Moralogy, the *Xiezhi*, Casuistry, and Jewish Law: Finding the Mean in Jurisprudential Openness to the Divine[1)]

Jason Morgan

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Introduction

Hiroike Chikurō focused his studies on East Asian law, but his research in a variety of fields, including law and moral philosophy, extended far beyond East Asia. He read widely in the works of thinkers writing in Latin, Greek, French, English, German, and of course Japanese, in addition to other languages. Given this breadth of erudition, it should be possible, based upon Hiroike's own moral philosophy research and upon the framework he sets out in his writings on the law in East Asia, to extend the Confucian-inspired "middle way" philosophy of Hiroike's legal idealism to other cultures and cultural practices not necessarily covered in Hiroike's works. Can a universal middle-way-ism be alembicated from Hiroike's philosophy? If so, what would be the ideal sources for such a middle-way-ism, and how might Hiroike's insights be applied fruitfully to other philosophical traditions outside of Hiroike's main intellectual orbit in order to refine such a tempered philosophy further? And, finally, how could such a philosophy be applied in practice for the benefit of others?

In this essay, I consider an example from Chinese legal history, the *xiezhi* or beastly instrument of divine judgment — which I do not find attested in Hiroike's otherwise extensive research on Chinese law — as well as examples from the Christian and Jewish traditions pointing to the tension between the will of God and the epistemological and prudential limits of human beings, to determine whether the doctrine of the mean ideal — which Hiroike held up as guiding Eastern jurisprudence and which, in context, is often understood as a strictly secular concept — is universalizable. I

1) I am very grateful to the librarians at the Institute of Moralogy for their help in tracking down materials for this study.

conclude by finding that the principle of the mean set forth in *An Introduction to the History of Far Eastern Law* is applicable, with some important modifications, to the study of these three very different aspects of world legal history, and also by demonstrating how such a principle could be made part of lived philosophical experience in the present based upon the premises outlined in the works of Hiroike Chikurō.

What Is Law?

Hiroike Chikurō spent much of his intellectual career studying the law. In particular, Hiroike was interested in the origins and moral underpinnings of the law, and how the law can make present, and even instill, a moral sense among men. In short, Hiroike wanted to know where law comes from and what it can do to improve the present. In the 1905 book *An Introduction to the History of Far Eastern Law*, Hiroike is presented as arguing that:

> the two Chinese characters for 'law', that is, *fa* and *lü*, [⋯] derive from the concept of 'the mean and average'. [Hiroike] then attempts to demonstrate that 'the mean and average' are the substance of 'Heavenly Way (Tian Dao)' as well as the substance of 'good', being the standard of human conduct.[2)]

In this way, Hiroike's biographer continues, Hiroike's *An Introduction to the History of Far Eastern Law*:

> does not stop at the illumination of the meaning of 'law' in ancient China, but it also brings to light how the concept of the mean and average, the ideology of the Heavenly Way and the substance of the good are universal ideals transcending time and culture. In other words, the book reveals that the traditional spiritual culture of China, the very basis of Oriental cultures, has a certain universal value recognized throughout all of human society.[3)]

In the rest of *An Introduction to the History of Far Eastern Law*, and in the rest of his voluminous writings on law and comparative legal study, Hiroike emphasizes the universal bearing of moral standards on the laws of the world. Although not all legal systems, and not all laws in any given system, are morally sound, Hiroike argues for the necessity of continually refining one's moral character in order to arrive at the Heavenly Way.[4)] More than just a final pronouncement on what is right and wrong, then, law on this Hiroikean reading can be understood as a cadenced process for approaching and living out the Heavenly Way.

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2) Hiroike Chikurō, *Tōyō hōseishi joron* (Tokyo: Waseda Daigaku Shuppanbu, 1905), cited in *Chikuro Hiroike: Father of Moralogy* (Kashiwa: The Institute of Moralogy, 2005), 189.

3) Hiroike Chikurō, *Tōyō hōseishi joron*, op. cit., cited in *Chikuro Hiroike: Father of Moralogy*, op. cit., 189.

4) Hiroike Chikurō, *Tōyō hōseishi joron*, op. cit., cited in *Chikuro Hiroike: Father of Moralogy*, op. cit., 190–191.

The Heavenly Way is therefore to be understood as a touchstone of Hiroike's legal philosophy. And the Heavenly Way, which Hiroike found in varying degrees in the works of such Chinese thinkers as Confucius, Mencius, Laozi, and Zhuangzi, was found to an exceptional degree, Hiroike thought, in the *Book of the Golden Mean* (*Zhong Yong*), "a masterpiece that had governed the moral teachings in the Orient for the past two thousand years or so, since the days of the Han dynasty".[5] The *Zhong Yong*, Hiroike affirmed, was Confucius' assessment that "the moral character of a person [was] based on whether or not that person practiced the doctrine of the mean."[6] The "doctrine of the mean" thus assumed a position of explicator for Hiroike's more general notions of the "middle way" and the jurisprudential search for justice and equity.

But what, in practice, is this doctrine of the mean? The middle way may be described and even demonstrated, but is impossible to define. It must be discerned using the totality of the human person. And yet, despite or because of its ambiguity, this un-preordained legal philosophy, which calls for reflection and careful, compassionate thinking over strict adherence to hard-and-fast rules, was, for Hiroike and for many other thinkers of the East, the guiding ideal of law and society. Whereas the Western European legal and philosophic tradition has been shaped, especially since the Enlightenment, by the drive to categorize human experience a priori into legal codes and then to apply those codes to problems — crimes, disagreements, other injustices — as they arrive in lived society, the legal process in East Asia has, in many ways, been marked more by performativity and kinetic justice, creativity in jurisprudence in pursuit of the just outcome in a given case, and willingness to skirt or even ignore certain sections of the written law in favor of a resolution satisfying to the parties involved and to wider society far beyond the courtroom and the controversy at hand. English philosopher Thomas Hobbes, for example, places the magistrate, as "sovereign representative," beyond reproach, finding the working-out of justice to occur solely within the circuit of God's Own Person, and likewise absolutizes the law as the necessary condition of peace in a realm.[7]

However, this has not always been the case in Europe, where there was a long history of common law jurisprudence which preceded Hobbes and the convulsions of the sixteenth and seventeenth centuries in England, for instance. And it has rarely been the case in East Asia, either.[8] Indeed, it is to East Asia that I now turn for an

5) Hiroike Chikurō, *Tōyō hōseishi joron*, op. cit., cited in *Chikuro Hiroike: Father of Moralogy*, op. cit., 190–191.

6) Hiroike Chikurō, *Tōyō hōseishi joron*, op. cit., cited in *Chikuro Hiroike: Father of Moralogy*, op. cit., 191.

7) Thomas Hobbes, *Leviathan*, in Mitchell Cohen and Nicole Fermon, eds., *Princeton Readings in Political Thought: Essential Texts since Plato* (Princeton, NJ: Princeton University Press, 1996), 230–231.

8) See, e.g., Timothy Brook, Michael van Walt van Praag, and Miek Boltjes, eds., *Sacred Mandates:*

example, largely forgotten today but nevertheless highly germane to discussions of kinetic jurisprudence justice and the "middle way," of a courtroom "technology" once used to effect resolutions to difficult cases in an acknowledgement of the limits of human reasoning and the need to seek help when seeking the truth. Below I present a mythical Chinese beast as an (imaginary) embodiment of the "doctrine of the mean".

The *Xiezhi* and the Interpleaching of Divine Justice in Human Courts

In many places in the ancient world, the will of the gods or of God was often seen to be at least as important as the decision-making efforts of human beings. At the very least, the ancient world was often seen to be alive with gods and other supernatural powers, and humans strove by any means available to appease those gods and powers and secure stability for their communities. In ancient Rome, for example, a kind of priest called an *auspex* was tasked with discerning omens in the flight patterns of birds, while another kind of priest called a *haruspex* divined using the extruded entrails of sacrificed animals and a special stone index as his guide. The ancient Israelites are famous for driving into the desert at Yom Kippur a goat on whose head was affixed a list of the sins of the Hebrew people.[9] In ancient Japan, many priests at Ise initially welcomed the influx of the Buddhist pantheon as a new kind of spiritual technology for supplicating, and even pacifying, the occasionally wrathful gods enshrined there.[10] The Greeks consulted oracles before making decisions of state or war and in other matters difficult for human beings to discern. The steps of the Great Pyramid of Tenochtitlan ran with the blood of prisoners of war and other sacrificial victims whose beating hearts, freshly excised from their chests, were

Asian International Relations since Chinggis Khan (Chicago, IL: University of Chicago Press, 2018), Terry Nardin and Luke O'Sullivan, eds., Michael Oakeshott, *Lectures in the History of Political Thought* (Imprint Academic 2006), 366–367, 480, Francis Oakley, "The Absolute and Ordained Power of God and King in the Sixteenth and Seventeenth Centuries: Philosophy, Science, Politics, and Law," *Journal of the History of Ideas*, vol. 59, no. 4 (Oct., 1998), 669–690, Brian Tierney, "Bracton on Government," *Speculum*, vol. 38, no. 2 (Apr., 1963), 295–317, Richard Halpern, "The King's Two Buckets: Kantorowicz, Richard II, and Fiscal Trauerspiel," *Representations*, vol. 106, no. 1 (Spring, 2009), 67–76, Kinch Hoekstra, "'Leviathan' and its Intellectual Context," *Journal of the History of Ideas*, vol. 76, no. 2 (Apr., 2015), 237–257, Ewart Lewis, "King above Law? '*Quod Principi Placuit*' in Bracton," *Speculum*, vol. 39, no. 2 (Apr., 1964), 240–269, Alison A. Chapman, "Milton and Legal Reform," *Renaissance Quarterly*, vol. 69, no. 2 (2016), 529–565, and David Carpenter, "Magna Carta 1215: Its Social and Political Context," in Lawrence Goldman, ed., *Magna Carta: History, Context, and Influence* (London, England: University of London Press/Institute of Historical Research, 2018), 17–24.

9) See Kaufmann Kohler, "The Sabbath and Festivals in Pre-Exilic and Exilic Times," *Journal of the American Oriental Society*, vol. 37 (1917), 209–223, and Howard Kreisel, "Reasons for the Commandments in Maimonides' *Guide of the Perplexed* and in Provençal Jewish Philosophy," in Howard Kreisel, *Judaism as Philosophy: Studies in Maimonides and the Medieval Jewish Philosophers of Provence* (Boston, MA: Academic Studies Press, 2015), 361–395.

10) See Mark Teeuwen and John Breen, *A Social History of the Ise Shrines: Divine Capital* (London, England: Bloomsbury Academic, 2017). See also Janet R. Goodwin and Joan R. Piggott, eds., *Land, Power, and the Sacred: The Estate System in Medieval Japan* (Honolulu, HI: University of Hawai'i Press, 2018).

11) See Maarten Jansen and Gabina Aurora Pérez Jiménez, *Encounter with the Plumed Serpent: Drama*

offered up as gifts to the seemingly insatiable deities Huitzilopochtli and Tlaloc.[11] The ancient world was, in many ways, a palimpsest of the heavens, and human beings carried out their affairs in the company — real to them it felt at the time — of the gods and spirits. As Peter T. Struck observes:

> For many millennia and across the whole Old World, from Eastern to Western Eurasia, and from the tip of southern Africa to the highlands of Britannia, people were in the habit of practicing divination, or the art of translating information from their gods into the realm of human knowledge. On a scale whose breadth we have yet to fully appreciate, they assumed clandestine signs were continuously being revealed through the natural world and its creatures (including their own bodies, asleep or awake).[12]

Contemporary man has largely laid aside this supernatural visionism in a disenchanted cosmos, but the historical fact, highly significant here, is that, in the past, our ancestors were immersed in the divine.

In ancient China, too, the world was seen by many to be osmotic between humans and gods, with but a very gauzy veil of imperfect perception and dimmed understanding partitioning off the daylight world of mortal men. As demonstrated in Edward Slingerland's *Mind and Body in Early China*, Chinese antiquity was a time of great spiritual and religious activity and belief.[13] The Xia (ca. 2070–1600 BC), Shang (or Yin, 1600 BC–1046 BC), and Western Zhou (1046 BC–771 BC) were times of:

> intense religious activity and feeling in China when Heaven, along with a host of other spiritual beings, […] suffused the human world with portents and signs and […] led human beings to their full potential by exerting a moral force on their

and Power in the Heart of Mesoamerica (Boulder, CO: University of Colorado Press, 2007).

12) Peter T. Struck, "2013 Arthur O. Lovejoy Lecture: A Cognitive History of Divination in Ancient Greece," *Journal of the History of Ideas*, vol. 77, no. 1 (Jan., 2016), 1.

13) Edward Slingerland, *Mind and Body in Early China: Beyond Orientalism and the Myth of Holism* (Oxford, England: Oxford University Press, 2019).

14) Jason Morgan, "Greatness of Character as the Great Idea of Religion and Freedom in Classical Confucianism," under review. Cf. Wm. Theodore de Bary, *The Trouble with Confucianism* (Cambridge, MA: Harvard University Press, 1991), esp. Ch. 1, "Sage-Kings and Prophets," 1–23, and Ch. 2, "The Noble Man in the *Analects*," 24–45. De Bary declares Confucius an "Undeclared Prophet," *The Trouble with Confucianism*, 24. See also Paul R. Katz, *Divine Justice: Religion and the Development of Chinese Legal Culture* (London, England: Routledge, 2009), 7, citing also Martin Chanock, *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge and New York: Cambridge University Press, 1985), 83, 86; Alison Dundes Renteln and Alan Dundes, eds., *Folk Law: Essays in the Theory and Practice of Lex Non Scripta*. 2 volumes. (Madison, WI: The University of Wisconsin Press, 1994), 13; Mark van Hoecke and Mark Warrington, "Legal Cultures and Legal Paradigms: Towards a New Model for Comparative Law," in *International and Comparative Law Quarterly*, vol. 47, 1998, 498; Jonathan Ocko, "Interpretive Communities: Legal Meaning in Qing Law," in Robert E. Hegel and Katherine Carlitz, eds., *Writing and Law in Late Imperial China: Crime, Conflict, and Judgment* (Seattle, WA: University of Washington Press, 2007), 261–65; Stanley Fish, *Is There a Text in this Class? The Authority of Interpretive Communities* (Cambridge, MA: Harvard University Press, 1980); Daniel L. Overmyer, "Attitudes Toward Popular Religion in the Ritual Texts of the Chinese State: *The Collected Statutes of the Great Ming*," in *Cahiers d'Extrême Asie*, 5, 1989–1990, 192–93, 221; Lin Duan, *Wei Bo lun Zhongguo chuantong falü: Wei Bo*

> whole human persons, forming them in body and mind for exemplification of the humane, Heaven-focused, human ideal.[14)]

It is this openness to the divine and acceptance of contingency as a fundamental condition of human existence which shaped much of the ancient Chinese jurisprudential experience and makes it, by that same measure, fruitful for us to examine as a key to understanding the invocation of superhuman actors in courts of law.

While previous studies have focused on the broad cultural implications for this gods-centered nature of ancient Chinese life, or have dwelt at length on the philosophical, archaeological, literary, and even anthropological ramifications of a revised worldview which takes into account the essentially and strongly religious character of the distant Chinese past, there remains much work to be done in investigating the implications for law in ancient China in light of the prominence, indeed even primacy, of religion.[15)] One important clue for how law under religious cover worked in ancient China comes from the works of historian Paul R. Katz. In Katz' estimation:

> justice in ancient China was pursued along what [Katz] calls a 'judicial continuum', a 'continuous series of elements often viewed as indistinguishable' and involving not just judges and hearings but also rituals, appeals to myths, religious interpretations, and interpersonal mediation. There was no strict separation between the courtroom and the justice of heaven, and human beings conducted trials, if not *sub specie aeternitatis*, then at least in the shadow of the intervention of forces beyond human control or even understanding.[16)]

Katz is one of the few scholars to accentuate the religious nature of ancient Chinese jurisprudence, and so his work presents an important new opportunity to rethink Chinese law in the context of Hiroike's emphasis on the doctrine of the mean. The expansion of "the mean" to include considerations of otherworldly impetuses greatly alters our understanding of law, religion, and philosophy in ancient China as well as in surrounding cultures in contact with Chinese states.

Perhaps the most succinct, and yet puzzling, expression of this religious,

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bijiao shehuixue de pipan (Taipei: Sanmin Shuju, 2003), and Max Weber, *The Religion of China*, and C. K. Yang, *Religion in Chinese Society*. See, also, Paul R. Katz and Stefania Travagnin, eds., *Concepts and Methods for the Study of Chinese Religions III: Key Concepts in Practice* (Berlin: De Gruyter, 2019).

15) See, e.g., Sarah Allan, "Erlitou and the Formation of Chinese Civilization: Toward a New Paradigm," *Journal of Asian Studies*, vol. 66, no. 2 (May, 2007), 461–496, Li Liu, "State Emergence in Early China," *Annual Review of Anthropology*, vol. 38 (2009), 217–232, David S. Nivison, *The Nivison Annals: Selected Works of David S. Nivison on Early Chinese Chronology, Astronomy, and Historiography* (Berlin: De Gruyter, 2018), Rowan K. Flad, "Divination and Power: A Multiregional View of the Development of Oracle Bone Divination in Early China," *Current Anthropology*, vol. 49, no. 3 (Jun., 2008), 403–437, and Horst J. Helle, "Oracle-Bones: The Mandate of Heaven," in *China: Promise or Threat? A Comparison of Cultures* (Leiden: Brill, 2017).

16) Jason Morgan, "Legal Fictions in East Asian and Western European Jurisprudence and Legal Philosophy," under review, citing Paul R. Katz, "On the Judicial Continuum and the Study of Chinese Legal Culture," in Paul R. Katz and Stefania Travagnin, eds., *Concepts and Methods for the Study of Chinese Religions III: Key Concepts in Practice* (Berlin & Boston: Walter de Gruyter, 2019), 11.

otherworldly aspect of Chinese jurisprudence comes in the form of the *xiezhi*. The *xiezhi*, said to have one horn and to resemble a kind of horse-like dragon or an oxen-like unicorn, is a mythical beast which was central to the functioning, and logic, of an ancient Chinese court. The character for *xie* forms part of the older, more complicated Chinese character for "law," *fa*, illustrating the *xiezhi*'s centrality to ancient Chinese jurisprudence and the universe of thinking that underpinned it and in turn emanated from it.[17] Indeed, the *xiezhi* was so prominent in the thinking of ancient Chinese law court officials that it was inscribed on certain robes worn by those officials, much in the same way that a statue of a blindfolded "lady Justice" or an image of a scale might adorn a law court in the United States today.[18]

But what, exactly, was this *xiezhi*, and how does it help us to understand Hiroike's emphasis on the doctrine of the mean and, beyond that, how that understanding might be extended to other jurisprudential milieux? The *xiezhi* might be said to be the (paradoxical) embodiment of a jurisprudential, even epistemological, aporia, the instantiation of an absence, the indexing of an unknown element. This aporia, absence, or unknown was, somehow, the keystone of the arch of justice which a judge must always try to rebuild in his court cases. The *xiezhi* was a kind of acknowledgement that perfect judgment is more than human beings can be called upon to achievement. The mean is, on that understanding, the maximum of our jurisprudential powers. As I write elsewhere:

> The *xiezhi* was a premodern legal fiction, an irruption of the inexplicable into the pursuit of justice which preserved the law while radically contravening it. The process of deliberating about a given case was carried out mainly by people. In the end, though, hard cases were left up to non-human beings to decide. The *xiezhi* was a token of the acknowledgement by those in Chinese antiquity that the reality of the law was ultimately beyond human reach.[19]

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17) On the etymology of fa and its variants in Chinese and Japanese, see Hiroike Chikurō, *Tōyō hōseishi joron*, op. cit., cited in *Chikuro Hiroike: Father of Moralogy*, op. cit., 189–191. See also Kure Asao, "Hiroike Chikurō 'Tōyō hōseishi joron' no tokushoku to gakusetsu shijō no igi: 'hō=nori'ron wo chūshin toshite," *Morarojī Kenkyū*, no. 78 (Nov., 2016), 21–44, and Shirakawa Shizuka, *Keitō zakki, shūi* (Tokyo: Heibonsha, 2010), esp. "Kami no sabaki," 233–44, which contains an excellent explication of the etymology of *fa*.

18) See, e.g., Takikawa Masajirō, *Hōritsu shiwa* (Tokyo: Ganshodo, 1932), 73–76, *Hōritsu Shunshū*, vol. 2, no. 5 (May, 1927), 43–45, Yamakawa Aki, "Chūkinsei senshokuhin no kisoteki kenkyū," Ph.D. dissertation, Ochanomizu Joshi Daigaku Daigakuin (September, 2013), 82, 87, 111–120, and Yajima Akiko, "Chūgoku kodai no dōbutsukan wo meguru kenkyū: tori no imēji kara miru kodai no kankyō to shinsei," Ph.D. dissertation, Keio Gijuku Daigaku Daigakuin (September, 2017 (2016)), 76–93.

19) Jason Morgan, "Legal Fictions in East Asian and Western European Jurisprudence and Legal Philosophy," under review. See also Takafuji Harutoshi, "Wasurerareta zuijū: kai, sono zuzōgakuteki bunrui no kokoronomi," *Bunsei Kiyō*, no. 21 (2009), 49–71, Yamada Katsumi, *Ronkō*, vol. 1 (Tokyo: Meiji Shoin, 1976), esp. 1–13, Yamada Katsumi, *Ronkō*, vol. 2 (Tokyo: Meiji Shoin, 1979), esp. 1120–1140, Terajima Ryōan, *Wa Kan sansei zue*, vol. 1 (Tokyo: Tōkyō Bijutsu, 1970), 437, Yoshida Kenkō, *Shiki*, 1 (Honki) (Tokyo: Meiji Shoin, 1973), 29–72, Yamada Taku, *Bokushi*, vol. 1 (Tokyo: Meiji Shoin, 1975), 336–51, Maeno Naoaki, *Sangaikyō, Retsusenden* (Tokyo: Shūeisha, 1975), 68–70, 444–445, 736–737, *Han Wei cong*

In a bigger sense, the *xiezhi* represents the very nature of human existence which demands that we reason using synderesis, or the application to contingency of human reason guided by a morally-formed conscience, rather than the strict application of rigid rules to every individual case indiscriminately. The *xiezhi*, or monster of the ordeal, was thus the representative of the divine will and judgment in a court of law in ancient China, but it was also an avatar of sorts for the human mind and heart, the puzzlement of the judge in the face of incomplete information, and the acknowledgement that, in the end, much of the work of the law is guesswork, in the light of the pursuit of justice, rather than clear-cut solutions to cases stateable in absolute moral and legal terms.

While the *xiezhi* is very much contextualized by religion and an openness to the supernatural, the jurisprudential nature of the *xiezhi* is apparent even for those who insist on a purely secularist reading of ancient China. For example, Park Yong-chol, who asserts that the ancient Chinese did not focus their attentions on God or the gods, attempts a distinction between the absolute nature of God in the West and the relative situationalism sometimes exhibited by agents of the deities in China.

> I believe that that the existence, or non-existence, of any divinity runs throughout the background of the difference between the East and the West on whether the essence of a court trial is judgment [*hantei*] or measurement [*sokutei*]. In the West, God is, above all things, a God of justice, or in other words the God of criminal justice who judges, in the afterlife, whether or not there is any sin. By contrast, secular Chinese civilization, which believes in no gods, and which, centered on the present realities, denies the existence of the afterlife, has no god for judging in the afterlife whether there is any sin. [⋯] Nevertheless, it is not the case that there was absolutely no divine judgment [*shinpan*] in China. The *kaichi* [*xiezhi*], which symbolizes law in China [⋯], is known as the divine beast used in divine judgments in ancient China. Also, the old character for law has as its compositional element *kaichi*, or *kai*. The significance of this original

shu (Taipei: Xinxing Shuju, 1970), 8–9, and Kumazawa Miyu, "Kinsei buke ni okeru shinjū hakutaku no juyō," *Aichi Kenritsu Daigaku Bungaku Bunkazai Kenkyūsho Kiyō*, no. 2 (Mar., 2016), 21–37. See also Ishimoda Shō, *Nihon no kodai kokka* (Tokyo: Iwanami Shoten, 1971), Mishina Akihide, *Kodai saisei to kokurei shinkō* (Tokyo: Heibonsha, 1973), Mishina Akihide, *Nihon shinwaron* (Tokyo: Heibonsha, 1970), Takahashi Tadahiko, *Bunsen* (*fuhen*), vol. 2 (Tokyo: Meiji Shoin, 1994), esp. 88–89, 100–103, Imamura Yoshio, *Yūyō zasso* (5 vols.) (Tokyo: Heibonsha, 1981), 138–39, Iwaki Hideo, tr., *Go zasso* (8 vols.) (Tokyo: Heibonsha, 1998), 20–21, Mozume Takami, *Mozume Takakazu, Kōbunko* (book 4) (Tokyo: Meicho Fukyūkai, 1916), 490–491, Uesugi Chisato, *Komainu jiten* (Tokyo: Ebisukosyo Publication, 2001), 22–29, 110–111, Suzuki Hiroshi, *Chūgoku no shinwa densetsu*, vol. 1 (Tokyo: Seidosha, 1993), Chang Ching, *Zusetsu: Chūgoku bunka hyakka*, vol. 2, *Ten kakeru shinborutachi: genos dōbutsu no bunkashi* (Tokyo: Keiyousha, 2002), 18–23, 54–63, Ozaki Yūjirō, *Kundō setsumon kaiji chū, ishi satsu* (Tokyo: Tōkai Daigaku Shuppankai, 1986), 208–210, 719, 729–733, 738–739, Ozaki Yūjirō, *Kundō setsumon kaiji chū, hisago satsu* (Tokyo: Tōkai Daigaku Shuppankai, 1993), 508–510, 620–25, *Shirakawa Shizuka, Shirakawa Shizuka chosakushū 1*, Kanji 1 (Tokyo: Heibonsha, 1999), 259, and "Chitsujo no genri," 84–113, and Shirakawa Shizuka, *Shirakawa Shizuka chosakushū 12, Zassan* (Tokyo: Heibonsha, 2000), 34–37, 262–263.

> character for law is that, once the divine judgment had finished and the issue at litigation had been decided, the party judged to be in the wrong, along with the kai and the testimony documents used in the divine judgment were together, for the sake of doing away with the filth [*owai*] of the unjust and the unfaithful, made to bear the calamity of the sin and washed away. The history of the *kaichi* can therefore be said to be the history of divine judgment and of law in China.[20)]

As Park shows in his own argument, the divine judgment, carried out by the *kaichi* or *xiezhi*, was in any event a central feature of ancient Chinese jurisprudence, notwithstanding Park's argument that the Chinese are secularist and disbelieving of the gods. But the divine judgment, exemplified by the *kaichi*, found its strongest competitor, not in the criminals who were judged, but in the state which pretended to be merely the venue for the divine judgment. As Park argues, it was the establishment of a strong central state which led to the demise of the *kaichi* concept as a factor in ancient Chinese courts of law.[21)]

Eventually, the politicization of the Chinese polity had rendered the *kaichi* an empty concept, a shell which had become merely decorative, or indicative of the longevity and continuity of the Chinese state. "The sanctity (*shinseisei*) of handing down divine judgments (*shinpan*) which the *kaichi* had once possessed had completely disappeared," Park writes.[22)] Thereafter, the *kaichi* was reinterpreted as a symbol of the "illiterate" class of hard-charging local officials, despised by the scholar-official elite as little more than beasts.[23)] As it turns out, it was a strong central authority — two authorities, actually — which shaped the rise of a kind of *kaichi*-esque legal reasoning in the early modern West. These two authorities were the religious and the political, the Church and the state (to use very broad phrasing). And this dual nature of Western authority is the engine of the search for the mean, the aspiration to justice in keeping with God's law while also giving due regard to the prerogatives of men.

The Hiroikean Ideal in Western Europe and the Anglosphere

Much Western European and Anglo-American jurisprudence has also, like jurisprudence in much of East Asia, developed in the company of the divine. For example, the kings of ancient Israel were often advised, willingly or not, by "judges" or holy men who claimed insight into the will of Yahweh and authority to pronounce the

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20) Park Yong-chol, "Chūsei Chūgoku ni okeru jigoku to gokushō," *Ronbun Mokuroku* (Kyoto, 1996), 374–375. Park quotes from Mozi (墨翟) to illustrate how the trial proceeded under the auspices of the *shenpan*, or divine judgment. Park Yong-chol, "Chūsei Chūgoku ni okeru jigoku to gokushō," op. cit., 375–376.

21) See Park Yong-chol, "Chūsei Chūgoku ni okeru jigoku to gokushō," op. cit., 376–377.

22) Park Yong-chol, "Chūsei Chūgoku ni okeru jigoku to gokushō," op. cit., 381.

23) Park Yong-chol, "Chūsei Chūgoku ni okeru jigoku to gokushō," op. cit., 381.

deeds of the political leader not in keeping with divine commandments.[24] In Rome, too, the *pontifex maximus, flamines*, and other priests and holders of divine office often held a power in the polity separate from, and sometimes counter-disposed to, that of the political leaders. The Roman emperors eventually co-opted the divine authority into their own person, ruling Rome as demigods unbeholden to any higher authority than themselves.[25] But this proved to be a function of political expediency after all when the empire over which the emperors ruled began to break down. Justinian I (482–565), the Christian leader of the Eastern Roman Empire in the sixth century AD, ordered formulated a law code which set out the laws in a clear and methodical manner. Before Justinian, St. Augustine of Hippo (354–430), writing in the late fourth and early fifth centuries, saw in a starkly religious context the struggle of the Christian order against the invasions of the pagans who had neither the Faith nor the books of the law. As the Roman Empire unraveled the Church assumed the role of the ordering principle of society, and the maintenance and application of the law was often a function of religious office. Kings, as Austrian scholar Eugen Ehrlich (1862–1922) wrote, did not have the authority to overturn legally-binding traditions such as the laws of marriage.[26]

During the ensuing Middle Ages we witness the progressive entwinement of the law of this world and the commandments of God, with political and religious rulers working together to achieve what Henri de Lubac (1896–1991) calls "the complete act," the "business of the peace and the Faith" (*negotium pacis et fidei*) described at length in Andrew Willard Jones' groundbreaking book *Before Church and State*.[27] According to Jones, the France of Louis VIII (1187–1226) and St. Louis IX (1214–1270) was not divided between secular and sacred, as most scholars since the so-called "Enlightenment" have tended to argue. Jones contends that there was no "Church" and "State" during the Middle Ages, but rather a societal whole in which the whole human person, material and spiritual, was incorporated into a complete societal and sacramental act, equally material and spiritual. This reached a zenith under King St. Louis IX, who would later become pope and work to extend this highwater mark of the peace of Christ to the parts of Christendom given over more to this-worldliness than other-. The papacy overcame the challenge of Frederick II (1194–

24) Cf. 1 Samuel 13–16, 2 Samuel 2.

25) See Henry Fairfield Burton, "The Worship of the Roman Emperors," *The Biblical World*, vol. 40, no. 2 (Aug., 1912), 80–91.

26) Eugen Ehrlich, "The Sociology of Law," under the heading "An Appreciation of Eugen Ehrlich," by Roscoe Pound, *Harvard Law Review*, Vol. XXXVI, No. 2 (Dec., 1922), 137, cited in Kahei Rokumoto, ed., *Sociological Theories of Law* (New York University Press, New York, NY, 1994), 101, in Jason Morgan, *Law and Society in Imperial Japan: Suehiro Izutarō and the Search for Equity* (Amherst, NY: Cambria, 2020), 52.

27) On the *negotium pacis et fidei*, see, e.g., Andrew Willard Jones, *Before Church and State: A Study of Social Order in the Sacramental Kingdom of St. Louis* (Steubenville, OH: Emmaus Academic, 2017), esp. Part I, "The Business of the Peace and the Faith".

1250), and also of the Holy Roman Emperor Henry IV (1050–1106), and for a time the Church was the paragon of the social order.[28] There was no need to conceive of an irruption of the divine into the secular, because the secular was already conceptualized as a subset of the divine.[29]

As Dante Alighieri (1265–1321) showed in his *De Monarchia* and *Divine Comedy*, though, and as Niccolo Machiavelli (1469–1527) and Thomas Hobbes (1588–1679) later developed at length in their own writings advancing the secularization of society, the ground of the medieval religious state was rapidly disintegrating. A "humanistic," which is to say anti-Christian, culture was being developed right at the time of the flowering of the Ludovician Christian peace.[30] As men took over the affairs of God and denatured divine mercy into the rougher potions of the human passions, to be sorted and tamed by human "reason," the law became a double of the Cartesian self, a mechanical contraption which was paradoxically all inner-space and without any abiding soul.[31] There was left no venue in which to perform the discerning search for the guiding mean advocated by Hiroike and by countless other thinkers from the East. The law in the West underwent a period of tremendous change, especially under what English political philosopher Michael Oakeshott (1901–1990) has described as the shift from the *gubernaculum* to the *legislatio*, or, more precisely, from rule by reasonable men to rule by inflexible and universalized laws, verbal extensions to infinity of the naked power of the sovereign enthroned.[32] Ironically, it was through rule by laws that the arbitrariness of rule by men was both amplified, by the medium of the lawbook, and transformed into the tyranny of the elided circumstance. The doctrine of the mean, impossible for the Cartesian (and especially later Kantian) person, became doubly impossible under the legislative state.[33]

The tandem balance between the state and the divine, which had helped keep

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28) See Paul Johnson, *A History of Christianity* (New York, NY: Simon and Schuster, 1976), 193–236.

29) John Julius Norwich, *Sicily: An Island at the Crossroads of History* (New York, NY: Random House, 2015), 116–118.

30) See David Walsh, ed., Eric Voegelin, *The Collected Works of Eric Voegelin: Volume 21, History of Political Ideas, Volume III, The Later Middle Ages* (Columbia, MO: University of Missouri Press, 1998), 66–82, and "The Medicean Restoration" and "The Problem of English Machiavellism" in J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975).

31) See Justin E.H. Smith, "Leibniz's Harlequinade: Nature, Infinity, and the Limits of Mathematization," in Geoffrey Gorham, Benjamin Hill, Edward Slowik, and C. Kenneth Waters, eds., *The Language of Nature: Reassessing the Mathematization of Natural Philosophy in the Seventeenth Century* (Minneapolis, MN: University of Minnesota Press, 2016), 250–273.

32) See Judith N. Shklar, "Ideology Hunting: The Case of James Harrington," *The American Political Science Review*, vol. 53, no. 3 (Sep., 1959), 662–692, Francis Oakley, "Jacobean Political Theology: The Absolute and Ordinary Powers of the King," *Journal of the History of Ideas*, vol. 29, no. 3 (Jul. — Sep., 1968), 323–346, and Michael Oakeshott, *Rationalism in Politics and Other Essays* (Indianapolis, IN: Liberty Fund, 1991), 314–332.

33) See Jason Morgan, "The Human Person in Confucianism: Triadic Relationships and the Possibilities of an Agapastic Semeiotic Pragmatism," *Dao: A Journal of Comparative Philosophy* (2020).

clear a space for discernment, justice, and the working out of the doctrine of the mean, was lost as the state assumed primacy in all aspects of human existence. This was nowhere truer than in the relationship between the ruler and the clergy. Kings eager to centralize power in their own hands found ways either to co-opt the priests of their realm, or else discovered arguments in favor of their own quasi-divinity, as under the Roman emperors.[34] In addition, later theorists like Roger Bacon held that men were citizens (not subjects), but the liberalization of the body politic — the splintering of the realm into a Hobbesian kaleidoscope of sovereign individuals — tended only to accelerate the process of centralization of authority in the government. The divine right of kings posited a kind of political transcendence to the king, with "the king's two bodies" becoming a theme of rule in the West.[35] But the secular right of kings was even more absolute. Politics was assuming an importance outstripping religion, and as the influence of the Church on the law weakened, the law took on a tyranny all its own.

In the United States and other Anglophone countries, the writings of Austrian political philosopher and Nobel laureate Friedrich Hayek (1899–1922) are sometimes held up as milestones in constitutional theory. Hayek claimed to be exploring what he called the "constitution of liberty," but closer inspection reveals that this "constitution of liberty" is the apotheosis of the written law. Just as with the "original position" heuristic introduced by John Rawls (1921–2002), the law under Hayekian thought is made the only occupant of the jurisprudential field, with the Church and the judge and the jury all relegated to, at best, minor supporting roles.[36] The only liberty to be found, under Hayek's scheme, is the liberty of the law's inflexible rules.[37] This may appear to be merely a political development, with the Church growing ever frailer as time progressed, but in truth there was a parallel development taking place in Rome and the rest of the Church on earth while the legal revolution toward absolutized law continued. One famous culmination was the Vatican I pronouncement of infallibility, which, as John W. O'Malley lays out in *Vatican I: The Council and the Making of the*

34) Antonio Padoa-Schioppa, *A History of Law in Europe: From the Early Middle Ages to the Twentieth Century* (Cambridge, England: Cambridge University Press, 2017), 222–223.

35) See Ernst Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, NJ: Princeton University Press, 1957), and Samuel J.T. Miller, "The Position of the King in Bracton and Beaumanoir," *Speculum*, vol. 31, no. 2 (Apr., 1956), 263–296.

36) John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971)

37) Friedrich A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), esp. part II, "Freedom and the Law," and Norman P. Barry, *Hayek's Social and Economic Philosophy* (Hampshire, England: The Macmillan Press, 1979), esp. ch. 4, "Liberty and Coercion," and ch. 5, "The Theory of Law". See also Chiaki Nishiyama and Kurt R. Leube, eds., *The Essence of Hayek* (Stanford, CA: Hoover Institution Press, 1984), Bruno Leoni, *Freedom and the Law* (Princeton, NJ: D. Van. Nostrand Co., 1961), Bruce L. Benson, *The Enterprise of Law: Justice without the State* (San Francisco, CA: Pacific Research Institute for Public Policy, 1990), and Jason Morgan, "Book Review: *Judicial Review in an Objective Legal System*," *Libertarian Papers*, vol. 9, no. 1 (2017), 146–156.

Ultramontane Church, was in large part a mirroring of the absolutism of the law. The Church under Pope Pius VI (1717–1799), in *Quod aliquantum* (1791), "condemned" the political developments in revolutionary France, but in time the Church would find herself with little choice but to meet liberal absolutism on its own terms in order to fight it.[38]

Parallel with this rise of absolutism in society in general, there had been, in certain places, a hardening of the Church's mercy into strict rules placed beyond the bounds of reason and temperance. This trend was typified by the rise of Jansenism, a strict-interpretationism of religious teachings advanced by Dutch bishop Cornelius Jansen (1585–1638) in the early seventeenth century. Unlike in China, whereby the old noumenal nature of the divine judgment was evacuated by creeping political cynicism until the *xiezhi* was little more than a symbol of its own ineffectualness, in the West the tide of political absolutism brought in the flotsam of the old Church-led order and deposited it as a barrier across the shore. Jansenism, while purporting to be concerned with the next life, was hobbled with rules for this one, and it took particular hold in Northern and Western Europe. As the wisdom of the High Scholastics was gradually forgotten and the attempt at *ressourcement* and revival of the Suarezians and other later Scholastics was increasingly ignored, the Church was co-opted anew by the secular power, which viewed with ever more apparent disdain the moral interjections emanating from Rome.

It was as a reaction to a reaction, then, a response to the Jansenism which was, in turn, an almost unthinking reaction to the absolutization of the political order, that casuistry arose. As post-Jansenist thinkers such as Blaise Pascal (1623–1662) and St. Alphonsus Maria de Liguori (1696–1787) worked out a "middle way" position between Jansenist absolutism and the need to temper punishment to fit the educational needs of men, a general way of thinking known as casuistry, or the foregrounding of cases and circumstances as a way to problematize absolute doctrines, began to emerge.[39] Casuistry was, in many ways, a kind of stealth *kaichi* in the unraveling of Christendom.[40] The stirrings of a spirit of mercy beyond the understanding of mortal men, coupled with the emphasis placed on situations and circumstances,

38) John O'Malley, *Vatican I: The Council and the Making of the Ultramontane Church* (Cambridge, MA: Belknap Press of Harvard University Press, 2018), and Helena Rosenblatt, *The Lost History of Liberalism: From Ancient Rome to the Twenty-First Century* (Princeton, NJ: Princeton University Press, 2018), 48.

39) See Thomas Fleming, *The Morality of Everyday Life: Rediscovering an Ancient Alternative to the Liberal Tradition* (Columbia, MO: University of Missouri Press, 2004), 10–12, and Edmund Leites, ed., *Conscience and Casuistry in Early Modern Europe* (Cambridge, England: Cambridge University Press, 1988).

40) On casuistry in general, see George Clarke Cox, "Ethics as Science and as Art," *The Journal of Philosophy, Psychology and Scientific Methods*, vol. 13, no. 8 (Apr., 1916), 204–219, and Albert R. Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley, CA: University of California Press, 1988).

subject to interpretation by individual men employing the full complement of their reasoning and discerning and pitying powers, marked casuistry as more and much less than the complex interworkings of the black-letter law.[41)]

But while the Christian West underwent this bucking around from absolutism to absolutionism, fussiness to fuzziness, there was a foundation to the Christian legal regimes which, although visible in plain sight, was conceptually invisible to nearly everyone in Christendom: namely, Jewish law.

Jewish Law and the Hiroikean "Middle Way"

Jewish law is often conceived of by non-Jews as a nearly hopelessly complicated system of rules governing the large and the small of a human life, from births, weddings, and funerals to clothing, grooming, and diet. And yet, while Jewish law is certainly capable of displaying a fastidiousness which is largely alien to the more generalized, rights-based political and constitutional thinking typified by liberal polities in Europe and North America, Jewish law is in reality defined, apart from the fundamental givenness of the Torah and the law in the heart by Yahweh, by the tension between the halakhah and the aggadah. "Halakhah" is the Hebrew term for the strict interpretation of the legal codes by scholars who spend their lives contemplating vanishingly fine points of distinction. Halakhah is the black-letter law, the things the books (and, ultimately, Yahweh) say to do and not to do. "Aggadah," by contrast, is the Hebrew term for the case-rooted searching for justice in a world where it is often very difficult to pronounce with final certainty whether a given action was, given the circumstances, absolutely right or absolutely wrong. Aggadah connotes an awareness of the demands of the infinity of God penetrating the finitude of the created universe, namely the higher justice of mercy and forgiveness over exacting justice which tends to shade over into vengeance, the settling of human scores under cover of divine sanction. On the aggadah interpretation, there is no way to decide in advance exactly how to balance this cosmic equation. Unlike the bezeled precision of the halakhah, under the aggadah one must examine all of the facts and circumstances, all of the emotions and half-sworn statements, all of the angles and inclines, and, taking all into account in a summation, render a verdict which must, impossibly, satisfy the demands of both divine and human justice. Hence, the emphasis placed by Jewish legal scholars from antiquity on case law. Case law helps us to examine how other people in the past, faced with perhaps similar dilemmas, put their best legal guesses into play and effected, they hoped and we hope, something as close to the

41) For an interesting development of law on a global scale and the question of casuistry, see Ernst Wolff, "Ricoeur's Contribution to a Notion of Political Responsibility for a Globalised World," in Ernst Wolff, *Political Responsibility for a Globalised World: After Levinas' Humanism* (Bielefeld: Transcript Verlag, 2011), 221–266.

right and the true as any human could.

This doctrine of the mean thinking shaded over into how some Jewish intellectuals conceptualized the law. For example, the medieval Jewish philosopher Moses Maimonides (1135–1204) understood the commandments of Yahweh in a dualistic sense, both as pre- and proscriptions and also as guides to man's natural end. This dualistic approach to the law opened up space for the pursuit of a casuistic, synderetic justice which echoes the Hiroikean understanding of the middle way and also parallels much of the more recondite reasoning enveloping the deployment in Chinese jurisprudential lore of the *xiezhi*.[42] This "medianism" formed, arguably, the core of Maimonedian thought. As Marvin Fox explains, Maimonides relied heavily on Aristotle's "doctrine of the mean" in his ethical teachings. Fox cites Joseph I. Gorfinkle as arguing that "although Maimonides follows Aristotle in defining virtue as a state intermediate between two extremes, [⋯] he still remains on Jewish ground as there are biblical and Talmudical passages expressing such a thought."[43] In other words, Maimonides followed a "middle way" not just in Aristotelian terms, that is, between two extremes in pursuit of an ethical disposition towards human action, but also in socio-religious terms, embracing his position as an outsider in society to formulate a method for remaining true to the teachings of Yahweh while also acting on those teachings in the different context of the *dar al Islam*.

Conclusion

The mythical avatar for weak human epistemology, especially in a courtroom setting, the *xiezhi* from ancient China, the rise of casuistry in Western Europe as a response to the Jansenism which was in turn a response to the liberal absolutism and iron bourgeois thought of Thomas Hobbes and other radical secularists, and the hidden-in-plain-sight Hiroikean-Aristotelian-Confucian counterexample of Jewish law, such as explicated by Moses Maimonides: these examples, taken together, point to a new horizon for Hiroikean legal thought. Hiroike's development of the Doctrine of

42) See Eliezer Goldman, "Rationality and Revelation in Maimonides' Thought," in Shlomo Pines and Yirmiyahu Yovel, eds., *Maimonides and Philosophy: Papers Presented at the Sixth Jerusalem Philosophical Encounter, May 1985* (Dordrecht, The Netherlands: Martinus Nijhoff, 1986), 15–23, "Maimonides on Being with God," in Louis Jacobs, compilation and commentary, *The Schocken Book of Jewish Mystical Testimonies* (New York, NY: Schocken Books, 1976), 45–60, Chaim Neuburger, "Das Wesen des Gesetzes in der Philosophie des Maimonides," in Steven T. Katz, ed., *Maimonides: Selected Essays* (New York, NY: Arno Press, 1980), and Colette Sirat, *A History of Jewish Philosophy in the Middle Ages* (Cambridge, England: Cambridge University Press, 1985), 157–175. See also Moses Maimonides, Chapter 27, in Shlomo Pines, tr., *The Guide of the Perplexed, Volume II* (Chicago, IL: University of Chicago Press, 1963), 510–512.

43) Marvin Fox, "The Doctrine of the Mean in Aristotle and Maimonides: A Comparative Study," in Joseph A. Buijs, ed., *Maimonides: A Collection of Critical Essays* (Notre Dame, IN: University of Notre Dame Press, 1988), 234, citing Joseph I. Gorfinkle, ed., *The Eight Chapters of Maimonides on Ethics* (New York, NY: Columbia University Press, 1912), 54.

the Mean as a generalized approach to ethics in the world can be deployed as an index for legal thinking in legal traditions and legal systems beyond those immediately considered by Hiroike in his own writings.

In this essay, I have attempted to follow and expand upon Hiroike's insights into the nature of the law and of the human beings who must inevitably live their lives in the law's embrace, by bringing into the purview of Hiroikean theoretical jurisprudence a range of examples which, I believe, prove the original integrity of Hiroike's legal thought. The "middle way" is more than an Aristotelian or Confucian avoidance of extremes. The "middle way," on the Hiroikean interpretation, has an explanatory power of its own, and in the future I hope this aspect of Hiroike's moral philosophy can be brought to bear on many more of the world's contemporary and past legal cultures than those few introduced above.

Bibliography

Barry, Norman P. *Hayek's Social and Economic Philosophy*. Hampshire, England: The Macmillan Press. 1979.

Benson, Bruce L. *The Enterprise of Law: Justice without the State*. San Francisco, CA: Pacific Research Institute for Public Policy. 1990.

Brook, Timothy, Michael van Walt van Praag, and Miek Boltjes, eds. *Sacred Mandates: Asian International Relations since Chinggis Khan*. Chicago, IL: University of Chicago Press. 2018.

Burton, Henry Fairfield. "The Worship of the Roman Emperors." *The Biblical World*. 1912.

Carpenter, David. "Magna Carta 1215: Its Social and Political Context." In Lawrence Goldman, ed. *Magna Carta: History, Context, and Influence*. London, England: University of London Press/ Institute of Historical Research. 2018.

Chang Ching. *Zusetsu: Chūgoku bunka hyakka*, vol. 2, *Ten kakeru shinborutachi: genos dōbutsu no bunkashi*. Tokyo: Keiyousha. 2002.

Chanock, Martin. *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia*. Cambridge and New York: Cambridge University Press. 1985.

Chapman, Alison A. "Milton and Legal Reform." *Renaissance Quarterly*. 2016.

Chikuro Hiroike: Father of Moralogy. Kashiwa: The Institute of Moralogy. 2005.

Cohen, Mitchell and Nicole Fermon, eds. *Princeton Readings in Political Thought: Essential Texts since Plato*. Princeton, NJ: Princeton University Press. 1996.

Cox, George Clarke. "Ethics as Science and as Art." *The Journal of Philosophy, Psychology and Scientific Methods*. 1916.

de Bary, Wm. Theodore. *The Trouble with Confucianism*. Cambridge, MA: Harvard University Press. 1991.

Ehrlich, Eugen. "The Sociology of Law." *Harvard Law Review*. 1922.

Fish, Stanley. *Is There a Text in this Class? The Authority of Interpretive Communities*. Cambridge, MA: Harvard University Press. 1980.

Fleming, Thomas. *The Morality of Everyday Life: Rediscovering an Ancient Alternative to the Liberal Tradition*. Columbia, MO: University of Missouri Press. 2004.

Fox, Marvin. "The Doctrine of the Mean in Aristotle and Maimonides: A Comparative Study." In Joseph A. Buijs, ed. *Maimonides: A Collection of Critical Essays*. Notre Dame, IN: University of Notre Dame Press. 1988.

Goldman, Eliezer. "Rationality and Revelation in Maimonides' Thought." In Shlomo Pines and

Yirmiyahu Yovel, eds. *Maimonides and Philosophy: Papers Presented at the Sixth Jerusalem Philosophical Encounter, May 1985*. Dordrecht, The Netherlands: Martinus Nijhoff. 1986.

Goodwin, Janet R. and Joan R. Piggott, eds. *Land, Power, and the Sacred: The Estate System in Medieval Japan*. Honolulu, HI: University of Hawai'i Press. 2018.

Gorfinkle, Joseph I., ed. *The Eight Chapters of Maimonides on Ethics*. New York, NY: Columbia University Press. 1912.

Halpern, Richard. "The King's Two Buckets: Kantorowicz, Richard II, and Fiscal Trauerspiel." *Representations*. 2009.

Han Wei cong shu. Taipei: Xinxing Shuju. 1970.

Hayek, Friedrich A. *The Constitution of Liberty*. Chicago: University of Chicago Press. 1960.

Hiroike Chikurō. *Tōyō hōseishi joron*. Tokyo: Waseda Daigaku Shuppanbu. 1905.

Hobbes, Thomas. *Leviathan*. 1651.

Hoekstra, Kinch. "'Leviathan' and its Intellectual Context." *Journal of the History of Ideas*. 2015.

Imamura Yoshio. *Yūyō zasso* (5 vols.). Tokyo: Heibonsha. 1981.

Ishimoda Shō. *Nihon no kodai kokka*. Tokyo: Iwanami Shoten. 1971.

Iwaki Hideo, tr. *Go zasso* (8 vols.). Tokyo: Heibonsha. 1998.

Jacobs, Louis, comp. *The Schocken Book of Jewish Mystical Testimonies*. New York, NY: Schocken Books. 1976.

Jansen, Maarten and Gabina Aurora Pérez Jiménez. *Encounter with the Plumed Serpent: Drama and Power in the Heart of Mesoamerica*. Boulder, CO: University of Colorado Press. 2007.

Johnson, Paul. *A History of Christianity*. New York, NY: Simon and Schuster. 1976.

Jones, Andrew Willard. *Before Church and State: A Study of Social Order in the Sacramental Kingdom of St. Louis*. Steubenville, OH: Emmaus Academic. 2017.

Jonsen, Albert R. and Stephen Toulmin. *The Abuse of Casuistry: A History of Moral Reasoning*. Berkeley, CA: University of California Press. 1988.

Kantorowicz, Ernst. *The King's Two Bodies: A Study in Mediaeval Political Theology*. Princeton, NJ: Princeton University Press. 1957.

Katz, Paul R. *Divine Justice: Religion and the Development of Chinese Legal Culture*. London, England: Routledge. 2009.

Katz, Paul R. and Stefania Travagnin, eds. *Concepts and Methods for the Study of Chinese Religions III: Key Concepts in Practice*. Berlin: De Gruyter. 2019.

Kohler, Kaufmann. "The Sabbath and Festivals in Pre-Exilic and Exilic Times." *Journal of the American Oriental Society*. 1917.

Kreisel, Howard. *Judaism as Philosophy: Studies in Maimonides and the Medieval Jewish Philosophers of Provence*. Boston, MA: Academic Studies Press. 2015.

Kumazawa Miyu. "Kinsei buke ni okeru shinjū hakutaku no juyō." *Aichi Kenritsu Daigaku Bungaku Bunkazai Kenkyūsho Kiyō*. 2016.

Kure Asao. "Hiroike Chikurō 'Tōyō hōseishi joron' no tokushoku to gakusetsu shijō no igi: 'hō=nori'ron wo chūshin toshite." *Morarojī Kenkyū*. 2016.

Leites, Edmund, ed. *Conscience and Casuistry in Early Modern Europe*. Cambridge, England: Cambridge University Press. 1988.

Leoni, Bruno. *Freedom and the Law*. Princeton, NJ: D. Van. Nostrand Co. 1961.

Lewis, Ewart. "King above Law? '*Quod Principi Placuit*' in Bracton." *Speculum*. 1964.

Lin Duan. *Wei Bo lun Zhongguo chuantong falü: Wei Bo bijiao shehuixue de pipan*. Taipei: Sanmin Shuju. 2003.

Maeno Naoaki. *Sangaikyō, Retsusenden*. Tokyo: Shūeisha. 1975.

Maimonides, Moses, Shlomo Pines, tr. *The Guide of the Perplexed, Volume II*. Chicago, IL: University of Chicago Press. 1963.

Miller, Samuel J.T. "The Position of the King in Bracton and Beaumanoir." *Speculum*. 1956.
Mishina Akihide. *Kodai saisei to kokurei shinkō*. Tokyo: Heibonsha. 1973.
Mishina Akihide. *Nihon shinwaron*. Tokyo: Heibonsha. 1970.
Miyashita Kazuhiro. "Jukyō no shisō to Hiroike Chikurō." *Reitaku Daigaku Kiyō*. 2017.
Morgan, Jason. "Book Review: *Judicial Review in an Objective Legal System*." *Libertarian Papers*. 2017.
Morgan, Jason. *Law and Society in Imperial Japan: Suehiro Izutarō and the Search for Equity*. Amherst, NY: Cambria. 2020.
Mozume Takami. *Mozume Takakazu, Kōbunko* (book 4). Tokyo: Meicho Fukyūkai. 1916.
Nardin, Terry and Luke O'Sullivan, eds. Michael Oakeshott, *Lectures in the History of Political Thought*. Imprint Academic. 2006.
Neuburger, Chaim. "Das Wesen des Gesetzes in der Philosophie des Maimonides." In Steven T. Katz, ed. *Maimonides: Selected Essays*. New York, NY: Arno Press. 1980.
Nishiyama, Chiaki and Kurt R. Leube, eds. *The Essence of Hayek*. Stanford, CA: Hoover Institution Press. 1984.
Norwich, John Julius. *Sicily: An Island at the Crossroads of History*. New York, NY: Random House. 2015.
Oakeshott, Michael. *Rationalism in Politics and Other Essays*. Indianapolis, IN: Liberty Fund, 1991.
Oakley, Francis. "The Absolute and Ordained Power of God and King in the Sixteenth and Seventeenth Centuries: Philosophy, Science, Politics, and Law." *Journal of the History of Ideas*. 1998.
Oakley, Francis. "Jacobean Political Theology: The Absolute and Ordinary Powers of the King." *Journal of the History of Ideas*. 1968.
Ocko, Jonathan. "Interpretive Communities: Legal Meaning in Qing Law." In Robert E. Hegel and Katherine Carlitz, eds. *Writing and Law in Late Imperial China: Crime, Conflict, and Judgment*. Seattle, WA: University of Washington Press. 2007.
O'Malley, John. *Vatican I: The Council and the Making of the Ultramontane Church*. Cambridge, MA: Belknap Press of Harvard University Press. 2018.
Overmyer, Daniel L. "Attitudes Toward Popular Religion in the Ritual Texts of the Chinese State: *The Collected Statutes of the Great Ming*." *Cahiers d'Extrême Asie*. 1989–1990.
Ozaki Yūjirō. *Kundō setsumon kaiji chū, hisago satsu*. Tokyo: Tōkai Daigaku Shuppankai. 1993.
Ozaki Yūjirō. *Kundō setsumon kaiji chū, ishi satsu*. Tokyo: Tōkai Daigaku Shuppankai. 1986.
Padoa-Schioppa, Antonio. *A History of Law in Europe: From the Early Middle Ages to the Twentieth Century*. Cambridge, England: Cambridge University Press. 2017.
Park Yong-chol. "Chūsei Chūgoku ni okeru jigoku to gokushō." *Ronbun Mokuroku*. Kyoto. 1996.
Pocock, J.G.A. *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*. Princeton, NJ: Princeton University Press. 1975.
Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap Press. 1971.
Renteln, Alison Dundes and Alan Dundes, eds. *Folk Law: Essays in the Theory and Practice of Lex Non Scripta*. 2 volumes. Madison, WI: The University of Wisconsin Press. 1994.
Rokumoto, Kahei, ed. *Sociological Theories of Law*. New York, NY: New York University Press. 1994.
Rosenblatt, Helena. *The Lost History of Liberalism: From Ancient Rome to the Twenty-First Century*. Princeton, NJ: Princeton University Press. 2018.
Shirakawa Shizuka. *Keitō zakki, shūi*. Tokyo: Heibonsha. 2010.
Shirakawa Shizuka. *Shirakawa Shizuka chosakushū 1, Kanji 1*. Tokyo: Heibonsha. 1999.
Shirakawa Shizuka. *Shirakawa Shizuka chosakushū 12, Zassan*. Tokyo: Heibonsha. 2000.
Shklar, Judith N. "Ideology Hunting: The Case of James Harrington." *The American Political Science Review*. 1959.

Sirat, Colette. *A History of Jewish Philosophy in the Middle Ages*. Cambridge, England: Cambridge University Press. 1985.

Slingerland, Edward. *Mind and Body in Early China: Beyond Orientalism and the Myth of Holism*. Oxford, England: Oxford University Press. 2019.

Smith, Justin E.H. "Leibniz's Harlequinade: Nature, Infinity, and the Limits of Mathematization." In Geoffrey Gorham, Benjamin Hill, Edward Slowik, and C. Kenneth Waters, eds. *The Language of Nature: Reassessing the Mathematization of Natural Philosophy in the Seventeenth Century*. Minneapolis, MN: University of Minnesota Press. 2016.

Struck, Peter T. "2013 Arthur O. Lovejoy Lecture: A Cognitive History of Divination in Ancient Greece." *Journal of the History of Ideas*. 2016.

Suzuki Hiroshi. *Chūgoku no shinwa densetsu*, vol. 1. Tokyo: Seidosha. 1993.

Takafuji Harutoshi. "Wasurerareta zuijū: kai, sono zuzōgakuteki bunrui no kokoronomi." *Bunsei Kiyō*. 2009.

Takahashi Tadahiko. *Bunsen* (*fuhen*), vol. 2. Tokyo: Meiji Shoin. 1994.

Takikawa Masajirō. *Hōritsu shiwa*. Tokyo: Ganshodo. 1932.

Teeuwen, Mark and John Breen. *A Social History of the Ise Shrines: Divine Capital*. London, England: Bloomsbury Academic. 2017.

Terajima Ryōan. *Wa Kan sansei zue*, vol. 1. Tokyo: Tōkyō Bijutsu. 1970.

Tierney, Brian. "Bracton on Government." *Speculum*. 1963.

Uesugi Chisato. *Komainu jiten*. Tokyo: Ebisukosyo Publication. 2001.

van Hoecke, Mark and Mark Warrington. "Legal Cultures and Legal Paradigms: Towards a New Model for Comparative Law." *International and Comparative Law Quarterly*. 1998.

Walsh, David, ed. Eric Voegelin, *The Collected Works of Eric Voegelin: Volume 21, History of Political Ideas, Volume III, The Later Middle Ages*. Columbia, MO: University of Missouri Press. 1998.

Weber, Max. *The Religion of China*. 1951.

Wolff, Ernst. "Ricoeur's Contribution to a Notion of Political Responsibility for a Globalised World." In Ernst Wolff, *Political Responsibility for a Globalised World: After Levinas'* Humanism. Bielefeld: Transcript Verlag, 2011.

Yajima Akiko. "Chūgoku kodai no dōbutsukan wo meguru kenkyū: tori no imēji kara miru kodai no kankyō to shinsei." Ph.D. dissertation, Keio Gijuku Daigaku Daigakuin. 2017.

Yamada Katsumi. *Ronkō*, vol. 1. Tokyo: Meiji Shoin. 1976.

Yamada Katsumi. *Ronkō*, vol. 2. Tokyo: Meiji Shoin. 1979.

Yamada Taku. *Bokushi*, vol. 1. Tokyo: Meiji Shoin. 1975.

Yamakawa Aki. "Chūkinsei senshokuhin no kisoteki kenkyū." Ph.D. dissertation, Ochanomizu Joshi Daigaku Daigakuin. 2013.

Yang, C.K. *Religion in Chinese Society*. 1967.

Yoshida Kenkō. *Shiki*, 1 (Honki). Tokyo: Meiji Shoin. 1973.