



The History of Law in Japan, Through Historical Sources

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Lecture 19: What Was the Einin Debt Cancellation of 1297?

Translated and interpreted by Emily Warren

Of all the laws in Japanese history, probably the best known is the Einin Debt Cancellation Law (永仁徳政令 Einin Tokuseirei), which is generally understood as having been created by the Kamakura shogunate to alleviate the burdens of its destitute housemen, the *goke'nin*. At the time of its promulgation in 1297, the housemen had mobilized in defense against the Mongol invasions of 1274 and 1284; and in spite of their vast expenditures, after the invasions they still

had not received expected reward payments. Suffering became a part of their lives. At the same time, housemen continued to receive partial inheritance in a way that divided their holdings into ever smaller pieces, lowering the profits they received from them. And in the expanding cash-based economy, many housemen were being forced to sell or pawn their holdings.¹ The Einin Debt Cancellation can basically be understood as a drastic policy by the Kamakura shogunate to address this social situation. Here, I will draw attention to that aspect of the Einin Debt Cancellation: that housemen who had not received compensation would be able to reclaim former holdings. It may seem to modern readers that forcing a buyer to return purchased land without restitution is unfair. But at the time, the policy was accepted because it was understood to embody Benevolent Government (*tokusei*). Indeed, from Kamakura through Muromachi times, this principle is seen to have reached maturity: the shogunates enacted debt cancellation laws many times. So here I want to consider how the Einin Debt Cancellation was thought to represent Benevolent Government.²

Contents of the Law

The Debt Relief Law as known today was clarified indirectly but concretely by a court case in 1345. Therein a complainant (*sonin*) named Yoshii (良伊) challenged a plaintiff (*ronnin*), who was the overseer of cultivators on Shimo-Kuze Estate near Kyoto. In his lawsuit, the complainant was appealing for the return of one part of a landholding within the estate. The plaintiff wrote out his opposition to the complaint and submitted it—both parties presented their claims to the estate proprietor, the great official temple in Kyoto, Tōji. The plaintiff's statement was dated Kōei 4 (1345), which means that it was completed roughly fifty years after the promulgation of the Einin Debt Relief Law.

From the plaintiff's argument we learn that throughout the Kamakura Period the property being demanded returned had been held by the Hōjō regent's lineage (*tokusōryō*). Before the promulgation of the Einin Debt Cancellation law, the property had been sold once; but after the promulgation of the law, the original holder took it back. After that, it was sold and reclaimed twice more. It was during this fifty years that a dispute developed: the plaintiff claimed to be the heir of a former purchaser of the land, and he asserted that a promise made in the document of sale (*baibai shōmon*) was being broken by his being ordered to return the property. In addition, he asserted that given the twenty-year rule (*chigyō nenki*) of the eighth clause of the 1232 Judicial Formulary, the complainant's assertions were wrong—the limited time (twenty years) for demanding a return of the property had long passed. And finally, the plaintiff submitted as decisive evidence clauses of the Einin Debt Relief law. There are two versions: the original law produced by the shogunate and the version sent to the Rokuhara headquarters of the shogunate in Kyoto. Following are sections of the latter from a later compilation of Kamakura supplementary laws (*tsuikahō*).³

¹ See Ethan Segal, *Coins, Trade, and the State*.

² For an early research essay in English see Delmer Brown, "The Japanese Tokusei of 1297," (1949).

³ See Satō Shin'ichi and Ikeuchi Yoshisuke eds. *Chūsei hōsei shiryōshū* vol. 1, pp. 296-97 (Iwanami, 1955), laws 661 through 663. The English interpretation was produced by the University of Southern California Kambun Workshop 2016, directed by Professor Toshiko Takahashi of the University of Tokyo Historiographical Institute and Professor Joan Piggott of the Department of History Project for Premodern Japan Studies, for which see Document

Document 1 Kantō Letter of Legal Instruction sent to Rokuhara [Headquarters]

Item: appeals are to be prohibited

As to the above, appeals have been increasing each year. The losers exhaust themselves in filing meaningless suits, and the victors cannot take solace in their victory. This causes distress for everyone. Henceforth these shall be prohibited.

However regarding {appeals that are already} under discussion and have not yet been decided, these should be handled by the appropriate magistrate.⁴

Next, as to lawsuits by {estate} proprietors, we cannot hold them as equivalent to those of housemen. If they have already lost an appeal, they may appeal one more time, or in future judgements, they may appeal once.

Item: the matter of land pawned or sold

As to the above, the pawning or selling of land holdings are the foundation of the housemen's distress, and as such, it must be stopped. As to the portion that has previously been sold, the original owner should retake control. However, {if} edicts or judicial orders have been issued, or management {of the land} has continued for twenty years or more, regardless of whether it is land given by the shogunate or a private holding, there should be no change from current circumstances. And if {the original owner} turns their back on these laws and steals the land, it will be prosecuted as a crime.

Next, concerning land pawned or sold to non-housemen or ordinary people, even if {twenty} years have passed, the original owner should have the land.

Item: Matters of cash and rice loans

As to the above, in times of need everybody, without thinking of worrisome expenses, increasingly accrues debt. That means profit is exclusively {for} the rich while impoverished folk come to distress! From this time on {we} will not render decisions. Even if there is a shogunate order, even if there are complaints of non-payments, we will not consider it our responsibility to make a decision. Furthermore storage of pawned items in storehouses is not prohibited.⁵

Einin 5 {1297}, Third Month, Sixth Day

The second clause was assembled with particular attention and includes four points:

1. that the pawning and sale of property was forbidden
2. that those who lost land as unreclaimed pawns prior to the law could demand its return
3. if the buyer was approved by the shogunate and entrusted with a relief document, and if the buyer had occupied the property for over twenty years, regardless of whether the property was public or private, it was not necessary for the buyer (the houseman) to return it to the seller. Ignoring this clause and demanding the return of property would result in punishment.

36 : https://docs.google.com/document/d/1NNmJ43TDPjOeXjH_CJ528CkHS_7InYMucna_HVqYPqA/edit. For a discussion of this text of 1345, see Ueshima Tamotsu et al. *Tōji hyakugō monjo wo yomu*, p. 94-95.

⁴ Originally, appealed cases required a new magistrate to take over the case. This item kept cases in the hands of the original magistrate.

⁵ That is to say, movable property that is pawned may be held by the lender.

4. in the event that a buyer was not a houseman, whether warrior or commoner, then the third provision would not apply. Even after twenty years the property was to be returned to the houseman seller.

In this way, the shogunate addressed the fundamental cause of the housemen's suffering: property sales and foreclosures. After this, selling and pawning property was completely forbidden. At the same time, if a property designated for houseman relief was occupied by a non-houseman for over twenty years, the occupier would nonetheless have to return the property of their own accord. This meant that while property-sellers and buyers were not actively regulated, they were expected to voluntarily return property to a houseman seller even after twenty years.

There was, however, a facet of the debt relief law that met strong resistance. We know this because in the year following its promulgation the shogunate issued a revision—the earlier ban on selling and pawning was amended, offering more judicial consideration of circumstances surrounding the purchased land being reclaimed.

Document 2

Item: on the matter of pawning and purchasing land

If shogunal confirmation of land possession has been received, or if the 20-year limit has been exceeded, then whether the land is a shogunal grant or private property, a directive on its disposition has already been promulgated. There shall be no change. But should there be any breach of the law from this point forward, a new judicial decision will be needed.

Einin 6 (1298) Second Month, Twenty-eighth Day

The Social Context of the Einin Debt Relief Law

There were parts of the 1297 law that were not in conflict with ideas of the time and so were accepted as fully proper. They resembled earlier laws. For instance, the buying, selling, and pawning of a houseman's private property was allowed before 1297, but the buying, selling, and pawning of property granted to a houseman by the shogunate, called *onryō*, was forbidden by Clause 48 of the Formulary. Also, in a law of 1240, the shogunate permitted the pawning of *onryō*. And in 1273 there is a law permitting private negotiations over the disposition of pawned land, but with the stated possibility that a houseman could turn to the shogunate for help with those negotiations. It is clear then that laws for debt cancellation were already in place before 1297. An extant source, the following sale document (*baiken*) from 1285, indicates too that in the Kōan era (1278-1288) the Kyoto court had issued a law providing for instances of voluntary return of land that had been sold.⁶

⁶ On these debt cancellations, see Mitobe Masao, *Kuge shinsei no kenkyū*, especially the chart on 246-47.

Document 3

5 *tan* and 240 *bu* of fields on Daigo Bodaiji's west border and along the road are being sold because of need. Borders are clearly noted in the proof document.

The nun Rennan is now selling this land for 110 *kanmon*, with this proof record for future need, to the monk Yuishō. There is no obstacle to his assuming possession of this land. Should there be any trouble, the seller will cooperate in solving any issues, and orders should be given accordingly. Should any untruth be discovered, the land shall be returned without the purchase cost being returned. The purchaser will hold the land, and there shall be no obstruction. So is this new deed made.

Kōan 8 (1285 11/)

Since this document was discovered, it has influenced research on other records of land purchases at the time. We learn herein, for instance, that there were more than five steps for the movement of property between parties, and that there was a general term for documents of sale, called *baiken*. In 1277 Ogō no Tsubone (the nun Rennan) had purchased land from another nun, Ozawa, for which a sale document was drawn up. Then in 1285 another sale document was created (the one above), when the nun Rennan sold the property to the monk Yuishō. It confirms that during the Kōan Era (1278-1288) a “new formulary” (*shin shikimoku*) included clauses indicating that there was no need to return money received for a land purchase when the land was returned to its original owner. Given that, the subsequent Debt Cancellation of 1297 can be seen as a new way to provide relief for warriors based on the court's earlier debt cancellation as a model.

A courtier's journal, *Kinhira kōki* 公衡公記, has this entry from 1288 (01/20): “Concerning hereditary lands, following reason, should landholdings be returned to the original owner?” So there was doubt that land to revert back to an original owner after many generations of ownership by another party. Nevertheless in 1297 the shogunate's original goal of protecting housemen as buyers and sellers of land is clear if we look at this clause from the *Great Laws of the Kantō* (*Kantō onkoto no shohō*), a cluster of regulations issued in 1295 (03/06).

Document 4:

As for military stewards' and housemen's landholdings, let this law be followed: if twenty years have passed, there is no need to return the land to the original holder. But in the case of non-housemen and commoners, however many years have passed the land should be returned to the original holder.

We can guess that the Debt Cancellation Law influenced society in many various ways. Here is a concrete example of such influence.

Document 5:

I will the military stewardship (*jitōshiki*) and the temple headship (*insushiki*) of Tomaridera in the lower village of Bungo province's Ono Estate to my elder brother, the laymonk Shiga Tarō (Yasutomo)

There is no question but that this temple was willed to me, along with the right to manage the holding, from my grandmother Shinmyō and my foster father, the monk Myōshin. But due to need, in the sixth

year of Kôan (1283) I met with the widow of Ono Tarô Motonao (the nun Zen'a) and sold it to her for 450 *kanmon*. Now given the Kantô Debt Cancellation, which applies equally to all provinces, a judgment is needed. The former official has retired so this matter of the sale of these fields is up to the venerable Governor of Kazusa. While he waits for the arrival of the Kantô's directive, I the monk Zenki understand that the harvest is to remain in the fields.

Einin 5 (1297) 08/05 Monk Zenki

A testament transferring land to an heir, called a *yuzurijô*, shows how the Einin Debt Cancellation influenced life even in distant Kyushu. Specifically, in 1283 a buyer, the nun Zenna, had purchased the temple headship and military stewardship. But after the purchase, the Einin Debt Cancellation was promulgated, so in accordance with that law she returned the purchased property. A new problem was, however, what should happen to the harvest of those fields? The decision was entrusted to the shogunate's representative at the Kyushu Headquarters, Kanazawa Sanemasa, who was also the governor of Kazusa. He decided that while awaiting further details from the Kantô, the harvest was to be preserved, going to neither party.

What would happen then if a buyer commended his property to a third party? The next document gives us the answer. We see the answer below.

Document 6

One *tan* of dry fields, a small cultivation by the Nishi Hirai Monk in Yoshikawa village—last year I sold it for eternity to the lord monk ritualist. Now, however, given the Kantô Debt Cancellation, it should be returned. But it has been commended to Katsuodera. After negotiation, it is now to return to the original owner for a payment of 200 *kanmon*. There should be no deviation from this agreement during the lives of my children and grandchildren.

Einin 5 (1297) 11/29 Nun Shinren her heir, Monk Kyôkai

This document records the negotiated settlement agreed to by the original seller, the nun Shinren, and it would have been passed to the purchaser. Given the Einin Debt Cancellation, the seller wanted the property back, but since the buyer had already commended it to Katsuoji, the original seller give up her right to receive the property back without cost. Instead she paid 2 *kanmon* in cash to recover the land, to avoid further quarrelling. It is very likely that in this case the purchaser of the land commended it to a temple precisely as a means to escape the need to give the land back to the seller—the strategy was called a “buyer's donation” (*baikishin*).

The Einin Debt Cancellation was a law of enormous scope—its influence stretched from the Kantô region all the way to Kyushu, with housemen as its focus. It is a law that cannot be compared to previous debt cancellation laws, as these results demonstrate. After its promulgation, it was widely accepted. The Muromachi shogunate would also promulgate debt relief laws, but the Kamakura law, with its provisions for buying and selling of property and associated judgments of right or wrong when considering the free return of land made a powerful foundation and precedents for future law and implementation. Its standardization of the movement of land between parties and management of the difficulties associated with such transactions proved effective.

It was in this way that medieval society, based on the traditional concept of Benevolent Government, emphasized the buyer's right to demand free return of property. This exerted enormous influence on the concepts of property, ownership, buying and selling, and debt and credit in medieval Japan.