Promulgation of Tokugawa Statutes

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Introduction

This is a description of the methods used by the Tokugawa shogunate to publicize its statutes and decrees. Most of the law in Tokugawa times (1600-1868) was a morass of custom and tradition, which had grown up over the centuries in diverse form from place to place. Folk law of this kind was transmitted in daily practice from one generation of villagers to the next and required no formal pronouncement to apprise the people of its content and effect. It was only with the rise of the new Edo shogunate that the idea of legislation (i.e., man-made law) issuing from a central authority became important in the regulation of the realm and only then did promulgation become essential. Of course, legislation does not accomplish its goals without publicity because not until after people know about a new law is it possible in fact for them to follow it. So rather than the natural-law or customs and precedents, which made up the great bulk of Tokugawa law, it was this new and shallow kind of Tokugawa statutory law which became the nearest ancestor of modern law in Japan, and an understanding of its character and limitations is useful to students of modernization of Japanese law after 1868. Modernization starts with the problem of what from the past is usable and what must be changed.¹

Besides clarifying the pre-modern Japanese legislative experience, a close scrutiny of the Tokugawa promulgation process also sheds some light on two interesting problems of Tokugawa legal history in general. First, it shows something about the degree of efficacy of Tokugawa statutes in the social context of the times; second, it shows something of the relationship between legislative pronouncements of shogunal policy and the other forms of law and social control—custom, Confucianistic ideology, court precedents, village regulations and family rules. In brief, the limitations of the techniques then available for announcing the laws to the people throughout the realm naturally also limited what could be accomplished by "made-law" by way of changing or reforming the underlying social practices. It meant also that as compared with statutory rules emanating from Edo the bulk of the rules actually observed by the people

in the countryside continued to be customary folk-ways which found their origins in communal life, not the will of the shogun. Thus, shogunal legislation was didactic, repetitive, shallow and usually rather ineffectual; nevertheless, it was the beginning of modern law in Japan.

Nowadays our laws are promulgated in official publications (e.g., the Federal Register in the United States or the Official Gazette [Kanpō] in Japan), where anyone who can read can learn of the effective date and content of new regulations. Such publicity also supports the corollary principle that, in case of violation, ignorance is no defense. Printed laws, literacy and mass communication are the life blood of effective modern legislation, but in Tokugawa times, aside from the notice-boards, the laws were seldom printed; rather they were orally pronounced and tediously copied by hand. In Tokugawa times, there were no mass media (even newspapers did not circulate in number until the very end of the period); the nearest thing to mass communication was therefore reading the laws to local assemblages of farmers or townsmen. Also even at the end of the period, less than half of the non-warrior, male populace was literate. It is, therefore, interesting to note just how, and to what extent the shogunate, working under these difficulties, managed to articulate and disseminate its policy in the form of written law. For perspective, it is also important, however, to remember that the volume of printed literature and the degree of literacy in Japan by 1868, though low by modern standards required for efficient legislative reform, were nevertheless high by comparison to most developing countries today.

One further point requires preliminary attention—the so-called "secrecy" of Tokugawa penal law. The idea of "secret" laws is, indeed, a peculiar one, and it seems to have arisen in the discussions of the older authorities because of a provision at the end of the Osadamegaki, Book II, art. 103:

"The foregoing having been duly (reported to the Shogun), it is hereby decreed. It is not to be allowed to be seen by any one except the magistrates [bugyō].

May 1742
Matsudaira Sakon no Shōgen"


2 But see Miura, *Rekidai hōsei no kōfu to sono kōfushiki* in *Hōseiishi kenkyū* 63 at 114 (1925) where he notes that laws once promulgated were sometimes printed (e.g., kōsatsu in 1682 and 1711), and also many Edo machibure after 1841. But generally speaking printed law was the exception.

3 See Dore, *Education in Tokugawa Japan* 254 (1965). Dore notes that most male warriors were literate, but that only 40% of all non-warrior boys received schooling outside the home at the end of the period and only 10% of the girls.


5 E.g., see in English, 3 Murdoch, *A History of Japan* 335 (1926); and Miura, *op. cit. supra* note 2 at 127.

6 See English translation, Hall, "Tokugawa Legislation" (Pt. IV), 41 *TASJ* (Pt. V) 804 (1913).