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# Translating the Corpus of Ancient Japanese Law

HERMAN OOMS

*Der Yōrō-Kodex. Die Gebote. Einleitung und Übersetzung des Ryō no gige. Buch 1.* By Hans A. Dettmer. Wiesbaden: Harrassowitz Verlag, 2009. 571 pages. Hardcover €98.00.

*Der Yōrō-Kodex. Die Gebote. Einleitung und Übersetzung des Ryō no gige. Bücher 2–10.* By Hans A. Dettmer. Wiesbaden: Harrassowitz Verlag, 2010. 679 pages. Hardcover €174.00.

*Der Yōrō-Kodex. Die Verbote. Übersetzung des Yōrō-ritsu.* By Hans A. Dettmer. Wiesbaden: Harrassowitz Verlag, 2012. 195 pages. Hardcover €78.00.

*Recueil de décrets de trois ères méthodiquement classés, livres 1 à 7: Traduction commentée du Ruijū sandai kyaku.* By Francine Hérial. Geneva: Librairie Droz, 2011. 779 pages. Softcover €71.99.

*Recueil de décrets de trois ères méthodiquement classés, livres 8 à 20: Traduction commentée du Ruijū sandai kyaku.* By Francine Hérial. Geneva: Librairie Droz, 2008. 811 pages. Softcover €72.11.

The volumes under review, by Hans A. Dettmer and Francine Hérial, provide for the first time, in over 3,000 pages, translations of nearly the entire pre-tenth-century legislative legacy of Japan. This body of work will immensely facilitate access to the complex world of ancient law and the sociopolitical and administrative structure of the Nara and Heian periods for legal and comparative historians, including specialists working with primary sources. While not legal historians themselves, these two scholars have engaged in decades-long research in this field; this has enabled them to produce copiously annotated translations that will be indispensable guides through the arcane thicket of the *Yōrō ritsuryō* 養老律令 (Yōrō Code) and its related commentary and supplementary legislation.

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The texts these authors have translated and provided commentary on have a complex history that requires some preliminary explanation. This is particularly so in the case of the Yōrō Code, the focus of Dettmer's volumes. The Yōrō Code, composed in 718 but promulgated only in 757, was a revision of the Taihō Code of 702, which was based on the Chinese Tang Code of 651. Neither the Taihō Code nor the Tang Code are extant. Moreover, even the text of the Yōrō Code itself is no longer extant. Most of what is known of the Yōrō Code is reconstructed from the *Ryō no gige* 令義解 (commentary, *gige*, on the administrative code, *ryō*) of 835, the only court-approved commentary on that code. The *Ryō no gige* is also the source for the reconstruction of the lost Tang Code and is therefore of great importance to our understanding of the ancient law codes of both China and Japan. (This work, incidentally, should not be confused with the *Ryō no shūge* 令集解 of 870, a compilation of *private* commentaries.) Though it poses its own challenges, the *Ruijū sandai kyaku* 類聚三代格, which is the focus of Hérail's two volumes, has a history that is more straightforward. That text is an eleventh-century compilation of supplementary legislation issued between 702 and 907.

The three volumes by Dettmer constitute the first complete translation of the *Yōrō ritsuryō*, which is sometimes referred to instead as the *Taihō ritsuryō* 大宝律令 (Taihō Code). In both cases, *ritsu* refers to the penal code and *ryō* to the administrative code, which is considerably longer.<sup>1</sup> The major difference between the Taihō and Yōrō administrative codes seems to be limited to an introduction in the latter of a more precise terminology for about two hundred terms. Dettmer's first two volumes cover the *ryō*. The volumes' subtitles identify them as translations (which they are not, as such) of the much later commentary, the *Ryō no gige*. While Dettmer does not offer a complete translation of the *Ryō no gige*, he does incorporate all of the material pertinent to a competent understanding of the administrative code. On the other hand, as I explain in greater detail below, the plentiful commentary in Dettmer's footnotes makes the volumes much more than just a translation. The third volume is a translation of and commentary on the *ritsu*, which the *Ryō no gige* does not address. Here, Dettmer of necessity relies on statutes reconstructed and recovered during the Tokugawa period from a variety of Japanese sources; the statutes that have survived in this manner number only ten out of the original thirty (159 of 500 articles).

Given that the original texts are no longer extant, the current standard Japanese edition of the administrative code, available as volume 3 of *Nihon shisō taikei* 日本思想体系 (NST)—in a format that includes both the reconstructed text and copious modern scholarly notes—is also based on the *Ryō no gige*. Dettmer's compilation, however, is not merely a translation of this edition. His footnotes (a total of over nine thousand for all three volumes) are filled with hundreds of references not only to Western scholarship (useful for alternative readings of terms), but also to Japa-

<sup>1</sup> There exists a Russian translation of the Taihō administrative code (see Popov 1985). I do not know whether this is a translation of the Taihō Code strictly speaking, as the dates in the title (702–718) seem to indicate. In any case, the penal statutes appear not to have been included.

nese scholarship that appeared after 1976, when the NST edition was published. Each volume also includes a bibliography. Dettmer has thus produced an updated and expanded version of the NST edition of the *Ryō no gige*, in a sense, an extremely serviceable German *Ryō no gige no gige*, or commentary on the commentary.

The two volumes by Hérail are translations of and commentary on legislation that was supplementary to the *Yōrō ritsuryō*, as recorded in the *Ruijū sandai kyaku*, an eleventh-century set of three compilations of decrees (*kyaku*) that had originally been presented to the emperor during the three eras (*sandai*) of Kōnin, Jōgan, and Engi, in 820, 868, and 907, respectively. The text classifies the decrees by subject matter (*ruijū*). Save for the *Engishiki* 延喜式 (Procedures of the Engi Era) of 927, which constitutes the last ancient codification of any kind,<sup>2</sup> the *Ruijū sandai kyaku* encompasses the bulk of Nara and Heian legislation to appear after the promulgation of the Taihō Code.

The two oldest manuscripts of the *Ruijū sandai kyaku* date from the early eleventh century, sometime before 1089. One manuscript organizes the text into twelve chapters, or *maki* 卷; the other divides the material into twenty chapters. The latter version has, with a number of modifications, become the standard scholarly edition and is available as volume 25 of *Shintei zōho kokushi taikai* 新訂増補国史大系 (KST). We are reminded that the *Ruijū sandai kyaku* is a collection of *selected* documents because from other sources we know of some documents that are not found here. On the other hand, some fragments of *pre*-Taihō/Yōrō edicts are included.

The field of ancient Japanese law is currently lying fallow in the United States and constitutes but a limited enterprise in Europe. Undoubtedly, for any scholar to overcome this subject's daunting linguistic obstacles would require a significant investment of time. These massive works of translation are the culmination of some fifty years of research and writing: Dettmer began work on the Yōrō Code in the mid-1950s. By the time he retired in 1992 from the Ruhr-Universität Bochum, he had published two volumes of research on the subject, *Die Steuergesetzgebung der Nara-Zeit* (Wiesbaden: Harrassowitz Verlag, 1959) and *Die Urkunden Japans vom 8. bis ins 10. Jahrhundert* (Wiesbaden: Harrassowitz Verlag, 1972), as well as translations of seven of the Yōrō administrative code's thirty statutes. Hérail's translation was preceded by a long and deep familiarity with the literature, court society, and administrative system of the Heian period, as evidenced by her publications *Fonctions et fonctionnaires japonais au début du XIe siècle* (Paris: Publications Orientalistes de France, 1977) and *La cour du Japon à l'époque de Heian, aux Xe et XIe siècles* (Paris: Hachette, 1995). Among her accomplishments are 12 books; 40 articles; and well over 5,000 pages of translation (including the works reviewed here), more than half of which she produced following her retirement in 1998 as Directrice d'étude émérite of the École pratique des hautes études. Especially notable are Hérail's translations of Fujiwara

<sup>2</sup> For an English translation of ten of the *Engishiki*'s thirty chapters, see Bock 1970–1972.

no Michinaga's 藤原道長 poetry, his *Midō kanpaku-ki* 御堂関白記, and Fujiwara no Sukefusa's 藤原資房 *Shunki* 春記.<sup>3</sup>

Hérail has exercised great care with her translations, and her commentary provides a detailed historical context for each document. The history of the *Ruijū sandai kyaku* is sketched in the introduction, and “commentée” refers to the summary, explanation, and historical contextualization that follow the translation of each of the 1,100 documents. For most of the documents, this additional material is as long as the translation itself.

Appendices include an afterword to each volume, translations of the introductions to the original *sandai* compilations (volume 1), missing sections from the texts reconstructed from other historical material, and a map (volume 2). Ample use of kanji in Hérail's commentaries, and in all index entries, adds considerable value. The first index in each volume, “Fonctions et matières” (Official Functions and Subject Matter), also serves as a glossary offering French equivalents for titles, offices, and types of documents, and this is followed by indexes for place-names, personal names, and cited works.

Although the title mentions only decrees (*kyaku* 格)—documents issued directly or indirectly by the emperor—the *Ruijū sandai kyaku* actually contains far more ordinances or procedures (*shiki* 式) than actual decrees. Most of these were ministerial regulations, often dispatched as responses to inquiries from lower officials. Both decrees and regulations frequently refer to earlier administrative decisions, which were rarely cancelled, or to the basic administrative and penal codes. Since the Yōrō Code was never revised (but remained on the books until the Meiji Restoration, albeit without efficacy after the tenth century), ancient imperial law developed as emendations, clarifications, or specifications of this fundamental code. Edicts and regulations were compiled occasionally. Official and private commentaries were written and, starting in the thirteenth century, legal material originating in the shogunal court and daimyo domains was added to this legislative corpus.

The original compilations of the *Ruijū sandai kyaku* do not constitute a full archive. Instead, they were selections of documents addressing general issues, and these were classified not topically, but by originating department. Probably meant as a vade mecum for legal experts, the *Ruijū sandai kyaku* rearranged the material thematically into twenty chapters; each of these is further divided into sections, of which there are eighty-one in all. The chapters carry no titles, but it is obvious from their sections that they group related material together. Chapter 1, for instance, is devoted to Shinto matters, with sections on topics such as shrines, festivals and offerings, promotions of kami, oracles, and official shrine documents. Chapters 2 and 3 deal with Buddhism—its statues, rituals and initiations, provincial temples, and so forth. In the following four chapters, one finds legal documents regarding administrative matters ranging from the creation or elimination of offices to matters pertaining to public servants,

<sup>3</sup> For a full bibliography of Hérail's work, see Hérail and Kouamé 2008, pp. 165–71.

addressing, for example, their numbers, ranks, and tenure. These chapters fill Hérail's first volume. Economic issues concerning management of agricultural fields, fiscal and currency questions, military matters, foreign relations, crime, and other topics are taken up in chapters 8 to 20, which are treated in the second volume.

Some chapters have up to ten sections; others—such as chapter 19, which contains sixty-nine documents relating to prohibitions—have none. One may wish that the documents were arranged in chronological order, or that a chronological index of all 1,100 documents had been added to this translation. Nevertheless, the indexes of Hérail's two volumes are comprehensive. Moreover, scholars looking for documents from a certain date or period can consult the KST volume, which includes a fifty-nine-page chronological table following the main text. Conveniently, such a table covering everything before 919, including several pre-Taihō decrees, as well as the texts, can be accessed at *Kindai dejitaru raiburari* 近代デジタルライブラリー on the Web site of the National Diet Library (<http://kindai.ndl.go.jp/>).

There are several aspects of this French publication that render it exceptionally valuable. Hérail's fluid style makes for pleasant reading of intrinsically dry material. The original thematic groupings of the data into eighty-one sections provide primary source perspectives on a number of ancient sociopolitical practices. Meticulously researched explanations and careful comments for each document marshal what appears to be all available contextual evidence. Hérail supplies detailed information on the occasion for the edict or procedure, discussions of the officials involved, legal grounds for the decisions, precedents invoked, and even the sources of quotations from Chinese law codes or classical texts. In performing this task, she brings to bear a vast knowledge of Heian society acquired through her earlier research.

As is well known, the Heian state experienced increasing difficulties keeping the administrative apparatus functioning as designed in the Yōrō Code—difficulties of a kind universal to any state, ancient or modern. The decrees and ordinances breathe life into an ancient past and evoke images of problems similar to those we face today: almost invariably, the documents tell of administrators' decisions in response to specific incidents. As records of encounters between legal authority and social practices, they provide rich material for evenemential histories.

The gradual bloating of the Heian administration is brought into clear focus by complaints, for example, about “nine shepherds for ten sheep” (2011, p. 325). In another interesting case, an 867 ministerial decree reduces the number of tax exemptions granted to temporary workers for the local administration of Ōmi province from 337 to 188 (2008, p. 457). And intriguing irregularities in population registers, such as men listing sons as older than themselves or taxation units with proportions of nine women to one man (2008, p. 475), are no doubt the fudged entries of corrupt local officials siphoning off taxes and corvée labor for their own use—or evidence of the reverse: scheming “sheep” doing their best to outwit the “shepherds.” In 893,



some provinces were ordered to pay all taxes in arrears by delivering ten percent of the accumulated deficit annually over the following ten years (2008, p. 75).<sup>4</sup>

Preparing these two colossal sets of translations, Hérail and Dettmer faced innumerable decisions regarding the fit between ancient Japanese and Chinese terms and approximations from a Western terminology with different historical and modern connotations. Hérail is fully aware of the terminological traps for any researcher in a field where she has labored as a pioneer for over half a century. She is sensitive to differing contexts in the Japanese text that may require choosing from among French homonyms for rendering a single Japanese term. Thus, Hérail distinguishes between two meanings for *kokka* 国家, “imperial house” (2008, pp. 45, 438) and “country” (2008, p. 32); decides that *kanke* 官家 “(high) official(s)” (2008, p. 83) can actually refer to the emperor; and determines that *kōke* 公家, a term she knows well from her studies of Heian literature, diaries, and private court writings, can refer to the emperor, but in official documents means the state (2008, pp. 170, 313, 396, 522).

The interpretive and explanatory material Dettmer provides in his three volumes is structured in more complex ways than Hérail’s. The Yōrō administrative code consists of thirty statutes (*ryō*), on matters related to appointments and promotions, households, corvée tax, palace guards, epistolary etiquette, and so forth, grouped into ten books. There are approximately 1,000 articles. Dettmer has numbered the articles of each statute separately, following the NST’s innovation, which greatly facilitates cross-checking with the original text. Dettmer’s 2009 volume is a translation of book 1 (five statutes) only; the 2010 volume covers the remaining twenty-five statutes contained in books 2–10. These two volumes are based on the *Ryō no gige*. The translation of what survives of the Yōrō penal code is found in the 2012 volume. It is important to note that the critical apparatus (list of abbreviations, indexes, and bibliography) is different for each volume.

The 2009 volume begins with a sixty-four-page introduction to all three volumes, more than half devoted to detailed ground plans of the administrative centers, the successive capitals of Fujiwara, Heijō (Nara), and Heian. Included are six additional maps of structures within the Outer Heian Palace, accompanied by detailed comments and descriptions of over 450 sites. These are followed by a table of weights and measures and a four-page list of abbreviations. Following the main text are a bibliography and three user-friendly indexes that allow the tracking of special terms along different paths.

Index 1 is a ninety-page list of all kanji appearing in the footnotes, organized by stroke order. Each entry lists the reference number to Morohashi Tetsuji’s 諸橋轍次 *Dai kanwa jiten* 大漢和辞典, starting with 00001 and ending with 48847. These are followed by the kanji’s transcriptions, a translation, and the page numbers where they appear in the volume. Index 2 lists the same kanji by reading and for each entry gives

<sup>4</sup> For these and other examples, and for a more detailed discussion of administrative quandaries, see Hérail 2007.

the Morohashi number, the kanji, and a translation without page-number citations. Index 3 lists German terms and phonetic transcriptions of Japanese terms, again giving Morohashi numbers and kanji.

The 2010 volume has, in addition to the text itself, reference material that consists of a list of abbreviations, a bibliography, and an index like the first of those appearing in the 2009 volume. The 2012 volume contains two indexes similar to the first index of the 2009 volume: one for the translation of the *ritsu* text and another for the appendix. This appendix offers translations of four documents ancillary to the *Ryō no gige*: the order for its compilation, the introduction, and the texts of its presentation to the emperor and of the official promulgation.

Dettmer is sensitive to the slippery process of translating the specialized Japanese/Chinese legal terminology of ancient law codes and commentaries. He is scrupulous in proposing a number of alternatives that German, French, or English-language scholars have used, and he is fully aware that the same terms may require variant translations depending on the context.<sup>5</sup> The abundance of Dettmer's critical apparatus results in many pages being dominated by a sea of footnotes upon which we find floating just a couple of lines of main text. This is especially true for the first two statutes, which deal with office rank and official appointments. These statutes are little more than lists of offices and office holders and are almost devoid of any further information. Here "translating" would be limited to finding equivalent bureaucratic titles in German. Yet these terms would be meaningless without the further elaboration that Dettmer provides, such as descriptions of responsibilities attached to the offices, or their relationship with other departments in the bureaucracy. Dettmer's volume devotes 331 pages to these two statutes (compared with only 35 pages in the original kanbun of the NST edition), and most of this space is taken up by footnotes—465 notes for the first statute and 1,137 for the second.<sup>6</sup> Dettmer draws from books and research appearing as recently as the year the first of the three volumes was published.

Given that Dettmer is working with Japan's fundamental legal code, his analysis of the structure of ancient Japan's bureaucracy is inevitably more comprehensive than Hérail's, which deals with specific regulations as they relate to particular historical settings. Thus,

<sup>5</sup> For a useful source of terms, see the "On-line Glossary of Japanese Historical Terms" at the database of the University of Tokyo's Historiographical Institute (Tōkyō Daigaku Shiryō Hensanjō 東京大学史料編纂所): <http://wwwap.hi.u-tokyo.ac.jp/ships/db-e.html>.

<sup>6</sup> As an example of what one can find in Dettmer's footnotes, see the 2009 volume, p. 160, note 5. Here, he glosses the term *hafuri* 祝, a (low-ranking) Shinto officiant; lists variant readings; discusses specific and broader meanings; and, as one might expect, provides references to the *Ryō no gige* and the NST's *ritsuryō* volume. In addition, Dettmer culls information from later studies: a German monograph (Roy Andrew Miller and Nelly Neumann's *Altjapanisch Fafuri*, 1991); a German two-volume study of the *Kugyō bunin* 公卿補任 by Gilherd Endress (1995, 2000); two Japanese-language studies of the *Ryō no gige*, one by Takikawa Masajirō 滝川政次郎 et al. (1989) and another by Mizumoto Hironori 水本浩典 (1999); and a Japanese-language dictionary on official appointments (*Nihon kodai kanshoku jiten* 日本古代官職辞典, 1995).



for example, while Hérail encounters only five instances where kanji are used to refer to third-rank officeholders (in all cases read *jō*), Dettmer lists all twelve possible cases.<sup>7</sup>

To date there have been only partial translations of the Taihō/Yōrō Code and the official histories of the time it was in effect. These include several statutes of the code and chapters 1–6 of the *Shoku Nihongi* 続日本紀 (covering the years 697–715), as well as a number of (partially translated) imperial edicts, all published in the *Transactions of the Asiatic Society of Japan*. Supplementing these are German critical full translations of all the imperial edicts and of chapters 36–40 of the *Shoku Nihongi* and 1–13 of the *Nihon kōki* 日本後紀, which cover Emperor Kanmu's reign.<sup>8</sup> A full translation of the *Shoku Nihongi* lies waiting as a project perhaps best tackled by a team of scholars.

Longue durée research such as Hans Dettmer's and Francine Hérail's may have the look of scholarship from a bygone age. Nevertheless, the wealth of knowledge these two scholars make available is eminently useful and owes everything to their meticulous, pertinacious efforts. These volumes in fact constitute a quantum leap forward in the field of legal studies of ancient Japan. While Dettmer has given us an invaluable tool to accelerate research on Japan's ancient foundational law, Hérail has provided a panoramic view of the multiple ways in which the codes and the social practices they were meant to regulate interacted with one another.

<sup>7</sup> The entry for *jō* in the “Fonctions et matières” index of Hérail's 2011 volume (see p. 742) glosses this term as “fonctionnaire de troisième classe” and further explains that *jō* can refer variously to that position in a department (where the kanji used is 丞), an office (允), a province (掾), the guards of the gates (尉), or the house of the crown prince (進). For Dettmer's chart of rank order, see the 2009 volume, pp. 147–48.

<sup>8</sup> See Sachert 1950; Lewin 1962.

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