation of his own political values.

This chapter evaluates the *Kujikata osadamegaki*, including the judicial innovations of the Kyōhō reforms included within it, as Yoshimune's representation of the system of justice he created, and by association, of his own authority to fashion a system of just laws. *Kujikata osadamegaki* functions both as an attempt to create a canon of Tokugawa law as perfected by the Kyōhō reforms and as the summation of the system of judicial administration that Yoshimune established over the course of his rule. Taking into advisement the caution of Yoshimune's contemporary Tominaga Nakamoto that any compilation functions not merely as a recapitulation

of past teachings but also as a new representation that speaks to the present, *Kujikata osadamegaki* works foremost as a new kind of authorizing narrative within the development of Tokugawa jurisprudence.

Because *Kujikata osadamegaki* has already played an oversized role in scholars' understanding of the Tokugawa legal system owing both to its comprehensiveness and subsequent reception, there is a risk that focusing on the manuals perpetuates a misconception of the work's role in Tokugawa society.⁵ This chapter seeks to avoid the false characterization of the manuals as the apotheosis of the Tokugawa legal tradition by placing the work within its historical context as just one important representation of Tokugawa lawmaking authority and considering both the complex interaction of the compilation with the source tradition upon which it was based and the reception of the text, which arguably differed considerably from its drafters' intent.

By so doing, this chapter identifies a tension between the ways in which *Kujikata osadamegaki* represents itself as a self-authorizing exemplum of the provision of justice, while at the same time sedimenting within the structure of Yoshimune's idealized legal system certain Confucian and Buddhist cosmological assumptions initially proposed by shogun from Ieyasu to Ienobu. These remainders of legal cosmology include most visibly Hakuseki's reliance on the Confucian "five relationships" as a framework for *bakufu* rule, but also include the remnants of Ieyasu's construction of the *kunigara* and Tsunayoshi's ethos of compassion. This sedimentation appears intentional in some key areas, most notably in the expressive nature to punishment and

⁵ Henderson shows how the lessons of the *Kujikata osadamegaki* have been extended across Tokugawa law, and Edo society more generally: "In Edo, the concepts [of law] rested more on officially sponsored and societally rooted morality (perhaps "natural law") of Confucian derivation. . . . We must identify this Tokugawa position as such, to understand the *Osadamegaki*, which existed only to reinforce this 'natural' order." (1987), 503.

Yoshimune's persistent glorification of early Tokugawa justice. More frequently, however, Yoshimune's incorporation of prior laws perhaps unintentionally crystallizes the cosmological preconceptions of prior eras. By identifying the situations in which this crystallization occurs, we can see ways in which legal discourse worked differently from ordinary political discourse.

This chapter will proceed in two parts. First, this chapter will describe the changes that occurred in Tokugawa law under Yoshimune, including a short summary of Yoshimune's rule and the social and economic challenges that he addressed. In this context, this chapter will focus particularly on Yoshimune's legal interventions, the Kyōhō reforms, as a means of addressing these challenges. The Kyōhō reforms were a response in discourse with various conflicting groups of stakeholders— including Confucian and Buddhist intellectuals; the growing merchant class; urban and rural samurai; and those ordinary villagers who increasingly had begun to revolt against poor conditions. This chapter will evaluate how these often-critical voices influenced the development of these reforms and, by association, the composition of the *Kujikata osadamegaki*. This chapter then offers a close analysis of the *Kujikata osadamegaki*, both to identify the manner in which Yoshimune celebrates the innovations of his own rule and the ways in which this text internalizes the cosmologies of prior shogun. When viewed in the context of these arguments, Yoshimune's *Kujikata osadamegaki* did not mark the transition to a mature legal system, but instead served as the latest—albeit most successful—in a series of reimaginings of Tokugawa authority. Through the manuals, Yoshimune sought to imagine and by so doing create a legal system in a way that would radically change the rules by which authority represented and assessed.

Yoshimune

Tokugawa Yoshimune came to power in 1716 following the early death of the child shogun Ietsugu. Although he was a direct descendant of Ieyasu, Yoshimune was the first shogun drawn from the *gosanke*, the three collateral Tokugawa lines of succession established a century before by Ieyasu and vested with responsibility for governing important provinces. Like his second-cousin, the fifth shogun Tsunayoshi, Yoshimune was not born into, or raised with, the expectation of becoming shogun.⁶ Like Tsunayoshi, Yoshimune began his rule as an adult, with a decade of experience in the administration of the significant and strategically important Kii province (around present day Wakayama). As administrator of a large province, Yoshimune had already faced many of the economic and social pressures that had become apparent in Tsunayoshi's rule, particularly the increasing economic dislocation of the samurai *vis a vis* the urban merchants and the ever-more tenuous financial circumstances of the *bakufu* (and the country as a whole) following decades of over-consumption.⁷ As leader of an independent province, Yoshimune also shared with other regional leaders the unsettling experience of contending with Tsunayoshi and Ienobu's increasing centralization of *bakufu* power.⁸ Although Yoshimune initially put into place a number of Hakuseki's proposed reforms at the beginning of the Kyōhō reforms—most notably currency stabilization—, over time his policies drifted

⁶ As fourth son of Tokugawa Mitsusada, Yoshimune could not even have initially expected to ever govern Kii province, let alone become shogun.

⁷ As a result of decades of mismanagement, crop failures, and flooding, by the time Yoshimune came to manage Kii, the province was tens of thousands of *ryō* in debt. Cooper emphasizes that the selection of Yoshimune was neither necessary, nor even the most obvious choice of succession from a genealogical perspective. Instead, the ability to manage Kii, he argues, weighed heavily in the selection. 21-24.

⁸ This attempt at centralization is the focus of Chapter 3. The centralization proposed under Ienobu and Ietsugu has been attributed largely to the influence of Arai Hakuseki.

towards decentralization; increasing the accountability of his own administration; and granting provincial leaders more independence in the affairs of their provinces.

Despite superficial similarities in their backgrounds and the structural challenges they faced, Yoshimune and Tsunayoshi approached lawmaking very differently. Where Tsunayoshi was the scholar and philosopher, Yoshimune was relentlessly prosaic and practical. In promulgating the *Shōrui awaremi no rei*, Tsunayoshi favored doctrinally consistent solutions that, while arguably centuries ahead of their time, much of Tokugawa society perceived as impractical and punitive. The difficulty of enforcing Tsunayoshi's laws engendered, and perhaps reinforced, this perception, particularly as his government enforced these laws unpredictably. Over the course of a nearly thirty-year rule, Yoshimune introduced a series of practical measures designed to reduce the pressures on Tokugawa society and put in place the foundations of a bureaucratic and legal structure that would largely remain in place through the remainder of Tokugawa rule.

Yoshimune sought to create a system that promised the consistent application of justice. The difference between Yoshimune and Tsunayoshi's lawmaking is also evident within the style of the proclamations they introduced; Yoshimune eschewed Tsunayoshi's reliance on hortatory statements and the issuance of laws as a didactic exercise. Yoshimune's lawmaking sought to excise references to rhetorical concepts like *jin* or *aware* to a greater extent than previously in Tokugawa history.

Yoshimune's rule was among the longest of the Tokugawa shogun and provides a challenge to summarize briefly.⁹ From a lawmaking perspective, Yoshimune's rule separates into three

⁹ The period of the Kyōhō reforms has been studied in detail from various perspectives. For those seeking closer analysis of the period, Tsuji Tatsuya's *Kyōhō kaikaku no kenkyū* (1963) provides the classic summation of the

periods that correspond to problems that Yoshimune sought to overcome. During the first period, lasting from his appointment through a period of crisis caused by the steep drop in the price of rice (about 1729), Yoshimune attempted to resolve problems that he inherited. In the second period, which started with the 1729 price shocks and continued through to the end of the Kyōhō period in 1736, Yoshimune responded to the crises his first reforms arguably caused. These included one of the largest humanitarian crises of the Tokugawa period, the Kyōhō famine of 1733. During this period, Yoshimune had to pivot, making necessary changes to the laws that he had previously enacted to restore stability. Once Yoshimune restored order following the end of the famine, he turned to the matter of state-building and burnishing his legacy.

Economic and Social Pressures and the first Kyōhō reforms

Notwithstanding Arai Hakuseki's efforts to end currency debasement, reduce corruption, and rationalize the legal process, when Yoshimune came to power there was still much work to be done. Hakuseki's recoinage with higher silver content, which designed to bring down inflation, had just begun to come into effect, and Yoshimune let this policy continue with the short term result of achieving the desired reduction of prices.¹⁰ This price reduction remained important because the samurai class was increasingly indebted to merchants. The share of rice yields that these samurai received as a stipend from the government had for decades grown less quickly

period, Ōishi Shinzaburō (1968) addresses the economic history of the period in detail, and Ōishi Manabu (2003) provides a detailed analysis of the social changes that propelled Yoshimune's reforms. For English language summations of the period, see also Chang (2003) and Cooper (2011).

¹⁰ Unfortunately, recoinage also resulted in price drops for the price of rice, which then actually exacerbated the strain on samurai. See Yamamura (1971), 387-389.

than their expenses, and many samurai increasingly financed their lifestyle with loans from merchants rather than reducing their expenses.

Samurai outside the direct authority of the *bakufu* felt many of the same pressures, particularly since they remained compelled by the system of *sankin kōtai* to maintain a residence and make the expensive trip to Edo each year. Increasing calls from samurai intellectuals to lessen the burden on samurai increased pressure on the central government during the early years of the Kyōhō period.¹¹ Because of these recommendations, Yoshimune urged samurai to reduce their voluntary expenses by releasing another set of sumptuary regulations as among the first of his Kyōhō reforms.

The primary goal of Yoshimune's early Kyōhō reforms was to reduce the financial difficulties faced by ordinary samurai while emphasizing shared sacrifice among non-samurai— particularly the merchant class. While Yoshimune promulgated sumptuary rules demanding frugality of the samurai and worked to control his government's spending by reducing the number of samurai dependents to the shogun,¹² his most notable legal reform of this period was to make it harder for merchants to file suits to collect debts from samurai.¹³ Yoshimune worked to reduce the administrative burden on the *daimyō* by reducing the risk of land confiscation; attempting to reduce the status competition among *daimyō* occurring during their annual *sankin kōtai*

¹¹ Ogyū Sorai, for example, suggested the relaxation or elimination of *sankin kōtai*, see *Seidan*, 1:10, 125.

¹² Bolitho (1974), 189, notes that Yoshimune reduced the number of retainers over the course of his term. See also Tsuji (1963), 100. Of course, the reduction in the number of dependents left these samurai out of work.

¹³ See *infra*, 303-304.

processions; reducing the number of public works projects the *bakufu* demanded of the provinces; and from 1721 to 1729, reducing the *daimyō*'s *sankin kōtai* duties by half.¹⁴

Although economic conditions had become painful for many samurai, the samurai did not hold a monopoly on suffering. To ease samurai pressure, both the central government and provincial *daimyō* increased samurai rice stipends, but the demand for more rice necessarily placed additional pressure on the villages responsible for payment of rice taxes. Because the government had little direct control over rice production, demands for an increase in yields meant increasing the tax imposed on villages, either directly through increasing the tax rate or indirectly through more closely assessing and taxing arable land.¹⁵ Given the lack of additional land available, increasing taxation on villages tightened economic conditions in the villages. These conditions were exacerbated by additional limitations on the ability to transfer property.¹⁶ At the same time, Yoshimune reduced villagers' recourse to petition the *bakufu* over mistreatment by their governing *daimyō*.¹⁷ These legal changes led to a significant increase in the number of village protests against the government that would continue to over the remainder of the Tokugawa period.¹⁸

¹⁴ Bolitho (1974), 188, provides the example of Oi river reconstruction as one example of Yoshimune's efforts to reduce the burden on the *daimyō* outside of his control. Bolitho characterized these activities as part of Yoshimune's efforts to decentralize the authority of the *bakufu* following the policies of Tsunayoshi and Ienobu. Whether Yoshimune sought to decentralize because of these economic conditions or out of a policy of broader deference to the *daimyō* seems less certain.

¹⁵ This increase in tax yield could either come from taxing crops that had previously been tax-free (non-rice yields), or by forcing land devoted to cash crops into productive use for taxable rice. See White (1988), 17-18. Vlastos, 49, also provides the example in Minamiyama of increases of 22% from traditional lands and 33% from newly reclaimed lands over the period 1713-1718, the earliest years of Yoshimune's rule.

¹⁶ The ability to transfer lands was one that Yoshimune changed directions on frequently over the course of his rule. Pledge forfeitures (a conceit to allow land transfers) were prohibited in 1721, then permitted again in 1723, then finally regulated with limitations in 1744, See Henderson (1987), 533.

¹⁷ See Bolitho (1974), 189.

¹⁸ For evidence of the increasing growth in village revolts starting in and around the Kyōhō, see Steele et al., 356-357. For a general description of village uprisings across the Tokugawa period, see Vlastos (1986), Walthall (1991). The pattern of collective revolt that Vlastos artfully describes was in large part caused by the legal structure chosen

Yoshimune's first economic reforms gradually improved the financial condition of the Tokugawa government and the samurai class until 1729, when agricultural conditions created shockwaves through the national economy. In 1729, a strong harvest led to price deflation, which caused a panic among urban samurai who could no longer meet expenses from their now-effectively-lower salaries. Then in 1732, as the first crisis reaching a resolution, there was a particularly weak harvest, which led to a famine felt across the country and particularly in cities. By the winter of 1732, there were rice shortages in Edo and riots in other urban areas.¹⁹ When yields returned and the famine subsided, rice prices dropped significantly again, creating another reverberation through the urban economy. During this period of crisis, Yoshimune remained busy, introducing various regulations to reassert control and stability in an increasingly chaotic environment. However, these reforms were largely reactive to conditions and were often rescinded or changed due to quickly changing conditions.

This period of crisis management persisted until 1736, when Yoshimune provided an economic stimulus by rescinding Hakuseki's policy of strong currency controls. This decision inflated the monetary supply by introducing as many as six billion copper coins into circulation.²⁰ By returning to currency debasement, government revenues increased, the urban economy temporarily stabilized, and over the final decade of his rule, Yoshimune presided over a period of relative stability.

by the Tokugawa to govern the villages. By giving them collective responsibility for tax yields and a high degree of self-government, the Tokugawa encouraged a collective response.

¹⁹ These famines were reduced by Yoshimune's efforts to place rice in storage following the gluts of the previous years. For a more comprehensive discussion of the Kyōhō famine, see generally Kikuchi (1997).

²⁰ Tsuji (2006), 453.

In 1737, following two decades of reform and in anticipation of the conclusion of his rule, Yoshimune began the process of collecting the materials that constituted *bakufu* law during the Kyōhō era, and would subsequently provide precedents for the bureaucracy his government had established. Already, the various government departments (*bugyō*) had begun to compile their records of their own precedents, and the government began to collect the proclamations of all Tokugawa shogun, which when complete would result in a compilation of 3,500 proclamations, into a reference work called the *Ofuregaki kampō shusei*. From these proclamations, Yoshimune sought to produce a set of manuals that would assist his bureaucrats resolving suits. This work, the *Kujikata osadamegaki*, was composed in two volumes, described in detail below. Where the *Ofuregaki kampō shusei* was a comprehensive reference work that de-emphasized the symbolic elements of law, the *Kujikata osadamegaki* was a working manual for practitioners that reflected what Yoshimune thought were the key elements of the system he had fashioned.

Jinsei and the intellectual climate of the Kyōhō reforms

Yoshimune largely kept his own counsel in matters of governance, but his lawmaking responded to increasing public scrutiny of Tokugawa rule. By the Kyōhō period, the burgeoning intellectual culture produced a growing diversity of political ideas; a dramatic growth in legal scholarship, in large part fueled by Yoshimune himself; and an increasingly well-informed popular culture. During this period, legal and political thinking focused particularly on the duties of the ruler and the people to one another. In this context, the concept of benevolent government (*jinsei*- 仁政) continued to play an important role in establishing the legitimacy of

laws. *Jin*, the Confucian value associated with benevolence, was commonly used in Confucian theory across the seventeenth century as a blanket term to describe the qualities of good governance and played a critical role in the thought of Tsunayoshi, among others.²¹ During the rule of Yoshimune, scholars, regional leaders, and the common people all contested the meaning of the term *jin* in different ways—and these varying definitions of *jin* often served to criticize Tokugawa law and Yoshimune’s policies. Perhaps for this reason, Yoshimune’s own proclamations rarely rely on the term benevolence. The malleability of *jin* drew *bakufu* censorship in at least one instance, and arguably served as a primary reason that Yoshimune avoided express reliance on cosmological or anthropological speculation in *Kujikata osadamegaki*. Because of the importance of the term to political and legal discourse of the period, and as a result on the production and reception of Yoshimune’s laws,²² this section provides a short summary of the more significant ways the term *jin* was used or defined during the rule of Yoshimune, with a particular focus on the critics of Yoshimune’s lawmaking program.

The Hayashi. The Hayashi school, the hereditary lineage established originally by Hayashi Razan at the beginning of the Tokugawa period and sustained with *bakufu* support, focused its work on *shushigaku*, the study of the works of Song Confucian scholar Zhu Xi. The Hayashi represented themselves as the voice of the Confucian mainstream, largely because their philosophy supported government policy on most matters. For the Hayashi, *jin* described benevolent rule, but this benevolence was imagined as “great benevolence”, where the state

²¹ This is discussed in detail *supra*, 177-179.

²² In particular, this work lacks the scope to address the burgeoning intellectual culture of the merchant classes during this period, in large part because Yoshimune does not appear to have addressed the concerns raised by these scholars and schools directly. For more detail on these works, please see Najita (1987), 70-86.

could impose punishments or privations on individuals, as long as it was for the greater good of society.²³ This malleable explanation validated almost all Tokugawa conduct and was already criticized by Yoshimune's rule. Arai Hakuseki sought to differentiate himself from the Hayashi by prioritizing and emphasizing the importance of different Chinese principles like adherence to the five relations for purposes of governance, minimizing the reliance on *jin* in favor of more objective standards.²⁴

Ogyū Sorai. Among the many scholars active during this period, Ogyū Sorai remains the most well-known and influential.²⁵ Unlike Arai Hakuseki or the Hayashi, Sorai never served Yoshimune directly,²⁶ and his opinions were often critical of government policies. Instead of working directly with the government, Sorai offered his opinions at his own school of ancient studies (*kōgaku*) and through written works that were influential on later generations.²⁷ Sorai revisited and adapted many conceptual categories—including *jin*—that other shogun used to authorize their lawmaking activities. In this context, Sorai abandoned the cosmological

²³ See *supra*, 178. Of course, for the Hayashi, the *bakufu* would remain the ultimate arbiter of what constituted the greater good of society.

²⁴ See *supra*, 214-215. See also Nakai, 37-38, for a more detailed description of Hakuseki's reliance on the authority.

²⁵ Maruyama Masao perhaps played an outsized role in the enthronement of Sorai as the leading thinker who drove the modernization of Japanese thought (and served as a basis for Meiji democratic movements). See, e.g. Maruyama, 208 (arguing that Sorai's mission was to "rescue feudal society from the critical situation confronting it and rebuild it on a firm foundation").

²⁶ Sorai was hardly an outsider, however. His father served as Tsunayoshi's personal physician for a period until he fell out of favor; Sorai was an advisor to Tsunayoshi's chief advisor Yanagisawa Yoshiyasu; and Sorai was called upon, from time to time, to offer advice— including on the Akō incident. Sorai and his brother Kan were also enlisted by Yoshimune into the translation effort of the Ming legal codes, and Sorai's translation of the Ming legal codes from Mandarin into *kanbun kundoku*, found in his *Ritsurei taishō teibon Minritsu kokujikai* (1723), certainly had an influence on eighteenth century jurisprudence, and more particularly on the project of formulating the *Kujikata osadamegaki*. See Henderson (1970b) 37-38. Similarly, Sorai's *Seidan* was crafted in response to questions supposedly posed by Yoshimune.

²⁷ As Najita has noted, there is insufficient evidence to suggest that Sorai had a direct advisory role to Yoshimune, see Najita (1998a). While a detailed exposition of Sorai's work is beyond the scope of this chapter, Valuable studies of Sorai's works and influence include the aforementioned Maruyama, especially 206ff, and Najita (1998b), at *xivff*. In addition, Sorai's *Seidan* (Treatise on Government), which was nominally written for Yoshimune, provides an excellent overview of his political thought.

speculations of Zhu Xi Confucianism and argued that the wisdom of the sages was exclusively human. Sorai's recommendations on government also differ from Hakuseki, the Hayashi, and other Chinese-oriented scholars of the period. The differences between Sorai's political opinions and those of his contemporaries provide a reminder of the diversity of thought found within the broader category of "Confucianism" during Yoshimune's rule.

Sorai's political philosophy relied on Chinese sources but shared more similarity to Itō Jinsai than to Hakuseki or the Hayashi. As self-described scholar of ancient studies (*kōgaku*), Sorai argued that the model set by the ancient kings of the Confucian classics was the ideal model for governance that should inspire contemporary leaders.²⁸ According to Sorai, the ancient kings merited emulation because they alone possessed a "great virtue" (*daitoku*- 大徳) inaccessible to contemporary people. Great virtue was expressed particularly in matters of governance through the quality of benevolence (*jin*-仁).²⁹ For Sorai, *jin* represents the fundamental principle for proper government: "Benevolence (*jin*) refers to the virtue (*toku*) of the head chief who brings peace to the people."³⁰

Sorai's reliance on *jin* as a governing principle may have seemed on its face to suggest a return to the syncretic Buddhist-Confucian values promoted by Tsunayoshi, who also based his rule on principles of *jin*.³¹ However, Sorai made clear that he understood the meaning of benevolence in

²⁸ See, e.g., *Bendō*, I-5.

²⁹ In *Bendō* (Study of the Way), Sorai's work that restated his understanding of key Confucian terms, he explains the importance of *jin* as follows: "For Confucius, Benevolence [*jin*] was the most important idea, because Benevolence embodied the essence of the entire Way [*dō*] of the Ancient Kings." *Bendō* I-7, 16-17 (Najita trans.).

³⁰ *Benmei* I, at 48.

³¹ See *supra*, 183-186.

terms very different from Tsunayoshi. Sorai expressly rejected the Buddhist association between *jin* and *jihi* (compassion) that Tsunayoshi had argued for in the *Awaremi shōrui no rei* by claiming that Tsunayoshi misunderstood of the principles of correct governance, contending that the Buddhist definition of *jin* wrongly internalized the concept. As he explains: “the virtue of the inner spirit... are rooted in the ideas of Buddhism and Taoism. They, moreover, misread the *Mean* and *Mencius* and rendered benevolence as being part of the inner nature of humans.”³² Rather than associate *jin* with interiority, in matters of governance Sorai emphasizes the importance of the duty of loyalty over Hakuseki’s favored filiality (*ko*): “to put loyalty (*chū*) and trust (*shin*) aside and advocate filiality (*ko*) and brotherly affection (*tei*) alone means that a person has failed to study adequately and locates filiality and brotherly affection in the inner human spirit. Such a person who favors the interior and slights the external should not be allowed to minister to others.”³³ As *Kujikata osadamegaki* will show, the importance of loyalty represents one of many affinities between Sorai’s work and Yoshimune’s laws.

As Sorai’s *Benmei* suggests, Sorai believed that governance succeeded by controlling external conduct, not by inculcating virtues found only in introspection.³⁴ Sorai emphasizes that governing with *jin* means taking actions in a manner that brings peace and prosperity to the people, and these principles of benevolent government should be cultivated not primarily by cultivating personal virtues.³⁵ At the same time, Sorai was not a legalist. He favored promoting virtuous conduct set forth in the teachings of the Ancient Kings, particularly the *Rites* and the

³² *Benmei* I, 50.

³³ *Benmei*, II, at 86.

³⁴ “Benevolence is a virtue, and not the inner spirit of human beings. Nor is it a principle.” *Benmei*, I, at 53.

³⁵ Sorai does not disparage cultivation of virtue more generally but suggests that such activity does not bear a direct relationship to matters of governance.

Music, over demanding strict adherence to the law.³⁶ For Sorai, rites (*rei*) play a particularly important role in government and the legal process. *Rei* were created because law and punishment alone would not generate appropriate conduct among the masses.³⁷ Instead, living according to the rites causes both the ruler and the governed—without internal contemplation or even internal recognition—to bend their conduct to the norms of society: “When one relies on rites one undergoes change. In changing, it is without realizing or knowing it that one comes to rely on the emperor’s rules. . . . Most assuredly, the same cannot be realized through legal punishments.”³⁸

An institutional “safety valve”. While *jin* was commonly-used among Confucian political thinkers of the period, the use of the term was not restricted to scholars. By the beginning of Yoshimune’s rule, the term *jinsei* had already come into common usage to describe a certain political dynamic between *daimyō* and villages, in which villagers facing ruin pleaded for “benevolence” from their *daimyō*, generally in the form of reduced tax levies that would allow them some economic breathing room. Stephen Vlastos, who studied the social process of *jinsei*, described it as: “seigneurial exploitation [that] contained specific contradictions with respect to small cultivators which in the short run could only be resolved by regular administrative procedures to provide emergency aid and moderate tax extraction.”³⁹ In the event that the samurai failed to offer benevolence as a “regular administrative procedure”—concretely,

³⁶ See e.g. *Benmei*, I, at 66: “Above all, rites and music are the greatest of the arts and it is these to which rulers devote themselves.”

³⁷ *Ibid.*

³⁸ *Ibid.* Or, as described in *Bendō*: “In the Way of the Ancient Kings, therefore, rites are relied on to regulate the human spirit.” *Bendō*, I-18, 28.

³⁹ Vlastos, 16.

emergency aid and reduced taxes—villagers felt empowered to mobilize by rioting or fleeing.⁴⁰

Jinsei was an emic term; villagers used the term *jin* in formal pleas for merciful rule to their provincial leaders. While this practice was already stylized by this point, the use of the term also implicitly criticized the Tokugawa laws. For, if the underlying tax structure demanded by the Tokugawa were not onerous (lacking in *jin*), then the *daimyō* exercise of benevolence would be unnecessary.

This systematized *jinsei* ritual of exchange came under increasing strain as a result of Yoshimune's policies. Particularly leading up to the Kyōhō famine, Yoshimune progressively increased tax levies in a way that placed greater strain on villagers. At the same time, Yoshimune made it harder for *daimyō* to grant the tax relief ("benevolence") demanded by villagers. As a result, *Kujikata osadamegaki* expressly prohibited peasant riots and promised execution to the leaders of peasant riots and the headmen of villages where riots occurred. By so doing, Yoshimune took action to replace the customary system of *jinsei* with a system of rule under *bakufu* law.

Tokugawa Muneharu. Villagers were not the only group dissatisfied with Yoshimune's laws; provincial leaders disagreed economically and socially with Yoshimune's austerity measures. Perhaps the most vocal critic of Yoshimune was the leader of the Owari Tokugawa, Yohimune's cousin Tokugawa Muneharu.⁴¹ Following his ascension to serve as Owari's *daimyō* in 1730,

⁴⁰ Vlastos, 55ff. provides examples from 1712 in Aizu in which peasants in distress made petitions asking for benevolence, and subsequently rioted until "benevolence" was granted.

⁴¹ Cooper has provided an extensive study of Muneharu and his complaints against Yoshimune and the *bakufu*. 33ff. This work is indebted to Cooper's consideration of Muneharu's disputes with Yoshimune, although this work does not address Cooper's primary thesis, which is that Muneharu's ultimate grudge against Yoshimune lay in a dispute over the chain of succession by which Yoshimune was chosen over the Owari lineage. See Cooper, 119-121.

Muneharu aggressively questioned Yoshimune's reforms and introduced policies in his province that expressly flouted Yoshimune's sumptuary laws, including offering public subsidies for *nō* performance, sumo matches, and other events. Under Tokugawa law, Muneharu had the authority to promulgate laws in his province, but he owed a customary duty to conform his laws to the shogun's.⁴² Thus, despite the deference that Yoshimune generally granted to provincial leaders, by 1739 Yoshimune relieved Muneharu of the government of his domain.⁴³

When he rose to power in Owari, Muneharu distributed a set of laws entitled *Onchi seiyō* (Wisdom for the Essence of Government) to his retainers. *Onchi seiyō*, was formally styled as a constitutional house code (*kakun*) but also served as a broadside against Yoshimune's laws.⁴⁴ *Onchi seiyō* criticized Yoshimune's laws indirectly: "With the myriad laws and edicts increasing annually, the number of violators has naturally increased and enforcement of the laws has now become cumbersome."⁴⁵ Similarly, Muneharu criticized Yoshimune's sumptuary regulations and economic policies by criticizing Yoshimune's lack of *jin*: "If you act thoughtlessly against good reason and consistently focus on austerity, your compassionate heart (*jihi no kokoro*) will become strained. Before you know it, you will unwittingly begin to govern cruelly and without benevolence (*fujin*), bring great pain on the people, and your austerity will instead generate useless expenses."⁴⁶

⁴² The requirement was found in *Buke shohatto* but was not closely enforced.

⁴³ *Ibid.*, 33-34.

⁴⁴ *Onchi seiyō* was atypical in style from other *kakun*. However, like *Bateren tsuihō no fumi*, the formal structure of the law belies the legal significance of various pronouncements found therein. Because these were intended to be enforced, this work treats *Onchi seiyō* as law, not rhetoric.

⁴⁵ *Onchi seiyō*, 1 (Cooper trans.).

⁴⁶ *Ibid.*, para. 9 (Author trans.).

In contrast, Muneharu literally drapes his government in the cloak of *jin*, with additional nods given to the importance of affection (*ji*) and mercy (*nin*): “I have instructed that the clothes of palanquin-bearers be stamped with the character *jin*. Seeing the characters *ji nin* inside my residence and the character *jin* outside, I will not forget them day or night and practice them without fail.”⁴⁷ Following Tsunayoshi’s example, Muneharu associated virtuous government with *jin* and identified *jin* with Buddhist compassion (*jihi*). In direct contrast to Yoshimune, Sorai, and the Hayashi, Muneharu argued that the essence of virtuous government lay in promoting character. Perhaps unsurprisingly, Muneharu attributed the same interior qualities that allowed his own exemplary governance to Tokugawa Ieyasu: “The Shining Avatar of the East (*Tōshōgu*) possessed the virtue of tolerance in his heart. His profound compassion (*jihi*) reached to his roots, and he even forgave his enemies for their crimes when they mended their hearts and submitted to his rule.”⁴⁸ It is noteworthy in this context that Muneharu contrasts himself with Yoshimune by expressly emphasizing the divine nature of their shared ancestor, the *Tōshōgu Daigongen*.

As his description of Ieyasu shows, Muneharu shared Tsunayoshi’s faith in interiority as the critical to governance. However Muneharu, espoused the even more radical position that allowing people to live without laws would allow their inner virtues to more perfectly order society: “If those who now govern suddenly create rules (*rei*), even though they profit the people or the *han*, they will upset the masses, who will reject them and they will not go as planned. Gradually, over the course of many years, when [conditions] become ripe, customs will

⁴⁷ Ibid., para. 1 (Author trans.).

⁴⁸ Ibid., para. 2 (Cooper trans.). It goes without saying that Muneharu’s depiction of Ieyasu’s compassion does not accord with the historical record, particularly *vis a vis* the Toyotomi. See *supra*, 84-85.

naturally improve in every corner [of the realm] with ease once and for all, and there will no longer be any need to rely on laws.”⁴⁹ In lieu of rule of law, the essence of harmony for rulers and subjects alike lay in everyone pursuing selfless conduct: “For both the nobles and the common people, all must cast away the self and, to fulfill the laws of heaven (*tenri*), work ceaselessly day and night without fail.”⁵⁰

Muneharu’s *Onchi seiyō* represented a radical criticism of Yoshimune’s Kyōhō reforms. From practical disagreements over economic policy and the benefits of austerity to more profound disagreements whether law functioned better as a tool to guarantee proper conduct or inculcate virtue, Muneharu defied Yoshimune. Muneharu’s characterization of *jin* was central to this defiance. Muneharu identified mercy and compassion as the metrics to which Yoshimune fell short as a ruler. Given the nature of this attack, it is unsurprising that in 1731, immediately before its broad publication, Yoshimune officially suppressed the work and interrogated its publisher.⁵¹

Buddhism. While the study of eighteenth century Japanese political philosophy overwhelmingly focuses on debates among different schools of Confucian scholars, these scholars were not the only sources of moral guidance during the period. During the rule of Yoshimune, there were signs of intellectual life among emergent scholars of Western learning; from within the Buddhist

⁴⁹ Ibid., para. 18 (Cooper trans.).

⁵⁰ Ibid., para. 19 (Author trans.). This final notion has affinities to Sorai’s dependence on adherence to the *rei*, although Sorai’s understanding of *rei* was inherently performative, while Muneharu’s understanding of following the *tenri* relied on the realization of internal virtue and the Buddhist abnegation of the self.

⁵¹ Cooper, 81ff. Cooper argues that the censorship of *Onchi seiyō* was part of a broader trend towards censoring works critical of the *bakufu* initiated by Yoshimune. While it is beyond the scope of this work to test that question, I note *infra* the censorship of Buddhist works that share similar themes (even when overtly positive towards the *bakufu*).

intellectual establishment; and in the Shinto community in ways that would come to form the nascent field of *kokugaku* (national studies).

But in contrast with the debates among Confucian scholars during Yoshimune's rule, the absence of an equally engaged debate among Buddhist monks seems surprising. Both Edo and Meiji-period opponents characterized Tokugawa Buddhist monks as either degenerate or socially disengaged. While taking these characterizations seriously underestimates the social engagement of Buddhists,⁵² there is some accuracy in the statement that many Buddhist scholars during the early eighteenth century focused their energies on questions unrelated to virtuous government. This lack of engagement contrasts with the active political engagement displayed by Buddhist monks of the seventeenth century, whether within the *bakufu* like Sūden or Tenkai, or as outside supporters or critics, like Takuan or Suzuki Shōsan.⁵³

By the beginning of the eighteenth century, many temples and shrines had become effective instrumentalities of the state, focused on the administrative demands of the *terauke* system, which required each family to register with their local Buddhist temple ostensibly to prove that they were not Christian.⁵⁴ The administrative demands of the *terauke* system fell primarily on

⁵² For a discussion of eighteenth-century anti-Buddhist polemics conducted primarily by Confucian scholars, see Hur (2007), 267-270. Of note, Ogyū Sorai opposed Buddhism as a governing philosophy: "proponents of this view have said that 'there is benevolence (*jin*) in Buddhism too, although not righteousness.' How can this be so when there is no principle in Buddhism that concerns itself with establishing an ordered state." *Bendō*, 11. In the early Meiji period, Tokugawa Buddhist institutions suffered persecution by the state, described in detail in Ketelaar, 43-83, and later a more progressive and politically engaged Buddhist modernism largely disavowed the Buddhism of the Tokugawa era, see for example Davis (1989), 314-315.

⁵³ As the case of Takuan suggests (described in Chapter 2), the Buddhist establishment was not always completely aligned with the *bakufu*. However, seventeenth century Confucian scholars like Yamaga Sōko were equally critical of the regime.

⁵⁴ The *terauke* system required that each family affiliate with a temple. The registrant family must confirm each year that there were no Christians among them. See generally Okuwa, 97-127. This system provided temples with a guaranteed source of income in the form of *dana* contributions but left the temples as Tamamuro Fumio would describe as effective instruments of the state. See Tamamuro (2009), 25. Please note, however, that recent scholars

monks responsible for family temples, not the scholar monks at larger temple complexes with the resources to conduct in political disputes. Nonetheless, the Buddhist establishment turned inwards; the Sōtō Zen school, for example, focused on the reforms to its lineage transmission undertaken by Manzan Dōhaku.⁵⁵ Similarly, in this period we find the rapid growth of Buddhist scholasticism exemplified by the Sanskrit study of Jiun Songa,⁵⁶ and in a more critical vein, the need to respond to the historical challenges to received doctrine posed by the renegade intellectual Tominaga Nakamoto.⁵⁷

Buddhist monks of this period did not entirely eschew politics. Rinzaï Zen reformer Hakuin Ekaku produced letters and sermons that addressed questions of virtuous governance, most notably the “Letter to the Governor of Settsu.”⁵⁸ Another of Hakuin’s works, *Hebiichigo*, shows the challenges Buddhists faced when wading into political philosophy. *Hebiichigo* was a letter originally drafted in 1754 that addressed statecraft and presented Tokugawa Ieyasu as the model of an ideal leader, in the same vein as described in *Tokugawa Goikun*.⁵⁹ Hakuin praised Ieyasu particularly for his personal ascetism, which Hakuin claimed produced in the shogun the interior virtues that resulted in his virtuous rule. Despite the essay’s favorable content, *Hebiichigo* was suppressed until 1862. This censorship, which was not yet common during the period,⁶⁰

have suggested that development of the *danka seido* also reinforced growing trends in popular religiosity, see Sonehara (2010), 97-100.

⁵⁵ See Bodiford, 437-438. Bodiford attributes Menzan’s reform efforts, which began at about the beginning of the Eighteenth century, in significant part on the administrative results of the *jiin hatto* issued by Ieyasu a century before.

⁵⁶ See Watt, 198.

⁵⁷ Tominaga’s *Shutsujō kogo* (1745) provides a contemporary example of Buddhist critical scholarship. Tominaga spent a decade at Manpukuji assisting in the production of the Tripitaka. See Najita (1987), 102-103.

⁵⁸ Available in Yampolsky, 52-53. Please note however, that even Hakuin’s political discourse adopted Confucian parallels to discuss statecraft, quoting from the *Analects*, for example, while making Confucian terminology ultimately subservient to Zen practice. Ibid.

⁵⁹ The *Tokugawa Goikun* was published during the rule of Iemitsu and attributed to Ieyasu. The “testament” presents a series of exhortations on statecraft. For a discussion, see Ooms (1985), 78-80.

⁶⁰ Kornicki, 154.

provided another reminder that the risk of censorship accompanied the production of all works addressing governance during this period, even if these works were favorable towards the Tokugawa and even if they were not directed at the *bakufu*.⁶¹ While Yampolsky has suggested that the suppression of this letter occurred as a result of an overuse of the Tokugawa name (technically a violation of a 1723 Yoshimune proclamation), another reason the language of Buddhism may have been suppressed in the political discourse of this period lay in Hakuin's belief, like Muneharu, that the locus of benevolent rule rested in the interior virtues of the ruler, rather than in the objective results of his government.

Given this context, the overall decline in reliance on Buddhist ideas in Yoshimune's lawmaking should not be surprising. And while the change in orientation in Buddhist thought towards sectarian preoccupations certainly played a role, *bakufu* laws and policies like the *honmatsu* and *terauke* systems and the suppression of Buddhist political ideas reinforced this shift. *Kujikata osadamegaki* reinforces sectarianism by the continued prohibition of innovative doctrines or rituals (*shinki* and *shinrei*) enforced by the sectarian establishment that gave sect leadership the ability to control new teachings.

This work will not attempt to address the complicated question of the relative influence on Yoshimune of Buddhist conceptions of virtue, Sorai's *daitoku*, Muneharu's criticisms, or even the pleas of the common people. There is little evidence of direct engagement between Yoshimune and Sorai after Yoshimune became shogun and even less of influence from the

⁶¹ See Yampolsky, 204-205. The *Shuppan rei* law passed in 1723 prohibited printing "matters related to" Ieyasu or the Tokugawa house, *Ofuregaki kampō shusei*, 994. Notably the same law also prohibited any printing that would "change the teachings of Buddhism or Confucianism". See also Cooper, 83-84 (suggesting that a fear of genealogical speculation led to the ban).

Buddhist establishment or local village pleas.⁶² It is undeniable, however, that these voices collectively raised questions and provided arguments posed in terms of *jin* that Yoshimune was obliged to resolve in his legal proclamations. Village revolts and unrest resulting from many of the reforms led to changes within the system, as shown by Yoshimune's fairly rapid reversal on the matter of pledge forfeitures. And perhaps most critically, the censorship of Hakuin and Muneharu suggests that the use of *jin* as a representation of interiority caused considerable anxiety within the government. The analysis of the *Kujikata osadamegaki* that follows considers the ways that Yoshimune wrestled with how best to rely on Confucian principles like the five relationships to represent the active form of governance that Sorai referred to as *jin*.

The Kujikata Osadamegaki

The balance of this chapter offers a detailed evaluation of the *Kujikata osadamegaki*, the set of manuals that Yoshimune's government produced at the conclusion of his rule. Yoshimune produced these manuals with to provide legal decision-makers with a handy collection of those proclamations that Yoshimune felt represented the key elements of Tokugawa law. By so doing, these manuals concurrently served an expressive function, constituting an imagined "system" of laws both directly for his own administrators and indirectly, through their application, to the people. Yoshimune likely understood that the laws the administrators enforced, and the degree of punishments that they applied, would come to express to the people his vision of Tokugawa law. The primary focus here will be on the expressive purpose of these laws, and as a result, this chapter will not devote extensive space to analyzing the substance of the laws themselves, except

⁶² Both Ogyū brothers, as Chinese legal scholars, were influential at a minimum in providing source materials to Yoshimune's legal project, though much of this work was commissioned before Yoshimune became shogun.

where the substance of these laws—particularly the nature of the penalties associated with non-compliance—helps to explicate meanings that Yoshimune sought to convey.

Instead of simply reciting what the laws were, I focus first on the act of compilation—the selection of proclamations to include in the manuals themselves. The act of compilation was intentional; in contrast with the simultaneously produced *Ofuregaki kampō shusei*, *Kujikata osadamegaki* did not attempt to be comprehensive. *Kujikata osadamegaki* selectively presented laws that explained the core elements of Tokugawa justice for the benefit of its administrators, and through the penalties applied in Volume II, showed how such a system of justice could use the systematic application of graduated punishments to express the values of the Tokugawa government.

This analysis will proceed in two parts. First, I will identify the sources from which the manuals drew. Yoshimune's choices of source material offers supplemental meaning that Yoshimune seeks to express through the inclusion (or sometimes exclusion) of these sources. This chapter then considers the structure of the manuals themselves to identify key themes within the texts and their relationship to one another and, by so doing, gain a better understanding of the messages Yoshimune sought to send through the production of these manuals in their final form and the system of laws Yoshimune anticipated they would constitute.

The primary message that Yoshimune conveyed with the production of *Kujikata osadamegaki* is that his system of laws offered broader access to justice, thus providing extrinsic evidence of Yoshimune's benevolent government and the legitimacy of Tokugawa rule. Offered without

significant reliance on justifying cosmologies, Yoshimune believes that this presentation of the manuals creates a self-justifying framework that replaces the increasingly contested discourse on legal cosmology. Yet, a code as broad as *Kujikata osadamegaki* also contains a number of secondary, implicit messages as well. Many of the laws, and particularly the gradation of recommended punishments, suggests that Yoshimune believed a set of extrinsic Confucian values to be constitutive of good government. Adding further complexity, remainders of Confucian, and some Buddhist, values also appear trapped within Yoshimune's code in ways that Yoshimune may have struggled to excise.

History

Yoshimune displayed an interest in standardizing Tokugawa dispute resolution from the beginning of his rule. He introduced many of his most important innovations to judicial reforms during his first years of government—1716-1721. From Ieyasu onwards, the Tokugawa government distributed the responsibility for resolving disputes broadly and unevenly. While the shogunate was responsible for disputes that occurred in their territory or across multiple provinces, village leaders addressed disputes within villages; in cities, neighborhood leaders or leaders of a trade or business association held the same duties.⁶³ Even within the Tokugawa government, the various *bugyō* each had their own responsibilities,⁶⁴ and their clerks and the inspectors subordinate to them ultimately often rendered day-to-day decisions. The *bugyō* made

⁶³ See Henderson (1970) for a description of this process generally.

⁶⁴ For example, the *machi bugyo* was responsible for Edo, the *jisha bugyō* for temples, shrines, and the periphery, and

decisions on a case-by-case basis using their own judgment,⁶⁵ and even where a *bugyō* developed customary norms, these were often unwritten and varied among the different *bugyō*. While precedent held some implicit weight, prior judgments had no formal precedential effect, and each decision maker was expected to make decisions based on the particular facts and circumstances of the matter before him.⁶⁶

Even before Yoshimune, the *bakufu* had begun to standardize the conduct of decision-makers,⁶⁷ but Yoshimune expanded this practice. In 1719, he ordered the various *bugyō* to compile their administrative materials.⁶⁸ This process continued across the course of the Kyōhō era, but after 1721, Yoshimune's focus was drawn increasingly towards resolving the economic problems that the country faced and finding ways to generate more revenues for the *bakufu*. While Yoshimune made some consequential legal innovations during this period, these were often the result of fiscal policy decisions. For example, Yoshimune restricted the various types of suits that could be brought for money damages (the *kane kuji*), but he made this decision to alleviate the pressure on samurai caused by deflationary economic policies that Yoshimune himself instituted.⁶⁹

⁶⁵ The devolution of discretion to the decision maker may not have been entirely arbitrary. Hakuseki, for example, believed that officials should render their decisions on a case-by-case basis, rather than being bound by rules or customary standards. See, e.g., Nakai, 166-167.

⁶⁶ As noted above, the *bugyō* were exclusively male, and as Yoshimune routinized justice at the clerical level, he also effectively removed one channel to remove unauthorized female voices from speaking.

⁶⁷ See, for example, the proclamation standardizing the dates on which the *hyōjōsho* was to meet each month, issued in *Shotoku 2* (1712) under Ienobu.

⁶⁸ See Henderson (1987), 541.

⁶⁹ See Tsuji (2006), 446-447, arguing that the limitation of money suits occurred primarily to speed up a clogged judicial process.

As economic stability returned at the end of the Kyōhō period, work on the standardization of a legal system began again in earnest.⁷⁰ During the period starting from 1737, Yoshimune involved himself personally with establishing the editorial policies that guided the production of the *Kujikata osadamegaki*.⁷¹ In addition to Yoshimune's direct leadership, the production of these materials relied on a committee of legal experts and clerks responsible for reviewing precedents and drafting. At the forefront of these experts was Ōoka Tadasuke, who had served Yoshimune in various decision-making capacities over the course of his rule.⁷² Ōoka leveraged the resources of the committee and the broader *jisha bugyō* to carry out the work of the committee. The committee worked on Volume I (the laws) and completed the edition as early as 1742, concurrent with the production of *Ofuregaki kampō shusei*, and the two works shared many of the same sources. Volume II, which compiled precedents on punishments from judicial cases, took longer to produce and was not formally finalized until 1754. Always more of a living work, Volume II continued to be annotated and appended in the decades that would follow, but Volume I received many fewer annotations.

Precedents for the Kujikata Osadamegaki

Ritsuryō codes and the Goseibai shikimoku

⁷⁰ Henderson (1987) provides the most thorough English language description of the production on *Kujikata osadamegaki*, 516-520. Harafuji (2010) provides a comprehensive Japanese language introduction to the text. For additional detail, see Kukita (1980), 649ff, Koide (1934) at 119ff.

⁷¹ Henderson (1987), 519. See also Kukita (1980), 105.

⁷² While an in-depth description of Ōoka's work (and his legacy as yet another Tokugawa era culture hero memorialized in Japanese television's *Ōoka Seidan* as Edo's premier judge) lies beyond the scope of this work, Ōoka's served as a *machi bugyō*, the head administrative/judicial officer in Edo, as governor of Echizen, and *jisha bugyō*, head of the administration of temples, shrines and the periphery, gave Ōoka an understanding of the breadth of problems faced by Tokugawa law.

The most obvious stylistic precedents for the *Kujikata osadamegaki* were the first Japanese *ritsuryō* legal codes, the *Taihō* and *Yōrō* codes. The drafters of these early eighth century codes modeled them explicitly on Tang-era Chinese precedents. The *ritsuryō* codes contained two volumes; the *ritsu* were penal statutes, and the *ryō* contained administrative materials. As materials largely drawn from the prestigious Chinese cultural tradition, the *ritsuryō* codes served the nascent Japanese state foremost as a representation that the nation had a body of law as a source for legitimacy.⁷³ Yoshimune, in turn, modeled the format of *Kujikata osadamegaki* on the codes quite directly; his manuals were composed in two volumes, with one devoted, like the *ritsu*, explicitly to penal matters. By modeling *Kujikata osadamegaki* on the *ritsuryō* codes, Yoshimune and his team of scholars consciously emulated the same representation of legitimacy that the *ritsuryō* conveyed, which by now had acquired the additional patina of a millennium of Japanese memory.

In substance, the *Kujikata osadamegaki* shared little with the *ritsuryō* codes, perhaps because the *Kujikata osadamegaki* served a practical purpose as well as an expressive one. Tokugawa Japan obviously shared little in common economically or socially with Nara Japan. The Kyōhō reforms found in Volume I of the *Kujikata osadamegaki* addressed the social problems of the era by offering practical guidance. In contrast, the drafters of the *ritsuryō* codes often copied verbatim T'ang era Chinese solutions even when these would be impractical in Nara Japanese society. Even in structure, the *Kujikata osadamegaki* bore only a superficial resemblance to the *ritsuryō*;

⁷³ The *ritsuryō* codes diverged far more ideologically from their Chinese precedent than they did in penal law. Of particular note, the Japanese abandoned the ideal pervasive in the T'ang Codes that the emperor had the mandate of heaven, replacing this concept with the Japanese understanding that the emperor was a *kami* descended from Amaterasu. See Ueyama, 72-107. Note also that there were some administrative differences in the *ryō* relating to the composition of government.

the drafters did not completely follow the formal conventions of the *ritsuryō* codes, as many elements of procedure are included in Volume II, rather than Volume I.

Just as Ieyasu looked back to the Kamakura *bakufu* to model the political structure of the *bakufu*, when Yoshimune produced *Kujikata osadamegaki*, he found his nearest functional precedent in the first significant law code of the Kamakura period, the *Goseibai shikimoku* (御成敗式目 - lit. “Laws and Regulations for Judgments”).⁷⁴ Hōjō Yasutoki, the third leader of the Kamakura government, issued *Goseibai shikimoku* in 1232, roughly half a century following the ascendancy of the Kamakura *bakufu*. *Goseibai shikimoku* was the most well-known of the Kamakura laws and was so prevalent in Tokugawa-era society that it was often used as a calligraphy book in temple schools (*terakoya*).⁷⁵

Goseibai shikimoku was a one volume, 51-article code that addressed a wide range of matters from punishments, to religious duties, to property rights. Like *Kujikata osadamegaki*, *Goseibai shikimoku* was styled as a manual to collect the laws issued and precedents created during a formative period when the number of civil disputes adjudicated by the *bakufu* was increasing rapidly. *Goseibai shikimoku* was created to ensure fair and impartial justice in adjudicating these suits and better standardize punishments for guilty parties. Because the *Goseibai shikimoku* was the first compilation of laws issued by the Kamakura *bakufu*, rather than by the Imperial court, the promulgation of *Goseibai shikimoku* also served a symbolic purpose for the Kamakura government. The production of the code announced that the Kamakura shogunate intended to

⁷⁴ For an English translation, see Hall (1906), 17-44. For a description of the promulgation of the text, see generally Sugihashi, 33ff.

⁷⁵ Sugihashi, 34.

render justice impartially, and the code suggested that the Kamakura *bakufu* sought to govern with less cruelty and more mercy than the Imperial court had offered in the past.

While there are obvious similarities between the *Goseibai shikimoku* and *Kujikata osadamegaki* both in their function and the symbolism of their promulgation, there are also significant differences between the two codes. *Kujikata osadamegaki* was a two-volume manual, not a one volume code. The *Goseibai shikimoku* was an internal, technical work focusing primarily on the identification of uniform punishments, and to a lesser extent criminal procedure. It bears a resemblance only to the second volume of *Kujikata osadamegaki*. More fundamentally, the *Goseibai shikimoku* was only intended for, and used to determine punishments against, the nobility and high-ranking members of the *bakufu* who constituted the upper class of Kamakura society. The *Kujikata osadamegaki* addressed all Tokugawa society, even if, as a practical matter, village disputes rarely reached the shogun's courts.

The substance of the two texts also reflects the different social priorities of the two eras. Despite its primary focus on criminal punishment, *Goseibai shikimoku* addresses prominently the proper conduct of ritual activity. The first two laws in the compilation address the maintenance and proper observance of ritual activity at Shinto shrines and Buddhist temples.⁷⁶ The imperative to promote ritual activity is notably absent from *Kujikata osadamegaki*, which gives pride of place instead to the establishment and function of the *hyōjōsho*, the Tokugawa high court.⁷⁷ Where the

⁷⁶ See, e.g., art. 1: “The *kami* shrines must be maintained, and rites conducted carefully. By honoring the *kami*, miraculous results (*reigen* - 靈驗) follow.”

⁷⁷ This is not because the importance of ritual conduct had declined socially by the Tokugawa. Hirai has documented the importance Yoshimune placed on the conduct of mourning rituals, particularly as a means to establish the legitimacy of his ascension to shogun, 88-90.

Kamakura era text emphasizes mercy in the punishment for adultery by reducing the punishment for both sexes to banishment, Yoshimune's text replaces this emphasis with an interest in symbolic justice and deterrence—the murder by a cuckold of a female adulterer and her lover is decriminalized in the text, but adulterous women are to be tortured.⁷⁸

Chinese Law

While *Goseibai shikimoku* provided a precedent for *Kujikata osadamegaki* in both its function and what the production of the text symbolized, Yoshimune sought to supplement the prestige of his law code by incorporating elements of the Ming law codes into the work.⁷⁹ Yoshimune's interest in Chinese legal scholarship reflected a growing Japanese interest in Chinese legal scholarship that had emerged along with the growth in Confucian political philosophy. Arai Hakuseki was responsible for importing a number of Chinese legal works for the *bakufu* when he served as advisor, and Ogyū Sorai and his brother Ogyū Kan both worked for Yoshimune produce commentaries on the Ming penal code.⁸⁰ Yoshimune had an interest in Chinese codes that predated his rule; as *daimyō* of Kii he had already begun to acquire and collect Chinese legal works and incorporated Ming legal concepts into the house code of Kii.⁸¹ This flurry of interest rendered the Ming Chinese codes readily accessible to the drafters of the *Kujikata osadamegaki*⁸²

⁷⁸ See *infra*, 278-279.

⁷⁹ Henderson (1970b), 270-301, offers the most comprehensive analysis of Yoshimune's interest in Chinese legal traditions. This work particularly analyzes Yoshimune's study of Ming law before and after he became shogun.

⁸⁰ *Ibid.*, 294, Henderson (1970a), 29-31, 38. Ogyū Sorai was most notable for translating the Ming Code into vernacular Japanese, reducing the risk that contemporary scholars would misinterpret the famously difficult codes.

⁸¹ Henderson (1970b), 285. Kii was long a center for Chinese legal scholarship, from the late Seventeenth-century onwards.

⁸² Ironically, though, given the difficulty of acquiring text and the limitations of trade, the more recent Qing legal codes were not available for the producers of the *Kujikata osadamegaki*.

and showed the interest scholars, particularly Confucian scholars, took in engaging with the most up-to-date Chinese legal sources.

While Chinese legal sources were in vogue during this period, the drafters of the *Kujikata osadamegaki* did not incorporate Chinese laws uncritically, nor does the *Kujikata osadamegaki* rely extensively on the Ming codes as a legal precedent. Hakuseki had mixed feelings about drawing from the Ming codes as a jurisprudential tool,⁸³ and when Yoshimune incorporated the Chinese punishment of beatings (*kōkei*) into Japanese punishment in 1720, he faced criticism for this innovation.⁸⁴ Nonetheless, *Kujikata osadamegaki* adopts some Chinese legal concepts. The manual recommends beatings as a punishment, even though the laws discontinued the traditional Japanese punishment of severing ears or noses, perhaps because the Chinese did not use this punishment.⁸⁵ Yoshimune's interest in the Ming codes as a representation of Chinese cultural achievement appears unfeigned, and this provides another insight into why Yoshimune chose to produce the manuals. As interest in legal scholarship waxed, the production of a code that emulated prestigious continental models offered another way to burnish Yoshimune's prestige.

The Kyōhō Reforms and other Tokugawa laws

While Yoshimune adopted the textual conventions of prior Japanese governments and sought precedents from China to lend authority to *Kujikata osadamegaki*, the substantive legal content of the manuals addressed contemporary problems. The laws contained in the manuals were not

⁸³ Hakuseki argued for the reliance on reason (*dōri*) as a means of reaching judgment, rather than relying on precedent or existing codes. Henderson (1970a), 31.

⁸⁴ Henderson (1970b), 278-279.

⁸⁵ Ibid.

created from whole cloth; even many of the new laws and precedents attributed to the Kyōhō era reflected consistent customary approach that had remained constant at least since the time of Ieyasu. But the drafters re-evaluated even the oldest laws and precedents, and in many cases laws *Kujikata osadamegaki* reissues laws that were originally issued in response to a particular problem or group to the general population. As a result of this re-evaluation, more than eighty percent of the proclamations compiled in Volume I were issued during the Kyōhō period or immediately before, and most of the punishments identified in Volume II related to recent decisions based on existing custom.⁸⁶ As Tominaga Nakamoto theorized, even though Yoshimune’s laws represented themselves as drawn primarily from ancient custom, the act of compilation superseded these customs and reintroduced them in a contemporary context.

This legal bricolage appears most obviously in Volume I’s recapitulation of prominent *bakufu* proclamations. The proclamations the drafters collected in Volume I provide an example of the development of Tokugawa lawmaking during this period. Henderson identified many different types of legal precedents found in *Kujikata osadamegaki*, including:⁸⁷

- *Hatto* - edicts published by Hideyoshi and later Ieyasu as warlords/sovereigns. These edicts were sometimes widely distributed and usually nominally of general applicability, but as we have seen the from the *jiin hatto* generally related to particular audiences with primary applicability to the temples to whom they were addressed;⁸⁸

⁸⁶ See Hall, 686-687. “Customary” precedents are generally described as *maenoyori no rei (tatoe)* (precedents from long ago. In this case, *rei* expresses 例 “precedent”, not 令 “law”, or 礼 “ritual”).

⁸⁷ Henderson (1987), 513-515. Henderson generally divides these types of materials into two types: proclamations (of general applicability) and directives (directed at particular officials).

⁸⁸ See Chapter 2 for a broader description of the *jiin hatto*.

- *Sadamegaki* and *Ōsewatasare* - These directives were directed internally within the government to individuals and later offices under control of the *bakufu* to set policy. The *Kujikata osadamegaki* itself is technically a *sadamegaki*; and
- *Sōbure*- these widely promulgated directives were issued to the people through government administrators, generally the *bugyō*. Most of the Kyōhō reforms were technically *sōbure* and were the most common precedent found in the *Kujikata osadamegaki*.

As these different types of proclamations suggest, over the course of Yoshimune's rule, the government moved from issuing *hatto*, which had general applicability but responded to a particular circumstance, to *sōbure*, which were directed towards the people more broadly, but were distributed through the *bugyō*.

Kujikata osadamegaki did not aspire to collect the totality of Tokugawa laws, or even just the laws issued by the Tokugawa *bakufu*. If the *Ofuregaki kampo shusei* collected all or most of these proclamations, then the *Kujikata osadamegaki* contained no more than five percent of the *bakufu* proclamations then available, and even only a small percentage of Yoshimune's proclamations. The *bakufu* constitutional laws—*Buke shohatto*, *Kinchū narabini kuge shohatto*, and *Jiin shohatto*—⁸⁹ did not appear. The manuals excluded laws issued by lawmakers other than the shogun. In the manuals, there were no provincial laws, village laws and contracts, guild laws, laws governing the *eta* and *hinin*, or internal laws of religious organizations.⁹⁰ Most of the

⁸⁹ Some provisions of various *jiin hatto* appear in Volume One, but most of the *hatto* directed at particular institutions are not included.

⁹⁰ Other sources of law are certainly anticipated and implied within *Kujikata osadamegaki*. V.2, art. 9 anticipates that *daimyō* will have primary authority to punish their retainers. Similarly, V. II, art. 14, for example, anticipates

directives and proclamations issued by shogun prior to Yoshimune were also absent, even when the manuals addressed crimes that resulted from the violation of these provisions. For example, Volume II provided punishments for blackmail and kidnapping,⁹¹ even though none of the proclamations in Volume I criminalized these activities. Similarly, certain of the prohibitions in Volume I, like the ban on illegal international trade, do not find accompanying punishments in Volume II.

Although Yoshimune did not radically change the *bakufu*'s adjudicatory institutions, the *hyōjōsho* and the various *bugyō*, procedural innovations were a focal element of the Kyōhō reforms and figure prominently in the manuals. Two notable innovations to civil adjudication were the expansion of use of the *kōsatsu* (sign-boards-高札) and the *sojōbako* (訴状箱, also *meyasubako*-目安箱- petition box). The *kōsatsu* were bulletin boards where the government posted proclamations publicly for all people, and Yoshimune emphasizes that his government maintained *kōsatsu* at heavily-trafficked commercial junctures (particularly key ports and bridges) and used them more broadly to ensure popular understanding of Tokugawa law. The *sojōbako* provided a new avenue of appeal outside of the *bugyō* channels; petitioners who wanted to bring an action filed the action in the publicly available petition box. This innovation opened Tokugawa law to people who felt the *bugyō* was set against them and provided a check on corrupt officials.⁹² The *sojōbako* was particularly controversial; Arai Hakuseki strongly disagreed with its introduction. The Kyōhō reforms also introduced tighter reporting standards

that religious organizations will adjudicate matters relating to their members, although these orders may authorize members to access *bakufu* courts. In each case, however, the *bakufu* retains some rights to assume jurisdiction if this internal authority fails.

⁹¹ See e.g., V. I, arts. 61-64.

⁹² See Roberts (1997) for additional detail on use of these innovations.

on both civil and criminal matters to ensure more speedy resolution and also provided representative precedents to standardize administration of justice in criminal matters.

Yoshimune included these procedural innovations prominently in the manuals, which suggests the emphasis placed on access to Tokugawa law.

In contrast, even though many of the Kyōhō reforms focused on matters of economic and fiscal policy, the manuals ignored most of the proclamations associated with these reforms. Similarly, the sumptuary regulations that Yoshimune promulgated at the beginning of his rule were largely omitted. While the reasons that these reforms were excluded from the manual differ—the former were not technically enforceable in most public lawsuits against the *bakufu* or the *daimyō*, while the latter were unenforceable against samurai—these exclusions provide a reminder that the manuals were designed to serve as functional documents. Those Kyōhō laws that relevant to lawsuits were not necessary for the users of these manuals. The exclusion of these policy measures also reflects the ambivalent history of the measures; many economic tactics were tried and discarded during the period.

Structure of *Kujikata Osadamegaki*

The *Kujikata osadamegaki* is composed of two volumes.⁹³ The first volume compiles eighty proclamations that the *bakufu* issued over the previous century. The second volume primarily

⁹³ The *Kujikata osadamegaki* is found in Volumes 1-4 of the *Kinrei kō kōshū* (10 vol. 1895). Volume 1 has never been translated into English, although it has been translated into German by Rudorff (1889). Henderson and Hiramatsu considered a translation of Volume I after decades of work, but elected not to translate the work on the death of Hiramatsu, see Henderson (1987). Volume 2 was translated in Hall (1913). Both translators worked from late Tokugawa era editions of the *Kinrei kō*, rather than from an original version.

compiles a series of about one hundred recommended punishments for common public offenses. Both volumes begin with matters of adjudicatory procedure,⁹⁴ then move to address different topics, following a logic that is neither entirely transparent today nor consistent between the two volumes.

The first volume was not designed to be comprehensive. Instead, a second reference work, the *Ofuregaki kampō shusei*, includes all or nearly all of the proclamations issued since 1615, some 3,500 proclamations.⁹⁵ For this reason, Volume I represents Yoshimune's compilation of a canon of laws established primarily during the Kyōhō reforms that would matter to the *kujikata*, the clerks responsible for adjudicating cases in Tokugawa courts. While historians mistakenly refer to this volume as strictly “procedural”, Volume I includes a number of substantive proclamations, particularly relating to new social or technological innovations. Volume II recites a number of the most common criminal acts and provides precedents for appropriate punishments associated with these acts. Although the two volumes were compiled as part of a single endeavor, and they relate to one another in several places,⁹⁶ the two volumes had fundamentally different uses and purposes. For this reason, the following section will describe the use and structure of each separately.

Volume I

⁹⁴ Tsuji has described Volume 1 as “instructions on legal procedure.” Tsuji (1992), 454. Tsuji's description does not reflect the majority of Volume I or the work as a whole.

⁹⁵ Some 1,655 proclamations in total.

⁹⁶ The punishments for many of acts prohibited in the proclamations included in Volume I are included in Volume 2, although this is not always the case.

The first volume of *Kujikata osadamegaki* collected 80 formal releases of the *bakufu* and offered one introductory section.⁹⁷ These materials included both proclamations released previously to the public and directives promulgated to other officials—both within the *bakufu* government and to the governments of the other provinces. Because the contents of this volume were all previously released,⁹⁸ the drafters considered Volume I public. However, the directives to government included in this volume were not all previously available to the general public, and there was some new material—at least three directives were new to the work. Volume I touches on a broad number of topics, and includes releases issued by shogun from Iemitsu to Ieshige (Yoshimune’s heir- who was technically shogun when the manuals were released), but the great majority of the Volume focuses on Yoshimune’s laws, and a majority of the total volume were produced as part of the Kyōhō reforms.

Volume II

Volume Two of *Kujikata osadamegaki*, which is often called the *Hyakkajō* (“100 Laws”), served an entirely different purpose. The government distributed this volume only to the *bugyō*, the chief administrators of penal law, to provide a reference work for the appropriate punishment of common offenses.⁹⁹ Initially, the government printed only sixteen copies of this volume,¹⁰⁰ and this volume was to remain confidential and secret from either private legal professionals or ordinary people.¹⁰¹ As a reference work for administrative professionals, the focus of Volume II

⁹⁷ Henderson (1987), 513-515, provides a description of the previously released materials included within Volume 1.

⁹⁸ Even if these works were released publicly in the past, they were not all available to the general public. Many of the laws had been directed only at particular officials previously.

⁹⁹ For a longer discussion of the role and function of the clerks responsible for lawsuits, see Steenstrup, 154-157.

¹⁰⁰ Ishii (1979), 49-50

¹⁰¹ Henderson (1987), 507-508.

remains largely technical. Approximately the first twenty provisions address the process of adjudication,¹⁰² but the majority of the hundred laws provide details on the appropriate punishments associated with acts criminalized in other proclamations, sometimes found in Volume I, more often not. The prescribed punishments are tied loosely to customary precedents, but like Volume I, a majority of these precedents were drawn from the rule of Yoshimune. The precedents and procedures that the compilers drew from the time before Yoshimune's rule were described as customary—from the indefinite, and nominally distant, past.

The association between the two volumes is loose. However, the volumes are not inconsistent with one another; rather, they address different topics. The two volume format of *Kujikata osadamegaki* reflected a conscious desire to emulate the structure of the *ritsuryō* (most notably the *Taihō* and *Yōrō* codes of the eighth century), or near-contemporary Chinese codes.¹⁰³ Such a hypothesis is possible, given the very general desire to split *Kujikata osadamegaki* into an administrative volume (*ryō*, Volume I) and a penal volume (*ritsu*, Volume II) in a fashion reminiscent of the early *ritsuryō* codes. This argument reinforces the thesis that Yoshimune produced *Kujikata osadamegaki* with an expressive purpose to evoke the prestige of the more famous *ritsuryō* codes and, by implication, provide a guide to its intended use.

Key Themes of Kujikata Osadamegaki

¹⁰² The first nineteen of the provisions of Volume Two address matters relating to adjudication, including provisions relating to jurisdiction, evidence, statutes of limitations, the composition of the adjudicatory panel, and others.

¹⁰³ Henderson (1970(b)), has shown suggestively the level of scholarly interest in Ming law codes during the period of Yoshimune (including by Ogyū Sorai and his brother Ogyū Kan), and in fact by Yoshimune himself. However, Henderson has also noted that the emergent Qing codes of the seventeenth century were not translated in time to be of value to the *Kujikata osadamegaki* and that the contents of *Kujikata osadamegaki* were not influenced by Chinese precedents.

Volume I of the *Kujikata osadamegaki* contains previously issued proclamations and directives, primarily proclamations that Yoshimune issued himself over the *Kyōhō* period. Despite the selective nature of the manuals, laws excluded from the Volume were not abrogated—in fact many punishments described in Volume II relate to crimes not included in Volume I—so the goal of Volume I was not to change Tokugawa law. Indeed, the proclamations included in this Volume totaled less than ten percent of the available laws. Given these two points, it is fair to consider exactly why Volume I was published, which unlike its companion, was always intended to be public.

There is no record that Yoshimune offered any public explanation to accompany the production of the manuals. Perhaps this is because although Volume I of the *Kujikata osadamegaki* was not intended to remain private, the intended audience of the work remained narrow. Volume I focuses primarily on what would matter to the *kujī*, matters to be adjudicated within the *bakufu* administrative structure that would ultimately pass to the *hyōjōsho*, the supreme adjudicatory body of the *bakufu* government, composed of the senior officials of the Tokugawa government. The *hyōjōsho* was composed originally of the *rōjū*, the five senior advisors to the shogun, the three *bugyō*, and the relevant inspector (*metsuke*).¹⁰⁴ In the normal order of matters, most disputes would be adjudicated by the office of the relevant *bugyō*; the *hyōjōsho* received matters only in the case of a conflict of jurisdiction.¹⁰⁵ One primary purpose of Volume I was to provide administrative direction in the adjudication of more complicated disputes to the members of the

¹⁰⁴ The proper makeup of the *hyōjōsho* in any circumstance would depend on the matters at issue. This is discussed in more detail in V. II, arts. 8-9. Please note, however, that over the course of Yoshimune's rule, he let the institution of the *rōjū* lapse and replaced it with other functions.

¹⁰⁵ According to one of Yoshimune's early reforms, all three *bugyō* had to endorse any complaint that would proceed to the *hyōjōsho*. Found in V.II, art. 1.

hyōjōsho (who were not legal professionals) and their clerks, the *kujikata*.¹⁰⁶ In this context, the structure of the proclamations included in the work suggests that Yoshimune wished to emphasize his improvements to Tokugawa law to his audience of lawmakers.

Celebrating Lawmaking as a Human Activity. Yoshimune structures Volume I to emphasize the changes he made to judicial administration. Providing this emphasis is not merely a means to call attention to his own accomplishments or to explain new features of law that law clerks might not yet understand—by emphasizing the ways the Tokugawa had increased access to its laws, Yoshimune identifies an alternative to legal cosmology as a source of Tokugawa authority. The first quarter of the Volume identifies various refinements to the activity and duties of the *hyōjōsho* and explains two primary innovations that enhanced access to law: the implementation of the *sojōbako*, and the broader deployment of the *kōsatsu*. Yoshimune’s emphasis on the *hyōjōsho* provides the vehicle to reframe his narrative of Tokugawa law.

Volume I begins by hearkening back to Iemitsu, the earliest shogun whose laws appear in the work. Article 1 begins with a historical note on the origins of the *hyōjōsho*, which frames the establishment of the *hyōjōsho* as the critical moment in the creation of Tokugawa law.

Yoshimune reminds the reader that the body formed in 1631 at the request of Iemitsu, when the *rōjū* convened at the residence of the *machi bugyō* to establish processes and procedures.¹⁰⁷

Article 2 reinforces this point by reproducing Iemitsu’s original rules to the *hyōjōsho*, produced in 1635. Because Iemitsu’s rules are amended by Yoshimune in the articles that follow, it is

¹⁰⁶ See Henderson (1987), 540. “Book I presents a Shogunal perspective of the imperative policies of the regime as of 1742. It was structural and authoritative.”

¹⁰⁷ Articles 1 and 2(a) were drafted by Hayashi Nobuatsu, and this is the only portion of the manuals associated with the Hayashi lineage. See Henderson (1987), 516.

clear that the introduction is designed to serve a hortatory purpose to current lawmakers and the public. By establishing the *hyōjōsho* the Tokugawa founders formed the basis of Tokugawa law, and the members of the *hyōjōsho* must take their duty to serve faithfully most seriously. By focusing this origin story on the fully human Iemitsu, rather than the *kamified* founder Ieyasu, Yoshimune structures a narrative that positions the *hyōjōsho*— and, by association, all subsequent Tokugawa law— as a human creation, not ordained by divine will or the laws under heaven. This shift marks a critical divide between Yoshimune and his predecessors; where his predecessors relied for their authority to issue laws on legal cosmology, Yoshimune instead introduces the human Tokugawa founders as the providers of peace and fair laws.

Yoshimune reinforces his reliance on the early Tokugawa throughout the work.¹⁰⁸ He relates his own administration to the early shogun by imposing his own rules governing the *hyōjōsho* found in the third and fourth articles. These articles, issued originally in 1717, were drafted by Arai Hakuseki, and offer Yoshimune's directions to the *hyōjōsho*. In addition to addressing procedural questions like the dates and times of attendance, they offer strong admonitions to the *hyōjōsho* regarding the importance of their duty.¹⁰⁹ Henderson argues that Yoshimune positioned of these two articles early to endorse Hakuseki's jurisprudence, particularly their shared understanding that the lawmakers of the *hyōjōsho* should resolve disputes situationally, without recourse to established laws- "as thus conceived, justice was a rule of man, not a rule of law."¹¹⁰ While this description captures both Hakuseki's pragmatic tendencies and Yoshimune's

¹⁰⁸ V. I, art. 3, for example, reminds representatives that the hour when the body would meet was originally set by the shogun in 1624.

¹⁰⁹ Henderson (1987) infers from Articles 3 and 4 an important shared jurisprudence between Yoshimune and Hakuseki that the lawmakers of the *hyōjōsho* resolve disputes situationally, without recourse to established laws.

¹¹⁰ Ibid.

early emphasis that lawmakers should review the evidence of the matter before them,¹¹¹ describing Yoshimune’s jurisprudence over the balance of the manual as a reliance on “rule of man” seems overdrawn. The positioning of these articles owes more to Yoshimune’s intent to emphasize his early and consistent interest in reforming the judicial process than it does in affirming Hakuseki’s situationalist conception of justice. Yoshimune’s checks on arbitrary decision-making provide clear evidence that he intended to make Tokugawa law more predictable than the “rule of man” would imply.

Soon after making these charges to the *hyōjōsho*, Yoshimune implemented—and celebrates in *Kujikata osadamegaki*—a number of procedures to check abuses and arbitrary decisions by administrators, including most notably the reintroduction of the complaint box (*sojōbako*) in 1722.¹¹² The *sojōbako* allowed citizens to anonymously complain about officials or file suits that officials refused to endorse. Yoshimune also later highlights the *ukagai*, another appellate process he introduced that provided a mechanism for reconsideration of arbitrary decisions.¹¹³ While plaintiffs took great risks in availing themselves of either of these processes, these innovations constituted procedural checks that deterred arbitrary or biased decision-making. Rather than an endorsement of Hakuseki’s jurisprudence,¹¹⁴ Articles 3 and 4 suggest instead Yoshimune’s desire to emphasize his early and consistent interest in the reform and management of the *hyōjōsho* as a symbol of his broader attempts to offer justice to all under the *bakufu*.

¹¹¹ For a more thorough description of Hakuseki’s jurisprudence, see *supra*, 215-218. art. 3, para. 2, exhorts the chamber to make its decisions entirely on lawful evidence submitted, rather than relying on rumors.

¹¹² The function of the *sojōbako*, which were proposed in a series of reforms issued in 1722 and 1723, are found in *Kujikata osadamegaki*, in V. I, arts. 8-12. Arguably, the inclusion of his reintroduction of the *sojōbako* provides another example of Yoshimune’s desire to emphasize the concrete reforms he made to Tokugawa judicial procedure. For an in-depth discussion of the impact of the *sojōbako* on governance, see Tsuji, 119ff.

¹¹³ See V. II, art. 4.

¹¹⁴ In further support of this argument, Yoshimune expressly disagreed with Hakuseki on the use of the *sojōbako*, see *supra*, 260.

Throughout Volume I, Yoshimune repeatedly emphasizes the constraints he set in place on his own government's powers. In addition to introducing the *sojōbako* and the *ukagai*, Volume I also presents Yoshimune's actions to ensure public notice of the Tokugawa laws through the use of public notice boards (the *kōsatsu*).¹¹⁵ The description of the *kosatsu* also provides a reminder, reinforced throughout the work, that within its jurisdictional limits Tokugawa law applied to all, not merely the nobility or the samurai. At the same time that Tokugawa law applied more broadly on Tokugawa lands, Tokugawa jurisdiction retained its traditional geographical limits. Consistent with his own inclinations and the longstanding admonitions found in the *Buke shohatto*, Yoshimune reinforces limited jurisdiction by including proclamations that guarantee autonomy to provincial leaders and limit *bakufu* rights over them.¹¹⁶

In addition to these procedural provisions, Yoshimune includes other legal reforms in Volume I. These include proclamations prohibiting bribery,¹¹⁷ speeding up the judicial process,¹¹⁸ and offering a more professional dispute resolution process particularly for land and riparian claims.¹¹⁹ Volume I also includes proclamations that reduced the severity of punishments, including relaxing the rules around exile (*tsuihō*) found in Articles 48 and 49.

Viewed as a whole, Volume I of *Kujikata osadamegaki* presents Yoshimune's argument that the Tokugawa had brought a broader and fairer system of justice to all the people. By producing a

¹¹⁵ Described in V. I, arts. 13-18.

¹¹⁶ See V. I, arts. 54-56 (easing limitations on *daimyō* marriages, providing limited autonomy to large *daimyō*, and providing limits on the levies (*yokin*) the government could assess).

¹¹⁷ art. 22.

¹¹⁸ arts. 24, 44-47.

¹¹⁹ arts. 23, 25.

compilation of laws to make this claim, Yoshimune follows the model previously established in the *Goseibai shikimoku*. This implicit reference to the lawmaking practices of the Kamakura *bakufu* provides a reminder that the production of the *Kujikata osadamegaki* was organized to reinforce the authority of the *bakufu*, and did not reflect Yoshimune's own practices as a lawmaker. Yoshimune never faced a significant threat to his legitimacy,¹²⁰ even though he ruled through periods of broad social unrest, often influenced by his own decisions. Despite his rhetoric, Yoshimune's early decisions did not always increase access to justice; one of Yoshimune's proclamations that was not included in *Kujikata osadamegaki* was the decision early in the Kyōhō to restrict merchants' access to the courts.¹²¹ This proclamation suggests that the symbolic claim of *Kujikata osadamegaki* to offer broad access to justice did not align with the reality of the Kyōhō reforms. To offer another example, although the grant of mercy in response to the petitions of villagers had long been acknowledged as a characteristic of benevolent rule, Yoshimune abolished villagers' right to flee from repressive rule.¹²²

Canonizing Tokugawa Law. Of all of the proclamations issued by the Tokugawa, Yoshimune chose to present only eighty in Volume I. About half of these proclamations address legal reforms and procedural innovations, which leaves only about forty to address matters of substantive law. Within this small number, Yoshimune's selection of proclamations for inclusion reflects both the government's interest in representing itself to its audience and Yoshimune's perception of the matters that his audience expected the government to address.

¹²⁰ In this context, however, one should remember that Yoshimune's succession was not a sure thing and, at least according to Cooper's analysis, Yoshimune did not have the best claim to ascension genealogically speaking. Cooper, 11-12.

¹²¹ See *supra*, 225. Yoshimune excluded from Volume I all proclamations restricting suits.

¹²² See Tsuji (2006), 454. This proclamation was also excluded from Volume I. A counter-argument to this point would be that *Kujikata osadamegaki* includes only those proclamations that allow jurisdiction, because these processes could be brought to the *kuji*.

Thus, in the same way we gain an understanding from Yoshimune's emphases on increasing access to Tokugawa law through the establishment of the *sojōbako* and the *ukagai*, the remaining proclamations in Volume I presents the adjudicatory priorities Yoshimune felt were necessary to a well-governed state.

Yoshimune's selection criteria returns to the model of the early *bakufu* to justify his treatment of moral concerns relevant to the Kyōhō era. In Tokugawa Ieyasu's *Buke shohatto*, Ieyasu took a firm position against gambling. Although Ieyasu's successors had relaxed these restrictions, Yoshimune includes four proclamations addressing what he described as gambling, including restrictions on both lottery games and mutual reliance contracts. In particular, these laws regulated both the "temple-building *ko*" and the "unlimited compassion [*mujin*] *ko*", as well as *haikaitensha*, a form of gambling disguised as a contest for producing the best haiku.¹²³ These restrictions expand Yoshimune's well-documented preference for samurai austerity to the rest of the population; the *mujin ko*, for example, were prevalent among the common people, not the samurai. Because these new forms of wagering were becoming difficult to distinguish from other, non-gambling diversions, it was an appropriate time to offer more clarity under law. However, Yoshimune did not include any of the sumptuary regulations he issued early in the Kyōhō period, and this suggests that the source of Yoshimune's increased concern lay primarily in controlling the behavior of the other classes, not mirroring samurai austerity. Rather than just offering moral guidance, these changes also may be motivated by more familiar political

¹²³ Vol. II, Arts. 66, 69. In addition, proclamations regarding the treatment of servants of samurai caught gambling and the treatment of land confiscated for gambling. For an extended discussion on the relationship between the *ko*, community organizations, and the *mujin ko* lotteries, see Najita, (2009) 75-79. Please note however, that where Najita discusses the spread of the *ko* during the 1760s in Osaka, the issue had become a concern for Yoshimune at least twenty years before.

concerns, particularly that the financial engineering necessary to build a temple could be extended to mobilizing against the government. Moral legislation remained important to Yoshimune. Other examples of moral legislation include closer regulation of the sex trade¹²⁴ and a re-emphasis on the abolition of child abandonment—¹²⁵ although this Tsunayoshi-era prohibition was rewritten to eliminate Tsunayoshi’s hortatory language regarding the need for compassion.

In addition to re-establishing the morality of the early *bakufu*, other proclamations in this volume also resuscitate the earlier era’s insecurities,¹²⁶ particularly relating to issues that re-emerged during Yoshimune’s rule. Like his predecessors, Yoshimune emphasizes the necessity of *bakufu* action to protect against foreign incursion. Although Yoshimune had relaxed the strict prohibition on importation of foreign learning and sought to expand foreign trade,¹²⁷ Yoshimune prohibits the secret acquisition of banned foreign goods imported from abroad at Article 19, the first among substantive proclamations identified in *Kujikata osadamegaki*. Yoshimune also restricts firearms, a dangerous foreign technology. Articles 28-30 authorizes inspections to find firearms; prohibits secret ownership of these weapons; and bans them around Edo.¹²⁸ These prohibitions reinforce the changing emphasis of Tokugawa law to adapt for changed technology.

¹²⁴ V.II, art. 76 (prohibiting secret prostitution outside the regulated pleasure quarters).

¹²⁵ V.II, arts. 62-63. Instead of exhorting compassion, the revised text merely calls child abandonment wicked (*kyokujii*).

¹²⁶ In addition to the implicit insecurities of the *bakufu* that appear within the code, Yoshimune occasionally also addresses direct attacks on *bakufu* authority, including, particularly the unauthorized use of the *bakufu* coat of arms in art. 33 and of the vermilion seal (in effect counterfeiting *bakufu* law) in art. 34.

¹²⁷ See *Ofuregaki kampō shusei* 991 (1721).

¹²⁸ V.I, art. 35 also reinforces the limitation on wearing swords to samurai. This proclamation reinforced both samurai class advantages and the lingering concern of the *bakufu* over more firearms.

Treatment of Buddhism and Shinto. Just as Yoshimune changed Tokugawa law to adapt to changing circumstances, he also changed the justifications for these restrictions to address emergent political issues. The laws against innovation in Buddhism and Shintō provide an example of this shift. These laws, found a century before Ietsuna's *Shoshū jūin hatto*, were reissued by Yoshimune and included in *Kujikata osadamegaki*. Yoshimune continued to regulate thought at temples and shrines within the same substantive legal framework that his Tokugawa predecessors established, which begs the question why these prohibitions appear in the manuals at all. Yoshimune devotes four articles (35-39) to addressing questions relating to Buddhist temples and Shintō shrines. As in other substantive laws, Yoshimune's focus on matters of religion shifted from the elites to the village level. Thus, in addition to regulating the sects, Article 35 prohibits villages from erecting their own Buddhist statuary or Shintō shrines.¹²⁹

Article 36 clarifies the jurisdictional bounds of the temples relative to the *bakufu*. Under this provision, any matters that are internal to a sect (*shū*) must be resolved by the sect's government (the *rokusho*).¹³⁰ These matters included both prosaic matters like disputes over sect property, succession, rank difference,¹³¹ as well as broader questions that included "anything of a sectarian nature." In contrast, disputes among sects or between sects and laypeople could be brought to *bakufu* courts like any other matter. Article 36 generally granted sects administrative autonomy for purely sectarian matters consistent with the regulatory structure of the *honmatsu* system.

This system was consistent with the doctrinal autonomy granted to sects since the Purple Robe

¹²⁹ "The construction of wayside shrines (*hokora*) or Buddhist statues (*butsuzō*) in villages is prohibited."

¹³⁰ Article 36 was one of the latest provisions to be included in Volume I, issued in Kampō 1 (1741).

¹³¹ Ogyū Sorai emphasized that many of the sects (particularly the Sōtō) were excessively litigious over exactly these matters, suggesting that restricting these disputes to the sectarian administration may also have served to improve the effectiveness of the *kujikata*. See *Seidan*, IV, 40, at 305.

Incident of 1627, which allowed temples to govern their own doctrine as long as the boundaries between sects remained clear, and as long as temple law remained subordinate to the overall strictures of Tokugawa law.¹³²

Articles 37 and 38 reaffirmed the bounds of temple authority, which had stood generally since Ietsuna's code of 1665. The sects retained control of matters relating to doctrine, as long as their doctrine remained effectively static. Article 37 prohibited new Buddhist or Shintō doctrines (*shimpo*- 新法) or rites (*shinki*- 新規) performed in the villages or the towns. If a temple priest believed that a new rite was necessary, he had to obtain approval in advance from the *bugyōsho*-the Tokugawa administration.¹³³ In Article 38, Yoshimune prohibited the spreading of tales of miracles or legends (*kihai isetsu*). In this case, Yoshimune provided the contemporary example of offering sacrifices to the *Osugi daimyōjin*, an event that the proclamation suggests generated a large crowd that behaved like a public party.¹³⁴ If performed again, such a celebration of new miracles would invite “severe punishment.” Taken together, Articles 37 and 38 reflect both a fear of innovation— whether through new doctrines, new rites, new miracles, or new legends— and of irregular performances of existing rituals.

The forbidden categories of ritual innovations (*shinki*) and mysteries and legends (*myōhō*) were exactly the same as Ietsuna's code, which itself had drawn previously from Iemitsu's *Buke shohatto*. However, the Kyōhō proclamations indicate that the causes of Tokugawa insecurity had started to shift. In early Tokugawa laws and Ietsuna's code, *shinki* and *myōhō* were associated primarily with the risk of foreign conspiracy (*totō*), based on the concern that these

¹³² *Supra*, 139-141.

¹³³ V. I, art. 37.

¹³⁴ V. I, art. 38.

innovations could lead to plots or conspiracies by the elite against the government. Yoshimune's proclamations replace concern about elite conspiracies with worries about events occurring in the villages (*zaizai*) or outlying areas,¹³⁵ as the prohibition on new statutes or shrines, the concern over the sacrifice to *Osugi Daimyōjin*, as well as of parties or crowds that took place among common people all suggest.¹³⁶ Yoshimune's locus of concern had shifted from foreigners and the *daimyō* elite to the risk of destabilization at the village or popular levels. This shift responds to the increase in popular revolts that had begun to occur following the Kyōhō famine.¹³⁷

The Penal Provisions

Volume II of *Kujikata osadamegaki* was not produced for widespread distribution.¹³⁸ Only fourteen copies were originally supposed to be produced, and these were to be kept for use of the *bugyō* and their attendants for purposes of evaluating disputes. As the title *kujikata*—“concerning public suits”—suggests, the priority of this volume was to guarantee predictable administration of a growing number of actions that had arisen. Because these actions were primarily, but not exclusively, penal, a majority of the provisions found in the second volume focus on standardizing penalties. Three key themes found in Volume II provide further insight into Yoshimune's expression of Tokugawa lawmaking: a focus on justiciability; an expressive use of gradations of punishment; and a reliance on custom as a justification for Yoshimune's punishments.

¹³⁵ V. II, art. 37.

¹³⁶ V. II, art. 38.

¹³⁷ Vlastos, 75, citing Aoki (1966).

¹³⁸ The fact that it was to be obscured from the public should not suggest that these laws had no representational quality. The Japanese had a very different understanding of the importance of publication. See Sorai, *Seidan* II-10, at 185 (“if the new regulations were announced openly (like bells on the top of a pole), they would never succeed.”).

Justiciability

In Volume II, Yoshimune again foregrounds the innovations he made to Tokugawa legal procedure. The first nineteen of the “hundred laws” do not relate to penalties; the general purpose of these provisions is to show that the Tokugawa had established consistent rules for when suits may and must be heard by *bakufu* officials— when these suits are justiciable. Questions of justiciability implicated foremost the question of jurisdiction—the scope of authority of Tokugawa justice— but also include questions of ripeness/mootness,¹³⁹ sovereign/status immunity,¹⁴⁰ and *res judicata* and the problem of litigants attempting to retry matters that had been resolved previously elsewhere.¹⁴¹

These questions were not new to *Kujikata osadamegaki*, but they demanded that the Tokugawa laws balance the representation of providing broader access to justice, on the one hand, with the Yoshimune’s desire to curb the authority of the central Tokugawa government, on the other. The Tokugawa assertion of jurisdiction cut to the heart of the *bakufu* claim to authority and had been supported by cosmological claims from Sūden to Hakuseki. The proper limits of *bakufu* justice were first addressed in Ieyasu’s proclamation of *Buke shohatto* in 1615, in which Ieyasu granted to the *daimyō* authority in their provinces as long as they enacted laws consistent with Tokugawa law.¹⁴² The limitations of Tokugawa justice against other authorities (the temples and

¹³⁹ Including a statute of limitations. V. II, art. 15. These procedural limitations collectively belie the notion that Tokugawa justice was purely adjudicated in a “case-by-case” fashion.

¹⁴⁰ V. II, arts. 6 (officials), 9 (lords and their retainers).

¹⁴¹ V. II, arts. 4, 5, 19.

¹⁴² See *Buke shohatto* (1615), art. 5

shrines, the merchant *za* and *eta/hinin* communities) remained the subject of constant contestation and refinement.

Kujikata osadamegaki reinforces Yoshimune's priority on limiting jurisdiction, but still includes provisions that preserve the trend towards centralized adjudication. Article 1 of Volume II reflects these competing policy goals. This article sets the tone by emphasizing that for any suit brought to the courts, local officials (*nanushi* or *ienushi*) should attempt to resolve matters before allowing recourse to Tokugawa courts.¹⁴³ Thus, Tokugawa courts should always be the venue of last resort, but Tokugawa justice remains theoretically available to all. Article 3 of Volume II limits Tokugawa jurisdiction by requiring that suits within a jurisdiction (*jitō*) should exclusively be settled by local authorities and matters of succession in independent provinces must be adjudicated by the ruling *daimyō* of the province. But, while other provisions institute strong penalties for persistent litigation or for knowingly bringing action in the wrong venue,¹⁴⁴ Article 6 describes the procedures of the *ukagai*— an innovation introduced during Yoshimune's rule— that grants the Tokugawa government appellate authority to review the decisions of a local official for “abuse of authority or perversion of justice.”¹⁴⁵ While this Article leaves the decision whether to take action ultimately to the *hyōjōsho*, this arrogation of *daimyō* authority suggests that Yoshimune had slowly begun to federalize ultimate adjudicatory authority under the *bakufu* by retaining the authority to assert jurisdiction where local governments failed to offer justice.

¹⁴³ V. II, art. 1. The focus of Article 1 is on establishing which *bugyō* are responsible for actions that do come to the courts. Henderson (1965) provided an extensive exposition of the workings of the conciliation process.

¹⁴⁴ V. II, arts. 4-5, e.g., provide handcuffing, public rebuke (*togame*), or even house imprisonment (*oshikome*).

¹⁴⁵ V. II, art. 6.

Article 14 displays a similar shift in the regulation of temples and shrines.¹⁴⁶ In the *Jiin hatto*, and later in *Shoshū jiin hatto*, the *bakufu* had previously assumed the authority to restrict doctrinal innovation,¹⁴⁷ but the *bakufu* respected the independent authority of the temple administrative structure to enforce internal discipline and adjudicate matters relating to their own doctrines.¹⁴⁸ Article 14 introduces processes that reinforce this division by directing monks who wish to bring actions, whether against their temples or otherwise, first to the temple administration to obtain authorization. However, if a temple is the defendant against an aggrieved monk and fails to meet its duty to investigate, Yoshimune's law now allows such a suit to proceed without prior authorization. Matters relating to the teachings or practices of an individual sect are not justiciable,¹⁴⁹ but if a matter of doctrine impacts the interests of a person affiliated with another sect, or if a monk disciplined within his own sect was punished with public censure (*togame*), then the *jisha bugyō* would hear the suit instead of the sect.

Gradations of Punishment

During the Sengoku period and continuing through the outset of Tokugawa rule, punishments for breaking the law were harsh, but unevenly enforced. Ieyasu's *Buke shohatto*, for example, limits punishments largely to death and banishment. As *Bateren tsuihō no fumi* describes, many punishments of this era were drawn from the Chinese legal tradition and were intended to deter bad behavior for the benefit of the general populace.¹⁵⁰ However, as the population became

¹⁴⁶ Discussed *supra*. According to the text, Article 14 dated to the rule of Tsunayoshi (1701), although the proclamations in Volume I were edited in 1741.

¹⁴⁷ *Shoshū jiin hatto*, art. 1. See *supra*, 158-159.

¹⁴⁸ See *supra*, 159-160. Note however that under the *honmatsu* system, sect administrative structure liaised with the *bakufu* through a relationship with the *juregashira*- government sect administrators.

¹⁴⁹ V.I, art. 36 ("Disputes ... of whatever sectarian nature will be decided by the *rokusho* [the head of the sect].").

¹⁵⁰ See *supra*, 122-123.

more densely urbanized, and finding and apprehending lawbreakers became easier, the draconian punishments of the early Tokugawa period became less practical and less necessary. By Tsunayoshi's rule at the close of the seventeenth century, death sentences were frequently commuted, leaving impractically large numbers of people incarcerated.

To resolve this problem, Yoshimune broadened the number and variety of punishments available, ranging from public censure (*togame*), to capital punishment followed by ritual torture (for example, *sarashikubi*- gibbeting; or *haritsuke*-crucifixion). Many punishments reflected the customary practice of *misarashi*- public humiliation produced as a general warning to the public.¹⁵¹ By broadening the number of punishments, Yoshimune reduced the severity of punishments, particularly by dramatically reducing the use of *enza* (縁座), family culpability for one member's crimes.¹⁵² Although families no longer shared the collective social guilt of their members, Yoshimune introduced new gradations in punishment that took into account the frequent opportunities for collusion or abetting in a complex society. In lieu of collective responsibility resting in the family, particularly for common people, the locus of collective responsibility shifted to the social structures of the village—particularly the village leader (*nanushi*) and the five-member work teams that served as sub-units of village authority (the *goningumi*). This shift again reflected rising *bakufu* anxiety about the village as the greatest threat to the Tokugawa social order.

¹⁵¹ *Misarashi* was not the only example of Tokugawa expressive punishment or public shaming. In *Kujikata osadamegaki*, ritual branding or tattooing (*irezumi*) were common punishments for smaller offenses (e.g. mortgaging the same property twice, V. II, art. 39), and *togame* (咎め- lit. blaming) was a common catch-all for discretionary forms of public shaming (handcuffing, e.g.).

¹⁵² Henderson (1987), 531; Ishii (1978), 89. See also Ishii (1978), 59 for a description of the various punishments employed during the Sengoku period, which Ishii considered the most draconian in Japanese history.

More finely nuanced gradations of punishment appeared more often for lesser offenses. While expressive capital punishment also remained common, *Kujikata osadamegaki* reinforces the ways Yoshimune's reforms introduced gradations of punishment less draconian than death or deportation. Yoshimune introduced at least four classes of banishment, ranging in severity from lifetime banishment to remote islands to short term expulsion from the city of Edo.¹⁵³ The manual also recommended confiscation and monetary fines for economic offenses.¹⁵⁴ For more significant offenses, *Kujikata osadamegaki* provided a series of non-capital, expressive punishments. In addition to public shaming and humiliation (*togame* and *sarashi*, which were also included as an enhancement to other punishments) the manuals recommend branding or tattooing as well as public punishments like handcuffing and foot-caning for minor criminal conduct. For more serious offenses, new penalties included the loss of position— seclusion for samurai, the loss of position for officials and priests; and for unusual offenses, the reduction in caste status to the caste of non-human or outcastes (*hinin* or *eta*, respectively).¹⁵⁵ While these punishments showed increasing interest in finding more efficient methods of deterrence and reducing the costs of imprisonment (and social costs of deportation), the government still reserved its most expressive punishments for serious threats to the state- both physical and reputational.

Introducing gradations of punishment also offered the *bakufu* a broader vocabulary to use punishment expressively as a means to identify with gruesome specificity the activities that most threatened the public order. In *Kujikata osadamegaki*, gradations of punishment both identify

¹⁵³ V. II, art. 103 describes the punishments in detail.

¹⁵⁴ V. II, arts. 27 (confiscation), 30 (fines for wrongly buying land).

¹⁵⁵ V. II, arts. 53 (expulsion and seclusion of priests); 47 (same for carrying on prostitution in temples); 49 (reduction to *hinin* status).

the insecurities of the *bakufu* (and particularly its male samurai) and reify the implicit ideological priorities of the *bakufu*. To the condemned, there is little difference between decapitation and decapitation followed by one's head being left for display on a pike. However, to both the state and the public, the difference between these punishments is clear—exaggerated public punishments reflect matters of greater governmental concern, whether because of the greater difficulty in preventing these crimes, or because the conduct represents a greater threat to the authority of the *bakufu*. *Kujikata osadamegaki* expressly identifies and relies on these differences. Forgery, particularly of land records, was a troubling offense to the *bakufu* because truth was so hard to prove. For this crime, the forger was to be presented for public display, then decapitated, then to have his decapitated head publicly displayed (gibbeted).¹⁵⁶ In contrast, kidnappers were merely killed without public display.¹⁵⁷

Gibbeting served as the recommended penalty enhancement for many other offenses. In addition to forging, the manuals recommend the penalty for a number of crimes of deceit, from faking shipwrecks to steal cargo, armed robbery (lit., robbery with swords), and selling poisons. The manuals also applied gibbeting to collective crimes, long a preoccupation of the *bakufu*, like gang-rape, group robbery, and conspiring to create a disturbance to commit a murder.¹⁵⁸ Crimes against vulnerable victims, like the murder of a physically disabled or blind person to steal their money, also merited this expressive punishment.¹⁵⁹

¹⁵⁶ V. II, art. 61.

¹⁵⁷ V. II, art. 60.

¹⁵⁸ V. II, art. 76. This crime extended to all rioting activities that resulted in death, making it a broad deterrent against the riots Yoshimune had seen during the Kyōhō period.

¹⁵⁹ V. II, art. 56. Similarly, groups that were hard to punish otherwise were also subject to gibbeting. Monks who commit adultery also received the punishment. V. II, art. 51.

When Yoshimune wished to emphasize the severity of the crime even beyond gibbeting, crucifixion was the most public and severe form of punishment. The manuals reserved this punishment for offenses against the state¹⁶⁰ and as a penalty enhancement for crimes against the Confucian five relationships. For example, the manuals recommend that crucifixion should be meted out for making false charges against one's master or parents.¹⁶¹ Similarly, if a wife has committed adultery and kills her husband, she will be crucified, while the adulterer who induces the murder will merely be gibbeted.¹⁶² To exacerbate the expressive force of crucifixion, the manuals required that the *eta* (a symbolically unclean caste) receive the remains of the criminal for disposal instead of the criminal's family, making a traditional Buddhist funeral impossible.¹⁶³

The most extreme recommendation of expressive punishment relates to the case of the murder by a servant of his or her master. Under these circumstances the murderer must be:

- first, bound to a stake and humiliated (*sarashi*) for two days at Nihonbashi, Edo's busiest location, with a placard explaining his crimes; then

¹⁶⁰ For example, knowingly evading government checkpoints, which could be seen as the first step to invasion. V. II, art. 20. Similarly, counterfeiters are both humiliated (*sarashi*) then crucified. V. II, art. 67.

¹⁶¹ V. II, art. 65.

¹⁶² V. II, art. 48. The various iterations of punishment surrounding adultery (and related crimes) are complex, reflective of the *Kujikata osadamegaki's* interest in graded punishment and, unsurprisingly, deeply gendered.

Female adulterers are generally punished more severely even than their male accomplices, while adultery by the husband is apparently not criminalized. Instead, murder by the husband of his wife and her lover (if adultery is proven) is decriminalized. Ibid. One exception to this treatment is the case of monks, who are to be gibbeted if they commit adultery with married women. V. II, art. 51.

Similarly, rape (which is treated as a form of adultery), is only punishable by decapitation if the victim is married (seemingly decriminalized for single women), and in cases of gang-rape, only the ringleader may be gibbeted, while all other participants do not receive capital punishment. V. II, art. 48.

As discussed above, a violation of the five relationships enhances punishment; thus the lover of his master's wife must be gibbeted, while the wife is merely decapitated. Ibid. In cases of incest (also treated as a form of adultery), incest with one's mother or daughter results in gibbeting for both parties; while relations with a sister or aunt lead to deportation and a reduction to the status of *hinin* (non-humans).

¹⁶³ V. II, art. 103.

- led through the streets for an additional day of public humiliation; then
- publicly tortured by the saw- where anyone wishing to run a saw across the culprits back may publicly do so; then
- crucified.¹⁶⁴

This punishment is the most gruesome presented in the *Kujikata osadamegaki* and reflects the emphasis that the work places on loyalty to the master and, by association, the state.¹⁶⁵

Gradations of punishment address three primary concerns. Foremost among these was the protection of the government, both in reputation and reality. The manuals enhanced penalties for crimes like conspiracy that directly threatened the Tokugawa rule, as well as for crimes like forgery that threatened to steal the Tokugawa voice. Enhanced penalties also supported an imagined Confucian hierarchy, exemplified by the status-maintaining five relationships. Purely practically, penalty enhancements also deterred crimes that were hard to catch or prove or, like arson, crimes that posed a disproportionate social threat.

Although the general thrust of *Kujikata osadamegaki* was to emphasize the human origins of Tokugawa law, Yoshimune's expansion of the gradations of punishment to support the Confucian social hierarchy suggests that Yoshimune incorporated certain tenets of Confucian anthropology into his vision of Tokugawa law. Whether or not consciously, Yoshimune's laws created a framework intended to reinforce one vision of Confucian morality as a framework for Tokugawa society. In contrast with the past, Buddhist cosmology was omitted even in the sole

¹⁶⁴ V. II, art. 71.

¹⁶⁵ Another likely competitor, also reflecting clear *bakufu* anxiety, is the punishment for arson- burning alive in the most basic circumstances, with varying degrees of additional public humiliation depending on additional factors. V. II, art. 70.

remnant of the *Awaremi shōrui no rei* that the manuals included. Yet even where generally omitted, elements of Buddhist cosmology remain. The threat of denial of a Buddhist burial provides just one reminder of the persistence of Buddhist cosmology within Tokugawa culture.¹⁶⁶ More broadly, the use of expressive, ritualistic punishments was entirely consistent with Tokugawa Buddhism. As shown most clearly in *Bateren tsuihō no fumi*,¹⁶⁷ Buddhist and Confucian scholars shared the belief that harsh, expressive punishments of offenders were consistent with Buddhist values: “If people commit crimes they will be punished in accordance with their severity by the five punishments of branding, cutting off the nose, cutting off the feet, ancient Chinese punishment, and death.”

The Importance of Custom

Although Yoshimune’s innovations to Tokugawa criminal law sediment one form of Confucian values through the punishment of criminals, Yoshimune did not radically overhaul the conduct that was criminalized. Rather, Yoshimune left earliest Tokugawa laws identifying criminal conduct largely unchanged. Yoshimune responded to emergent threats that newly criminalized conduct posed to the government, but he did not generally use criminalization as a way to change the contours of state authority. Repeated claims in *Kujikata osadamegaki* that precedents derived from “longstanding custom” reinforced Yoshimune’s reliance on Tokugawa-created custom as a validator of Tokugawa law.

Yoshimune’s treatment of conspiracy and doctrinal innovations in religion provide a concrete example how Yoshimune sought to emphasize custom in the treatment of criminal conduct.

¹⁶⁶ In the event of killing one’s master, see *supra*.

¹⁶⁷ See *supra*, 122-123.

From the earliest promulgations of *Buke shohatto*, Tokugawa Ieyasu and his successors remained consistently concerned about the threat posed by conspirators. Whether this fear was well-founded or merely a justification to turn the shogun's outward-facing authority inward to establish broader domestic authority, the government consistently watched for internal conspirators as much as external threats.¹⁶⁸ In Volume I of *Kujikata osadamegaki*, the fear of religious destabilization under Yoshimune shifted from the fear of foreign intervention in support of rival political leaders to the fear of destabilization arising at the popular level.¹⁶⁹ These issues played out in Volume II *Kujikata Osadamegaki* in the treatment of adherents of the *fujufuse* Buddhist sect. Like the Christians, followers of *fujufuse* had been outlawed by Ieyasu, and in the laws the “customary” punishment for their practice was banishment.¹⁷⁰ With changing circumstances, in 1744, Yoshimune provided additional qualifications to this law. These qualifications reduced the punishments for family members of the follower but increased the penalties to be imposed on village leadership who allowed these practices to continue. In the case of preaching new doctrines (*shinki*), the customary penalty for monks remained the same, but there is a penalty enhancement if the monk “draws a crowd.”¹⁷¹ While Yoshimune continued to describe the punishment for each of these crimes as “customary”—tied to the Tokugawa's established patterns of authority—in reality, the *bakufu* used its ability to recalibrate punishments to address the emergent threat of dissent from common people.¹⁷²

¹⁶⁸ See *supra*, 266-267.

¹⁶⁹ See *ibid.* Signs of this fear are widespread, including the elimination of the right to petition, the prohibition of the *ko* as forms of unwanted gambling, and the restriction on the right of villagers to travel without approval.

¹⁷⁰ See *supra*, 161. The *fujufuse*, who notably refused to engage with or recognize the authority of the *bakufu*, were the subject of particularly harsh punishment in the *Kujikata osadamegaki*, banishing all practitioners. V. II, art. 52.

¹⁷¹ V. II, art. 53.

¹⁷² That these provisions were aimed at common people and not at wealthy merchants or samurai may be seen by the unwillingness to prosecute scholars for new works. Tominaga Nakamoto provides a concrete example of a scholar who unabashedly pursued doctrinal innovations but showed no interest in mass unrest or proselytization. The failure to address scholars like Tominaga in light of the stated legal concern for doctrinal innovations provides a useful reminder that these Tokugawa attempts at censorship were only selectively applied.

Conclusion

Over his thirty-year rule, Tokugawa Yoshimune introduced a series of legal innovations that promised a more comprehensive, functional system of dispute resolution. At the conclusion of his rule and on the basis of these innovations, Yoshimune sought to shift in the way that his government asserted its authority to make laws to account for his work. For the first time under Tokugawa rule, Yoshimune's broad reforms presented a series of laws that appear "constitutional" in function but lack recourse to Confucian or Buddhist cosmology to support his authority to explain them. Yoshimune's most significant act of codification, *Kujikata osadamegaki*, provides Yoshimune's ideal representation of this trend; the laws provided in Volume I have been shorn of the cosmological commentary they previously contained, and the punishments laid out in Volume II, in contrast with the descriptions provided by Ieyasu a century before in *Bateren tsuihō no fumi*, rely on history and Tokugawa custom, rather than cosmology, to explain the need for punishment. Viewed most broadly, in *Kujikata osadamegaki* Yoshimune represented his system of laws as a proof that the Tokugawa had increased access to justice, and he sought to justify Tokugawa rule on the dual bases of the Tokugawa's history of offering peace and justice, and the system of justice that the manuals themselves represented.

As Cooper has cautioned, it can be difficult to assess shogunal intentions through the laws themselves or the thin commentary of the *Tokugawa Jikki*. However, Yoshimune's choices suggest a new, independent approach to lawmaking. Considered in the context of the broader intellectual culture of the period, which remained steeped in Buddhist and Confucian ideas, the

absence of cosmology in *Kujikata osadamegaki* is reminiscent of Sir Arthur Conan Doyle's *Curious Case of the Dog in the Nighttime*—absence provides a clue in itself about Yoshimune's goals and concerns. As the foregoing analysis of *Kujikata Osadamegaki* suggests, the manuals allow inferences why Yoshimune effected this shift in lawmaking ideology. In part, Yoshimune dispensed with additional claims to authority because he believed these claims to be unnecessary. Yoshimune took numerous actions in the Kyōhō reforms to limit Tokugawa authority, both over the *daimyō* and over common people. As we have seen with previous examples lawmaking, religious ideology most often accompanied broader assertions of authority, and Yoshimune may have believed that imposing limits on his own authority required no extrinsic justification. From the precedent of Hōjō Yasutoki's issuance of the *Goseibai shikimoku*, Yoshimune drew the idea that the implementation of a system of adjudication, and the production of a compilation to showcase this system, provides ample demonstration of the authority to govern. The Kyōhō reforms, viewed collectively, represent a significant advance in the standardization of adjudicatory processes and procedures, and the *raison d'être* of *Kujikata osadamegaki* was to highlight just these advances- the beginning of each Volume of *Kujikata osadamegaki* is devoted highlighting innovations to procedure and jurisdiction.

Yet there is also ample reason to suspect that contemporary criticism and concerns about reception also drove Yoshimune's turn away from legal cosmology. The rejection of legal cosmology is notable within the laws, but given the overall climate, it is perhaps too simplistic to accept the argument that such arguments were unnecessary due to widespread adoption of Confucian social conventions.¹⁷³ On the contrary, Yoshimune resisted reliance on such claims in

¹⁷³ Henderson (1987), 503. "In Edo the concepts [of law] rested more on officially sponsored and societally rooted morality (perhaps "natural law") of Confucian derivation." Based on the foregoing, the notions of "official

part because of the growing dissensus about philosophical matters. Yoshimune's abandonment of reliance on *jinsei* or other cosmological speculations reflects his response to the arguments of Ogyū Sorai and the attempt by critics like Tokugawa Muneharu to recharacterize the idea of benevolent rule (*jinsei*). Offering cosmological claims to lawmaking authority would have invited further debate over the meaning of *jinsei*. The failure to meet the state's customary grant of mercy (in the form of reduced tax levies) to villagers and farmers during the Kyōhō famine of 1732 would have introduced questions whether the *bakufu* met its obligations under *jinsei*. As we have seen in Tokugawa Muneharu's *Onchi seiyō*, Yoshimune's most aggressive critics continued to proffer an alternative understanding of *jin*—one tied to the exercise of compassion (*jihi*) and tolerance (*nin*). These echoes of Tsunayoshi, whose law making emphasized the inculcation of proper interior values over proper external conduct, were shared by Buddhist thinkers like Hakuin. In this context, the desire to suppress the articulation of *jin* reliant on interiority provided at least one shared cause for the censorship of Muneharu and Hakuin's works, and for the absence of significant discourse on benevolence in *Kujikata osadamegaki*. The fact that Ogyū Sorai and the Hayashi school described a *jin* defined by extrinsic conduct (whether reliant on the behavior of the Ancient Kings or solely on the authority of the *bakufu*) did not reduce the contested nature of *jin* during this period. Yoshimune appears to have favored Sorai's arguments, however, as the standards by which the *Kujikata osadamegaki* promoted virtuous conduct favored a jurisprudence that demanded extrinsic compliance, rather than seeking to promote good conduct through inculcating virtues in his subjects. In this respect at

sponsorship" and social rooting, though doubtless existent, were significantly overstated. This overstatement has led to the unfortunate tendency in Tokugawa legal studies of referring to Tokugawa law as Confucian *in toto*. See, e.g., Steenstrup, 120.

least, *Kujikata osadamegaki* did not “reinforce” an existing natural order, it sought to manufacture one.¹⁷⁴

Although *Kujikata osadamegaki* eschewed the express reliance on Buddhist or Confucian cosmology as a justificatory mechanism, Yoshimune’s laws also were not fully able to excise Buddhist and Confucian ideas from within the laws themselves. As Yoshimune’s changes to the laws governing abandoned children show, eliminating the words *awaremi* did little to change the underlying purpose of the laws. Similarly, although Yoshimune’s assimilation of temples and shrines into the state left these entities with significant control over their own internal doctrines, continual anxiety remained about the growing threat of social unrest associated with popular expressions of religiosity. More centrally, the penal system relied expressive gradations in punishments found in *Kujikata osadamegaki*, and any such expressive regime demands a value system on which to identify these gradations. While the imposition of lesser punishments may have, in itself, been a way of emphasizing the justice and mercy of the Tokugawa regime, expressive enhancements reinforced a set of Confucian anthropological biases by systemically enhancing qualities the government sought to suppress or mitigate penalties where the government sought to promote mercy. *Kujikata osadamegaki* systematically augmented punishments for crimes that violate the Confucian five relationships and that sought to undermine the authority of the *bakufu*. Although *Kujikata osadamegaki* represents that Tokugawa law no longer needed to rely on legal cosmology as a source of authority, it was not so easy for Yoshimune to excise legal cosmology and anthropology from Tokugawa law.

¹⁷⁴ Again, *contra* Henderson’s claims about the nature of Tokugawa law. *Ibid.*, 503.

CHAPTER V MATSUDAIRA SADANOBU'S IMAGINED ORTHODOXY

On August 5, 1783, Mount Asama erupted, spewing inches ash across the Kantō plain and causing a river of mud carrying the corpses of humans and horses to flow along the Edo river through Edo two days later.¹ The resulting impact on crops and the transportation infrastructure would lead to one of the most significant famines under Tokugawa rule.² These famines led to thousands of deaths, a hollowing-out of Northern villages, and ultimately to riots across both the countryside and the cities. This unrest culminated in major riots in Edo and Osaka in 1787.³ During the Edo riots alone, rioters attacked more than 1,000 businesses believing that shop-owners were artificially inflating the price of rice and, by so doing, forcing the urban population to starve.⁴

The Tokugawa government was not up to the task of managing a meaningful relief effort outside the cities, so relief efforts largely fell to the leaders of the provinces and to the people themselves. At least in part, the *bakufu* response failed because shogunal leadership was itself unstable due to the age, infirmity, and finally death of the long-serving shogun Ieharu, as well as of the attendant turmoil surrounding the untraditional transition from Ieharu to his adopted son, the thirteen-year-old son of the powerful Tokugawa Harusada, who would become the shogun

¹ Kikuchi, 162.

² The Tenmei famine was most pronounced in the north in Tōhoku, where accounts described villages emptied of residents and piles of human bones along the roads. See Bolitho (1990), 503 (citing the journals of Sugae Masumi).

³ Walthall (1994), 413-419 provides a detailed account of 1787 Edo riots. Walthall suggests that the riots were a primary factor in contributing to Sadanobu's ability to consolidate power and initiate the Kansei reforms. The riots provided a clear need for *bakufu* symbolic action, but the two years that passed between the riots and Sadanobu's ability to commence the reforms in earnest raises doubts that it was the primary factor in the transfer of power.

⁴ *Ibid.*, 407.

Ienari.⁵ In 1787 at the close of the Tenmei era, the *bakufu* was in transition, had failed to govern, and was again on the brink of crisis.

As the *bakufu* dug itself out of these crises in the Kansei era that followed, the government and the people cast the lion's share of the blame for the government's failures on Tanuma Okitsugu, the former longstanding leader of the *rōjū* and the *de facto* head of the Tokugawa government during the Tenmei famines. Tanuma had led the *rōjū* for the final two decades of Ieharu's rule—for so long and with so much control that later historians would describe the period between Yoshimune's rule and the Kansei period as the "Tanuma period". Tanuma made meaningful efforts to broaden the Tokugawa tax-base and modernize the economy in ways that might otherwise have mitigated the economic dependency on rice that ultimately exacerbated the Tenmei famines.⁶ Nevertheless, the touchstone of Tanuma's government remains its corruption.⁷ Facing deteriorating fiscal circumstances early in his rule, Tanuma responded by centralizing commercial activity into guilds that the government could more efficiently tax for licenses.⁸ This centralization made tax collection easier, but tended to favor businesses that were in the *bakufu*'s favor. This system coincidentally allowed for the more systematized collection of bribes in exchange for licenses.⁹

⁵ Ooms (1975), 17-22 provides an insightful summation of the transition from Ieharu to Ienari.

⁶ The most comprehensive English language account of Tanuma's modernization effort may be found in Hall (1955), 72-78. While Hall's work was unavoidably focused on questions of modernization, his analysis of Tanuma's economic efforts remains largely accurate. See also Bolitho (1978), 197, making the argument that Tanuma was condemned, in part, for favoring stronger *bakufu* control over the *han*.

⁷ It is beyond the scope of this work to address Tanuma's corruption in depth. For a more comprehensive analysis, see Tsuji (2006), 460 ("Certainly, the stories of Tanuma's cupidity and venality are greatly exaggerated, often wildly so, but undoubtedly Tanuma and those around him accepted bribes more or less openly.").

⁸ Ibid. 461.

⁹ J. W. Hall (1955), 74-75.

After Tanuma was forced out in 1786, Matsudaira Sadanobu, the *daimyō* of Shirakawa province, was appointed to the *rōjū* in 1787 with a mandate to restore faith in Tokugawa leadership. Under the guidance of Sadanobu, the government announced a series of legal reforms that have come to be known as the Kansei reforms.¹⁰ Sadanobu produced the reforms in conscious emulation of his grandfather, the sixth shogun Yoshimune. But although Yoshimune had abandoned narratives reliant on cosmology and anthropology to augment Tokugawa lawmaking authority, the government's failures during the Tenmei period drove the need to reinstall popular faith in *bakufu* leadership. This chapter focuses on the ways that Sadanobu returned to cosmological narratives for this purpose in the Kansei reforms.

Like his cousin the shogun Ienari, Matsudaira Sadanobu was a grandson of Yoshimune, born in Edo Castle as part of the Tayasu branch of the Tokugawa family and classically-educated as part of the governing clan. But for Tanuma's intervention, Sadanobu himself might ultimately have become shogun. Instead, he was sent to govern Shirakawa, a remote northern province.

Shirakawa was hit hard by the Tenmei famine, and Matsudaira had to guide the province through the worst of the Tenmei famine while restoring the province to financial stability, reportedly at great personal expense.¹¹ Sadanobu's mixture of pedigree and experience with both the challenging internal politics of the *bakufu* and the deteriorating economics of the provinces made him an ideal candidate to lead one of the *bakufu*'s last significant legal reforms.

¹⁰ Ooms (1975) provides most comprehensive study of Matsudaira Sadanobu's personality and career. While Ooms's analysis of Matsudaira's motivation through the lens of the Weberian model of charisma now seems strained, his research on Matsudaira's career remains unchallenged in English. For other studies on Matsudaira Sadanobu, see also Iwasaki (1983) (translating Sadanobu's self-satire *Daimyo Katagi*).

¹¹ For an analysis of Sadanobu's leadership in Shirakawa, see Ooms (1975), 49-70.

Scholars who have analyzed the Kansei reforms have emphasized these biographical details to explain Sadanobu's motivations for the substance of these reforms. The most common explanations for Sadanobu's reforms identify either Sadanobu's desire to efface the legacy of his rival Tanuma,¹² or his wish to emulate the memory of Yoshimune.¹³ Yet the reform for which Matsudaira Sadanobu is perhaps most well-known was the *Igaku no kin* (異学の禁, lit. "ban on different teachings"),¹⁴ which established the particular brand of Zhu Xi Confucianism as taught by the Hayashi lineage as the "orthodoxy" of the *bakufu*. This reform seems to bear little relation either to honoring Yoshimune's heritage or to vilifying Tanuma's. Instead, *Igaku no kin*—like many of the Kansei reforms—draws its motivation from a more proximate need, the need to respond to popular challenges to *bakufu* law and authority by reasserting the position of the *bakufu* as Japan's dominant ideological force. For, by the Kansei era, the shogun's voice was only one of many intent on shaping the meaning and direction of Tokugawa law.

Over the half century following Yoshimune's production of *Kujikata osadamegaki*, there had been a quiet transformation in the understanding and reception of Tokugawa lawmaking. During Yoshimune's rule and before, even though Tokugawa law had come to broadly influence much of the population (even in those regions and to those populations where the Tokugawa did not exercise direct jurisdiction), elites had monopolized the understanding, interpretation, and deployment of Tokugawa law. Yoshimune, who otherwise broadened access to law through increasing use of the *kōsatsu*, intended even compendia of laws like *Kujikata osadamegaki* to remain private, for use only by those who would be called on to enforce the law. Yet by the

¹² See, e.g., J.W. Hall (1955), 141; Hauser, 46-47; Tsuji (2006), 468.

¹³ For this claim, there is at least nominal evidence, see, for example, Ooms (1975), 82-84; Soranaka, 153-154.

¹⁴ Described in more detail *infra*, 324-327.

Kansei period, ordinary people had grown to know, understand, and, increasingly, criticize the laws in popular culture. During this period, literary and satirical works relied on Tokugawa law as a key theme, and legal apocrypha, unauthorized works purporting to constitute real law, emerged in the form of the *Tokugawa seiken hyakkajō*. No longer just a representational tool of the elite, Tokugawa law had become a medium of popular discourse. And within this popular discourse, Tokugawa critics used competing cosmological narratives to make their claims.

This chapter evaluates the major laws of the Kansei reforms instituted by Matsudaira Sadanobu as an elite response to popular engagement with, and criticism of, Tokugawa lawmaking. In a manner patterned on previous *bakufu* leaders, Sadanobu performed the act of lawmaking as a gesture of shogunal authority and a signifier of the *bakufu*'s benevolent rule (*jinsei*). Sadanobu was keenly aware that the Tokugawa had lost the unilateral control of the ability to define *jinsei*. In reaction, Sadanobu sought to reassert the intellectual primacy of the *bakufu* through a mixture of promulgating laws defining virtuous conduct (particularly the sumptuary laws—the *shashikin no rei*), censoring discourses corrosive of this primacy (through newly re-enforced censorship laws), and promoting an orthodoxy in education reliant on a certain set of teachings that would presumably invigorate a shared set of cosmological understandings and values that going forward across the country would provide greater support for *bakufu* rule. In contrast to the laws of Yoshimune, the Kansei reforms both promoted and were reliant on earlier forms of Confucian essentialism that situated benevolence (“*jin*”) as a precognitive category reflective of a broader, ordered cosmos that could best be demonstrated by the *bakufu* through the shogun's performance of just lawmaking. In the laws that comprised the Kansei reforms, Sadanobu sought to naturalize this cosmology across all layers of society by referring to these principles not only as

“orthodoxy”, but also as “public morality” and “traditional conventions” (*fūsoku*). By normalizing Hayashi Zhu Xi Confucian cosmology as a traditional convention, Sadanobu sought to create a new narrative that Kansei law merely reflected what had always been the hallmark of Tokugawa law since Ieyasu, a reliance on Confucianism to stabilize the social hierarchy.¹⁵ The subsequent broad adoption of this narrative by ordinary samurai and later scholars alike was Sadanobu’s most lasting success among the Kansei reforms.

To demonstrate the substance and technique of Sadanobu’s lawmaking, this chapter will evaluate the Kansei constitutional laws, consider how and why these laws once again relied on legal cosmology and anthropology as an authorizing mechanism, and address the public reception of these laws. This chapter will also consider the alternative voices that spoke about Tokugawa law and the cosmologies that they conveyed. Viewed in context with their contemporary competitors, the Kansei reforms appear as an imagined re-articulation of Tokugawa law, particularly the ways in which Matsudaira Sadanobu justified these laws in the historical context of the development of Tokugawa law. To place the Kansei reforms in historical context, this chapter will first provide the background for the Kansei reforms by considering the legal, political, social and economic changes that occurred during the half-century between the rules of the shoguns Yoshimune and Ienari, including the broader dispersion and social understanding of Yoshimune’s articulation of Tokugawa law and its increasing popular contestation during the crises of the 1780s. This chapter will then analyze more closely several of three of the key reforms made by the *bakufu* as a part of the Kansei reforms: the sumptuary regulations Sadanobu instituted at the start of his reforms; the censorship laws Sadanobu used to control

¹⁵ Ooms (1985) notes this point in passing.

dissent against *bakufu* rule; and the *Igaku no kin*, which sought to change the focus of Tokugawa officialdom and potentially the ideological orientation of Tokugawa society. This chapter will conclude by considering the challenges posed by, and the social meaning of, alternative legal cosmologies that occur with the emergence of the legal apocrypha the *Tokugawa seiken hyakkajō*.

When viewed in the broader context of Tokugawa legal history, Matsudaira Sadanobu's reforms, while in many respects directly allusive to the laws of Yoshimune, were not simply a reactionary attempt to return Japanese society to the Kyōhō era or, more particularly, to Yoshimune's novel style of lawmaking influenced by Ogyū Sōrai's reliance on historical models. Rather, these laws sought to repudiate Yoshimune's exclusive reliance on Tokugawa history, which by this period threatened to authorize an intellectual counterweight to the *bakufu*. Sadanobu's reforms instead constituted a performance of virtue designed to bolster the perception of stability under Tokugawa rule in response to the collective pressures of the prior decade by reinforcing the *bakufu*'s authority to define and assess virtuous conduct. By passing laws emphasizing frugality and promoting Hayashi Confucian orthodoxy, Matsudaira was not trying to forge a model Confucian state, he was using set forms to show that the Tokugawa were attentive to contemporary problems and that they were taking actions in a measured, stable way to restore society to its traditional order. This traditional order reflected the cosmos to the balance anticipated in Zhu Xi thought and stood in sharp contrast to the idea of world-renewal (*yonaoshi*) that first emerged in the Edo Tenmei riots. Yet, even during this period of rebuilding, the Buddhist-oriented contestation of these cosmological justifications in *Tokugawa seiken hyakkajō*

shows that the contours of this imagined traditional order remained subject to contestation, even if there was not yet any real political threat to Tokugawa rule.

From Yoshimune to Ieshige

Growth of legal administration in the Hōreki period

In 1745, soon after the initial production of *Kujikata osadamegaki*, Yoshimune stepped down and transferred the title of shogun to Ieshige, his oldest son. Ieshige suffered from a severe speech impediment that reportedly left his advisor Ooka Tadimitsu as the only retainer able to understand him, and Ieshige in any event showed far less interest in active governing than had his father.¹⁶ While Yoshimune remained active in the affairs of state until his death in 1751, Ieshige would not play a prominent role in government during his own decade of rule, and responsibility for government transferred back to the *rōjū*. Nor was Ieshige needed to govern actively. With bureaucratic rule replacing close shogunal oversight, and benefiting from a generally stable economy, the legal administrative structure contemplated by Yoshimune began to flourish in the Hōreki period (1751-1764).

During the Hōreki period, particularly following the final completion of *Kujikata osadamegaki* in 1754, the legal administration supporting the *hyōjōsho* became increasingly routinized. Many judicial/administrative positions had become hereditary, which led to greater standardization of administrative activity and promoted a tendency towards reliance on established precedent.¹⁷

¹⁶ See Totman (1967), 220 for further details on Ieshige's poor physical condition. Nakashima (2011) speculates that excessive concentration of lead in women's makeup (which led to severe contamination among samurai children) may have impacted Ieshige's health, at 27.

¹⁷ Hiramatsu (1981), 10-12.

Records of decisions were kept with more rigor during this period, leading in 1760 to the publication of the second collection of proclamations, the *Ofuregaki hōreki shusei*.¹⁸ These records provide clear evidence of the growth of legal argumentation starting from the Hōreki period, with the only limitation being that this growth in legal practice focused primarily on criminal matters and more particularly on arguments surrounding the application of the facts to the penal provisions found in Volume II of *Kujikata osadamegaki*.¹⁹ During this period, ordinary legal practice focused on pleas to *bakufu* officials for leniency regarding the proper precedent to apply in cases of punishment.

The afterlife of Kujikata osadamegaki

The increasingly public use of *Kujikata osadamegaki* provides perhaps the most representative example of the development of Tokugawa judicial practice in the latter half of the eighteenth century. Although it was first released in 1742, practitioners and the government continued to formally revise Volume II of *Kujikata osadamegaki*, which focused on penalties, until 1754.²⁰ Even during the period of these revisions, administrators and the *hyōjōsho* quickly began to use the manuals, and from as early as 1737, administrators had begun to compile precedents based on the penal recommendations found in the *Kujikata osadamegaki*. This process led to further standardization of the penalties associated with the laws. The public reception of this code of laws differed significantly from what Yoshimune directed. *Kujikata osadamegaki* was offered as

¹⁸ The collection and publication of significant proclamations was conducted again at the conclusion of the Tenmei and Kampō periods. These collections still form the basis for evaluation of Tokugawa laws.

¹⁹ Hiramatsu (1981), 14.

²⁰ This period of final “completion” was important because at this period, the *Kujikata osadamegaki* was determined to be authoritative over past precedent. Ibid, 16.

an administrative support to standardize judgments in accordance with the will of the shogun across a growing administrative infrastructure. The government directed the manual to remain private,²¹ with only sixteen copies of the work produced.²² However, the government permitted both *bakufu* administrators and *daimyō* in the provinces to review and copy these works, and over time numerous handwritten copies of the law code were produced and often reproduced.²³ As a result, the laws themselves spread widely, but the accuracy of these reproductions varied widely. Despite the directive that the laws themselves were to remain private, by the end of the Hōreki period there was a broad understanding across all levels of society that the laws contained in *Kujikata osadamegaki* reflected *bakufu* policy. The wide dissemination of *Kujikata osadamegaki* had the very likely unintended effect of popular reinforcement of the very policies that were contained within the law code, as the participants in contested matters learned about these laws, they began to use them to support their claims. This unintended change in policy reinforced another, intentional change in policy—the broad distribution and use of the public message boards (the *kōsatsu*)— in order to make Tokugawa law more visible and impactful on ordinary people. As a result of these trends, the public who wished to avoid the reach of the Tokugawa laws began to rely upon these laws to govern their conduct. This meant that by the start of the Tanuma period, popular society had begun to understand Tokugawa law as a systematic body, rather than as a piecemeal collection of ordinances. During this period, Tokugawa law for the first time became the object of widespread popular consideration.

Tanuma Okitsugu

²¹ Harada, 244 (providing details of a criminal case brought for violation of the secrecy duty in 1841).

²² Henderson (1987), 507, provides a list of the holders of authorized copies.

²³ *Ibid.*, 506.

Following the death of Ieshige and the transfer of power to his son Ieharu, political influence moved inexorably into the hands of Tanuma Okitsugu, Ieharu's chief of staff (*sobayonin*), and later head of the Council of Elders, the *rōjū*. Despite a twenty-six-year rule, the ninth shogun Ieharu never engaged in the administration of the *bakufu*.²⁴ Instead, all practical authority remained with the *rōjū* and Tanuma, who retained control over both the executive and deliberative bodies of the *bakufu*. Under Tanuma, the *bakufu* weathered a series of social and economic crises, including plagues, flooding, and volcanic eruptions during the An'ei period. The volcanic activity, unusual climate, and crop failures of the Tenmei famine, described previously, represented the worst of these crises. Even preceding these disastrous and destabilizing events, the *bakufu* continued its decades-long fiscal decline, leading ultimately to the need to solicit loans from the provinces during the Tenmei period to manage ordinary expenses. Yet despite weathering these difficulties, Tanuma's government is most renowned for the level of corruption associated with his administration. This reputation was certainly reinforced by the influence of his successor, the reformer Matsudaira Sadanobu who succeeded him.²⁵

The development of Tokugawa law under Tanuma has been described as “minimal.”²⁶ This characterization fails to do justice to Tanuma's legacy. Like the fourth shogun Ietsuna, Tanuma came to office following a period of intense doctrinal development, and the responsibility for

²⁴ Brecher, 93, summarizes contemporary criticisms of Ieharu.

²⁵ Hall has argued that Tanuma's economic policies were under-appreciated and set the stage for Japan's modernization. See Hall (1956), at 76ff. A thorough analysis of the relative merits of Tanuma's rule is unfortunately beyond the scope of this work.

²⁶ See Steenstrup, 151.

implementing Yoshimune's doctrinal innovations fell to Tanuma. While Tanuma made no significant changes to the criminal laws, he oversaw notable innovations in the development of penal institutions, including, for example, the confinement of the homeless.²⁷ More importantly, as had occurred a century before under Ietsuna, Tanuma oversaw the gradual dissemination and systematic enforcement of Yoshimune's criminal laws, which added a measure of predictability to the laws Yoshimune promulgated. Where Yoshimune deserves the credit for organizing and systematizing Tokugawa criminal law, his legacy owes a debt to Tanuma for their largely faithful execution.²⁸

Notable in its breach was Tanuma's well-documented transition to an administration fueled by corruption.²⁹ In fairness to Tanuma, his rule was not the first to incorporate bribery and influence as a standard operating procedure. The level of venality in his government may have been comparable to the bribery commonplace under Ogiwara Shigehide as Arai Hakuseki described in detail.³⁰ Performances of bribery and reform may even be seen as another set of competing narratives that spanned the Tokugawa era—and were projected backward onto earlier eras, particularly the late Ashikaga.³¹ However, the narrative of reform initiated by Arai Hakuseki and perpetuated by Yoshimune in *Kujikata osadamegaki* remained a dominant moral standard by which Tanuma's administration was measured. The existence of bribery under

²⁷ See Hiramatsu (1972), 47; Botsman, 100-101.

²⁸ It is notable in this context that Yoshimune's laws, which contained some checks on institutional misconduct, provided only limited recourse against *bakufu* corruption.

²⁹ There is no serious question whether it was ordinary course during the Tanuma era to seek influence through bribery or influence-peddling. See Mitchell, 5-7.

³⁰ See *supra*, 200-201. As Mitchell notes, the story of forty-seven ronin (the *Akō* vendetta) may actually have arisen because of a poorly placed bribe by Asano Naganori to the official he later killed Kira Yorinaka. See Mitchell, 4-5.

³¹ Motoori Norinaga, contrasting the Ashikaga to current rule, wrote "By the end of the Ashikaga era, the empire was in an unprecedented condition, plunged as it were in perpetual darkness. Everything was in decline, and corruption reached its extreme." *Tamakushige*, 54.

Tanuma fed the perception held by reformers, *bakufu* critics, and ordinary people that the government had fallen into decline.

Tanuma attempted to follow Yoshimune in matters of commercial law and management of the economy. During the 1760's and 1770's, Tanuma pursued economic policies intended to broaden the revenue base of the *bakufu*, particularly by providing to cartels the license to exclusive distribution and sale of different classes of goods in exchange for the ability of the *bakufu* to tax these organizations.³² Tanuma also sought to promote economic development through currency controls, an emphasis on exports, and supporting new business ventures.³³ These activities had mixed success, but in aggregate they helped to stabilize the revenues of the *bakufu* against the persistent threat of decline over this period, in particular in raising revenue to rebuild Edo after the great Meiwa fire of 1772, one of the largest fires of the Tokugawa era.³⁴ Tanuma's policies kept the social structure stable, although criticism continued to increase,³⁵ but did little to change the economic fundamentals of Japanese society, particularly including a reliance on the rice markets of Osaka. With rice as the primary focus of *samurai* stipends and Osaka as the central hub of the national economy, the *bakufu* remained deeply exposed to the production of rice as a primary staple. This economic structure remained susceptible to the price shocks in the event of unexpected climate conditions like those Yoshimune faced in the Kyōhō period, and the Tenmei famines would bring these conditions to the fore in the early 1780s.

The Tenmei Era

³² See *supra*, 284, on the relationship of promoting cartels to modernization.

³³ Tsuji (2006), 463-465.

³⁴ See J.W. Hall (1955), 120-121.

³⁵ Miura (2019), 30-33 provides a summary of popular criticism of Tanuma. See also Ooms (1975) 6-7.

The eruption of Mount Asama (in Shinano province, near present-day Nagano) began with an eruption that would last over a period of months and spread a plume of ash across much of the arable land in the Kantō region.³⁶ In the same year, but half a world away, the Laki volcano in Iceland also erupted with a much more significant impact on global climates.³⁷ The cumulative result of these two events were failed rice harvests in the years 1783-1785, resulting in a famine that ranks among the worst in the Tokugawa era.³⁸ Unlike the Kyōhō famine, which impacted southern Japan disproportionately, the impacts of the Tenmei famine were felt across the archipelago. However, the north was hardest hit, with northern village populations declining by as much as fifty percent due either to death or flight to urban areas to seek opportunity. This population decline led to a corresponding drop in tax revenues to the *bakufu*.³⁹ Contemporary accounts described mounds of bleached bones and reports of cannibalism across the north.⁴⁰ These famines, as well as the depletion of rice stores from previous poor weather in 1782, led to severe price shocks in the cities that lasted until 1788.⁴¹

³⁶ The Asama eruption peaked in August with a three-day flow of magma. For further information on the eruption and its implications, see Totman, 238-240. In April 1783, Mt. Iwaki had already erupted, although on a much smaller scale, Imura, 33.

³⁷ On the relative impact of Laki and Asama, see Zielinski et al, 2365-2368.

³⁸ Rice yields in 1783, 1784, and 1785 were roughly 50% of the yield averages of previous and subsequent years, likely caused by both the presence of ash from Asama and reduced temperatures caused by Laki. As Totman notes, the buildup of ash had a secondary, deleterious effect of clogging and dirtying waterways, requiring considerable expenditure to reopen waterway transportation and improve drinking water. At 238-240.

³⁹ Ravina, 128-129. But see Hanley and Yamamura, 63, questioning impact of the famine versus other famines.

⁴⁰ McFarlane (2002), 72, quoting Sugae Masumi, who reports being told “These are the bones of people who starved to death. During the winter and spring of the year before last, these people collapsed in the snow....Their bodies blocked the road for miles and miles, and passersby had to tread around them carefully....We also used to catch chickens and dogs running around in the open and eating them. When we ran out of animals, we stabbed and killed our children, our brothers, or other people who were on death's door with some disease, and ate their flesh.” But note that other scholars, including Hanley and Yamamura, 63, 182, question the actual impact of the famines in terms of population.

⁴¹ Ooms (1975), 8.

The Tanuma *bakufu* was poorly positioned to address these disasters. Reconstruction efforts undertaken following the Meiwa fire and other disasters had already depleted the treasury. Although Tanuma's economic policies had stimulated new development, they had not earned him the trust of the merchants or the common people. As a result, Tanuma only had access to half-measures to address the Tenmei famine: taking out loans from the provinces; making the provinces bear the brunt of their own reconstruction projects in regions impacted by the eruptions; seeking loans or price controls from the merchants; and further debasing the currency to give the *bakufu* cash resources to pursue these policies. These measures were unable to head off the economic problems the state faced, and the ultimate result of many of them was to promote the significant migration of villagers from the starving provinces into the cities. This influx placed even more pressure on the resources and prices of commodities in Edo, which ultimately touched off riots.

In addition to their economic impacts, the Edo riots and related riots across the country shared a new millennial fervor. In the place of earlier village protests, which called the *bakufu* to account by appealing to their duty to rule with "benevolence", the Tenmei rioters showed more interest in overturning the social order than in perfecting the existing one.⁴² The agents of this new social order promised the emergence of an alternative cosmology; the rioters associated the mandate for change with the emergence of a new "world renewing" *kami* (*yonaoshi daimyōjin*).⁴³ In addition to this new cosmological orientation, rioters identified ghosts and other supernatural figures as

⁴² Ooms (1975), 75-76, associates this attitude with the *yonaoshi* style rebellions that would occur in the 1850s and hasten conclusion of Tokugawa rule.

⁴³ Miura (2019), 32-35, provides an overview of the rise of Sano Masakoto (the murderer of Tanuma's son) as a *yonaoshi daimyōjin* that would later serve as the symbolic head of the riots.

leaders of the riots⁴⁴ and drew inspiration from the charismatic religious professionals of the common people, the *yamabushi* and practitioners of *onmyōdō*- fortune telling.⁴⁵

The *yonaoshi daimyōjin* was a new figure in Japanese religion—the people believed that the *kami* was actually the representation of Sano Masakoto, the murderer of Tanuma's son. In contrast to the many *daimyōjin* that reflected the *kamification* of the elites, Masakoto was an ordinary low-ranking samurai and a convicted killer. The emergence of the *yonaoshi daimyōjin* from the low-ranking samurai was, as such, an inchoate expression of a new political consciousness and without question an implicit challenge to Tokugawa law. Yet Miura identifies the aims of the cult of the *yonaoshi daimyōjin* as primarily economic, not political.⁴⁶ The priority of the rioters was the elimination of the threat of poverty, rather than the announcement of a new political order.⁴⁷ Nonetheless, the overtly cosmological orientation of this populist movement, and the alternative cosmology articulated around the *yonaoshi daimyōjin*, ultimately provoked an aggressive military repression of the riots.

Tanuma's military repression was the final blow for his rule. Tanuma had been under considerable pressure since the challenges of early in the decade. These pressures were exacerbated by personal loss—the revenge killing of his son in 1784 and the loss of his political patron with the death of Ieharu in 1786.⁴⁸ Soon after Ieharu's death, the new shogun Ienari

⁴⁴ Walthall (1994), 415-416.

⁴⁵ Ooms (1975), 76.

⁴⁶ Miura (2019), 19-22.

⁴⁷ Movements for explicitly political reforms were proposed elsewhere in Japan during this period. Roberts (1997) identifies such a movement in 1787 in the Tosa province that presented an independent petition seeking democratic reforms, 575ff.

⁴⁸ Ooms (1975) also noted that the death of Tanuma's son was celebrated by the masses, with the killer identified as a *yonaoshi daimyōjin*- the world-renewing *kami*- reflected both Tanuma's diminished standing and the millennial feel of the age. Ibid. at 73.

replaced many of his loyalists and promoted Madsudaira Sadanobu. However, the bureaucratic stalemate between Tanuma's remaining allies and the forces of reform lasted until the riots conclusively swung the mandate for change to Matsudaira and his supporters.

The Kansei era

At the death of Ieharu, Matsudaira Sadanobu was still the leader of the Shirakawa province. He had ruled Shirakawa since his adoptive father's death in 1783, and as a result, he had borne the brunt of the Tenmei famines. Because the northern province was hit particularly hard by the famines, Sadanobu had invested considerably, including from his own resources, in the restoration of the province. His rule of the province was considered one of the nation's success stories during the period.⁴⁹ Whether Sadanobu considered his own governance during the period to be a success is less certain; in *Daimyō Katagi*, the satirical work that Sadanobu himself wrote in 1784 about the rule of an unnamed *daimyo*, Sadanobu mocked himself for tendentiousness, as well as for taking his own beliefs too seriously.⁵⁰

When Ienari succeeded Ieharu, Sadanobu was a natural choice to succeed Tanuma as regent to the new shogun. Ienari, who would eventually be the longest-serving shogun, was not borne into the post but appointed as the son of Tokugawa Harusada, the leader of a faction opposed to Tanuma.⁵¹ As such, the appointment of a Tokugawa cousin who was shunted aside by Tanuma

⁴⁹ See *ibid.*, 49-70, for an extended description of Sadanobu's works in the province.

⁵⁰ Iwasaki (1983) describes this work in depth and provides a translation. As Iwasaki notes, Sadanobu burned this work and did not intend its publication, but the work remains valuable as a window both into Matsudaira's thoughts during this period and his personal struggles with the idealized qualities of a Tokugawa ruler.

⁵¹ Ienari, like the shogun who preceded him, was not an active ruler. He was particularly active instead as a lover, maintaining an estimated 900 concubines and fathering a reported fifty-six children.

seemed the ideal way to purge the *bakufu* of Tanuma's influence. Even though many of Tanuma's key allies were dismissed with Ienari's appointment, it would take another year before the shogun appointed Sadanobu, and not until the following year and the Edo riots did Sadanobu achieve full influence over the *rōjū*. As a result, even though they responded to problems that began half a decade before, the popular reforms for which Matsudaira Sadanobu is best known did not begin to appear until the Kansei era began in 1789.

Although harvests had begun to restore themselves by the end of the Tenmei, there had been a significant flight to urban areas, which had left too many fields fallow. Among his first actions, Sadanobu sought to restore proper balance by issuing numerous edicts to return vagrant urban dwellers to the provinces.⁵² More importantly for the samurai, Sadanobu emulated Yoshimune's strategy of reducing, then ultimately eliminating, credit that merchants held against the samurai and added to this by lowering the prices of many urban commodities.⁵³ Although he erased their debts, Sadanobu began to hold the samurai who held positions of authority more accountable for their actions. He replaced many provincial and town administrators, including those from his own allies, when they were unable to meet historical quotas for tax production. And, in service to the merchants, Sadanobu replaced Tanuma's inflationary monetary policy with high quality, more stable currency.⁵⁴ In total, and with the assistance of more cooperative climactic conditions, Sadanobu and the Tokugawa government was able to reverse the fortunes of the economy over the course of the next decade, eliminating all *bakufu* debt and returning the state

⁵² See Ooms (1975), 87, citing four separate proclamations. This change was essential as the tax revenues of the *bakufu* from the provinces had halved during Tenmei era, see Tatsuya (2006), 466.

⁵³ Tatsuya (2006), 474, Ooms (1975), 100. Merchant money-lenders were authorized, however, to reissue debts to distressed samurai, effectively making the cancellation a wealth transfer from one set of merchants to another. See Ooms (1975), 91-99.

⁵⁴ *Ibid.*, 89-90.

to a period of stability that would allow the Tokugawa dynasty one final generation of relative prosperity and easy living.⁵⁵

Sadanobu's lawmaking ultimately embraced a form of shared sacrifice, where villagers (through higher taxes and repatriation), urban merchants (through debt cancellations and price controls), samurai (through more accountability), and the *bakufu* were all expected to participate. On behalf of the *bakufu*, Sadanobu reduced the government and the palace's own expenses significantly and issued additional sumptuary regulations (detailed below) that would reduce the expenses of samurai further. To assist the leaders of the provinces, Sadanobu eased *sankin kōtai* and reduced the demand for forced labor to maintain roads and waterways. But, as *Igaku no kin* suggests, Sadanobu also enforced more particular standards for the training of both provincial administrators and of his own.

Although Sadanobu's reforms had the desired effect of restoring stability, his austerity measures were predictably unpopular. The growing dislike of Sadanobu was shared by the Imperial court, whom he had displeased by refusing the Emperor's father the role of retired *tennō*;⁵⁶ the shogun and his family, to whom he had refused a similar request;⁵⁷ and the common people, who had begun to issue a barrage of criticism that brought about the reforms, which in turn led to the repromulgation and strict enforcement of strict censorship laws to suppress further dissent. By the end of 1793, only half a decade after the start of his reforms, Ienari accepted Sadanobu's

⁵⁵ The Bunka and Bunsei periods (often called the Kasei era), like the Genroku at the end of the seventeenth century, were a period of greater prosperity, if continued economic difficulty. For greater detail on the period, see Howell, 349-371.

⁵⁶ In the so-called "Title Incident" (*Songo jiken*) of 1789-1793. See Ooms (1975), 105ff.

⁵⁷ See Tatsuya (2006), 475-476.

resignation, and Sadanobu would have no formal position for the remainder of his life. While Sadanobu's allied cadre of administrators remained in place and continued his pattern of reform over the course of the next half-decade—and the reforms themselves remained on the books throughout the nineteenth century—the overall period of the Kansei reforms, and of Sadanobu's direct influence, was quite short.

The Kansei Intellectual Climate

Although Tokugawa culture had consistently supported a broad variety of intellectual perspectives, by the latter half of the eighteenth century there was a growing fragmentation of public discourse. Scholars advocating a wide variety of Confucian-oriented thought actively taught and advised *bakufu* and provincial leadership.⁵⁸ Differences in the political entailments of their ideas generated concern at the *bakufu* level that would emerge more visibly in the *Kansei* reforms. Buddhist sects continued to do the bidding of the state, and Buddhist sects also remained in the public eye during famines and panics, particularly through their social relief efforts.⁵⁹ Buddhist scholarship also continued to look deeper into its historical origins. Over the course of the Tanuma period, more and more scholars had become interested in studying Japan's imagined past, a field that was beginning to solidify into what would be called National or Japanese studies (*kokugaku* or *wagaku*, respectively). While not yet a political factor, knowledge gained from Western works had increasingly made its way into Japanese thought since

⁵⁸ The existence of diverging strands of Confucian thought was not novel, nor was provincial sponsorship of different types of teachings. In the seventeenth century, Yamaga Sokō and Kumazawa Banzan each received provincial support, despite the fact that their teachings created political problems for the *bakufu*. See *supra*, 163-164; see also, e.g., McMullen, 291-294.

⁵⁹ Ehlers, 68, describes Buddhist relief work during the Tenmei famines.

Yoshimune's time, and these ideas were beginning to impact the other schools of study. The ideas of the common people previously excluded from these elite preoccupations had also begun to find their way into public discourse, most notably through printed literary works. While a thorough description of the fertile eighteenth-century intellectual climate exceeds the scope of this work, for purposes of explaining the arguments occurring within Tokugawa law the following section briefly provides more background on the main intellectual streams active during this period that impacted Matsudaira Sadanobu's Kansei reforms.

Confucian thought

As the previous chapters suggest, *jusha* (scholars of Chinese learning) remained preeminent as teachers to *bakufu* leadership and rulers of the provinces, and their schools trained most samurai in argumentation in accordance with Confucian teachings. Sadanobu, himself, was educated primarily in Confucian thought, and he modeled his own reforms as a way to signify benevolent rule (*jinsei*).⁶⁰ Similarly, the government continued to support a social hierarchy that aligned with the Confucian five relationships.⁶¹ For these reasons, by the Kansei period Confucian terminology played a fundamental, although not exclusive, role in the Tokugawa government's political theology.

⁶⁰ Sadanobu personally did not affiliate himself solely with Confucianism or its cosmology. Ooms notes oaths Sadanobu took to Buddhist deities, (1975) 85-86, and Sadanobu also notably funded a school of Japanese learning (*wagaku*).

⁶¹ Evidence of this support is most obvious in the proclamation of civic duties, the "Parent and Child and Brother Notice", posted on message boards from the 1710's onward. "All relations, from parents and children, elder and younger brothers, husbands and wives downward must be affectionate toward one another and compassionate towards their inferiors down to the lowest; and those who have masters over them must be diligent in the performance of their duties." Trans. Hall, 320-321.

While the Tokugawa privileged Confucianism in official political discourse, Confucian ideas were not monolithic, nor was every lineage of Confucian scholarship equally aligned with *bakufu* policies. From the seventeenth century onwards, there had been a number of divergent lines of Confucian thought, among them the Zhu Xi thought associated with the Hayashi school (which was inevitably supportive of *bakufu* policy); the school of ancient studies (*kōgaku*) associated with Itō Jinsai and Ogyū Sorai; scholars associated with Wang Yang Ming Confucianism like Nakae Tōju; scholars like Yamaga Sokō who merged Confucian thought with military studies; and countless other lineages of teachers and students who offered variants of these schools.⁶² The differences among these schools were often arcane, but one clear divide lay between scholars influenced by Sorai who understood governance as a fundamentally human endeavor, and those influenced by Zhu Xi who viewed shogunal rule as a microcosm of a broader cosmological order. The differences in political philosophy implied by these two vastly different cosmological beliefs led to significant policy differences.

Although Confucianism was associated with the elites, even before the Kansei period, Confucian learning and discourse had spread broadly across both status and geographical lines. In *Visions of Virtue*, Tetsuo Najita provides a detailed account of the establishment and development of Chinese learning in the context of one particular institution, the *Kaitokudō*, an academy established in Osaka primarily to educate the families of wealthy merchants.⁶³ While the subjects of instruction at the merchant academy paralleled those at the *bakufu* training courses, the dialogue between Sadanobu and Nakai Chikuzan, a leader of the school, showed differences

⁶² See Paramore (2012) 85-86.

⁶³ Najita (1987), 60-98.

in the orientation between the two.⁶⁴ In addition to this dialogue, throughout the Kansei period educated discourse at the popular level frequently alluded to, and often satired, Confucian theory.⁶⁵

Buddhism

In the latter half of the eighteenth century, the Buddhist establishment remained largely engaged in the administrative project of the state. As a result of the *terauke* system, local temples had acquired financial stability through the performance of funerals for their parishioners. The political cost of this stability was that Buddhist temples had become a quasi-administrative body of the state, which administered annual registrations commonly through the nineteenth century. Through the *honmatsu* system, the *bakufu* effectively controlled the administrative structure of the major Buddhist sects. Tokugawa law had prohibited doctrinal and ritual innovation for over 100 years, and in 1770 the *bakufu* asserted more direct control over the doctrinal matters of the sects.⁶⁶ However, there is little indication that the *bakufu* intended to actually exercise any direct doctrinal control over the sects; instead, the legislation continued the tradition of demanding doctrinal consistency. However, following the critical attack offered by Tominaga Nakamoto, and spurred on perhaps by reinforcement from the *bakufu* to more clearly maintain the boundaries of the sects, the Buddhist elites continued to focus primarily on scholarship into their own history and traditions. The late eighteenth century saw the beginnings of the Buddhist

⁶⁴ See Najita (1987), 177-187. Chikuzan, for example, suggested that *daimyo* be ranked not by loyalty but by fiscal solvency.

⁶⁵ One notable example of Confucian satire is the scholar of Western learning Hiraga Gennai's 1771 *Hōhiron*, or "Discourse on Farting." ("To consider this phenomenon with all due attention. we may first observe that within the microcosm of the individual human body, farts correspond to the thunder of the macrocosm. Being like thunder, the sound of yin and yang in contention, sometimes farts explode, sometimes they silently escape - this is their nature." at 167).

⁶⁶ Nishimura, 184ff.

modernist movement that would take root a century later, with an increasing interest in textual interpretation and in learning Sanskrit.⁶⁷

In popular culture, Buddhist monks had a mixed, complex reputation. During this period, there were a number of scandalous incidents involving Buddhist monk and nuns, and the degenerate Buddhist monk became a stock character in comedies. Conversely, however, there was an increasing interest in faith healing, the supernatural, and monks who had shown an alternative form of virtue. These stories were compiled in popular works like Ban Kōkei's *Kinsei Kijinden*, a biography of recent "eccentrics," of which nearly a third of the biographies were of monks. In *Kinsei Kijinden*, the author's portrayal of the monks and of monastic life focuses on—even romanticizes—their reclusive (*kakure*- 隠) behavior as an alternative, popular form of virtue (*tokko*- 徳行) that contrasts with Sadanobu's orthodoxy.⁶⁸ In a related way, many of the leaders of the Tenmei Edo and Kyōtō riots claimed to be *yamabushi* (itinerant Buddhist lay priests), and this populist religiosity played a significant role in the social unrest of the Kansei and later eras.

In contrast with the prevalence of Confucian scholars, Buddhist monks had disappeared from government by the Kansei period. In part, this change was structural; as positions became hereditary, there was no way for Buddhist monks to re-enter the hierarchy. And while Buddhist *terakoya* were still major educators of village and common children, the majority of the samurai had moved to Confucian instruction.⁶⁹ Buddhists like Jiun Songa waged a counter-offensive in

⁶⁷ See Watt, 194-195.

⁶⁸ See Brecher, 127-129. This is not always the case, the story of Tetsugen, for example, emphasizes his relief efforts in times of famine.

⁶⁹ As had many merchant families, see generally Najita (1987), 80-84, for descriptions of the change. Please note *ibid.*, 77, 84, however, for reminders of the Buddhist influences that remained even in nominally Confucian instruction.

support of Buddhism and against Confucian study, but his voice was certainly in the minority.⁷⁰

However, the Buddhist establishment retained some influence, and as the distribution of the *Tokugawa seiken hyakkajō* shows, individuals aligned with Buddhism continued in their attempts to reincorporate Buddhist ideas into Tokugawa governance.

National Studies (*kokugaku*)

The early Tokugawa *bakufu* was acutely conscious of its potential rivalry with the Imperial Court. In part, this consciousness arose out of the understanding that Japan's origin myths placed the *tennō* as a direct descendant of the gods, a living *kami*. As an immanent *kami*, the *tennō* and the court would also hold a rival, possibly superior, claim to rule. While the relative military and political power of the *bakufu* reduced this threat for much of the seventeenth and eighteenth centuries, increasing scholarly interest in the nation of Japan as an object of inquiry, referred to as *wagaku* or *kokugaku*, raised the specter of Imperial restoration as a political threat to the shogun.⁷¹

Ancient Japan was, in some shape or form, always an object of scholarly inquiry. But prior to the Tokugawa period, Buddhist monks held a virtual monopoly on scholarship. Over the course of the Tokugawa period these strands of learning, like those of Confucianism, became increasingly independent from Buddhism.⁷² In the Tokugawa period, two groups primarily pursued national studies as an object of inquiry: the Mito school, an official project of Mito

⁷⁰ See, e.g., Watt, 195-199.

⁷¹ At the end of the *bakufu*, the rise of national studies was one prominent strand that supported the eventual restoration of the *tennō* in the Meiji restoration. That story is beyond the scope of this work, but a valuable presentation may be found in, e.g. Burns (2002).

⁷² Even in *kokugaku*, for example, Buddhist monks like Keichū played an originary role in studying seminal works like the *Manyōshū*.

province directed by a collateral line of the Tokugawa and defined by the long-running project of drafting a comprehensive history of Japan, the *Dainihonshi*;⁷³ and a collection of independent scholars whose inquiries grew into lineages that grew similarly to Confucianism. Because the Mito school was led by Tokugawa allies, their work remained generally aligned with the *bakufu*, even if some of its entailments would create political problems. The independent scholars, most notably represented by Motoori Norinaga in the Kansei period, would later become the source of greater *bakufu* concern.

The independent scholars posed a greater challenge to the *bakufu* because their works were increasingly polemical; rather than merely studying ancient practices, authors like Norinaga and his forebear Kabo no Mabuchi emphasized that the life conducted in accordance with Japan's ancient traditions was preferable to life influenced by Chinese Confucianism or Indian Buddhism.⁷⁴ While scholars often attribute the threat posed by this line of thinking to the risk that it would "destabilize the Confucian social order," a more salient threat posed by works like Motoori Norinaga's was that his conception of national studies threatened to radically democratize the process of cosmology. Norinaga argued that because the ancient ways were more authentic to Japan, all Japanese who reflected on these ancient ways would share the same precognitive feeling of *mono no aware* as the ancient poets,⁷⁵ and would be able to ascertain intuitively the truth of how things were.⁷⁶ For the Tokugawa, who depended in various ways on

⁷³ For more information on the Mitō school and the *Dainihonshi*, see Koschmann (1987).

⁷⁴ See, e.g., Burns, 200.

⁷⁵ For more detail, see Marra, 187-188.

⁷⁶ This stream of thinking derives significantly from Tominaga Nakamoto and would be adopted in greater force by Hirata Atsutane in the nineteenth century. See Harootunian, 96-97; 136-138.

their ability to mediate cosmology as a form of authority, this precognitive path to knowledge posed a direct threat to their rule.

Although Norinaga was critical of Chinese learning in his works, he was never directly critical of the *bakufu* or of Tokugawa law.⁷⁷ Similarly, contemporary Shintō practitioners of this period remained supportive of *bakufu* rule. As a result, the intellectual discussion of *kokugaku*, which was becoming more pervasive by the Kansei period, had not yet had an impact on Tokugawa law. Instead, there was more restiveness on the part of the Imperial court during the Kansei period. The Title Incident,⁷⁸ in which the child *tennō* Kōkaku sought to bestow on his father the title of retired emperor, was just one occasion when the Imperial court sought to test the authority of the *bakufu*. However, despite the court's traditional authority to grant titles, Sadanobu was able to forestall this contest to his authority by threat of punishment. The outcome of this incident suggests that in the Kansei period, at least, the threat posed by assertions of Imperial authority still remained modest and largely symbolic.

Rangaku

After Yoshimune liberalized the importation of Western literature during the early eighteenth century,⁷⁹ scholarship about Western ideas accelerated. Sugita Genpaku's translations of European anatomical works began in 1774,⁸⁰ and by the Kansei period there was a growing

⁷⁷ In *Hihon Tamakushige*, for example, Norinaga was supportive of Tokugawa rule. See Motoori, 54; see also Bowring, 267.

⁷⁸ Ooms (1975), 105ff, analyzes the *Songo jiken* in the greatest detail.

⁷⁹ Books about Christianity remained banned, of course, but scientific works became more broadly available. For more detail, see Jansen, (2002), 238-239.

⁸⁰ See Josephson, 118-119.

appreciation that these bodies of knowledge, which were derided in the early Tokugawa period,⁸¹ should be addressed and incorporated into Japanese science.⁸² The process of assimilation would exacerbate the political instability at the conclusion of the Tokugawa era and provide a major impetus for the Meiji process of “modernization.” During the Kansei period, though, the legal impact of these ideas had not yet crested. Even though scholars of *rangaku*—the study of “Dutch” or Western learning— like Hirata Gennai and Sugita Genpaku, had begun to criticize rival cosmologies, particularly Neo-Confucian ideas, alternative Western ideas had not yet found their way into Tokugawa legal cosmology. Thinkers who were primarily concerned with statecraft and government, and whose ideas were consulted by the *bakufu* and the *han* in consideration of how best to govern, had not yet incorporated Western laws or science into Tokugawa.⁸³ During this period of rapid intellectual growth, the absence of *rangaku* and *kokugaku* influence on Tokugawa law provides an example of the divergence between the conversations found in Tokugawa law and the conversations that were beginning to occur in other areas of Tokugawa society. Similarly, the threat of foreign incursions, which began towards the end of the Kansei period following the appearance of Russian explorers, would increasingly influence later Tokugawa political thinkers, but in the Kansei period these foreign threats remained inchoate.

Popular Perspectives on Tokugawa Law- The *yonaoshi daimyōjin* and Ueda Akinari’s *Kikka no*

Chigiri

⁸¹ See *supra*, 115-116, describing scholarly derision of Western learning in comparison to Confucian understandings of geography during Ieyasu’s rule.

⁸² Jansen (2002), 243-244.

⁸³ Western legal traditions did not enter Japan until the mid-nineteenth century after the arrival of the black ships. See Josephson, 78ff.

While the *kokugaku* of the elite was a popular topic of intellectual discussion but not yet a legal threat, the popular veneration of the *kami* had become a pressing political problem by the Kansei period. The popular belief that the Edo riots were supported by a commoner turned *yonaoshi daimyōjin*, Sano Masakoto, validated Yoshimune's concerns that the greater threat to Tokugawa authority would come from the common people. In his study of the *yonaoshi daimyōjin* phenomenon, which began during the Tenmei revolts, Takashi Miura argues that the worship of these gods was related to “economic soteriology”—the promise of alleviating problems that were directly identified with poverty in this world.⁸⁴ While Miura argues that it is impossible to ascertain all of the causes of this phenomenon,⁸⁵ this emergent religious force was enabled in part by changes in Tokugawa legal cosmology. The cosmology of world renewal as a means of alleviating poverty played an analogous role in justifying protests that occurred in the Kansei period that pleas for benevolent rule (*jinsei*) had played in the popular protests of previous generations. When Yoshimune suppressed the ability of the common people to make pleas for benevolence and more broadly attempted to eliminate Confucian or Buddhist legal cosmology from Tokugawa legal discourse, the disappearance of *jinsei* dialogue left a vacuum in popular religious discourse that opened the door for the introduction of a far more radical, alternative popular legal cosmology.

Popular culture had also begun to reflect on Tokugawa law. Popular literary works of the Tanuma period provided another window into the impact of Yoshimune's laws on broader society. Literary works of the period show a popular awareness and interest in the laws and,

⁸⁴ Miura (2019), 10-14.

⁸⁵ *Ibid.*, 14.

particularly, on their application. However, Yoshimune's pride in the increased transparency of Tokugawa law did not correlate precisely with popular endorsement of Tokugawa law.

Increased scrutiny gave rise to more criticism of Tokugawa legal practices, even if this criticism remained thinly-veiled. This increase in criticism would play a role in Sadanobu Matsudaira's broad censorship of popular literature found in the Kansei reforms.⁸⁶ Criticism of Tokugawa law appears in popular works that were produced before Kansei era censorship started in earnest, although these works remained hesitant to offer overt criticism of the *bakufu* laws.

Ueda Akinari's *Kikka no Chigiri* (The Chrysanthemum Pledge) provides one example of a veiled reflection on Tokugawa law. This short story, first published in 1776 as part of Ueda's classic *Ugetsu Monogatari*, is a retelling of a Chinese ghost story. Although nominally set in fifteenth century Japan, *Kikka no Chigiri* offers a reflection into contemporary Edo period concerns.⁸⁷

Kikka no Chigiri offers a reflection on loyalty- in this case the loyalty of two lovers whose vows to one another proved undying. The two lovers are Hasebe Samon, a Confucian scholar, and Akana Sōemon, a samurai warrior. After Samon nurses the travelling Sōemon back to health and they pledge themselves to one another, Sōemon returns to his home province of Izumo to serve his master. The two pledge to meet again at the Chrysanthemum Festival, some months in the future.⁸⁸ But when he returns to Izumo, Sōemon finds a new lord, Tsunehisa, has ransacked the castle. His brother Tanji has sworn allegiance to Tsunehisa and convinces Sōemon to meet

⁸⁶ See *infra*, 320-323.

⁸⁷ For a consideration of the similarities and differences between *Kikka no Chigiri* and its source, the Chinese "Fan Juqing's Eternal Friendship, a Chinese vernacular story published in Japan in 1620, see Reider, 34-35.

⁸⁸ The theme is reflected in the title of the story "the Chrysanthemum Pledge." This title provides an elaborate pun, however, as *Chigiri* (pledge) can also be read as a lover's tryst, and Chambers suggests that the chrysanthemum (and the Chrysanthemum Festival) were coded analogies for homoerotic love. See Ueda, 75 (Chambers introduction).

with the new lord. Sōemon is unconvinced of Tsunehisa's loyalty, and the new lord orders him to be detained. Sōemon's detainment lasts until the day of the Chrysanthemum Festival, and Sōemon realizes he will not be able to keep his vow. Rather than break the vow, he kills himself, and his ghost appears that night to Samon. Learning of Sōemon's detainment and suicide, Samon travels to Izumo, confronts Tanji and accuses him of disloyalty, then murders him in revenge. The story ends with the new lord Tsunehisa, who is impressed with Samon's loyalty, refusing to chase Samon.

Kikka no Chigiri departs from its inspiration, the Chinese story *Fan Juqing's Eternal Friendship*, in ways that frame the story as a reflection on how changes in Tokugawa law have changed traditional standards of loyalty. In the Japanese version of the story, the lovers are a samurai and a Confucian scholar, allowing for a plot featuring themes of loyalty and revenge. In *Kikka no Chigiri*, the warrior Sōemon is detained out of fear of conspiracy against the new lord. In *Fan Juqing*, in contrast, the protagonist is a merchant who travels away and merely loses track of time. In *Fan Juqing*, both lovers are posthumously given scholarly titles demonstrating their merit; *Kikka no Chigiri* ends ambiguously, with Samon on the run and Tsunehisa unable (or unwilling) to enforce the punishment for an improper killing.

The themes of private morality and public duty found in *Kikka no Chigiri* should be familiar from the Akō vendetta, contrasting the idealized loyalty of the lovers with failed public rule of the new government. But in contrast with the Akō vendetta, where intellectual tension was created by a surplus of morality, in *Kikka no Chigiri* conflict arises from a deficit in morality. Neither Tanji the retainer (who lacked loyalty to his former lord), Sōemon (who chose personal

loyalty to his former lord over the current government), or in the ruler Tsunehisa himself (who failed to seek justice for his retainer by apprehending Samon) met traditional standards of duty. A constant thread in this tale of disloyalty is the intrusion of Tokugawa legal practices into the Japanese system of justice. Sōemon's conflict in duty came from a change in legal norm. When the Tokugawa *bakufu* assumed the ability to replace *daimyō*, they created a condition in the provinces where a samurai's loyalty to his master could shift by bureaucratic change. Similarly, the increasing preference for incarceration over exile reflects a shift in penal standards occurring in the Tokugawa era, particularly following Yoshimune's rule. By detaining Sōemon rather than exiling him, Ueda frames a criticism of Tokugawa penal practices. This critique of state punishment concludes with the Tsunehisa's refusal to enforce the law against Samon, which simultaneously both highlights the arbitrary nature of Tokugawa justice and reinforces a critique against Tsunehisa as a disloyal leader who marvels at the personal loyalty of the lovers while ignoring his duties as a ruler.

Kikka no Chigiri provides just one example of the spreading popular reception of Tokugawa law and its impact of changing norms on Japanese culture. Ueda came from a merchant background and had no particular political relationships or access to legal culture yet was a strong believer in Confucian virtues. By the Tanuma period, there was clearly a broad awareness of the basic features of Tokugawa law, and in the detailed reflection found in *Kikka no Chigiri*, Ueda depicts political leadership lacking in their performance of virtue. Through Tsunehisa, Ueda portrays state authority is arbitrary and inconsistent; Tsunehisa should be expected to support institutional loyalty. When convenient, Tsunehisa does so, demanding Sōemon's loyalty even though their connection is an institutional one, Tsunehisa is the lord of Sōemon's province, not a

lord to whom he has personally pledged himself. At the same time, Tsunehisa fails in his own personal duty to his retainers by failing to apprehend Samon. This tension offers a criticism of Tokugawa era leadership for failing to meet their duties to the nation. *Kikka no Chigiri* provides an example of popular criticism of contemporary leadership and Tokugawa law and is represents the restive literary culture that drove Matsudaira Sadanobu's desire for broader censorship.

The Kansei Reforms

The Kansei Reforms and the Igaku no Kin

When Matsudaira Sadanobu succeeded Tanuma Okitsugu, he was chosen in no small part out of the need to reform the *bakufu*. Whether or not Tanuma's efforts to modernize the Japanese economy were well-intentioned, the combination of the Tenmei famines and the subsequent price shocks that followed them;⁸⁹ the growing popular unrest over economic conditions and perceived mismanagement;⁹⁰ and the broad popular understanding that the venality of the Tanuma leadership had shaken popular trust in the *bakufu*. Add in the death of Tanuma's patron, the shogun Ieharu, and his replacement with the untested thirteen-year-old shogun Ienari, and the political conditions were ripe for change.

Following the consolidation of his authority, Matsudaira Sadanobu made a series of significant legal changes. These Kansei reforms attempted broadly to reinforce the authority of the *bakufu*. Although Sadanobu made a number of policy decisions that were designed to reform and

⁸⁹ In 1787 when Sadanobu became a member of the *rōjū*, the price of rice was as high as it was in 1875 in the midst of the Tenmei famine. See Soranaka, 157.

⁹⁰ During the Tenmei, the number of riots in both urban areas and the countryside again began to skyrocket. See. e.g., Vlastos, 75.

stimulate the economy and which never rose to the level of constitutional changes,⁹¹ the primary focus of the Kansei Reforms lay on issuing new constitutional laws that repositioned the *bakufu* as the moral center of the nation through legislative action. In contrast to Tanuma's legislative quietism, Sadanobu reissued many laws that reinforced Yoshimune's policies, for example increasing censorship and banning pornography. Sadanobu diverged from Yoshimune by using law to reframe the intellectual debate of the era; in the *Igaku no kin*, Sadanobu decreed that Hayashi school Zhu Xi Confucianism was and had been the "orthodoxy" of the state and only students of this school would receive promotion through the *bakufu*.

There have been many works published on the substance of the Kansei reforms,⁹² and this work will focus not on the substantive laws themselves but on the performative purpose of introducing new constitutional reforms and the ways that Sadanobu relied on legal cosmology to support these reforms. In considering intent of the Kansei reforms, scholars make two claims that appear to contradict one another, even if both draw inspiration from the same source material. Some scholars claim that Sadanobu intended to follow the model of Yoshimune as a lawmaker and ruler.⁹³ Others focus on *Igaku no kin* and the other constitutional laws that Sadanobu promulgated and assert that Sadanobu instead sought to reframe the *bakufu*, and Kansei era society, within a conservative Confucian framework.⁹⁴ This section analyzes closely certain of the constitutional Kansei reforms to identify the ideas that Sadanobu used to justify these legal changes and, by so doing, offers a different understanding of the social meaning that Sadanobu

⁹¹ Soranaka (1978), 152 provides a concise overview of Sadanobu's economic reforms. Soranaka's assessment that these economic reforms ultimately failed for the same reason that his social reforms failed, "because its own moral pretensions did not correspond to the times," 163, fails to fully account for the success of the symbolic agenda that Sadanobu sought to achieve.

⁹² See, for example, Tsuda, Ooms (1975), Soranaka, Hauser, 46ff, Tsuji (2006), 467ff.

⁹³ See *supra*, 286 n.13.

⁹⁴ See Paramore (2012), 84ff.

sought to convey through the promulgation of these laws. By comparing Matsudaira Sadanobu's sumptuary regulations (the *Shashikinshi*), his censorship laws, and *Igaku no kin*, I argue that rather than slavishly emulating Yoshimune or attempting to reinforce Confucian values in Kansei society, Sadanobu instead sought to more aggressively reframe what he referred to as traditional custom (*fūsoku*) as inclusive of those elements of Zhu Xi Confucian cosmology and anthropology that Sadanobu felt provided the strongest support for Tokugawa rule. By invoking the idea of tradition and the memory of Ieyasu in support of his reforms, Sadanobu successfully reimagined for his contemporaries and future generations a Tokugawa legal culture that had “always been” informed mainly by Zhu Xi cosmology.

Sumptuary Regulations (Shashikinshi)

Among the first actions that Matsudaira Sadanobu took between 1787 and 1789 after he took authority was to issue a new series of sumptuary regulations (*shashikinshi*- 奢侈禁止).⁹⁵

Yoshimune modeled these regulations on previous laws issued by Tsunayoshi and Yoshimune, although he updated them to account for changing fashion and economic circumstances;⁹⁶ for example, the 1787 laws updated the prohibitions on to restrict certain hairstyles and faddish articles of clothing that were popular in the Kansei period.⁹⁷ The overarching theme of the regulations remained to admonish *daimyō* and other samurai with sufficient means against spending wastefully on travel processions, gifts, and clothing.

⁹⁵ See Hirano, 451; Norinaka, 62.

⁹⁶ See Hirano, 451-454 for a comparison of trends in fashion.

⁹⁷ Ibid.

Because of the nearly formulaic introduction of these laws at the inception of Sadanobu's course of reform, the Kansei sumptuary regulations suggest a multitude of potential meanings. Most straightforward are the historical: Sadanobu sought to contrast the disciplined rule of Ienari (and Sadanobu) with the profligate rule of Ieharu (and Tanuma);⁹⁸ and to compare the rule of Ienari (and Sadanobu) with the enlightened rule of Yoshimune.⁹⁹ Soranaka adds the straightforward economic motivation of attempting to control inflation,¹⁰⁰ while, in contrast, Hirano identifies in these regulations a doomed response to the underlying disparities between the idealized social and real economic hierarchies.¹⁰¹ Each of these explanations holds some merit, but none addresses the primary function of these proclamations, which was significatory.

In his psychological study of Sadanobu, Ooms offers an alternate argument drawn from the political philosophy of Sadanobu's own early work *Seigo*. In *Seigo*, Sadanobu reflects that frugality is a religious/ethical concept that is constitutive of good government and patterned on the Way of Heaven.¹⁰² Accordingly, frugality was a constitutive quality of benevolent rule. Thus by issuing regulations demanding frugality, Sadanobu sought to perform as a benevolent reformer would by issuing laws that exhorting the people to behave virtuously.¹⁰³ This conjecture comports generally with the governing philosophy that Sadanobu adopted in the

⁹⁸ See, for example, Tsuji (2006) 468; Hauser, 47. But see Ooms (1977), 84 (noting that Tanuma had also issued sumptuary regulations).

⁹⁹ See, e.g. Ooms (1977), 85; Soranaka, 153-154.

¹⁰⁰ Soranaka, 154.

¹⁰¹ Hirano (2019) 458-460 ("The futile yet repeated attempts to regulate consumption were nothing but the salient symptom of the legitimacy 'crisis' engendered by the mounting contradictions that the Tokugawa authorities could not contain or resolve", 460).

¹⁰² Ooms (1975), 34-35, citing *Seigo*, at 391. Ooms also characterized Sadanobu's zeal towards reform as ritualistic in his dedication, suggesting that Sadanobu viewed himself as a *daimyōjin* "who rectifies the wrongs of society" and noting that Sadanobu made a pledge to a Buddhist deity to carry through his reforms to their completion. at 85-86.

¹⁰³ This performance of frugality was matched by Sadanobu's enforcement of the *bakufu*'s own frugality. See Soranaka, 153.

Kansei reforms as a whole, as the Kansei reforms sought to promote virtue by reducing other vices like prostitution, gambling, and other “frivolous” pastimes. There is also supplemental meaning that arises from the timing of Sadanobu’s performance of lawmaking. When viewed in relation to the pattern of issuance of prior Tokugawa laws, Yoshimune’s promulgation of sumptuary regulations served a ritualistic function as a signal to announce a new period of reform, in much the same way that the promulgation of the *Buke shohatto* upon the ascension of a new shogun announced a new personal set of oaths between the shogun and his retainers. By issuing sumptuary reforms, Sadanobu was both announcing broadly the commencement of a new period of reform and, more precisely, that he was a ruler who was committed to reintroducing benevolent rule by the *bakufu*. By mirroring the reform traditions of the past, Sadanobu sought to emplace his own rule, and his reform lawmaking, within a historical narrative that associated legal reform with benevolent rule.

One reason to view the relevance of Sadanobu’s sumptuary regulations as primarily signficatory, rather than motivated by economic benefits, was how difficult it was to actually enforce these laws. There is scant record in the Kansei period of punishment of samurai for ostentation, or of confiscation of property on the same basis.¹⁰⁴ In the same vein, punishment for violation of the sumptuary laws appears to have had only modest deterrent effects, as the continual reissuance of these proclamations suggests. While Sadanobu’s government acted to stamp out vice among the common people,¹⁰⁵ there was no significant effort to enforce the

¹⁰⁴ One counter-example from the Genroku era was the case of Yodoya case, outlined in Hirano (2019), 436-438. In this case, the accused was a wealthy merchant and the degree of ostentation was far in excess of what was permitted in the Kansei.

¹⁰⁵ See, e.g., Soranaka, 154, for a description of *bakufu* attempts to use street informers to deter gambling and prostitution.

sumptuary regulations more forcefully than in the past. This lack of effective enforcement stands in marked contrast to Sadanobu's more aggressive enforcement of censorship laws described below.

Censorship laws

Matsudaira Sadanobu also sought to echo Yoshimune by taking aggressive action to censor controversial material. While the *bakufu* had consistently issued laws promising to censor works they deemed questionable and threatened publishers who distributed materials that criticized *bakufu* positions, Yoshimune was the first of the shogun to make and enforce laws that effectively restricted the ability of publishers to offer works more broadly.¹⁰⁶ Yoshimune's laws prohibited materials the *bakufu* deemed subversive, and during his lifetime, he obtained the tacit cooperation of publishing guilds. By coordinating with the guilds, Yoshimune initially slowed (though never stopped) the publication of works that were particularly critical of the government, largely as a result of self-enforcement by the publishing guild. In exchange for the guild's cooperation, penal enforcement of Yoshimune's laws was lax.

As Akinari's *Kikka no Chigiri* demonstrates, from the 1770's onwards political commentary increased in popular works, even in those popular *sharebon* styled as amusements or diversions. By the start of the Kansei period, widely-circulated works by Santō Kyōden, Hōseidō Kisanji, and others were critical of Tanuma Okitsugu and even the reforms of Matsudaira Sadanobu.¹⁰⁷

¹⁰⁶ See *supra*, 239-240.

¹⁰⁷ Kornicki provides an excellent summary of these works and their suppression. Kornicki (1977) at 155ff. Kisanji's *Bunbu Nidō Mangoku-dōshi* is particularly notable in this context because it parodied Matsudaira's attempts to restore Ieyasu's values of *bun* and *bu* (see Chapter 2) among *Kansei*-era court samurai. Ibid.

Many of these popular works adopted the tactic found in *Kikka no Chigiri* of setting a contemporary satire in a conveniently distant historical period. Prior to Sadanobu, these sorts of books were often nominally suppressed. Yet without effective enforcement, the bans had little effect, and the works spread widely.

In 1790, Matsudaira Sadanobu issued a new series of censorship laws modeled on Yoshimune's laws. The Kansei laws banned many of the same types of works banned by Yoshimune, but significantly expanded the categories of works subject to censorship. In fact, Sadanobu's censorship laws restricted the production of any new works, an activity the laws described as "thoroughly wasteful." The laws required publishers to receive approval from the *machi bugyō*, the Edo town supervisor, before publishing any newly-created works.¹⁰⁸ In addition, the laws outlawed anonymous works, banned "evil" works that were nominally set in earlier historical periods, and banned the lending of books containing "rumors."¹⁰⁹

Unlike the *Shashikinshi*, Sadanobu aggressively enforced the censorship laws.¹¹⁰ Shortly after the promulgation of the new laws in 1790, local authorities brought forward prominent *sharebon* author Santō Kyōden, his father, his publisher, and two representatives of the publishers' guild on charges related to the publication of three satirical works. While the government charged Kyōden for three books published in 1790 after the laws took effect, the inquiry into his conduct took into account prior works as well. On the basis of the "depravity" of a Kyōden story about

¹⁰⁸ Ibid.

¹⁰⁹ Ibid. The ban on anonymous works and new works derives directly from Yoshimune's 1722 regulations, but the addition of prohibition on false historical eras or rumormongering were new. See *Ofuregaki kampō shusei*, 993-994, see also Ikegami, 308.

¹¹⁰ The enforcement of the censorship laws is described in greater detail in Kornicki (1977), 156ff.

courtesans, the author was sentenced to fifty days in handcuffs.¹¹¹ By Tokugawa standards, this was a light sentence, but for authors and publishers of satirical works, it was significant.

Moreover, the punishment of the guild representatives threatened a new standard of enforcement of the censorship laws that neither the publishers of the guild nor the authors themselves had expected. As Koike describes, “all that was necessary was to make a victim of Kyōden, the leader of the literary world, and so create something of a sensation in that literary world and among contemporary readers.”¹¹² In contrast to the sumptuary laws, Sadanobu enforced the censorship laws intentionally and aggressively, and this enforcement led to more caution from popular authors not to criticize the *bakufu* in the future.

Matsudaira’s legislation expanded Yoshimune’s laws on censorship, but the new proclamations did not change the much of the substantive content of Yoshimune’s censorship laws. Their reissuance was consistent with the pattern established with the sumptuary laws of performing an act of virtue and modeling reforms in a manner that created a sense of tradition rather than a change in the underlying laws. Sadanobu’s significant change lay in how the *bakufu* actually enforced the laws that he issued. Although the laws expressed concern about “depraved or unorthodox ideas”, the primary focus of concern remained on those books critical of the *bakufu*. In this context, Iwasaki notes Sadanobu’s concern for *sharebon* like Hoseidō Kisanji’s *Bunbu Nidō Mangoku Dōshi* (“Sorting 50,000 bushels on the paths of *bun* and *bu*”).¹¹³ While Iwasaki identifies the primary threat as one to the social order more generally, attacks on *bun* and *bu*

¹¹¹ Ibid., 159. The other accused, with the exception of Kyōden’s father, were also punished. Kyōden’s work contains a postscript that contains a disclaimer that compares his work to “Buddhist parables” and as a method to use benevolence, righteousness and the five virtues to reprove the vice found in the text. See Kornicki (1977), 168.

¹¹² Koike, 54, cited in Kornicki (1977), 162.

¹¹³ Iwasaki, 17-18. Iwasaki notes the unsubstantiated claim that Kisanji was banished from Edo for the publication of this work. Koikawa Harumachi wrote a similar satire of *bun* and *bu* in 1789 but died before his work could be investigated. Ibid.

particularly drew Sadanobu's attention because Sadanobu had made the restoration of the traditional samurai focus on *bun* and *bu* (scholarship and martial arts) a direct link from Ieyasu's ideology to his own, and a centerpiece of his reforms.

However, Sadanobu's justification for issuing the censorship laws differed notably from Yoshimune's justification. Yoshimune's regulations touched on the same subject matter as Matsudaira's, but characteristic of Yoshimune's style, the earlier regulations did not provide any justifications for their enactment. In contrast, Sadanobu explained his proclamations by focusing on the need to protect traditional customs (*fūsoku*- 風速).¹¹⁴ Concern for Tokugawa customs arose periodically across the laws of prior generations, but the introduction of custom by Sadanobu most clearly echoes Ishin Sūden's idea of the *kunigara* (the national character), which demanded protection in a similar fashion. However, where Sūden portrayed the *kunigara* as principally under siege from external conspirators, Sadanobu's primary concern was critical internal voices. By alluding to Sūden in this manner, Matsudaira's protection of customs and morality situated these laws as consistent with longstanding traditions. By protecting traditional customs, Sadanobu sought to connect his legislation with a tradition of lawmaking dating back ultimately to Ieyasu. This suggests one reason why the satire of *bun* and *bu*—Ieyasu's paradigm for samurai virtue—faced such aggressive enforcement. The censorship laws and their enforcement reinforced the argument that Sadanobu used the Kansei reforms to signal his support, or to be perceived as supporting, the values and customs of the founder Ieyasu.

Igaku no kin

¹¹⁴ See *Ofuregaki kampō shusei*, 993.

The *Igaku no kin* is the most well-known of Matsudaira Sadanobu's Kansei reforms.¹¹⁵ Scholars frequently describe this constitutional law as Sadanobu's attempt to establish Zhu Xi Confucianism, particularly as historically taught by the Hayashi School, as the "national orthodoxy."¹¹⁶ Despite this broad pronouncement, *Igaku no kin* was in fact styled as a much narrower law announced to address a more discrete, though still significant, purpose. Although its ambitions may have been much broader than the subject matter of the text, the legal vehicle that Matsudaira Sadanobu selected shaped the law's function and reception. In contrast with the trend following Yoshimune to issue laws of universal applicability, *Igaku no kin* is a directive issued to one institution, the Hayashi school and Confucian learning academy that it had led since the seventeenth century. *Igaku no kin* directs the Hayashi to teach only Zhu Xi Confucianism (*shushigaku*- 朱子学) to the *bakufu* retainers that it educated and explains clearly that *shushigaku* would be the basis for orthodox education at the Confucian academy, and for all *bakufu* retainers, going forward. In order to maintain the orthodoxy of instruction at the Hayashi school, the law appoints two monitors to the school. While not formally addressing other schools, the directive makes two additional points. First, any school that teaches Confucianism to *bakufu* retainers must remain orthodox in its teaching. Second, when drawing talent for

¹¹⁵ With the exception to the major laws proposed by Ieyasu, *Igaku no kin* is among the most closely studied Tokugawa laws. Ooms, in his study of Matsudaira Sadanobu, evaluated the law in detail and criticized previous Western scholarship that positioned the law as a gateway to the reforms of the Meiji *Ishin* and read back to all Tokugawa laws through the framework established in *Igaku no kin*. See Ooms (1975), 122-145. While this work differs in its understanding of the relationship between the law and prior Tokugawa laws *infra*, Ooms's critique of prior scholarship (particularly as relates to Tokugawa Confucianism) remains accurate. Following Ooms, *Igaku no kin* a further generation of scholars have argued that Zhu Xi Confucianism remained far from the core of Tokugawa government. See Paramore (2012), 77 n.5 (citing scholarship).

¹¹⁶ See, e.g. Backus, 58ff for a representative example of this line of scholarship.

government service, the *bakufu* should draw only from scholars trained in Zhu Xi Confucianism.¹¹⁷

From one perspective, *Igaku no kin* was far from radical. From the time Hayashi Razan founded the lineage during Ieyasu's lifetime, the Hayashi school had generally taught a version of Confucianism that viewed the Tokugawa government as a necessary and stabilizing microcosm of an orderly cosmos. In this context, Sadanobu's law merely recapitulates the lineage's own narrative of their founding history and central intellectual propositions. More generally, the Hayashi were unflagging supporters of the Tokugawa regime, who provided constant doctrinal support and validation for the actions taken by the *bakufu*.

In this context, *Igaku no kin* is notable because the law accuses the Confucian academy in the Kansei period of straying from the principles of orthodox teaching (*seitō gakumon*, 正統学問). This claim was at least somewhat accurate; in the years prior to the law's enactment, Hayashi scholars had begun providing instruction incorporating numerous veins of Confucian thought.¹¹⁸ Thus, the heterodoxies *Igaku no kin* sought to suppress were other Confucian teachings (*gaku*), not the teachings of other religions, which were usually called *kyō* or *dō*. In particular, the primary targets of *Igaku no kin* appear to have been the remnants of the Sorai lineage.¹¹⁹

¹¹⁷ “朱子学を講義・研究し、人材を取り立てるように心がけなくてはならない。” “In appointing talented men, they must strive to study and attend lectures on Zhu Xi Studies.”

¹¹⁸ See Paramore (2012), 78-79.

¹¹⁹ See Paramore (2012), 84ff (describing the arguments by the Zhu Xi purists against the Sorai school); Ooms (1975), 141.

These points collectively shed light on the intent of the directive. While aimed at the Hayashi school, *Igaku no kin* swept broadly into the moral education of the *bakufu* and its retainers. Addressing the law to the Hayashi school was significant because the Hayashi were and had been the most consistent scholars in their support of the *bakufu*. Because they were also economically reliant on their connection to the *bakufu*, they were also a target who could not easily ignore the directive. In this way, *Igaku no kin* offered a low-risk means to re-center the moral education of those samurai aspiring to a career in government. Since these positions were largely hereditary, this action meant the moral education of a certain class of literate urban samurai who Sadanobu expected would one day lead the *bakufu* would be conducted strictly in accordance with Zhu Xi principles.

But how far beyond *bakufu* training did Sadanobu really intend to reach with *Igaku no kin*? Did Sadanobu really anticipate that this law would have the significance of other constitutional laws like *Buke shohatto*? Ooms made the compelling point that a key goal of Matsudaira Sadanobu was to compel the moral education of *daimyo* in the provinces in addition to urban samurai.¹²⁰ Provincial leaders had long educated their own samurai at their own institutions, and many of these had moved away from Zhu Xi Confucianism towards Wang Yang Ming Confucianism, *kōgaku* (generally from the Sorai lineage), or some variation of the above or related to the *bushidō* of Yamaga Sokō. As a result of this directive, although it was nominally targeted only at the Hayashi school, the training schools in various provinces over the next decade did shift predominantly towards instruction in Zhu Xi Confucianism.¹²¹

¹²⁰ Ooms (1975) 146-147.

¹²¹ See Backus, 73ff for a detailed discussion of the impact of *Igaku no kin* on provincial education.

This suggests the conclusion that *Igaku no kin* was intended to serve as a constitutional law. And consistent with many other prior Tokugawa constitutional laws, *Igaku no kin* was, on its face, a radical departure from the non-cosmological legislative practice of Yoshimune, to whom Sadanobu often seemed to draw for inspiration. Establishing a particular school of thought to be the State's articulated ideology was a radical move, and one that seems out-of-step with the Sadanobu's other Kansei reforms, which were largely consistent with the models of "reform legislation" established by previous shogun. Although Sadanobu clearly understood that with *Igaku no kin* he was taking aggressive action—perhaps highlighted most clearly by the rhetoric he used to claim its provenance—the announcement of this law served the primary purpose of reimagining Tokugawa law as consistently Zhu Xi Confucian in its cosmology, rather than any substantive promise to radically change Tokugawa law or its practice going forward. By effectively stripping the Sorai school of its government mandate, the primary function of *Igaku no kin* was to announce a transition in legal cosmology away from the ideas of Yoshimune and Ogyū Sorai and back to the Neo-Confucian cosmology the Tokugawa found in Zhu Xi.

Sadanobu's justifications of the establishment of *shushigaku* as orthodox teaching provide the most salient evidence of his intent to reimagine Tokugawa legal cosmology. Like the censorship laws and Sadanobu's Kansei reforms more generally, *Igaku no kin* hearkens back to Ieyasu to establish its precedence, claiming: "Since the Keichō era, the shogunal family has trusted in Zhu Xi Confucianism for generations as a branch of learning."¹²² In order to justify *shushigaku* as orthodox in *Igaku no kin*, Matsudaira Sadanobu reimagines Tokugawa law as fundamentally Confucian from its origins. This claim had little bearing in fact. Although Fujiwara Seika and

¹²² *Igaku no kin* is available from a number of sources, including in English at De Bary et al. Vol 1, 304. Translations in this work are the author's.

Hayashi Razan were present at Ieyasu's court during the Keichō era, Zhu Xi Confucianism was by no means dominant during the period,¹²³ and the idea that in the Keichō period there were separately distinguishable “branches of learning” (*gakumon*- 学問) was anachronistic. The claim that the Hayashi school had been charged by the *bakufu* for generations to maintain Zhu Xi studies is similarly suspect; although Tsunayoshi formally established the Hayashi academy, the school received relatively modest government funding.¹²⁴ It would, in this context, have been simpler and more accurate for *Igaku no kin* to promote Hayashi-style Confucianism as one form of Confucianism that the *bakufu* had supported in the past.

Viewing these three constitutional laws of the Kansei reforms collectively, a pattern begins to emerge. Each of these laws seeks to promote a form of virtuous conduct. Issuing laws that promote a certain conception of virtue is hardly novel, but as the sumptuary regulations suggest, the performance of lawmaking to promote virtue was primarily symbolic. By issuing a series of decrees promoting morality, Sadanobu sought to perform as a model Confucian ruler governing with *jinsei*. More critically, as the censorship laws suggest, the moral virtues that Sadanobu sought to promote were the very virtues that he associated with Tokugawa traditional customs, and more particularly with Tokugawa Ieyasu. By justifying the censorship laws as a means to protect national customs, and by enforcing them most stringently against those authors who satirized Sadanobu's preoccupation with Ieyasu's *bun* and *bu*, Sadanobu created a narrative that situated his reform activities as consistent with a practice of lawmaking that extended back to

¹²³ This idea has been discussed at length in Ooms (1998). While Ooms and others have debunked the idea that the early Tokugawa shogun were avowed Confucianists, there has been less discussion of the genealogy of the claim itself. *Igaku no kin* deserves notice as an important early statement that gave rise to these claims.

¹²⁴ Although since the Hayashi were granted a formal school at least a century before by Tsunayoshi, these claims had a somewhat greater basis in fact. See *infra*, 354.

Ieyasu. Sadanobu reinforced this narrative with *Igaku no kin*, in which he expressly asserted that Hayashi Confucianism was Tokugawa orthodoxy and claimed that the teaching of Zhu Xi had represented the cosmology of Tokugawa law as far back as Ieyasu's rule. By imagining a consistent legal practice justified by Zhu Xi cosmology from the time of Ieyasu continuously to the Kansei period, Sadanobu reinforced the essentialism of Zhu Xi legal cosmology and sought particularly to efface the memory of Yoshimune's historicist legacy.

Legal Apocrypha: the Tokugawa Seiken Hyakkajō

Yet around the same time that Matsudaira Sadanobu began to reframe the cosmological bases of Tokugawa law through his Kansei reforms, there was an entirely new development: the emergence of Japanese legal apocrypha in the form of the *Tokugawa seiken hyakkajō*.¹²⁵ The *Tokugawa seiken hyakkajō*, a legal code of 100 articles, appeared popularly around the beginning of the Kansei era but claimed to be a lost work of Tokugawa Ieyasu, himself. Perhaps because of its formal similarity to other Tokugawa codes (most notably to Volume II of *Kujikata osadamegaki*), the text succeeded for a century in being taken seriously as authentic Tokugawa law. *Tokugawa seiken hyakkajō* was included uncritically by early Meiji scholars within the overall corpus of Tokugawa law; it appears, for example, in Volume I of the collected laws of

¹²⁵ The *Tokugawa seiken hyakkajō* (徳川聖権百力条- “100 Laws of the Tokugawa”, hereinafter “TSH”) was also known by other similar names, including the *Go-yuijō gohōzu-iri hyakkajō* (“Treasured Legacy in 100 Articles”), see Hiramatsu (1981), 5.

the Tokugawa, the *Tokugawa kinreikō*.¹²⁶ Yet by the early twentieth century, legal historians had dismissed the laws as rather obvious forgeries.¹²⁷

Tokugawa seiken hyakkajō was not law issued by the Tokugawa, but the text provides an important alternative vision as a concrete, alternative imposture, a representation of how other legal actors, most likely Buddhists, wanted Tokugawa law to be. *Tokugawa seiken hyakkajō* demonstrates that by the Kansei period, law had emerged as a genre to present cosmological counter-narratives to the mainstream laws offered by Sadanobu. The formulation of these “laws” demonstrates that at least certain elements of the public understood that Tokugawa law by now constituted its own independent stream of discourse, and as a separate discourse Tokugawa law was open for redeployment. Representing just such a redeployment, *Tokugawa seiken hyakkajō* presents a narrative reminder that many of the cosmological arguments that appeared in prior Tokugawa laws remained in play as late as the Kansei era.

Although styled as a series of legal pronouncements composed by Tokugawa Ieyasu,¹²⁸

Tokugawa seiken hyakkajō quite clearly is not what it claims. There is no indication that the original versions of the text included any of the indicia of provenance (the vermilion seal, for

¹²⁶ TKK 1:159 et seq. The text is also available in numerous other independent, extant sources. For purposes of my translations, however, I rely on the *Tokugawa kinreikō* recension. Otto Rudorff also included the text among the focal Tokugawa laws he translated to German in 1886, leading to this text receiving somewhat more attention from Western legal scholars than it otherwise might have.

¹²⁷ Kobayashi, 101, devoted the most attention to debunking the authenticity of the text. See also Henderson (1987), 542, citing Naito (1904) as the initial scholarship questioning the authenticity of the text.

¹²⁸ Article 27 *Tokugawa seiken hyakkajō* attributes the work to Tokugawa Ieyasu: “Although I come from the house of Matsudaira in Sanshū [Mikawa], which has its roots in Seiwa, I have had to live sorrowfully among the common people for a long time, deprived by the enemies of my ancestral land. Now, through the favor of Heaven, the achievements of my ancestors Serata, Tokugawa, and Nita has been restored to me. These four names shall be borne in the future by our descendants, that my commandment may be fulfilled, that they should worship their ancestors, and remember their deeds.” Lest one believe that the text may be attributed to a later shogun, Article 28 continues to claim that in the author’s life he had been in a battle “80 to 90” times, unlike Iemitsu, who never participated in a battle.

example) that accompanied the early proclamations of Ieyasu and Hidetada.¹²⁹ More tellingly, the laws themselves are rife with anachronisms. The laws governing the ranking of samurai provide that the *hatamoto* (samurai with incomes less than 10,000 *koku*) will receive their orders from the *wakadoshiyori*,¹³⁰ a body that was formed by Iemitsu, not his grandfather Ieyasu, and which was not granted any real authority until the time of Iemitsu's son Ietsuna. Similarly, the laws validate the practice of *sankin kōtai*,¹³¹ which was also initiated by Iemitsu. Article 47 recommends the practice of using investigators (*keishi*) every five to seven years, even though this was also a practice initiated by Ietsuna. There is even a modest degree of textual self-awareness. In Article 74, the text seeks to reinforce the ban on retainer suicide (*junshi*), that was notably promulgated by Ietsuna in 1655.¹³² In this context, the text takes care to note that while *junshi* is an “old custom” and thus meriting respect, “in the future” the practice should be forbidden. Read broadly, this text suggests that the Tokugawa public actually had little awareness of Tokugawa legal history, which in turn provides one reason why Matsudaira Sadanobu's claims about the continuity of Tokugawa legal cosmology met with such easy reception.

While *Tokugawa seiken hyakkajō* is the most notable example of legal imposture in Tokugawa Japan, there are comparable examples of such legal impostures in other cultures. Bruce O'Brien identified a series of *impostures* in ninth through thirteenth century Anglo-Norman law, which he describes as “private treatises that posture as royal codes, but were not produced or authorized by

¹²⁹ For a discussion of use of the vermilion seal in *Bateren tsuihō no fumi*, see *supra*, 102-103.

¹³⁰ TSH, art. 14.

¹³¹ TSH, art. 20 (“The unofficial *fudai* and all the great and small *tosama* lords are to pay alternate attendance (*Sankin Kotai*) to the shogun's court. . .”).

¹³² TSH, art. 74. For more on Ietsuna's abolishment of *junshi*, see *supra*, 154 n.23.

any king.”¹³³ These impostures, like *Tokugawa seiken hyakkajō*, arose during a period when Anglo-Norman and French law codes were not widely distributed publicly, providing perhaps an explanation why there was some leeway in public credibility about the provenance of these laws. The symbolic significance of these legal apocrypha have been considered only in a rudimentary fashion. However, a review of other legal apocrypha shows that they were produced for a variety of purposes. Certain of these documents, like the thirteenth century French text *Etablissements de Saint Louis*, a “code” of laws that was purported to be issued by Louis IX, seem to have been produced by later admirers to reinforce the reputation of Louis IX as lawmaker.¹³⁴ Others, like the ninth century forged “treaty” between Edward the Elder and the Danish King Guthrun, also performed substantive work, like “encourag[ing] reform of the diocese.”¹³⁵ In all cases, these laws attempted to recharacterize legal innovations within the context of antique, and certainly settled, law, as O’Brien describes “intent upon ‘finding’ and wielding older royal authority to address current problems.”

Certain of the strategies found in the Anglo-Norman and French law recur in *Tokugawa seiken hyakkajō*. The text portrays Ieyasu as a wise lawmaker; reinforcing the characterization of the founder of the Tokugawa that Sadanobu had taken pains to promote during the Kansei period. Yet, unlike legal impostures in other cultural contexts, there appears to be no real attempt to make new law or materially change the substantive laws of the Tokugawa. In contrast, *Tokugawa seiken hyakkajō* represents a sustained effort not just to portray the substantive laws

¹³³ O’Brien (2015), 24-25. In addition to those listed below, Edward I, the “English Justinian” was, like Tokugawa Ieyasu, frequently the attributed source for legal apocrypha, see Skemer, 1, n.2.

¹³⁴ See O’Brien (2000), 3. O’Brien notes that the relationship between Anglo-Norman and French legal impostures remains open.

¹³⁵ O’Brien (2015), 25. This treaty was also composed more than a century after the dated claimed in the imposter text.

themselves as antique but also to promote a minimalist jurisprudence. Article 99 of the law claims that the laws of the Tokugawa are merely an updated extension of the laws of the Minamoto lords of the *Kamakura* era:

By virtue of my office, I have drafted these laws, using the old statutes of Minamoto and adding only those things added here. These laws were created solely for the purpose of presenting something that already existed, not creating something new, and therefore there should be no new laws at one's own discretion. . . There should be the desire to seek in all, both for big and small thing, a role model in antiquity.¹³⁶

This conservatism is even articulated as a (somewhat irrational) legal maxim: “Incorrect customs that have lasted for fifty years should not be changed.”¹³⁷ This is arguably why the practice of *junshi* creates a kind of legal anachronism that the text must contort itself to address. While these statements might otherwise be described as lip service designed to promote the text's own laws, there are many continuities with previous substantive laws within the text of *Tokugawa seiken hyakkajō*. Consistent with Tokugawa law governing religion from the period of Ietsuna onward, we find the same blanket prohibition on innovation (*shinki*).¹³⁸ Similarly, Article 21 addresses many of the same punishments frequently identified in *Kujikata osadamegaki*.¹³⁹ Article 52 identifies the murder of a master by a servant as the greatest of crimes- consistent with the both the treatment found in *Kujikata osadamegaki* and the intent of the creators that work to promote a worldview based on Confucian relationships.

¹³⁶ TSH, art. 99. See also art. 6: “Although the *buke shohatto* are based on old customs, they should be limited or supplemented according to the conditions of the time.”

¹³⁷ *Ibid.*, art. 18.

¹³⁸ *Ibid.*, art. 17 (contrasting *shinki* with established law- *kōrei*). For discussions of previous prohibitions against *shinki* in Ietsuna's *Shoshū jūin hatto* and *Kujikata osadamegaki*, see *supra*, 158-159 and 278. Similarly, while free practice of religion is promoted, Christianity remains anathema, and is described in terms harkening back to *Bateren tsuihō no fumi*, see TSH, art. 30, described *infra*.

¹³⁹ *Ibid.*, art. 21. Note however that among these punishments are tattooing, a punishment that was not common before the mid-Edo period. Similarly, Article 49, addressing adultery, largely corresponds to the treatment of adultery found in *Kujikata osadamegaki*, see *supra*, 275, n.163.

Rather than seeking to change the laws themselves, the author of *Tokugawa seiken hyakkajō* seeks to change the justifications provided to support these laws, as well as the cultural presuppositions that underlie them. In stark contrast to the laws of Yoshimune, *Tokugawa seiken hyakkajō* reintroduces moral and religious teachings into the text. In its focus on re-establishing tradition, *Tokugawa seiken hyakkajō* was entirely consistent with the work of Matsudaira Sadanobu. Yet the cosmological content of the legal apocrypha is strikingly different. Hiramatsu suggests, perhaps for this reason, that a voice from the Buddhist establishment was the source for *Tokugawa seiken hyakkajō*. Many articles within the text offer support for this hypothesis. As discussed throughout this work, Japanese legal texts often place a symbolic emphasis on the beginning of a set of laws—the most important concepts are presented first. In *Tokugawa seiken hyakkajō*, questions of religious practice return to prominence in the text—occupying two of the first three passages. The language of the text reflects eighteenth century *shingaku* and the Buddhism of the Zen reformer Hakuin,¹⁴⁰ as Article 3 most notably exhorts readers to: “Never be lukewarm during your whole life to worshiping the *kami* and the pursuit of perfecting your mind (*kokoro*) and body.”¹⁴¹ More tellingly, Article 29 identifies the role of the chief priest of the Tendai sect in defeating enemies and praying for the peace in the land as a focal point of state power,¹⁴² and Article 85 reinforces the role of the Tendai within the traditional state hierarchy. This emphasis on the Tendai sect creates another tension within the text itself, as the text acknowledges that Tokugawa Ieyasu’s family traditionally practiced Pure

¹⁴⁰ See TSH arts. 2-3. *Shingaku* was a religious movement founded by Ishida Baigan in the early eighteenth century incorporating both Zen Buddhism and Neo-Confucian philosophy that focused on self-perfection by meditation as a means of better meeting Confucian ideals. See Sawada (1993), at 51 for further description. However, Hakuin’s *Rinzai* Zen of the eighteenth century similarly focused on self-attainment in ways that were complementary.

¹⁴¹ TSH art. 3.

¹⁴² TSH, art. 29.

Land Buddhism (*jōdōshu*) and had no connection with the Tendai prior to the work of the monk Tenkai.¹⁴³

While one aim of *Tokugawa seiken hyakkajō* is to reintroduce Buddhist cosmology into Tokugawa legal discourse, it would be an oversimplification to refer to the text as a Buddhist work. Different articles emphasize Buddhism, traditional *kami* worship, and elements of Confucian thought. As described above, the reference in Article 3 to worship of the *kami* and to Zen/Neo-Confucian meditative practice forges a syncretic position that would not have been out of place in the laws of Ishin Sūden. Similarly, Article 30 promotes broad religious and ideological pluralism in direct contrast with the *bakufu*'s official position in *Igaku no kin*: “high and low [people] may freely follow any of the traditional teachings, other than the heretical teachings (*jakyō*). Sectarian disputes have always been fatal to the world so let us put an end to them.”¹⁴⁴ Similarly, the text strongly endorses the traditional worship of the *kami*, and echoing the laws of Ieyasu and Hideyoshi, Japan is again referred to as the *shinkoku* (the land of the *kami*).¹⁴⁵ Confucian thought remains prominent; the text repeatedly underscores the importance of the five relationships, and particularly the sanctity of the vertical relations between father and son and master and servant.¹⁴⁶

Tokugawa seiken hyakkajō has the feel of a cosmological *bricolage*, but the text itself is no more disordered than other Tokugawa laws—none of which suggest much interest in systematic

¹⁴³ See TSH art. 28, “As a sign of my gratitude, I erected eighteen temples, and my descendants should always follow the *jōdōshū*.”

¹⁴⁴ TSH, art. 30.

¹⁴⁵ See, e.g. art. 71 “If all of us who have received our bodies in the land of the *kami* (*shinkoku*), prefer the doctrines of foreign philosophers, the Confucians, the Buddhists, the Zen teachers e.g., to worship solely, this would be as if one neglected his master and turned his faith to a foreign ruler, the origin (*hon*) would be lost.”

¹⁴⁶ See, e.g. arts. 52 and 70 (master and servant); 54 (man and wife); 75 (five virtues); and 97 (five relations).

organization. Instead, *Tokugawa seiken hyakkajō* feels more cluttered intellectually than the laws of Yoshimune or Sadanobu because the text more honestly reflects the diversity of cosmological influences that existed in the Kansei period, and across Tokugawa history. This diversity is reinforced by the author[s] evident desire to use the text to sustain counter-narratives that the eighteenth century *bakufu* sought to suppress. In addition to syncretic Buddhism, another notable intellectual feature of *Tokugawa seiken hyakkajō* is the reemergence of an emphasis on humaneness (*jin*) and compassion (*jihī*) as the foundation of proper government.

As early as Article 2, emphasis on *jin* and *jihī* re-emerge: “Since the ancient past, widows, orphans, *eta*, *hinin*, the blind, and river-dwellers have been treated with compassion (*jihī*) so they can make a living. This is the basis of benevolent rule [*jinsei*].”¹⁴⁷ While this sentiment is unquestionably noble, it is more interesting as a matter of Tokugawa legal history because this article places in the foreground the importance of governing in accordance with *jin*, a radical departure from the political philosophy of Yoshimune and his successors and a return to the tradition of Tsunayoshi and Tokugawa Muneharu.¹⁴⁸ Again in Article 97, the text refers to the practice of the *bakufu* of protecting the people as *jin*, however in this context, the authors synthesize *jin* with Confucianism, identifying *jin* with supporting the five relationships that serve as the basis for Yoshimune’s legal ideology.

¹⁴⁷ TSH art. 2. Henderson claims that this reference to the *kawata* is the only reference found to them in Tokugawa law. Of course, this reference is not actually found in Tokugawa law, and there are numerous references in law to the *eta* and *hinin*. For additional detail, see Geiger, 20-22, Groemer, 275-276.

¹⁴⁸ See also art. 13, in which the authors argue that ministers should be chosen based on their “honesty and benevolence (*jin*)”.

This synthesis is critical, because the authors of *Tokugawa seiken hyakkajō* do not seek, as Tokugawa Muneharu may have, to weaponize *jin* as a concept to subvert Tokugawa authority. Throughout the text, the authors emphasize the importance of strong *bakufu* leadership,¹⁴⁹ hierarchical social and political relations (particularly between and among the various classes of *daimyo*), and the glory of the Tokugawa lineage. The creators of the text seek, through the reintroduction of *jin* and *jihi*, to broaden the set of intellectual narratives that support Tokugawa law. Too much praise for the pursuit of a more tolerant and compassionate government should not be heaped on the author[s], for the reintroduction of these arguments in the production of *Tokugawa seiken hyakkajō* clearly served a political purpose. By reintroducing alternative narratives as a representative part of the Tokugawa legal culture, the authors sought to reposition the proponents of these narratives—most likely the Buddhist establishment— as more prominent within the Tokugawa legal mainstream.

This tactic was unsuccessful. Buddhists remained marginalized, and at the conclusion of the Tokugawa era, they would face violent persecution.¹⁵⁰ Yet, in this context what is most relevant is not the aptness of their performance, but the authors' "sense for the game." *Tokugawa seiken hyakkajō* demonstrates that by the Kansei period that Tokugawa law codes had themselves become a genre capable of imposture. Non-state actors had begun, through the use of imposture, to ably redeploy the genre of Tokugawa laws as a means to convey a cosmological counter-narrative. Whether non-state actors had the ultimate ability to enforce or impact Tokugawa justice, despite Yoshimune's best efforts to freeze and control the canon, Tokugawa law had by this period become a battleground that was no longer the sole purview of the *bakufu*.

¹⁴⁹ As contrasted with Imperial leadership, which was portrayed as a remnant of the distant past.

¹⁵⁰ See Ketelaar, 43-86.

More importantly, the intellectual counter-narratives deployed in *Tokugawa seiken hyakkajō* are not new ones. Given the narrative's express reliance on precedent and antiquity as a means to convey its own authority, it is not surprising that the core cosmologies of the text reflect an alternative genealogy that also arose from Tokugawa Ieyasu. The text's emphasis on limited tolerance (at least of "ancient teachings"), on the syncretism of the *sankyō*, and most particularly on the priority of the related virtues of *jin* and *jihi* to government reflect an intellectual tradition that ran from Sūden through Tsunayoshi, and Tokugawa Muneharu. That this narrative was not, by the Kansei period, the privileged narrative of the Tokugawa *bakufu* does little to undermine the remarkable persistence and sustained cultural relevance of these cosmological arguments.

Conclusion

Coming on the heels of a decade of extreme hardship and considerable popular unrest, the Tokugawa government had much at stake politically during the Kansei period. Yoshimune's belief that the Tokugawa's history of effective rule provided sufficient justification for its authority to make laws had been thoroughly undermined by the failures of the Tanuma regime. During a period of extreme *bakufu* insecurity, lawmakers unsurprisingly sought to buttress efforts to restore stability and reinforce trust in Tokugawa rule through the reintroduction of cosmological narratives naturalizing the Tokugawa as a microcosm for cosmic order. Consistent with the models of the past, Matsudaira Sadanobu sought to demonstrate the benevolent intentions of the Tokugawa government by performing virtue through the institution of a

sweeping set of reforms. These reforms, particularly the sumptuary laws, the censorship laws and *Igaku no kin*, served two primary ends.

These constitutional laws reintroduced Hayashi Confucianism as the cosmology that authorized Tokugawa lawmaking, both as an element of the nation's customs and, more radically, reimagined as reflective of an unchanging Tokugawa reliance on Confucian cosmology stretching as far back as Ieyasu's Keichō period. Reliance on Hayashi *shushigaku* situated Tokugawa rule cosmologically as a central part of a broader and more systematic cosmic design. In a world that moved in accordance with principle as the Hayashi understood it, the Tokugawa *bakufu*'s rule was necessary and inevitable. Within this cosmology, because the *bakufu* held the position of master within a hierarchy established in a principled universe, the Tokugawa would naturally have the responsibility to interpret and express benevolent rule to the people through performance of virtue. By issuing the Kansei reforms, Sadanobu sought to play the reformer and perform the act of lawmaking as a virtuous ruler, and by so doing to re-establish control over the meaning of *jinsei*. The re-establishment of Zhu Xi cosmology as a basis for lawmaking provided a necessary departure from Yoshimune's historicism, which was essential for the *bakufu* to remain viable politically given their objective failure to serve the state during the Tenmei famines. The Kansei reforms situated Sadanobu's lawmaking within a narrative that Sadanobu took pains to associate with Tokugawa Ieyasu, the *kamified* founder of the era. By devising a narrative imagining continuity from the time of Ieyasu to the Kansei, Sadanobu reinforced the stability of *bakufu* rule at a time when stability was sorely necessary. This tactic reinforced the authority of the reforms themselves at a time when Sadanobu's austerity policies were predictably unpopular.

Yet by the Kansei period, the Tokugawa government was only one voice in the articulation of Tokugawa legal cosmology. The emergence of pro-government legal apocrypha like *Tokugawa seiken hyakkajō* offers a particularly noteworthy example of the production of alternative cosmologies by different lawmakers. Although the authors of this false law intervened into the discourse on Tokugawa legal cosmology to reintroduce Buddhist arguments that had been abandoned by Sadanobu, the apocrypha tellingly uses the same tactics as Sadanobu's Kansei reforms. By promoting Sūden's *sankyō*, *Tokugawa seiken hyakkajō* provides an alternative cosmology that relies on Buddhism, Shintō and Confucianism, yet still offers a totalizing schema that places the *bakufu* at its center and replaces Yoshimune's jurisprudence. By claiming to represent a lost testament of Ieyasu, the apocrypha also seeks to relate new laws to the glorified founder, using the same stabilizing tactic as Sadanobu. By the Kansei period, the public recognized that Tokugawa law as an alternative discourse, and the basic themes of this discourse were understood and deployed both by lawmakers who held power and by competing lawmakers who wanted more influence within the Tokugawa regime.

The authors of *Tokugawa seiken hyakkajō* were not the only lawmakers that understood the significance of legal cosmology as a means to authorize Tokugawa law. By the Kansei period, the Tokugawa government also faced critics who questioned the validity of Tokugawa rule, and there is ample evidence that these critics sought to use alternative cosmologies to corrode the authority of the Tokugawa. These efforts started before the Tenmei era with works like *Kikka no chigiri*, which displayed a noted ambivalence towards whether the legal system or the Tokugawa government truly embodied Confucian duties. These criticisms found more visceral expression

during the Edo riots, where the rioters introduced the alternative cosmology of world renewal based on the *yonaoshi daimyōjin* to explain their efforts. In the Kansei period, the most obvious examples of *bakufu* criticism appear in popular works of satire. The most obvious of these, like the work of Hoseidō Kisanji, directly mocked *bun* and *bu*, the ideological touchstone that Sadanobu used to associate himself to Ieyasu. These satires were a direct target of Sadanobu's censorship laws, which were the most effectively and aggressively enforced of Sadanobu's reforms. The censorship laws suppressed popular dissent against the *bakufu* during the Kansei period.

Paired with *Igaku no kin*'s reintroduction of Hayashi Confucianism as *bakufu* orthodoxy, Sadanobu sought to restore order with a narrative that imagined Zhu Xi orthodoxy as an unbroken cosmology that originated with Ieyasu. Regardless of the historical inaccuracy of this narrative, Sadanobu's Kansei reforms succeeded in restoring *bakufu* stability, at least until the next famine. Perhaps with more lasting impact, nineteenth century samurai, and later Meiji scholars, adopted Sadanobu's narrative largely uncritically. This uncritical adoption gave rise to the claims of Buyo Inshi, cited in the beginning of this work, that Tokugawa Ieyasu "renewed the state" according to Zhu Xi principles, and that all Tokugawa rulers following him did likewise.

CONCLUSION

Before a man studies Zen, to him mountains are mountains and waters are waters; after he gets an insight into the truth of Zen through the instruction of a good master, mountains to him are not mountains and waters are not waters; but after this when he really attains to the abode of rest, mountains are once more mountains and waters are waters.- Attributed to Seigen Ishin.¹

This work offers a long *durée* consideration of Japanese law during the seventeenth and eighteenth centuries, with an emphasis on how lawmakers used cosmological narratives during this period. As a conclusion to this study, I wish to summarize by considering just what changed during this period. The question is particularly apt in the context of Tokugawa law, because previous scholarship on this topic has too often assumed that little change actually occurred. This misconception arose at least in part from the work of Matsudaira Sadanobu. In his highly influential Kansei reforms, Sadanobu urged the Japanese people to accept his assertion that there had been no fundamental change in Tokugawa law since the time of Tokugawa Ieyasu. In service of this argument, Sadanobu relied on and promoted as orthodoxy a cosmology based on Zhu Xi Confucianism which described human nature and the cosmos as fundamentally stable under the guiding principle of *ri*. In this work, I have argued that cosmological narratives did not appear naturally in Tokugawa law in the way Sadanobu argued but, instead, were contingent on the facts, circumstances, and interests of particular lawmakers.

During this two-hundred-year period of *bakufu* rule, the Tokugawa substantive laws were surprisingly stable. Starting from a framework of existing precedents that were politically unworkable for them, the Tokugawa shoguns created a body of substantive laws that remained fairly constant. Many of the substantive provisions of the key constitutional laws that articulated

¹ Suzuki (1926), 24.

the authority for Tokugawa rule—like *Buke shohatto*, *Kinchū narabini kuge shohatto*, and the *Shoshū jūin hatto*—remained largely unchanged over this period, and these laws were even reissued at predictable intervals to reinforce the rhetorical effect of stability.² This performance of stability permeated the public proclamation of laws as well; the same prohibitions and injunctions were promulgated year after year on the public message boards (*kōsatsu*) year after year.³ Even within particular laws, the same terminology was used consistently over many laws to address persistent concerns. For example, in multiple proclamations over 150 years, the laws governing temples and shrines use consistent language prohibiting any “innovation” in doctrine or practice in multiple proclamations over 150 years.⁴ In addition to similarities in process and language, much of the substance of the early Tokugawa laws remained largely unchanged even two hundred years later. Despite the fact that over two centuries as Japan urbanized and became more broadly literate, its economy became more modern and complex, and the Tokugawa *bakufu* legal bureaucracy became both more standardized and increasingly able to enforce laws across the archipelago, and the government at the same time fell deeper and deeper into sustained financial hardship—despite all this, the Tokugawa leadership generally only changed the substance of the laws in reaction to economic or technological innovations.

This level of apparent legal stability was exceptional, particularly considering the growth and urbanization of Japanese society over this period, as well as the concomitant economic changes

² *Buke shohatto* was not entirely static—Arai Hakuseki sought to reformulate it for his own ideological purposes. See *supra*, 203. However, this change was acknowledged to be a mistake, and following Yoshimune the law was reissued in the same (pre-Hakuseki) construction for each new shogun.

³ Hiramatsu (1981), 8, emphasized the rhetorical effect of repeated pronouncements: “these standards—following the same wording for a century and a half—came to be like natural law in the consciousness of the people and permeated the flesh and the bones.”

⁴ For example, the prohibition on “innovation” (*shingi*) remained in these laws from the time of Ietsuna (1660’s) through the Kansei period.

that shifted considerable power from the warrior samurai class to urban merchants. Perhaps beguiled by the *bakufu*'s own narrative of stability and the constant repetition of substantive laws, scholars of Japanese law have generally evaluated Tokugawa law from the broadest possible perspective, as a single body. Viewed from such a "telescopic" narrative lens,⁵ the common description of Tokugawa lawmaking reflects Seigen Ishin's famous description of Zen practice, described above. But just as Seigen suggests, although the laws looked the same when proclaimed, they were not the same in practice, and for both the lawmakers and their critics, the laws held a social significance that changed over time. Between the first *hatto* issued by Ieyasu and the conclusion of Matsudaira Sadanobu's Kansei reforms, Tokugawa lawmaking reflects a "radically changed stasis."

The justifications that Tokugawa shoguns offered to support Tokugawa lawmaking practices changed in particularly meaningful ways across this period. I identify many changes—both explicit and implicit—in what I describe as the legal cosmology and anthropology of the Tokugawa constitutional laws. Legal cosmologies are those systems and practices found within laws that laws rely on to explain how the world operates; legal anthropologies are the same sorts of systems and practices that explain how people behave.⁶ Legal cosmologies and legal anthropologies occur regularly in Tokugawa law. The many different narratives that appear belie the totalizing vision according to which the Tokugawa laws relied solely, or even predominantly, for their authority on an unchanging set of arguments drawn from Zhu Xi Confucianism. From the first laws drafted by Ishin Sūden, legal cosmology was used primarily as an explicit tool of

⁵ For this analysis, I am of course indebted Doniger's metaphor of the microscope and the telescope to contrast these perspectives. See Doniger (2011), 6-28.

⁶ French (1995), 97. See also Stockdale, 103-107.

persuasion in support of those constitutional laws that framed the Tokugawa legal order. Sūden relied on the interpretive concept of the *sankyō*, which posited a fundamental unity of cosmologies found in Buddhist, Confucian, and Shintō teachings, but also found in Christianity a destabilizing threat to this unity. Sūden used this concept to justify and explain the necessity of Tokugawa *bakufu* authority to make laws that would protect the national character (*kunigara*) against internal threats and conspiracies and also offer salvation to the people. A century later, Tsunayoshi in the *Awaremi shōrui no rei* used the related categories of compassion and benevolence (*jihī* and *jin*) similarly to justify an expansion of *bakufu* lawmaking authority. Tsunayoshi argued that the need for new laws was drawn not from Zhu Xi thought but from his responsibility to save the people by inculcating in them those Buddhist/Confucian virtues that he felt supported the social order. In each case, the practical need to resolve a political problem in Tokugawa law impacted the narrative of legal cosmology that was provided.

Rejecting Tsunayoshi, Arai Hakuseki sought to make very similar arguments for broader authority on the basis of Confucian principles, but Hakuseki's cosmology differed notably from the Zhu Xi cosmological speculations of his rivals the Hayashi. Following Hakuseki, the sixth shogun Yoshimune incorporated Confucian cosmology implicitly into his own rearticulation of Tokugawa law, for example in the ways in which he systematized the gradations of punishment. In contrast to his predecessors, Yoshimune sought to demonstrate his authority through an appeal to his historical ability to make and execute laws, rather than an appeal to legal cosmology. In short, it was not until the Kansei period under Matsudaira Sadanobu that a vision of Tokugawa law informed exclusively by Zhu Xi Confucianism actually took shape. Sadanobu adopted Zhu Xi Confucianism as the "state orthodoxy" in *Igaku no kin* to support *bakufu* rule under

conditions where disruptions in the cosmic order (famines, volcanic eruptions) had led the people to question the *bakufu* ability to sustain the socio-political order, a danger reflected in the emergence of the alternative, transformative cosmology of the *yonaoshi daimyōjin* during the Edo riots. In this context, Zhu Xi Confucianism's argument that an essential relationship exists between a well-ordered universe and a well-ordered state represents the apotheosis of the Tokugawa's tactical use of cosmological arguments in the service of their own political self-preservation.⁷

The frequent, significant shifts in the narratives of legal cosmology and anthropology that the Tokugawa and their critics used to inform Tokugawa constitutional law offer an insight into legal cosmology as an evaluative category. In previous works, French and the Engels relied on legal cosmology, particularly of non-Western cultures, for two purposes. They hoped both to use alternative legal traditions with non-Western cosmologies to highlight deficiencies in modern secular law, and they believed that identifying legal cosmologies offered a different, unbiased perspective on social understandings of religion. This analytical approach further assumed that:

- society shared a common set of cosmological and anthropological understandings, and these understandings were not subject to significant contestation;
- laws were produced and interpreted by lay people without a stake in a particular cosmological point of view or particular sophistication in cosmological argumentation, such that laws reflected these shared social understandings; and
- laws were created to reflect an existent social order and to protect people, and not as a means to establish or maintain artificial hierarchies of authority—or, at least that the

⁷ This point is described in more detail *supra*, at 326-328.

ideology of cosmology could be assumed irrelevant to the construction or maintenance of such hierarchies.

My work calls into question each of these assumptions. Instead of a repository for shared social meanings, the Tokugawa constitutional laws frequently served as an arena of contestation of the political theology of Tokugawa Japan. This may seem surprising, since the Tokugawa shogun faced few apparent political rivals over the majority of this period. Nevertheless, the practice of presenting narratives reliant on legal cosmology in connection with the Tokugawa constitutional laws provides a reminder that across the breadth of Tokugawa law, lawmakers were beset by a deep-seated anxiety. This anxiety arose both from the relatively universal concern that the *bakufu* would not be able to enforce the laws it made—reflecting poorly on its authority—and, more fundamentally, because Tokugawa authority to issue laws was directly and continuously subject to critical scrutiny. Both sources of anxiety were well-founded; it was hard to enforce laws in Tokugawa Japan and from the beginning, alternative critical voices existed and used alternative legal cosmologies to criticize the government. The use of competing legal cosmologies provides one example demonstrating how lawmakers from outside the government increasingly influenced the production and direction of Tokugawa law.

Appeals to legal cosmology occurred particularly frequently in association with crises of *bakufu* authority, and when they occurred, both the government and its critics deployed legal cosmologies in support of contemporary, non-cosmological concerns. Tokugawa lawmakers drew on legal cosmology because it offered non-falsifiable cosmological arguments that naturalized the *bakufu* within a stable, identifiable worldview. These arguments were not merely rhetorical; government officials who offered these arguments understood their intellectual

significance. Most were educated in Buddhist and/or Confucian studies and had also served either as practicing monks (like Sūden) or as Confucian instructors (like Arai Hakuseki). Lawmakers (both inside and outside government) were deeply familiar with competing cosmologies and relied upon them as a baseline for broader argumentation. But, legal cosmology was not the only tactic in the Tokugawa *bakufu*'s arsenal that could be used to establish its authority. As Yoshimune's *Kujikata osadamegaki* shows, by the mid-eighteenth century at least, the act of lawmaking itself offered a representation of authority that no longer needed cosmological narratives to substantiate it.⁸

Legal cosmology offered opponents of broader *bakufu* authority a means to introduce a corrosive discourse.⁹ While *bakufu* constitutional laws incorporated legal cosmology as a means to naturalize Tokugawa power, the *bakufu* never had complete control over popular understandings of cosmology or anthropology. Consistently across the Tokugawa period, popular voices criticized and contested these laws by offering alternative forms of legal cosmology.¹⁰ During the Tokugawa period, legal cosmology served as an ideological battleground precisely because there was no cosmological consensus. In his fight with the shogun Yoshimune, local leader Tokugawa Muneharu posited a world in which ordinary people, if not led astray by unreasonable laws like those of Yoshimune, following their own intuitions would not need laws at all.¹¹ Muneharu held a significantly different understanding of human nature, and of benevolent

⁸ See *supra*, 279-281. In this context, it merits consideration that *Kujikata osadamegaki* was issued by perhaps the most powerful Tokugawa shogun at the height of his personal authority. In other cases, claims to religious authority were both sought and necessary.

⁹ See Lincoln, 74-89.

¹⁰ In addition to the examples of *Tokugawa seiken hyakkajō* and the Zen establishment's critique of Sūden's laws governing abbacy, described above, we should also consider the criticisms by Tokugawa Muneharu, *supra*, 234-236, and by Dazai Shundai of Tsunayoshi's handling of the Akō rebellion, see *supra*, 185, as other examples of this contestation.

¹¹ See *supra*, 235.

government, than Yoshimune did. In the same way the *bakufu* used legal cosmology as a persuasive tool to reinforce their own laws, Muneharu deployed legal cosmologies in his province's constitutional law *Onchi seiyō* in an attempt to destabilize what he saw as Yoshimune's over-prescriptive lawmaking.

In the context of Tokugawa lawmaking, both the *bakufu* and its critics took seriously the cosmological claims that they made; the divergence in understanding of basic cosmological matters was real. Over the course of the Tokugawa period, public intellectual disputes outside the realm of law also periodically laid bare a clash in cosmologies.¹² But legal cosmology was not used in Tokugawa laws to resolve underlying religious or scientific disputes. Legal cosmology primarily justified lawmaking authority, for example when Ishin Sūden used the *sankyō* to explain why Tokugawa Ieyasu, rather than the *tennō*, must be entrusted with the authority to make laws, not just to enforce them.¹³ Rather than making laws that reflected a homogenous social structure or hierarchy that had been arrived upon by broad popular consensus, Tokugawa lawmakers deployed legal cosmologies purposefully as a way to create and retain dominance over the production of cosmology and, by so doing, to use its description of “the nature of things” to naturalize a social hierarchy and social mores that the government believed would sustain the entirely contingent authority of the *bakufu*. The contours of the social hierarchies and social norms that lawmakers sought to naturalize were innately contingent; they varied in accordance with the lawmaker (as Tsunayoshi, for example, sought very different

¹² One of the most noteworthy of these was the clash between European understandings of cosmology and those informed by Chinese science, such as the Christian-Buddhist debates that occurred at the beginning of the Tokugawa period, see *supra* 115-116. These debates would re-emerge by the Kansei period, as Western science gradually gained adherents, but notably, this shift in cosmologies did not reach to Tokugawa laws. See *supra*, 309-310.

¹³ See *supra*, 132-133.

social norms than Yoshimune) and, even by the early eighteenth century, were increasingly divorced from economic reality. But by using its lawmaking authority to adjudicate among competing cosmologies on those occasions when differences arose, the *bakufu* demonstrated and reinforced its critical role in maintaining the cosmological order, and as a consequence, generally sustained the social order.

Seeing the pitfalls in taking an uncritical, telescopic approach to Tokugawa law, in this work, I have considered the deployment of particular legal cosmologies from a microscopic perspective to derive insights into both the scope and relative weight of ideas that emerged during this period, and on the ebb and flow of particular ideas within the particular discourse of Tokugawa law. Even though there was never a single, dominant “Buddhism” or “Confucianism” that informed legal cosmologies across Tokugawa society or over time, Tokugawa lawmakers found particular arguments associated with Buddhism or Confucianism to be valuable from time to time, and these were reflected in legal cosmology. Close comparison of particular narratives of legal cosmologies articulated in the foregoing chapters, and consideration of the interrelation of these arguments genealogically, provides a window that shows continuities and discontinuities in Tokugawa lawmaking practices and, more generally, in the Tokugawa government’s articulations of its own lawmaking authority over this period. As I described above, when Tokugawa constitutional laws are viewed immediately and from the perspective of the subject lawmaker, each historical moment—represented by the cosmological arguments presented with a law or set of laws—is holographic, containing within it a web of inferences that include remainders from the past and often anticipate concerns that would arise in the future. When the historical moment represented by a particular law is viewed closely with an eye towards the

ways lawmakers and their critics deployed legal cosmologies in service to other particular goals, the seemingly static substance of the law offers the potential to serve multiple, often-competing perspectives. For example, when Arai Hakuseki sought to replace the legal cosmology based on compassion found in Tsunayoshi's *Awaremi shōru no rei* with his own legal anthropology drawn from the Chinese classics, he was engaged in no less than four arguments: (1) an argument about competing teachings with thinkers influenced by Buddhism about competing teachings as to whether benevolent rule should be equivalent to showing compassion; (2) an argument with his Confucian rivals, about whether anthropology drawn from the ancient classics provided a better basis for rule than Zhu Xi cosmological theories; (3) an argument within the government about why the shogun (whom Hakuseki described as a Confucian “king”) should have primary authority rather than the senior ministers of the *rōjū* or the provincial leaders; and (4) an argument with the government's critics, about whether, by replacing Tsunayoshi's principles with his own, the Tokugawa government was reforming the laws in a way that proved their fitness to rule.

Rather than shining a light on shared cosmological assumptions, legal cosmology provides an informative viewpoint from which to understand social dissensus, more particularly the types of arguments that occurred within Tokugawa law. Identifying the particular genealogy of these arguments also highlights that Tokugawa law represented an independent stream of thought that moved at its own pace and changed according to its own internal logic. In conclusion, I wish to explore the internal logic of Tokugawa law by identifying and considering two pairs of competing narratives that emerge from a close reading of the deployment of legal cosmology in its historical context: Zhu Xi cosmological “orthodoxy” versus the Buddhist soteriology of

“compassion”; and Confucian and Buddhist essentialism versus Yoshimune’s adoption of Ogyū Sorai’s reliance on historical models.¹⁴

Tokugawa “orthodoxy.” By taking into account the deployment of legal cosmology across the Tokugawa era we can explain how legal scholarship made the mistake of treating a historical moment—Sadanobu’s establishment of Hayashi Zhu Xi Confucianism as state orthodoxy—as a totalizing narrative. Nineteenth century scholars and literary elites¹⁵ developed the conventional wisdom about Tokugawa law by relying, perhaps naïvely and perhaps tactically,¹⁶ on Matsudaira Sadanobu’s Kansei era promotion of Hayashi Confucianism’s essentialist narrative as state orthodoxy. These elites and scholars, who included both critics of the *bakufu* prior to the Meiji *ishin* and a generation of scholars from the Meiji era, accepted uncritically Sadanobu’s argument that Hayashi Confucianism was orthodox because it reflected the state’s “traditional” morality that Sadanobu claimed to trace back to the legendary founder Tokugawa Ieyasu.¹⁷ Later authors like Buyo Inshi, and the later scholars who relied upon authors like him, accepted as fact Sadanobu’s characterization of the past, assuming that Tokugawa laws had always relied on Confucianism across the era as a means to reinforce the particular social hierarchy Sadanobu envisioned with the samurai at its head. Because Sadanobu’s lawmaking arguably forced essentialism on the Hayashi school at a time when the school, in fact, had begun to stray from

¹⁴ Sorai’s methodology has been described as historicist, but as Sullivan has identified, could more accurately be described as Straussian. Equally, of course, Strauss’s methodology might be equally described as Soraian.

¹⁵ These scholars and elites were also both politically engaged, particularly in the overtly political activity of supporting the Meiji state in contrast with its Tokugawa predecessor, see *supra*, 176, and influenced by general historical trends of the period which sought to identify a narrative of development to explain historical progress.

¹⁶ It is beyond the scope of this work to consider the political agendas of Meiji-era legal and religious scholars. Those interested in these matters should consider Isomae (2002). One consequence of this work is to suggest that we should not uncritically assume that Meiji scholars’ adoption of Sadanobu’s characterization was simply naïve, and not in service of a broader political agenda.

¹⁷ Buyo Inshi is cited uncritically, for example, in Najita (2009), 85, and Hur (2000), 203.

“orthodoxy,”¹⁸ we can see that the beneficiary of Tokugawa orthodoxy was the Tokugawa government, not the Hayashi school. Under Sadanobu’s narrative, the Tokugawa government had always relied on the principles of Zhu Xi Confucianism to order the state by importing the idealized Zhu Xi cosmological/social order into the Tokugawa laws. This account attributed the ineffectiveness of law to the gradual economic shift of Tokugawa society, a shift that strained the idealized social ordering that was supposedly incorporated into Tokugawa law.¹⁹ Growing discontent with Tokugawa law was cited as proof of this theory from the perspective of later Tokugawa popular accounts of lawmaking like that of Buyo Inshi, who argued that contemporary lawmaking practices were incessant and increasingly irrelevant, particularly in comparison with the model established by Ieyasu.²⁰ Yet these later assessments were proof of the persuasiveness of Sadanobu’s narrative, not of its historical accuracy. When we reflect on the laws of the Kansei period in particular, Sadanobu offered his narrative for the narrower purpose of stabilizing society under *bakufu* rule in the Kansei era, rather than reflecting faithfully the actual history of Tokugawa laws.

However, Zhu Xi/Hayashi Confucianism did previously play a role in Tokugawa law.

Matsudaira Sadanobu explicitly deployed a narrative based on the cosmology of the Hayashi

¹⁸ See *supra*, 325-327.

¹⁹ Hur (2007), 74-77. Hur suggests that by the Kansei period, there had been a “deterioration in the social order” which “reflected people’s diminishing trust in the established order”, but that people still generally fell into the sway of this “social order”. As described in detail in the text, I take issue with the notion that there ever was a dominant “established order”, that ordinary people ever had much trust in the established order, and that what contemporary scholars saw as a deterioration in this order was in equal parts the failure of the Tokugawa to effectively enforce laws that were primarily hortatory in nature, and the supposition of a *pancatantra* of state ideology that these commentators could use to promote their own viewpoints.

²⁰ In this context, scholars most frequently cited the pseudonymous Buyo Inshi, author of *Seji Kenbunroku*, who has little positive to say about Tokugawa lawmaking. While this perspective, and Buyo Inshi’s articulation of Confucian social values, are informative of the perspective of the samurai elites during the nineteenth century, his statements are misleading as a reflection of the broad swathe of Tokugawa law.

school precisely because the narrative of Zhu Xi essentialism had offered stability in the past. Sadanobu's Kansei reforms did not invent the relationship between the government and the Hayashi school, even if Sadanobu inflated its importance under the early shogun. Yoshimune implicitly drew on Zhu Xi principles within *Kujikata osadamegaki*; Arai Hakuseki—although a rival of the Hayashi school—espoused the return to the five relationships that Yoshimune and Sadanobu would later reinforce; and even Tsunayoshi and Sūden supported the Hayashi school and relied to varying degrees on the essentialist approach that the Hayashi school represented.²¹ Nevertheless, although each of these lawmakers drew on principles found in Zhu Xi thought, they didn't draw on these principles in the same way. Instead, a legal cosmology relying on Hayashi Confucianism may more accurately be seen as a series of related claims, each with a distinct, self-conscious intent. These arguments all shared a genealogical relationship to one another, as well as a functional relationship.²²

Zhu Xi Confucianism played two primary roles for Tokugawa lawmakers. The Hayashi school's reading of Zhu Xi Confucianism posited that the cosmological order of things, associated with “principle” (*li*), implied a normative set of human social relations that were a microcosm of an ordered cosmos, and this set of human relations—sustained by the benevolent intermediation of Tokugawa law—created a hierarchical framework for Japanese society modeled on the five idealized human relationships. Because the shogun served in this framework as the master/father of the people, the government by design was supposed to identify and represent principle for the

²¹ Tsunayoshi notably provided significant funding to the Hayashi school. See Bodart-Bailey (2006), 120. While the substance of Tsunayoshi's political philosophy diverged from the Hayashi, Tsunayoshi was undoubtedly influenced by the approach that the Hayashi school brought to Tokugawa law.

²² Or, as Tominaga Nakamoto may have put it, these deployments were each additions from one to the next, adding or changing the meanings of previous deployments based on particular historical context.

people. This meant that Tokugawa law was, by necessity, highly personal in nature, with situational judgment prioritized over reliance on precedent.²³ Henderson describes this thesis: “In Edo the concepts [of law] rested . . . on officially sponsored and societally rooted morality (perhaps ‘natural law’) of Confucian derivation. The vehicle of governance was the superior (‘moral’) man; his ‘morality’ was defined in hierarchical status. This rule-of-status was not merely an incidental aspect of Tokugawa justice. It was the essence of justice. . . .”²⁴ This legal cosmology led Hiramatsu and Henderson to envision Tokugawa law as largely static, primarily because in a system of law based on these theories, the position of the shogun was fixed and necessary atop a social hierarchy and the government must organize society for it to remain similarly stable. In this respect, the re-emergence of Hayashi Confucianism during the Kansei period is telling; the *bakufu* relied on this set of Zhu Xi Confucian arguments most expressly when the threat to their authority was greatest.

The re-emergence of Zhu Xi legal cosmology in the Kansei period shows one consistent way that legal cosmology was used in Tokugawa law. The *bakufu* generally relied on cosmological arguments in contexts where the *bakufu* issued constitutional laws to resolve a crisis of authority. Cosmological arguments appeared in laws concurrently with periods when *bakufu* critics most vocally appealed to alternative cosmologies as a way to reframe or destabilize the government. During famines, the common people had previously made appeals for “benevolence;” these petitions were expressly for a reduction in tax rates, but implicitly they criticized the failure of

²³ This emphasis on individual justice over precedent, much overstated by commentators, led Wigmore in his early consideration of Tokugawa law to describe it as: “the extreme antithesis to the Anglo-Saxon conception of Justice.” (1892) 72-73. Wigmore acknowledged, however, that the Tokugawa developed “a legal system, a body of clear and consistent rules, a collection of statutes and of binding precedents,” *ibid.*, so I read his criticism largely to be in the ideological prioritization of the person of the shogun (or, in the provinces, the *daimyō*) as the personal decision-maker.

²⁴ Henderson (1987), 503.

bakufu governance.²⁵ During the Edo riots, popular outcry took a more radical turn, seeking world renewal and the establishment of a new social order, rather than the faithful discharge of an existing social compact. Within the text of the constitutional laws themselves, appeals to legal cosmology emerge where the traditional authority of the *bakufu* is most suspect. For example, in a constitutional law like *Bateren tsuihō no fumi*, Sūden appeals to the natural order of things most aggressively to deter the Christian threat because the precedent for the *bakufu*'s authority to enforce laws for internal security was limited.²⁶ In contrast, *bakufu* lawmakers rarely saw the need to rely on legal cosmology to justify making substantive laws governing religious institutions. The notable exceptions to this general trend reinforce this point: legal cosmology appears in substantive laws related to Christianity— a direct political threat to the *bakufu*— and in response to the emergent threat of popular revolts that demanded the closer regulation of *matsuri*, as found in *Kujikata osadamegaki*.²⁷

Central among the disputes that the analysis of legal cosmologies lays bare is the persistent disagreement, over time and across different elements of society, about which social values should predominate in lawmaking. Even in *Kujikata osadamegaki*, which eschewed legal cosmology generally, elements of Buddhist cosmology appeared in critical junctures in the laws, for example denying a Buddhist funeral to certain criminals as a means of reinforcing the opprobrium placed on their crimes.²⁸ Over the duration of the Tokugawa period, there is an ongoing question whether ideal benevolent government should embody the “Buddhist” ideal of

²⁵ See *supra*, 232-233.

²⁶ See *supra*, 119-120.

²⁷ See *supra*, 114-115 (Christianity), 266-267 (fear of popular revolts).

²⁸ See *supra*, 277-278.

compassion (*jihī* or *awaremi*) as a means to save the people,²⁹ or the Confucian ideal that was most commonly (but not exclusively) identified with the five idealized social relationships. While Confucian values and claims of benevolent rule appear from early in the Tokugawa period, these values were not essential to pro-*bakufu* arguments made under Ieyasu or Iemitsu. Arguments that governing with compassion was a means to save the people existed in Sūden's lawmaking, but they reached their apotheosis in Tsunayoshi's *Awaremi shōrui no rei* as an argument to explain the broadening of Tokugawa lawmaking.³⁰ Although Tsunayoshi was criticized aggressively by later Confucian scholars for espousing this ideal, the narrative of compassion as a hallmark of benevolent government never disappeared. The bias caused by looking backward from laws produced in the Kansei reforms from the perspective of the *bakufu* ignores the role that Buddhist ideas played in supporting eighteenth-century counter-narratives of proper government. Such narratives were promoted by a variety of non-governmental actors ranging from the Buddhist establishment to rogue *daimyō* Tokugawa Muneharu to the leaders of popular revolts. Even in the "orthodox" Kansei period, the appearance of the Buddhist-oriented legal apocrypha *Tokugawa seiken hyakkajō* shows that the dispute was far from conclusively resolved. *Tokugawa seiken hyakkajō*, presents a false set of laws that differs from actual *bakufu* laws less in substance than in its claim that Tokugawa Ieyasu intended that the *bakufu* govern in accordance with compassion by adopting the arguments for the equivalence of benevolence and compassion that Tsunayoshi drew from Ishin Sūden and Fujiwara Seika.

²⁹ Even the narrative of salvation was not specifically Buddhist during the Tokugawa period. For an extended consideration of the conjoined narratives of "ordering the world" (*keisei*) and "saving the people" (*saimin*) in the eighteenth century, see Najita (2009), 124-126.

³⁰ See *supra*, 181-183.

Tokugawa “*natural law*.” Framing competing legal cosmologies as simply a clash among “religions” invites the misleading suggestion that there was, at any time, only one “Buddhist” or “Confucian” orientation towards law. Instead, arguments found among early *bakufu* lawmakers occurred between different understandings of Buddhism, both within the government, in the feuds between Sūden and Tenkai, and opposed to the government, in the arguments that the Buddhist temples made against direct *bakufu* control over their ordination practices.³¹ In the same way, Matsudaira Sadanobu’s Kansei reforms were not a Confucian reaction to Buddhist degeneracy but an essentialist response of one lineage of Confucianism to the influence of the Sorai school that informed Yoshimune’s approach to lawmaking.³² And sometimes disputes relating to legal cosmology simply related directly to the economic interests of the participants. This was true of debates like that of the Purple Robe Incident, which concerned the ability of the temples to gain patronage through the dispensation of positions, even if these arguments were made based on custom and more indirectly on a sect’s claim to identify immediate enlightenment. In such cases, however, resolution of a practical dispute injected new ideas, and new doubts, into Tokugawa law, and these doubts bore fruit later on, as shogun following Ietsuna acknowledged the authority of sects over their own doctrinal matters.

While there was no sense in which the use of legal cosmologies “developed” in a particular direction, legal institutions did develop under the Tokugawa. As the economy became more complex and the urban population became larger and denser (and, as a result, judgments became

³¹ For just one example of inter-sectarian arguments within Tokugawa law, consider the fight between the *bakufu* and the major Zen temples over the right to control criteria of transfer of control of temples, a battle that incorporates meaningful different understandings within Zen between “gradual” and “immediate” enlightenment. See *supra*, 135-136.

³² See *supra*, 324-326.

easier to enforce), legal institutions and legal practices emerged to handle an increased volume of actions. These legal institutions increasingly relied on tradition and precedent, even though *bakufu* clerks were never technically bound by precedent in the way that common law judges were. Under Yoshimune, there was a desire to rely less on cosmological arguments and more on Yoshimune's own accomplishments. Yoshimune's lawmaking practices highlight a second narrative on *bakufu* authority that occurred in Tokugawa law. Yoshimune sought to move Tokugawa law away from an account based on "natural law" and towards a historical account drawn from the historical effectiveness of the laws laid down first by Tokugawa Ieyasu and the ability of these institutions to enforce the laws.³³

Henderson's analogy with "natural law," however, requires some unpacking to understand the significance of this argument in the Tokugawa context. Henderson and other legal scholars focused on the articulation of social stratification ("rule by status") as the articulated "natural law" of the *bakufu* in the dual sense that these laws were both aligned to morality and derived from contemplation of the natural order, particularly as derived from the Zhu Xi articulation of principle.³⁴ However, as we have seen, there were numerous other essentialist claims introduced in Tokugawa law. Ishin Sūden in *Bateren Tsuihō no fumi*, for example, introduced into law the literalist formulation of the theory of the mandate of heaven. Under Sūden's conception of natural law within the *sankyō* rubric, the ruler has a mandate to make laws that promote the natural order, and if the ruler fails to align society to the natural order, cosmological chaos will

³³ This is arguably why the reliance on legal cosmology occurred least under Yoshimune. See *supra*, 216.

³⁴ See, e.g., Ishii (1966), 201-202 describes Henderson's understanding of natural law as "the synthesis of [Neo-Confucian scholars'] thought was the basis of the natural law that supported the fact of Shogunal power."

directly ensue.³⁵ Sūden's theory, which also relied on the Chinese tradition, differed from Hayashi Confucianism particularly because the failure to meet the mandate of heaven under Sūden would result proximately in the occurrence of physical calamities. The argument connected cosmological unrest directly with the loss of the mandate of heaven aligned with the Chinese tradition, but it would cause significant problems for the Kansei-era *bakufu*.

Tsunayoshi sought to articulate a different vision of natural law in the *Awaremi shōrui no rei*. In Tsunayoshi's vision, Confucian benevolence and Buddhist compassion merged to form a pre-reflective compass that would guide proper conduct if the people incorporated it into their behavior. Under Tsunayoshi's interpretation, *bakufu* lawmaking was necessary to remind people of these pre-reflective attitudes, providing an alternative way to naturalize the idea that the *bakufu* possessed the unique ability to identify what constituted benevolent government and the compassionate treatment of all things. These cosmologies all share the assumption that there is an apprehensible relationship between the cosmological order and the social order which could be harnessed and reinforced by law. For Japanese lawmakers, unlike Western lawmakers, "natural law" emerged pre-reflectively and immediately and expressed itself performatively, most commonly in the ideal performance of the shogun ruling benevolently. Thus, even for Tsunayoshi, the shogun issuing *Awaremi shōrui no rei* acted as an exemplar of virtue by promoting compassion among others.

Yet even this pervasive strand of legal argumentation was not unquestioned in Tokugawa law.

Ogyū Sorai was notably critical of both Buddhist and Confucian essentialist approaches to

³⁵ As described in Chapter 2, *supra*, 112. However, Sūden's reliance on the mandate of heaven faced its own pitfalls. The concept had never been applied to Japanese *tennō*, because the *tennō*, it was argued, were the direct descendants of the gods and didn't need a mandate. Applying the mandate of heaven to the shogun, rather than the emperor, was potentially disruptive of this cosmological balance.

government and law, and sought instead to replace them with a model based on the Chinese sage-kings.³⁶ For Sorai, virtuous rule meant rule that directly modeled itself on the holders of “great virtue,” the sage kings, whose virtue could be apprehended through close study of works like the *Rites* and the *Laws*.³⁷ Of course, the manner in which contemporary rulers modeled themselves on these precedents would necessarily change based on the conditions existing during their rule.³⁸ Tokugawa reliance on Sorai’s ideas reached its height under Yoshimune. By offering the *Kujikata osadamegaki* as his own self-authorizing testament, Yoshimune made a strong case for the articulation of authority based on the excellence of his own rule—as a window to the past and as a model for future rulers—in lieu of reliance on or in furtherance of cosmological models. But besides Yoshimune, the tendency to rely on historical models was similarly present across the entire Tokugawa period. The most significant example of this trend was the rise of the cult of Ieyasu, the founder of the Tokugawa, and the overt reliance on Ieyasu as the Japanese model of ideal rule. Throughout later Tokugawa law, most notably under the work of Arai Hakuseki, lawmakers presented Ieyasu as an ideal ruler and lawmaker, a model on which future shogun should rely, in place of the sage kings.³⁹ Reliance on the precedent of Tokugawa Ieyasu occurs as frequently as other forms of legal cosmology, and, perhaps unsurprisingly, in Tokugawa law the historical role of Ieyasu also assumes a cosmological significance in Tokugawa law. On his death, Tokugawa Ieyasu became an immanent cosmological figure, a *daigongen* whose duty was to protect the Tokugawa clan and, by

³⁶ See *Bendō*, Ch. 21, 263.

³⁷ See, *supra* 231-233.

³⁸ For this reason, I associate with Sorai the term historicist, which I adopt to mean “the perspective that the meanings of words and actions are to some degree dependent on the particular social and historical conditions in which they occur.” Gordon, 1017.

³⁹ For examples of reliance on Ieyasu in later law, see for example, *supra* at 208 (Hakuseki), 219 (Yoshimune), 328 (Sadanobu).

association, the nation.⁴⁰ Thus, while invocations to Ieyasu contextualized present lawmaking activity in a historical model, the representation of Ieyasu as a protective deity suggests that even historical models demanded a cosmological context.

Arguments based on historical precedents opened up significant alternative possibilities for both the government and its critics. Rulers like Yoshimune who were confident in their ability to issue laws, found in this approach the opportunity to shift *bakufu* authority from cosmological speculations that were ultimately subject to the whim of meteorological caprice and alternative articulation by political rivals. Perhaps because he could rely on a decades-long track record of success, Yoshimune, more than other shogun, sought to rely on his accomplishments through the representation of an idealized legal system, enshrined in the *Kujikata osadamegaki*, that was his bequest to future shogun.⁴¹ Yoshimune's strategy promised his successors a more stable claim to authority on the basis of a well-organized, well-governed state, but this model instead delivered only problems for the future leaders who lacked Yoshimune's governing talents. By subjecting *bakufu* authority to critical evaluation based on historical precedents, Yoshimune provided the Tokugawa's critics with a means of criticizing Tokugawa rule that became hard to refute objectively. Following a decade of misrule in which critics of the *bakufu* used precisely these tactics to hold the *bakufu* to account, it is not surprising that Matsudaira Sadanobu reversed course from Yoshimune and retreated from Sorai's historicism to Hayashi essentialism.

⁴⁰ See *supra*, 125. As described in detail in Boot (1990), the precise nature of Ieyasu's *kamification* was a matter of considerable debate, but this debate was not one that had later legal significance.

⁴¹ See, *supra*, 218.

Another risk of relying on historical precedents appears most clearly in the Kansei era, where at least two sources attempted to reimagine historical custom. *Tokugawa seiken hyakkajō* presented a contemporary historical counter-narrative and a set of precedents that opposed the recharacterization of “traditional customs” that Sadanobu offered. The *Hyakkajō* represents itself as a lost testament of Tokugawa Ieyasu, and one in which the voice is Ieyasu’s own. This tactic, while transparently anachronistic in places, suggests that the authors understood well, and were willing to play, a game in which the authority of Ieyasu could be used to authorize a counter-narrative as easily as to authorize the *bakufu* orthodoxy.⁴² These competing histories reinforce the reality that *Tōshōgu Daigongen*, the cosmic Ieyasu, was something of an empty signifier. He could be used to promote Confucian or Buddhist ideas, in support of the government or the opposition. Perhaps for this reason, Nakamura has criticized Japanese lawmaking more generally for the equivocation of both Buddhist and Zhu Xi Confucian arguments and for the ineffectiveness of either of these arguments as a critical tool, since neither Buddhism nor Zhu Xi Confucianism “make[s] an issue of laws governing behavioral relations among people but [both] tend rather to consider the basic conditions that bring about public behavior and subsistence only insofar as they affect the inner life of the individual.”⁴³

A detailed consideration of legal cosmologies in Tokugawa law seems to raise more questions than it provides answers. While my work highlights a practice of presenting competing narratives that recurs within Tokugawa law, the evaluation of particular instances of legal cosmologies across the Tokugawa period provides evidence that calls into question the easy

⁴² See *supra*, 236 (Tokugawa Muneharu’s previous use of this strategy). This risk was heightened by the early- to mid-Tokugawa practice of keeping many laws private, which obscured whether an Ieyasu-era law was real or apocryphal.

⁴³ Nakamura, 333.

totalizing characterizations of Tokugawa law that were common in previous scholarship (and that are still commonly used as a shorthand to explain the impact of Tokugawa law on Japanese religion). Further, I have tried to refute the possibility of any totalizing description of legal cosmology in Tokugawa law. My work asserts only three general propositions:

- legal cosmology occurred regularly in Tokugawa law,
- lawmakers offered narratives of legal cosmology as a practice relating particularly to the authority to issue constitutional laws, and
- legal cosmology had a bi-directional influence on Japanese society, as lawmakers relied on religious ideas to support or criticize laws, but, by their deployment in law in the service of an interested mission, these laws then influenced religious practice and social understandings of religion.

Instead of trying to understand the general, this dissertation emphasizes the particular and the situational, based on the understanding that lawmaking is an act of performative speech that is necessarily particular—targeted at a specific persuasive purpose— but that operates across multiple valences—perhaps to account for multiple potential audiences. By focusing on circumstances where particular lawmakers (which include critics) used cosmological arguments to authorize legal solutions to particular political problems, I suggest that, although lawmakers are generally trying to effect a single proximate outcome, there is rarely only one factor at play driving the narrative of legal cosmology that is presented. Evaluating the various particular instances of legal cosmology in comparison with one another, the nature and structure of particular arguments depend on a number of factors, including:

(i) the educational/professional background of the lawmaker. Buddhist monks tended to rely more heavily on Buddhist cosmology, and Confucian scholars restricted their own use of Buddhist arguments.

(ii) self-interest/group interest. Both lawmakers and their critics have an interest in the outcome of the matter in question, an interest that aligns ideologically to the cosmological reference. Certainly *bakufu* lawmakers had an interest in promoting their own authority.

(iii) the political climate. The *bakufu* favored essentialist arguments when faced with crises of authority because these arguments tended to naturalize their authority within a greater cosmological pattern. And arguably (though there is a small sample size) the *bakufu* relied on arguments based on historical precedent at the height of their power.

(iv) the particular issue to be resolved. Actions clearly within the mandate of the *bakufu*-- generally required less justification than those at the fringes of understood authority. The need to resolve an issue provides one critical way in which the internal logic of law differed from other strands of intellectual debate during the Tokugawa period.

Often, different factors influenced the performance of lawmaking in different directions, which led to equivocal outcomes. Even though Yoshimune produced the *Kujikata osadamegaki* largely to promote his own achievements in government and sought to promulgate laws without reliance on the grand cosmological narratives, in those areas that required additional support, cosmological arguments reappear to address particular concerns.

Because the focus of this work has been on the particular, it is fair to ask what value may be found in comparing particular instances of legal cosmology over a two-hundred-year period.

The primary benefit that I can point to is the ability to measure how well or poorly lawmakers used legal cosmology to support their claims. To be blunt, across the course of Tokugawa history, many Tokugawa laws were failures. Laws like *Bateren tsuihō no fumi* and the *Awaremi shōru no rei* may have been unenforceable, or unfair, or led to unintended consequences. Where these laws were authorized in reliance on legal cosmology, the cosmological argument may have failed to resonate or apply in a particular situation. But in this context, the repeated emergence of similar arguments—whether they relate to benevolent government, the importance of compassion, the mandate of heaven, or the historical precedent of Ieyasu— suggests that the arguments themselves still resonated over time with at least a portion of the population. More generally, this suggests that the arguments themselves were not inherently flawed, even if they did not always carry the day; rather, various legal cosmological arguments were not always equally appropriate to support the purposes for which they were made.

While this dissertation does not purport to make broad generalizations about the ways that legal cosmology works in legal contexts outside of Tokugawa Japan, future scholars who are interested in this project may wish to consider the short list of factors cited above, as there is no particular reason why interested lawmakers in other historical or cultural contexts would not be expected to be influenced by these factors in the formulation of their own legal arguments. I wish to emphasize that we should not expect that interested parties, in whatever time or place, will produce laws that may be evaluated as if they were produced by a disinterested observer. We should not naively expect that when religious narratives appear in laws or in arguments offered in support of laws, the presentation of religion, and particularly of naturalizing legal cosmology, is neutral. And when we are confronted with a historical moment that represents

itself as entirely stable or consistent with past tradition, if we look closer, we will likely find that this stability is itself a performance that obscures hundreds of burgeoning differences. For legal cosmology, as for law more generally, context is everything.

APPENDIX A- TRANSLATION OF *BATEREN TSUIHŌ NO FUMI*

With *Yang* as our father and *Yin* as our mother, people are born in the world in between. Within these three powers, everything is fixed. Japan from the beginning has been a land of the *kami* (神). The unfathomability of *Yin* and *Yang* is called *shen* (神).¹ As a wise man is a wise man, as a soul is a soul, who does not honor these things?

Needless to say, the ability of a person to be born comes entirely from the awareness of *Yin* and *Yang*. In the five parts of the body, the six sense objects, and the arising of movement and rest, there is not a moment when *shen* is absent. *Shen* is not to be sought somewhere else. All people have it, in each person it is made whole. This is the body of *shen/kami*.

And, it also may be said that this is the land of the Buddha. One source says that this is the land of the immanent manifestation of *Amaterasu*² and the home of *Dainichi*. The Lotus Sutra states, “The various world-saving Buddhas live in powers of great spirit (神). To please sentient beings, they manifest the immeasurable power of spirit(神).” These words were proclaimed from the golden mouth of the Buddha. Thus, while the names of the Buddhas and the *kami* may differ, that to which they refer is of one nature, just like the two sides of an equation.

In ancient times, monks and ordinary people each sailed across the great ocean, receiving aid from the *kami*, and came to far-away China seeking the dharma of the Buddhist teachers and the teaching of the way of benevolence,³ and with great zeal they brought back books that were both Buddhist

¹ This sentence is a quotation from the *I Ching* and emphasizes the ideogrammatic identity between Chinese *shen* (神) and Japanese *kami* (神). Throughout this section, Sūden relies on the extended allusion to the identity of Chinese *shen* and Japanese *kami*, as well as the use of the same term to translate from the Sanskrit in the Lotus Sutra.

² The text in question is unattributed. In this context, *shinmyō* (神明)(an abbreviation of *Amaterasu*), may also be translated “the gods”, the use of the character *mei* (明) signals a correspondence with *Dainichi* (大日). The phrase “immanent manifestation” is *suijaku* (垂迹, lit. remaining traces) as used in the *honji suijaku* ideology, which is to say the Shintō *kami Amaterasu* is an immanent manifestation of the eternal Buddha *Mahavairocana (Dainichi)* available only in the land of Japan.

³ The way of benevolence (*jin*, 仁) is another description of the teachings of Confucius, for whom *jin* was a focal term particularly for the art of governance. The equivalence between the teachings of the Buddha and *jin* are addressed in Chapters 3 and 4.

and non-Buddhist in nature. The teachers who came later handed these down from teacher to teacher, purposefully transmitting and receiving them. The prosperity and vigor of the dharma far surpasses other countries. Can't it be that this is the eastward progression (*tōzen*) of the dharma?

But lately Christian conspirators have by chance come to Japan, and trade goods were not all that was transported on their trading ships. They have also spread their false teaching and have misled people from the true schools. They want themselves to be sovereign by changing the central government. This is clearly a sign of a great catastrophe. This must be prohibited.

Japan is the land of the *kami* and the land of the Buddha, and it honors the *kami* and respects the Buddha. It sustains completely the way of virtue and the dharma of good and evil. If people commit crimes they will be punished in accordance with their severity by the five punishments of branding, cutting off the nose, cutting off the feet, ancient Chinese punishment,⁴ and death. In the *Rites* it says, "there are many kinds of mourning, but five kinds of mourning dress; there are many kinds of crimes, but five kinds of punishments."

If someone is suspected of a crime, immediately they should make a vow to the *kami* as evidence, as the rules governing the punishment are decided, and the difference between guilt and innocence does not err by a hair's breadth. Criminals who have committed the five heinous crimes or the ten evil acts are abandoned by the *kami*, the buddhas, the three jewels, the heavens, and all beings.

Because of the remnants of longstanding evil, it is hard to escape disaster. And the punishments of beheading and roasting alive are the kind of punishments you can receive. This is called the path of rewarding good and punishing evil. Even if we want to control evil, it is easy for evil to accumulate, and even if we want to promote the good, it is difficult to preserve the good. Shouldn't we offer a clear warning?

Even if this world is still like this, in the next world along the dark path even the various buddhas of the three worlds find it difficult to save people from Yama's accusations. Even the historical line of ancestors has not yet arrived. We should worry.

⁴ Castration for men, confinement for women.

Those *bateren* conspirators in all things disobey government orders. They cast doubt on the way of the *kami*, they slander the true dharma, and they injure the happiness of those who hold to morality. If they see a person being punished, immediately they happily rush over to them and devote themselves to bowing to them and apologizing to them.⁵ This seems to be the achievement of the sect's true ambitions. Can't we eliminate this heresy?

Truly they are the enemy of the *kami* and the enemy of the Buddha. If this teaching is not prohibited quickly, in the future certainly the nation will become diseased. Certainly if this is not controlled by the command of the government, then instead we will sustain divine punishment. Inside the Land of Japan, we should not lend even a small plot of land for their assistance, and we must quickly sweep these people away! When there are people who intentionally violate the laws, they should be punished.

Now those blessed to have received heaven's imperial mandate, as lords of this land of the Sun, this is the time to protect the national character in Japan.⁶ When externally one expresses the virtue of achieving the five cardinal virtues, internally one returns to the *tripitaka*. For this reason, when the land is wealthy, the people are calm. The Sutra says, "If you are tranquil in this world, in later lives you will be treated well." And Confucius has also said, "Your body, your hair and skin you receive from your parents. Bravely avoiding injury is the beginning of filial piety." To treat your body properly is to respect the *kami*. By quickly driving away their evil teaching, increasingly we will prosper from the true dharma. Although it goes without saying that the world has already passed into the degenerate age, perpetuating the way of the *kami* and the Buddhist dharma still provides benefits and is good government.

Let this be well known across the world. Definitely let there be no mistakes or failure to do so.

⁵ This is a description of Christian prayer to Jesus on the cross.

⁶ National character is *kunigara* (国柄), discussed herein.

APPENDIX B TRANSLATION OF *SHOSHŪ JIN HATTO* (1663)

- (1) The doctrines and practices (*hōshiki*) of the various sects should not be mixed (*midareru*); Monks who perform the dharma poorly must be disciplined.
- (2) Monks who don't comprehend (*rigai*) the doctrines of the sect shall not become the head monk of a temple or shrine, and neither new rites shall be established nor mysterious dharma be taught.
- (3) The honmatsu structure should not be mixed up (*midareru*); Main temples should not investigate/punish branch temples unreasonably.
- (4) With regard to support-giving (*dana*) families, whichever temple they select, let them fulfill their duties, and monks should not compete for them.
- (5) If conspirators (*tōto*) join together, or if disputes arise, these inappropriate deeds should not be tolerated.
- (6) In the event of the arrival of people who do not follow the *dharma* of our nation (*kokuhō*), in addition to reporting this, without question deny them entrance.
- (7) When temples and shrines must restore their facilities, they should not be ostentatious; but don't neglect the Buddha halls and keep them clean.
- (8) Buying and selling, or pledging, temple properties, is completely prohibited.
- (9) If the younger child of a lay family has the desire to do so, he should not be accepted into the monastery without a good reason. If a person appears who wants to be a monk without a good reason, consult the *daikan* or local magistrate, and entrust the judgment to them.

Additional Laws:

- (1) Monks should continue to dress in accordance with their social position (*bugen*), and for the performance of funerary services, even if you expect the offerings (*dana*) given to be lavish, they should be suitably humble.
- (2) When financial support (*dana*) is given for a newly founded temple or shrine, you should discuss the offering with the head temple, and should follow the decision of the head priest.
- (3) The contract for the succession of a head priest may not demand a cash payment.
- (4) You should not use lay people to look after the Buddha Hall in your temple.

- (5) Women should not be given shelter in the monks' quarters- certainly not a stranger, but not even of your relations. But henceforth, men who are already married are exempted from this rule.

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