

Oaths in Premodern Japan and Premodern Europe. An Introduction

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This introduction to this collection of articles on oaths in premodern Japan and premodern Latin Europe aims merely to survey the data presented in the articles, and some comparativist findings. It considers terminology, chronology, avoidance of oath-taking, identity of oath-takers, diversity in formulas and practices of swearing, depending on hierarchy and situations, sanctions for perjury, and the efficiency (or not) of oaths.

Keywords: Oaths, Japan, Europe, perjury, ordeals, symbolic communication

This introduction will not summarize the articles in this volume; abstracts exist for a purpose.¹ Rather, it aims to explore some issues arising from the encounter between these contributions and from the intensive discussions that took place at the workshop devoted to the theme (Vienna, Austria, October 2021). It will begin by presenting the agenda of the workshop, and by clarifying our common terminology and lexicon, and then reflect on the origins of the oath in Late Antique and medieval Japan (to ca. 1600 CE) and medieval Latin Europe or »Western Europe« (to ca. 1500 CE).² It will discuss the relationship between oath and power, including social and political hierarchies, and finally ponder oaths' efficacy. These pages are thus deliberately comparativist, in juxtaposing practices that belong to two distinct and unconnected contexts.³

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This article introduces thematic section *Oaths in Premodern Japan and Premodern Europe*, guest editors: Philippe Buc and Thomas D. Conlan. To read all related articles, please access: doi.org/10.1553/medievalworlds_no19_2023.

- 1 In the bibliographies, author names follow national conventions, thus for the Japanese, Family Name followed by First Name (Yoshikawa Shinji and Horikawa Yasufumi).
- 2 We do not mean that »Europe« does not include today the areas that East Rome had ruled prior to 1453 (date of the Ottoman conquest of Constantinople), or that some research themes should not include for the premodern era both western and eastern Europe. For our subject here, however, Constantinople's past sphere of influence is beyond the scope of our topic.
- 3 For a panorama of the evolution of the comparative method since WW2, see Gingrich, *Multiple histories*, 111-115.

Agenda and Comparison between Medieval Japan and Medieval Western Europe

The choice of Japan and part of Western Europe as comparanda – and as sole comparanda to the exclusion of further terms – may not be evident to all readers. A tripolar comparison might indeed have been more instructive, but, firstly, a binary one can be already fruitful,⁴ and secondly, we meant to address a long history of juxtaposing Japan and Europe. It was initiated by Japanese scholars in the wake of the Meiji restoration of 1867-1868, who borrowed from the so-called West historiographic concepts and frameworks. One motivation was to fit the Japanese polity in the European historical narrative, to serve as a barrier against the imperialism that was dislocating neighbouring China. Not to be a victim, Japan had to be comparable to the West. This explains the adoption of »medieval« (中世) as a period, and later the popularity of »feudalism« (封建制度) as a concept. Similarly, Japanese political elites considered that they had to have colonies if the Western powers were to admit Japan as a sovereign nation-state, thus not as a barbaric, thus legal target for colonization. This is how »the terms of international law entered modern Japan's discourse of power.«⁵ In time, with Japanese success at modernization (and imperialism), the discourse of comparability became a scholarly explanation for this happy trajectory. As a result (I have summarized studies on this process elsewhere) historians East and West begun to establish parallels, and enter in dialogue.⁶ Most famous perhaps are the musings of Marc Bloch, the acknowledged giant of twentieth-century French Medieval History, in his *Feudal Society* (1939-1940), as to whether there had not been only two feudalisms in world history.⁷ Sustained or not, comparison was also fostered by the importance in the two premodern ensembles of warrior elites. At the very beginning of the twentieth century, Japanese scholars began to put side-by-side late Antique European warbands (and later in the century the European knights of the so-called feudal age) and the Japanese bushi who founded the Kamakura Shogunate in the late twelfth century.⁸

Until recently, such comparisons looked either for similarities or differences between the two societies as wholes. They were thus well fitted to implicit or explicit Eurocentric master narratives, looking to paths taken or not taken toward a modernity defined by the West's experience. Recent scholarship on the comparative method, however, has underscored that it is likely safer and more productive to consider smaller objects,⁹ here, the oath.

We started from a common questionnaire: What did one take oaths about? Who could swear oaths, or otherwise put, were there people who could not swear oaths? Who were the persons receiving oaths? How frequent was oath-taking? Which forms did oath-taking assume? What were the sanctions for oath-breaking (religious, social, political)?

4 Buc, *Sectarian Violence*, 373-376, justifies a binary comparison between a Japanese configuration and a West European configuration.

5 See Dudden, *Japan's Colonization of Korea*, 4.

6 Buc, *Civil war and religion*, 2-5. See as well Adolphson, *Social Change*.

7 Bloch, *Société féodale*. The recent comparison between the ethos of West European and Japanese warriors by Barthélemy, *Chevalerie européenne*, ends on a note of difference, despite their military societies being organized via vassalage.

8 Kawai, *Medieval warriors*, 311.

9 See for example van der Veer, *Value of Comparison*. I reflect on this in Buc, *Introduction to premodern war and religions*, 4-5.

Terminology and Boundaries of the Concepts

To be consistent, all contributions to the dossier of articles call the person or persons swearing an oath the »oath-taker(s).« Oaths belong to two main types.¹⁰ A first type is the »promissory oath,« which addresses the future. A second type is the »probatory,« »purgative,« »exculpatory,« or »assertive oath,« addressing the past or the present. Promissory oaths may be one-sided (unilateral), with just one oath-taking party, or oaths exchanged (bilateral) between two parties who swear to each other, and they may all be individual or collective (group oath-taking).¹¹ Some oaths straddle the two types (promissory and probatory). Western and Central Europe's oaths are called, in Latin, *sacramentum* or *iuramentum*; the articles on Japan focus on a written form called *kishōmon* and its predecessors or contemporaries. The impression yielded by an international conference three decades ago that brought together anthropologists and historians working on many cultural areas, was that »political oaths,« thus necessarily of the promissory kind, were across cultures much less frequent than purgative oaths. Thus oaths with a judicial function (»probatory«) were by far the most common.¹² The articles here gathered suggest that this was not the case. The European areas studied in this collection, that is, H  l  ne D  bax's twelfth-century southwestern France and Olivier Richard's late medieval southwestern German and Swiss cities, demonstrate at least the intensive use of promissory oaths.¹³ It goes without saying that only a much larger research project could establish whether this was true across Latin Europe. And it is evident that not only the dynamics of urbanized and semi-autocephalous communities but also the policies of autocratic lords foster the political oath.

Earlier studies underlined the presence (and sometime identity) in many societies of the purgative oath and of the ordeal (*Ordal*, *Gottesurteil*, *jugement de Dieu*), whereby a deity or the Deity passed a verdict on the assertions presented by a suspect (or on his or her standing vis-  -vis this deity). The once lively scholarly production on the Latin European trials by water or fire revealed its many functions, which are also those of the oath: the person(s) proposing to take the (purgative) oath or requesting it may: seek to establish through it an objective truth (hard to determine in the case of alleged crimes without witnesses); try to assess the subjective standing of the oath-taker vis-  -vis the god(s); or use it to try to reconcile a group (within itself or with its neighbors or with its lords or with a lord's dependents).¹⁴ The oath can share structural features with the ordeal, for instance, to make a subordinate take an oath rather than take it oneself parallels to make a subordinate undergo an ordeal rather than submit to it oneself. As the articles show, both are dangerous and both be considered humiliating or not befitting one's rank. Thus, unsurprisingly, Thomas Conlan's contribution features some purgative oaths that functioned as ordeals, and the divine sanctions that were

10 See Fezas and Jacob, *Fonctions sociales du serment*, 219.

11 A distinction underscored by Megan Gilbert in this collection. Gilbert also points to a different distribution of the two sorts in the sources, originals often featuring plural parties, and, in narrative sources, often (perhaps for dramatic effect) one-sided...

12 Jacob, *Anthropologie et histoire*, 238-239.

13 In the one case, frequency may be owed to frequent conflicts (regularity), in the other, regular oath-taking by the population is part of the routine fabric of power with its implicit rules (rule-bound).

14 To cite a few among these studies, Brown, *Society and the Supernatural*; Bartlett, *Trial by Fire and Water*; White, *Proposing the ordeal*; Barth  lemy, *Diversit   des ordalies*.

expected should the oath-taker(s) have lied. Interestingly for Japan, promissory oaths too came with a form of ordeal: the gods were supposed to strike swiftly persons who had no intention of following up on their promise within a limited period of time straight after the oath-taking. Conlan's article features a remarkable finding about Ashikaga Takauji's manipulation of this timing: The warlord broke his promise to the Kamakura Shogunate's leadership immediately after the expiry of the two weeks during which the gods would have intervened to punish him, and turned against those to whom he had sworn, with devastating consequences for the regime. For Japan in particular, then, we consider oaths and ordeals to be on a continuum.

Origins

Political oaths, called »sacraments of power« by Paolo Prodi – an author discussed in this collection by Olivier Richard and mentioned by Stefan Esders and Helmut Reimitz – are attested early on both in Japan and in Latin Europe. In both areas, they appear in the record within very specific historical matrices. As Esders explains in this volume, Frankish Carolingian oaths of fidelity, whose formulas are the ancestors of those of many later oaths in Western and Central Europe, derive from Late Roman military oaths. The Frankish interest in the imitation of Rome is well known. And for the Frankish kingdoms as well as its neighbors, Esders argues that the military oath served as the backbone of post-Roman »barbarian« polities (ca. 500 to ca. 700). As for the Japanese oaths, they are also exogenous, an import from Tang China (618-907), whose strength and expansionism Japan's imperial court feared, and thus whose institutions it copied for defensive purposes over the course of the seventh and eighth centuries of the Common Era. Both historical matrices involved internal political crises or violent reconfigurations. Helmut Reimitz underlines the reconfiguration of the royal families in the aftermath of the coup d'état in 751-754 that brought the Pippinids (a.k.a. Carolingians) to the throne and displaced the Merovingian dynasty (coronation in 751, papal blessing in 754). The coup did not entail merely a change in the Frankish royal family; it took place in the midst of a longer process of frequently bloody internal pruning of the major aristocratic kin groups in Francia and neighboring polities, which were often related by marriage. In Japan too, according to Yoshikawa Shinji's reconstruction, coups d'état and power reconfigurations involved the political oath. We can highlight here two moments among those discussed by Yoshikawa. Through a veritable palace coup in 645 CE, the future emperor Tenji and his allies displaced the then hegemonic main branch of the Soga clan, and immediately introduced Chinese-style laws to reform and strengthen imperial rule (the Taika reforms, same year). And in 671-672 CE, the accession of Tenmu Tennō took place after a brief civil war against the legitimate imperial heir, his nephew Prince Ōtomo a.k.a. Kōbun Tennō. Factions in both cases (the winners in the first, the losers in the second) swore Chinese-style loyalty oaths.¹⁵ Comparatively, one might submit that the oath was

15 For a very different understanding of Chinese influence on oath-taking, see Héral, Réapparition du serment. According to this great scholar (the doyen of Japanese studies in France in the second half of the twentieth century), the adoption of Chinese law inhibited the existing autochthonous Japanese oath-taking for centuries. The cases that Professor Yoshikawa highlights are exceptions, but the import of his contribution is that these oaths are Chinese-style and thus far from being examples of an either-or dichotomy – either customary and oral practices or prescribed by law (a classic opposition between ritual and law). For the debatable idea that law replaces ritual or vice-versa, see Buc, *Dangers of Ritual*, 220-223.

thus borrowed from two prestigious »centers out there«:¹⁶ the Roman past for the Frankish world, and for Japan, China, the neighboring Asian hegemon and transmitter, among other things, of Buddhism and law codes. The one, Rome, was temporally remote, the other, China, geographically separate. Also, looked at comparatively, these political oaths become visible in moments of major restructurings of the political sphere, both in Francia and in Japan.

The other chronological bookends are the Late Middle Ages in Latin Europe (fourteenth and fifteenth centuries) and the closure of the Japanese civil wars with the battle of Sekigahara (1600 CE) and its immediate aftermath. Did the oath, then, experience a crisis, meaning, did people no longer take oaths seriously, either because of their overuse or because of some secularization process? This idea of a »crisis« makes sense only if the oath was a strong bond to start with. And whether or not the oath had initially had substantial binding efficacy (an issue to be discussed later), we observe an upswing in oath-taking in Japan and Europe during these closing periods.¹⁷

Oaths and Hierarchy: Tactical Use of Oaths

In fact, promissory oaths »democratized« themselves over the centuries, in the sense that more people from more social classes and groups were asked to take them (but not in the sense that oath-taking was always fully voluntary – far from it). The needs, however conceived, of communities and institutions led to this. Olivier Richard shows how late medieval southwestern German towns and their Swiss neighbors enlisted for the yearly communal oath-taking even disreputable people (marked by *infamia*), normally excluded from judicial processes, such as prostitutes and Jews. Tom Conlan presents a similar trend in Japan. He explains that retainers (or ordinary members of peasant communities) in an earlier period (the twelfth and thirteenth centuries) had been assumed to be bound by their Japanese lords' sworn promises or signatures; by the sixteenth century, they too had to take oaths or sign.

Despite this democratization of the oath, different status groups swore differently (as Richard explains), and high lords might either refuse the oath or, in contrast, might condescend to swear one even though being exempt or above such an action.

Thus a higher-status person might deign to swear an oath so as to comfort someone in a position of inferiority. It might be out of Christian humility, or a show of it, in a manifestation of spiritual superiority. Or it might be a form of »role distancing« à la Erving Goffman: by making a show of one's magnanimity in doing what is not normally appropriate to one's status and power, one underscores one's socio-political superiority.¹⁸ It can also be – like proposing the ordeal – a chess move, a gamble to change the dynamics of a political process.¹⁹ At the end of a dispute circa 1030 between a vassal, Hugh of Lusignan, and his lord, William Count of Poitiers and Duke of Aquitaine, William offered to send a serf to the ordeal by fire (to carry

16 One of the insights in the splendidly idiosyncratic book by Jussen, *Die Franken*.

17 Esders points us to Behrmann, *Instrument des Vertrauens*, who (in Esders' words) »argues that we should not speak for the later 9th century of a crisis of the oath, but rather of a crisis of trust«. I had no time to read this book.

18 Marcus, Role distance. See Goffman, *Encounters*.

19 White, Proposing the ordeal.

a red-hot iron) so as to prove that he would henceforth be a good lord to Hugh. The narrative recounts that he said: »I shall make you the kind of assurances (*fiducias*) that will ensure that you no longer disbelieve (*discredas*) me (...) I shall demonstrate to you via one serf who will carry the judgment [by red-hot iron], so that you do not disbelieve that the agreement (*finem*) that we shall make between us is good and firm.« Hugh allegedly answered: »You are my lord, I shall not take from you assurances, but merely put myself in the Lord's mercy.«²⁰ A pact was then struck, »without deceit«, looking very much like those analyzed by H el ene D ebax (but with the explicit clause that Hugh, as vassal, would not have to hand over his castle to his lord upon summons). Tom Conlan explains that »some commanders signed oaths to their subordinates to get them to agree to difficult tasks.« In Japan, as with Hugh of Lusignan and Count William, a warrior lord in a position of superiority or having the upper hand in a conflict could sign – in blood if necessary – a *kishōmon* to reassure the other party that he would treat it as agreed, without deceit. Megan Gilbert documents this with an extended discussion of an oath sworn in 1402 by retired Shogun Yoshimitsu (the most powerful man in Japan at the time) to the head of a *daimyō* family that controlled three provinces, in a tense situation (Yoshimitsu was known to systematically scheme in order to weaken powerful lords). Almost two centuries later, in 1571, the warlord hegemon Oda Nobunaga (1534-1582) promised favorable treatment to the powerful temple-shrine compound on Mount Hiei if the monks would remain at least neutral in an ongoing conflict. His companion and biographer Ōta Gyūichi reports that »to reinforce his promise (約束 *yakusoku*)« Nobunaga struck with his sword the sword of the monastic envoy (and the metal rang out). »Moreover, he sent the monks a vermilion-seal document (朱印状) to that effect.«²¹

A person might refuse to swear an oath or might only utter a verbal promise without a written instrument because he or she regarded himself or herself as having superior status. The nationalist humanist Johannes Aventinus (1477-1534) argued that the proof of »German« superiority was that they did not live in a culture of deceit where oaths might be necessary:

With us crude Germans, it is not the custom to take an oath and to seal a deed in order to declare our fidelity to someone; we just believe and trust each other, and everyone treats each other as they like it, believing and trusting is our highest worship, doing good, giving faithful advice and helping each other is our religion, with which we honor God. You clever Greeks, though, are so wary and wise that you do not trust either each other or other humans. You want to have deeds under seal; you have to swear a learned oath to God and all His saints.²²

20 *Conventum Hugonis*, translation mine, from the Latin text edited by Beech, Chauvin, and Pon, *Le Conventum*, 137 (the English translation they propose seems to me deficient here).

21 Ōta Gyūichi, *Chronicle of Lord Nobunaga*, IV.5, for Genki 2 (1571), 164-165. Thus a promise followed what in Europe would be called a charter.

22 Aventinus, *Bayerische Chronik* (ca. 1520x30), ed. Lexer, 359-360: *Bei uns groben Teutschen ist der brauch nit, das wir ein aid schwern, das wir eim holt wellen sein brief darumb nemen und geben : wir halten sunst glauben und trauen eneinander, tuet einer dem andern was im <360> lieb ist; glauben und trauen halten is bei uns der höchst gotsdienst; einander vertrauen, alles guets beweisen, treulich ratten tuen und helfen aneinander ist unser glaub, da er wir got mit. Ir wizigen Kriechen seit so fürsichtig und weis, das ir aneinander selbs nit, auch andern menschen nit vertraut, wölt brief und sigel haben, man mues euch ein gelerten aid schwern bei got und all sein'n heiligen.* Aventinus is embroidering on Quintus Curtius Rufus, *Historia Alexandri Magni Macedonis*; translation from Hirschi, *Origins of Nationalism*, 173-174.

While swearing an oath was – according to Carolingian law – a privilege of the free, the needs of the community or its leaders could entail – as Olivier Richard shows for late medieval cities of the Holy Roman Empire – a transgression of this association between good standing, freedom, and oath-worthiness. This was a dynamic put in motion by the more inclusive – even though hierarchical – politics of political societies that had become more complex. In late medieval Japan, which was characterized by an all-out mobilization for war, the evidence suggests an increase in oath-swearing by commoners: while in former days a collective oath might be signed by a single representative, one sees more people signing their name – or making a mark if they were illiterate. The multiplication of oaths is therefore not in itself some telling symptom of an erosion of trust in their value. Similarly, Horikawa Yasufumi underscores that the ability to cancel *kishōmon* via the rite of *kishō-gaeshi*, administered by Yoshida Shinto masters, indicates a belief in their efficiency rather than disbelief in their value. All the same, in Japan's Sengoku (the era of the warring states), new forms emerged that one may deem dramatic: blood-oaths, that is, oaths written in blood, which are evidenced from the mid-fourteenth century on, explode numerically. However, did written oaths multiply because of increased needs, or because of increased literacy?

The multiplication of Japanese »metapersons« (non-human powers) warranting or judging the oath has also to be explained.²³ In Latin Europe, there is no such sense of an accumulation of saintly relics or a narrative insistence on them – unless a partisan narrative wants to damn an evildoer. One would have expected chroniclers friendly to William the Conqueror to identify the relics on which Harold swore, later to betray his oath, but they did not. However, the late 1150s *Hyde Chronicle* speaks of »an infinite multitude of holy relics« topped by the reliquary of the martyr Pancracius, »knowing that such a great martyr could not be deceived by any temerity [deceitful oath].«²⁴ Wace (ca. 1100- post 1174) has a parallel account. He insists on a great pile of relics that William ordered to be brought (*toz les cosainz fist demander*), likely from the church, and hidden under a cloth; Harold, future perjurer, thus believed he was swearing only on that single reliquary (*filatiere*). »Harold was strongly terrified by the relics« which William then showed to him.²⁵ Helmut Reimitz explores at length in this volume the oaths allegedly sworn by Duke Tassilo of Bavaria. The Royal Frankish Annals mention five saints for the first oath of fidelity that he swore to King Pippin I, which oath, as Matthias Becher underscores, is described at length, in a rare textual hypertrophy – there are more lines devoted to this promise than to Pippin's accession to the throne (751) and

23 For the concept of metapersons, see Sahlins, *Original political society*.

24 *Warrenne (Hyde) Chronicle* 6, ed. van Houts and Love, 14. For the chronicle's insistence on perjury in several other episodes, including divine punishment, much of this to the advantage of the Earls of Warrenne's own interest, see *ibid.*, xxxix.

25 Wace, *Rou*, 5685-5716, ed. Holden, 2.97-98. The *Brevis relatio*, ed. van Houts, 28, does not number the relics, but speaks of »three oaths« sworn by Harold (thus the number of oaths not the number of saints).

confirmation of this usurpation by Pope Zacharias (754)! This is part and parcel of the anonymous author's rewriting of the past in the light of Tassilo's deposition and confinement to monastic prison in 788.²⁶ Five saints is a rare maximum, and this is likely the product of this scribal strategy of hyperbolic *damnatio memoriae*. But we stop here at just five supernatural warrantors. In contrast, the Japanese *kishōmon* mustered a plurality of divine beings, some named, some not, by the dozen.²⁷ This makes sense in a polytheistic cosmos, perhaps, but more importantly this plurality has a spatial structure: Greater cosmic gods initially located in a mythical India, pan-Japanese deities, and more local *kami*. In Ancient Greece, army leaders sacrificed to the god who was locally in charge of the battlefield, as is clear from the battle of Marathon, where Artemis as guardian of boundaries, another god in charge of swamps, and yet other extremely local deities were offered sacrifices.²⁸ In some societies studied by anthropologists, the metapersons were carefully chosen, taking their might into account: they should be neither too powerful, and thus able to tip the scales to suit their favorites, nor too weak, and thus unable to punish or signal deceit.²⁹ For Japan, this seems not to have been a consideration. Furthermore, strikingly, the same metapersons appear over and over again in the Japanese lists (what most varies are local *kami*, a product of Japanese decentralization). The regular presence of the same metapersons is testimony to the imprint of the Kamakura Shogunate's *Goseibai shikimoku* well after its demise in 1333.³⁰ Analogically, the imprint of the late Roman military, then Carolingian, formulary presented by Stefan Esders is striking: oaths of fidelity are predictable variations on this initial blueprint.

As one might expect, the saints involved in European oaths were, when named, men and women whose sacred relics were kept locally. The divine warrantors of a *kishōmon* were, as noted above, much more varied. They included greater gods located in the »center out there«, India, land of the historical Buddha, and insular *kami*, in an implicit translation of divine potency from one land to the other.³¹ The *kishōmon* also named revered Buddhist masters and sacred buildings. Masters were classically reincarnations of greater beings, and destined to be reincarnated as such. As for shrines, they were identical with the indwelling gods.³² This may surprise the specialist with a narrow focus on Latin Europe, but it is unsurprising given the logic of religions with metapersons. Such religions tend to assume permeable boundaries between human and non-human, dead or alive (and some do not know the difference between nature and culture).

26 *Annales regni Francorum* a. 757, ed. Pertz and Kurze, 14-16 (the three patron saints of the royal monastery of Saint-Denis near Paris, and the great Gallic saints Germanus and Martin); Becher, *Eid und Herrschaft*, 36-37; and see below, at notes 40-41.

27 For examples of such lists, see Satō Hiroo, *Wrathful deities*, 98-100.

28 Gartzioi-Tatti, *Gods, heroes*, 95-97.

29 Jacob, *Anthropologie et histoire*, 252-253.

30 Recall that the Ashikaga accepted the *Goseibai Shikimoku*, and expanded on it.

31 As Gilbert (in this volume) underscores, following Satō Hiroo.

32 For one such monastic trajectory, see Wakabayashi Haruko, *From conqueror of evil. The identity of building and deity is evident in the Kasuga tales translated in Miracles*, trans. Tyler.

To demand an oath or to offer to swear one was often tactical. Steve White has shown this for the ordeal in tenth- and eleventh-century Francia. There, to propose to undergo a judgment of God was one card among others to play in a conflict, and by no means the absolute trump card.³³ A stronger party might try to impose an oath, humiliating the weaker party – unless the latter could counter. In a fairly enigmatic passage in an Icelandic saga, a group of Norwegians, condemned to pay compensation for having chopped off a man's hand, ask one of the Icelanders, Haf Brandsson, who had set the amount, to »either reduce the [monetary] award or swear an oath.«³⁴ This is a power-play on the Norwegians' part (but one that would end in their humiliation); they feel that they can force this alternative on Haf. The oath, as is clear, has a monetary value proportional to the honor and status of the oath-taker.³⁵ This potestative value and tactical role of oaths is highlighted for Japan by Megan Gilbert's article, as is the effect of the power differential between the person demanding the oath and the oath-taker(s). What Robert Bartlett says about the European ordeal can also be applied to Japan: it could be »a political gambit, volunteered by those on the defensive or by the weaker party. It could also (...) be insisted upon by the stronger.« Bartlett glosses this further: »the subjection of rivals to the ordeal might be simply another aspect of the exercise of (...) domination.«³⁶ A fine example comes from the pro-Norman dossier concerning Harold: as William had doubts about the *fides* (trustworthiness, fidelity) of the English, Harold was forced to swear stringent oaths (*ad districta sacramenta est coactus*).³⁷

»This is not an oath that I write from my heart,« exclaimed a Japanese oath-taker in a fourteenth-century war-tale (*gunki*).³⁸ This sort of excuse was hardly accepted in the Latin West, with its religious culture of confession and development of an interiority that has to be made authentic to satisfy the Christian God.³⁹ In contrast, in the case contextualized at length by Helmut Reimitz, Carolingian annalists attributed the following tactic to the despicable Tassilo, Duke of Bavaria: »(...) he ordered his men when they swore oaths that they would think otherwise in their mind (*aliter in mente*) and swear with deceit (*sub dolo*).«⁴⁰ This constituted an inversion of the norm, which specifically called for oaths »without deceit« (*absque fraude* or *sine ingenio*, occitan *senes engan*). According to the Royal Frankish Annals (as cited by Stefan Esders), this was painted into a perverse breach of the loyalty that Tassilo,

33 White, *Proposing the ordeal*, 121-122.

34 *Guðmundar saga dýra*, cited in Miller, *Bloodtaking and Peacemaking*, 1.

35 In his later *Eye for and Eye*, 51-52, Miller underlines the monetary value of the hand, and that compensation for it can be imposed by the stronger party at arms, which comes with humiliation, but he does not mention the oath or its value (in either monetary currency or honor currency). My thanks for guidance here to Oren Falk.

36 Bartlett, *Trial by Fire and Water*, 15.

37 *Warrenne (Hyde) Chronicle* 6, ed. van Houts and Love, 14.

38 Both Conlan and Gilbert, in this volume, from the *Genpei jōsuiki*, a source recounting, at temporal distance, the civil war of 1180-1185.

39 See the comments of Esders, in this volume, suggesting the oath-taker's interiorization of the contents of the promise, which becomes a personal obligation and thus self-coercion.

40 See Becher, *Eid und Herrschaft*, 72-75; *Annales regni Francorum* a. 788, ed. Perz and Kurze, 80: (...) *confessus est (...) homines suos, quando iurabant, iubebat, ut aliter in mente retinent et sub dolo iurarent*.

along with his most eminent noblemen, had promised in 757 to King Pippin I to hold *recta mente*, with an non-crooked spirit. The source had likely been reworked well after 757, with a view to Tassilo's condemnation to monastic prison in 788.⁴¹ Mental reservation during oath-taking, in a Christian culture of interiority, was clearly blasphemous. It must have occurred, but it was certainly not acceptable. One should not automatically assume in other religious worlds, including Japan, the same dynamics.

In Latin Europe, the oath was not easily broken (and, as the Aquitanian case shows, its cancellation had to be negotiated). Norman propaganda composed in the decade after the Battle of Hastings (1066) could depict Harold, a rightful pretender to the English throne after Edward, swearing to recognize Duke William of Normandy's claim to the English throne, as mandated by King Edward. This is illustrated in the Bayeux Tapestry. In the words of one source, Harold had been ordered »to swear fidelity« to William concerning Edward's »crown and to confirm this as is the Christian custom through oaths« (*de sua corona fidelitatem faceret ac Christiano more sacramentis firmaret*). And so it was; Harold swore »fidelity concerning the realm through many oaths« (*fidelitate[m] de regno plurimis sacramentis*).⁴² Harold betrayed his oath and seized the English throne; as divine justice willed it (and as William's propagandists had it), he was therefore defeated and killed at Hastings. A major crisis highlights even more Latin Europe's respect for oaths. Pope Gregory VII's assertion in February 1076 that he could free vassals from oaths of fidelity to King Henry IV raised a storm of polemics as massive as had the simultaneous excommunication and deposition of the same ruler.⁴³ For one anonymous participant in this huge row – possibly in a rhetorical flourish, but possibly seriously – Gregory's action was a sign of Antichrist's arrival. By cancelling oaths, what else happens but that »the faith (*fides*) is destroyed, and if it can ever be, that even the elect [of God] are seduced to be oath-breakers (*periuri*)?«⁴⁴ This polemicist called Gregory's episcopal allies, who were absolved of oaths sworn to the king, »pseudo-apostles« (2 Cor. 11.13-15), also an apocalyptic reference.⁴⁵ This contrasts with the Japanese configuration, where one could negotiate oaths with the gods, at least (as Horikawa Yasufumi shows) with the help of masters such as the Yoshida Shinto experts. As noted above, the Japanese oath was much closer to the ordeal than its Latin Europe counterpart, and was often itself an ordeal. The gods, however, could decide to spare an oath-breaker, and, what is more, could be bargained with or countered. As for the Christian God, he might deign to

41 Becher, *Eid und Herrschaft*, 35-38.

42 See Guillaume de Jumièges, *Gesta Normannorum Ducum* 7.31, ed. van Houts, vol. 2, 160 (here cited); Guillaume de Poitiers, *Gesta Guillelmi* 1.43 and 2.12, ed. Davis and Chibnall, 70, 120.

43 Gregory VII, Register 3.10b, ed. Caspar, 1.270, and 4.3, ed. Caspar, 1.298; Struve, *Das Problem der Eideslösung*; Melve, *Inventing the Public Sphere*.

44 Struve, *Das Problem der Eideslösung*, 116 n. 35, citing the anonymous *Liber de unitate ecclesiae conservanda* 2.34, ed. Schwenkenbecher, 261. The nod to Matthew 24.24 (signs of the end) is clear (*ita ut in errorem inducantur si fieri potest etiam electi*).

45 *Liber de unitate ecclesiae conservanda* 2.33, ed. Schwenkenbecher, 259-260, with a nod to John's Revelation (Satan liberated »to seduce the nations and drag them into war«, see Apoc. 20.7).

spare a guilty party, as in the Gottfried von Straßburg version of the Tristan romance, where the adulterous Isolde, tricking her judges and trusting in »God's courtliness,« succeeded at the ordeal. He might judge the whole person as opposed to the fact in debate. But he could hardly be bribed.⁴⁶ The law of the Church, canon law, actually provided little more than penance or excommunication for proven perjury.⁴⁷ As Stefan Esders explains, contracts that had been sworn could be taken to ecclesiastical courts – but they were dealt with as contracts that pertained to the competency of Church tribunals because of the invocation of God, His saints, or sacred objects, and not because oath-breaking was some form of blasphemy that had to be punished. The Lord God was thus not a protagonist here: Catholic theologians rejected the idea that God might intervene visibly and clearly. What He would do to punish (and given His omnipotence He could not be forced to do so) would normally remain hidden from human eyes, and likely take place in the other world. He was the all-knowing supreme witness, but not an enforcer compelled to act by human actions.⁴⁸ Hagiography, however, is rich with saintly or divine punishments in this world, far from theological niceties.

Efficacy

In premodern Japan, sanctions for the oath were both divine and (as one would expect) political. In Horikawa Yasufumi's *Kōga*, perjury would be punished by the gods and by a very human banishment from the local community, the *sō*.⁴⁹ Unsurprisingly, narrative sources dramatize perjury, and dramatize punishments. At the beginning of Oda Nobunaga's military career, one of his uncles, Oda Magosaburō, sent to a castle-lord named Sakai Daizen »an elaborate oath« (literally an »oath consisting of seven pieces [of Go'ō-hōin] talismanic paper«, 七枚起請 *nanamai kishō*, but in common usage this is metaphorical) »that there would be no ›double-dealing‹« (表裏 *hyōri*, literally »inside and outside«). This was part of Magosaburō's assurance that Daizen would receive his help against Magosaburō's own nephew Nobunaga. There was however a secret pact between uncle Magosaburō and nephew Nobunaga.⁵⁰ Daizen could only run away as the planned trap against him unfolded. But (as Japanese conceptions would have it) divine retribution for an oath sworn with inner reservation came swiftly:

On the 26th of the Eleventh Month that same year, Lord Magosaburō died in an unforeseen incident. »This is the immediate punishment for his oath,« people said. »The Way of Heaven is terrible!« To be sure, the end-result was consequent with the maturation of the *karma* (果報, *kahō*) of Lord Kazusa no Suke [Nobunaga].⁵¹ Karma coming to fruition, indeed, with a fine bloody harvest, since it trimmed away one of the claimants to the Oda clan's patrimony, which was at that point dispersed.

46 For a discussion engaging earlier historiography, see Ziegler, *Trial by Fire*, ch. 2. For God judging the whole person and not necessarily the case at hand, see Ho, *Legitimacy of medieval proof*.

47 Gaudemet, *Serment dans le droit canonique*; see also Helmholz, *Canon Law*, 358-368. Full discussion in Leveleux-Teixeira, *Prêter serment*.

48 Courtois, *Mensonge et parjure*, 94-95.

49 Horikawa Yasufumi, in this volume.

50 Ōta Gyūichi, *Chronicle of Lord Nobunaga*, Initial book, 17 (Tenbun 23, 1554), 74-75, here modified with the help of its translator Jeroen Lamers and that of Horikawa Yasufumi plus Tom Conlan, who helped me with the nuances and deeper meaning (including »consisting of seven pieces [of Go'ō-hōin] talismanic paper«).

51 Ōta Gyūichi, *Chronicle of Lord Nobunaga*, Initial book, 75 (also modified). Lamers and Elisonas explain that Magosaburō was assassinated by one of his own retainers on 8 January 1556. The biographer does not mention this.

Thus, sanctions might cause efficacy; another scholarly approach is to grant the oath a power of its own as »performance,« »symbolic communication,« or »speech-act.« While the organizer of the 2021 Vienna workshop voiced strong reservations about the so-called »magic of rituals,«⁵² that is no reason not to explore this avenue, given that some of the authors in this collection (and participants in the workshop) mobilized these models. This willingness comes, however, with a warning. When all is said and done, just as with so-called »rituals« as a general category, scholarship will likely endlessly debate the power of oaths and, when willing to see them as powerful as opposed to being mere signals, debate the reasons for their efficiency.

Hélène Debax underlines that Occitan oaths, unlike the vassalistic homages attested further north, do not refer to an elaborate ceremony (what is elaborate are the words that survive on parchment, see the translated sources appended to her article). She trusts that the short surviving texts correspond very much to the words spoken, and indeed their oral quality is evident.⁵³ Energetic words, uttered in all or in part in the local dialect, a handshake, and contact with saintly relics or sacred Scripture, seem to suffice. This would plead either for the efficacy of oath-taking in structuring political bonds or, if one deems words impotent to effect anything, for their weakness. When considering the power of words, one does well to keep in mind Pierre Bourdieu's critique of the notion of »perlocutionary force.« A so-called »speech-act« has no efficacy if the speaker does not have authority (»represents«) and is not backed by objective power.⁵⁴ The local Occitan practice of oath-cancelling does suggest that the »judges,« also called »honest men,« who backed the dissolution of an oath for a castle (Débax, document 24) had some social and political capital (Bourdieu) locally to support their verdict. A vernacular German tale dated from circa 1260 brings home, despite literary hyperbole and dramatization, both the strength of the oath and how force or superior political pressure might allow its cancellation. Emperor Otto had sworn an oath to the effect

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- 52 Buc, *Dangers of Ritual*; Pössl, Magic of early medieval rituals. The debate lingers, with over-simplifications of positions, such as attributing to me (1) the view that there are only texts and that actual events are beyond any reconstruction, or even (2) the preposterous idea that medieval »rituals« (however defined) were completely unimportant. For the former, see the whole movement of the following sentence: »There can only be anthropological readings of (1) medieval textual practices, or perhaps (2) medieval practices that the historian has reconstructed using texts, with full and constant [my italics] sensitivity to their status as texts. The latter is nonetheless much more difficult (especially for data-poor eras), less reliable, and allows only a circumscribed realm of appropriate questions and possible results« (Buc, *Dangers of Ritual*, 4). For the latter, explaining narrative distortions and inventions, see *ibid.*, 249: »one fights [with the quill] over matters of importance«, and *ibid.*, 258-259, »(...) solemnities were all at once (individually) objects of doubt and (as a genre) a central part of the accepted order.«
- 53 With due respect to my mentor Le Goff (Symbolic ritual), it should be underlined that the tripartite sequence (1) kneeling and joining of hands, (2) promise, (3) kiss of peace, is more a scholarly reconstruction than a form widely attested in the sources. The flamboyant Flemish narrative in Galbert of Bruges, *The Murder of Charles the Good*, trans. Ross, is a rarity.
- 54 Bourdieu, *Language & Symbolic Power*, 105-116. See the judicious reference to Bourdieu in Koziol, *Politics of Memory*, 350: »oaths were used to reveal and apply social and political standing.« Leveleux-Teixeira, Prêter serment, alludes to the issue in passing. On the one hand, a promissory oath »as a performative statement works (in theory) owing to the mere virtue of it being uttered« (174-175). On the other hand, the oath's »reach is partially a factor of the identity and thus of the degree of credit of the person« of the oath-taker (*ibid.*, 174 n. 17, my translations from her French).

that Heinrich von Kempten, who had killed Otto's cupbearer in a breach of the peace that had taken place at the imperial table, absolutely had to die. This Heinrich grabbed the king and laid him flat on the table and, threatening him with a knife, demanded that he »turn around the oath that he had just sworn.« Helpless and hapless, Emperor Otto had to swear a counter-oath that Heinrich would be safe and sound. The first oath thus no longer had any force. In the Middle High German lexicon, Otto's first oath had been made »*falsch*« or »*valsch*,« that is, it could no longer »be kept« (*be-wahren*).⁵⁵

An emic, culturalist approach may be taken to explain how the Japanese oaths may have had power. In Vienna, Michael Como noted that the early *kishōmon* oaths written on wooden tablets, the *mokkan* (presented in these pages by Yoshikawa Shinji), were long-lasting and visible. Como went on to reflect on the impact of writing in a Buddhist culture that assumed that sacred scriptures simultaneously sermonized, asserted their own power, and demanded reproduction.⁵⁶ Indeed, one can approach the Japanese discourse emically within the frameworks of the so-called material turn illustrated by thinkers such as Bruno Latour, Arjun Appadurai, and Igor Kopytoff, and of the return to the »fetish« as social agent.⁵⁷

Despite local conflicts, the oath may have been the structuring force in Languedoc, as Hélène Débax proposes. Overall, the great Occitan war of the mid-twelfth century resulted in local adjustments of lordships and fidelities, as was the rule for most high medieval internal conflicts in Latin Europe – a redistribution and reconfiguration of assets but not a revolution. The enforcement mechanisms for the oath were not to be found in divine intervention (as was common or expected in Japan), or in ecclesiastical courts, or in some secular equivalent of these; Débax's collection of written oaths suggests instead negotiations and arbitration. But this flexible political structure came crashing down in the thirteenth century. The crusade preached by Pope Innocent III in 1208 against the Languedocian heretics (the so-called Cathars) and their friends, supporters, and lordly protectors dismantled the pre-existing political culture.⁵⁸ Forced to take sides in a war for survival, since the penalty for affinities with heresy was dispossession of lordship, and also aware of unprecedented opportunities for massive gains, the southern lords could not but break some of their oaths.⁵⁹ Rancor and recrimination were now widespread in the Toulousain and surrounding lands⁶⁰ and a whole new regime, not so structured by oaths for castles, then came into being.

55 For the story and its interpretation, see Hattenhauer, *Der gefälschte Eid*, 662-663.

56 Michael Como, presentation and discussion at the 2021 Vienna Workshop.

57 For a good introduction, see Pels, *Magical things*. For classic reflections on materiality, see also (*inter alia*), Appadurai, *Introduction*; Kopytoff, *Cultural biography of things*; Latour, *Nous n'avons jamais été modernes*. Reckwitz, *Status of the »Material«*, is useful for materiality and objects in the major social scientific theories.

58 A colorful narrative illustrated by striking citation of the primary sources is Pegg, *Most Unholy War*. More sober are Tyerman, *God's War*, 562-605, and, in German, Oberste, *Kreuzzug gegen die Albigenser*. On loyalty during the crusade, see Buc, *Medieval European civil wars*, 133, 136-137.

59 Compare Buc, *Krise des Reiches*, unpublished English original accessed on 15 February 2023 at www.academia.edu/3707060/The_crisis_of_the_Reich_under_Henry_IV_with_and_without_Spielregeln.

60 See Macé, *Comtes de Toulouse*, 268-279.

Short of this level of catastrophe, however, the frequent betrayal of political alliances that are traditionally sealed by the use of a given symbolic form does not necessarily cause that symbolic form's atrophy and disappearance over time. Depending on the political culture and overall power structures, these transgressions may actually lead to an inflation in the use of this selfsame symbolic form.⁶¹ Civil war, with its attendant betrayals and perjuries, along with intensified administrative measures and regulations to ensure both survival in war and mobilization for war, may have countered the impact of these perjuries. Commenting on sixteenth-century Japan's massive usage of oaths for legal and administrative processes, Mary Elizabeth Berry suggests as much. She submits that »(...) to break a law was not simply to disobey the state but to violate, and to dissolve, a personal covenant between men.« The law was bound to the oath. Berry's 1986 article further suggests one reason why late sixteenth-century promissory oaths had meaningfulness and thus efficacy: they had been used to bind men together during a time of murderous wars, involving more troops than ever.⁶² Her reasoning may be applicable to moments in Latin Europe's history: intense internecine warfare led to both intensified individual oath-breaking and intensified and solid oath-taking by battle-comrades. It is a comparative history banality to say that both Latin Europe and late medieval Japan (from the mid-fourteenth century on) were heavily militarized, both as to the frequency of warfare, the amount of men under arms, and the ethos of the governing elites.⁶³ But the commonplace points to a context that allows one to assess and understand the constitutive importance of oaths, both »probatory« (»purgative,« »exculpatory,« »assertive«) and »promissory.« It may even be that the intensified military need for »promissory« oaths in the Late Middle Ages influenced recourse to the »probatory« type. Our categories and typology (here »probatory« and »promissory«) need not in practice mean barriers between what we categorize and typologize. The possible similarities between Europe and Japan should not hide, however, the different valences of divine enforcement of the oath (weak in the Latin West, strong but unreliable and negotiable in Japan).

As for the redescription of the oath as concept,⁶⁴ in Western Europe, an oath almost always accompanied the ordeal and the ordeal could replace a simple oath. For a while, oath and ordeal were, therefore, either usual companions or (as in Japan) functional equivalents. But functional equivalency did not last. Church authorities banned the ordeal in 1215. If Thomas Aquinas is representative, thirteenth-century Catholic theologians wanted strictly to demarcate the oath from the forbidden ordeal, and thus rejected the possibility that the oath might play the same revelatory role as the form that had been banned.⁶⁵ In Japan, the oath was usually tantamount to an ordeal (with, as explained by our authors, limited validity in time). For Japan, one can arguably »redescribe« the concept of the oath, and speak rather of the »oath-ordeal« as one compound form – which cannot be done for the Latin West.

61 For such a case, see Oschema, *Falsches Spiel mit wahren Körpern*.

62 Berry, *Public peace*, 262. Moerman, *Swearing to God(s)*, expands on the late sixteenth-century emic understanding, also perceived by European observers, that the oath was the keystone of law and military loyalty.

63 Buc, *Civil war and religion*, 261-265, with further references, esp. Adolphson, *Social Change*.

64 For the notion of »redescription,« see Freiberger, *Considering Comparison*.

65 Courtois, *Mensonge et parjure*, 90; for the 1215 decree, see Baldwin, *Intellectual Preparation*.

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Abbreviations

MGH Monumenta Germaniae Historica

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