



The History of Law in Japan, Through Historical Sources

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Lecture 3: The Judicial Formulary of 1232 and Medieval Law

Traditionally, schoolchildren in Japan have been taught that the Kamakura shogunate began in 1192, when Minamoto no Yoritomo (1147-99) was appointed Barbarian-subduing Generalissimo (*seii taishōgun*, hereafter “shogun”) by the monarch’s court. Lately, however, the trend has been to teach 1185, the year when Yoritomo defeated the Ise Taira, defeated and killed his brother Minamoto no Yoshitsune, and appointed the first military governors and land stewards. Other possibilities have also been put forward as well, including the year Yoritomo raised troops against the Taira in Izu and entered Kamakura (1180), the year that the Taira escaped westward and Go-Shirakawa gave his official imprimatur to Yoritomo’s rule in the east (1183), and the year of Yoritomo’s appointment as Captain of His Majesty’s Inner Palace Guards of the Right (1190).

The beginning of the “Kamakura shogunate” is ambiguous. In Japanese schools the focus is on military governance, which began with Yoritomo as the shogun in Kamakura and the initiator of

warrior government—the shogunate—that endured until the modern period (the third shogunate, that of the Tokugawa shoguns, was disestablished in 1868).

Setting its beginning in 1192, in contrast, emphasizes longer term shogunate-court relations that are vital to understanding medieval Japanese history. According to this narrative, military organization allowed Yoritomo to succeed in the Gempei Wars (1180-85). The houseman (*gokenin*) and land steward (*jitō*) systems, as the foundations of the shogunal lord-and-retainer relationship, were subsequently enabled by the relationship between the Kyoto court and the Kamakura shogunal government. For example Yoritomo's appointees as provincial constables (*shugo*) were given the role of overseers of the "great rotation duty" (*obanyaku*) as protectors of palace and capital. This secured for the shogunate a place in the operation of court and realm; and ultimately this capital guard duty under shogunal supervision surpassed the earlier lord-retainer relationship in importance. It also linked provincial constables and land stewards just as in classical times provincial governors and district chieftains had linked the *tennō*'s court in the capital to the provinces.

As a key element of shogunal governance, as well as a representative body of medieval law, there was the Judicial Formulary (*Goseibai shikimoku*) of 1232. This text has been called "the warrior's legal classic," but in fact it deserves a central place in medieval law as a whole. Here we will discuss the Formulary's contents and comment on some of its lesser known sections to better understand aspects of medieval law and the Formulary's role therein.

1. The Judicial Formulary and Medieval Law

The Judicial Formulary (*Goseibai shikimoku*) is the basic legal text of the Kamakura shogunate, and it was promulgated in 1232 by the third shogunal regent Hōjō Yasutoki (1183-1242). It has only 51 clauses but was deeply respected over a long period of time as the first legal text created by and for warriors. Much later it spread in the temple schools of the Edo (Tokugawa) period (1600-1868) as an important text that went beyond mere law. The fact that the text was long valued confirms that its promulgation was an epochal development for medieval society.

Let us begin by looking at man behind this text, Hōjō Yasutoki. Clues are in a letter addressed by Yasutoki to his younger brother Hōjō Shigetoki (1198-1261), who was then working as a shogunal deputy at Rokuhara, the shogunal headquarters in the Kyoto capital. The letter helps us understand the Yasutoki's thoughts in pushing the creation and promulgation of the Formulary.

Document 1 Hōjō Yasutoki's Letter to the Rokuhara Deputy, Shigetoki

Let it be widely known that these clauses concerning judgment of suits (*seibai*) should be referred to as a list (*mokuroku*), and since it represents the substance of decision-making that is to be well remembered, let it be called "the Formulary" (*shikimoku*, lit. "the list of protocols"). You understand this, of course, but people [of the court] will surely criticize it and ask what our precedents are.

In truth, we have not depended on any classic text. We have written this list simply in keeping with reason (*dōri*). For some time there has not been such a formulary set in

place. As a result, people have filed unreasonable suits, trusting that the strong will overpower the weak; or they have filed suits on matters that have already been decided, feigning ignorance. Therefore we have decided to establish regular procedures to facilitate the rendering of impartial verdicts without discriminating between high and low.

Although these rules may deviate from the principles of existing laws in minor points, the *ritsu*, *ryō*, *kyaku*, and *shiki* are like Chinese characters—they are for those who can read them. Those who can only read the syllabary (*kana*) are lost when they see Chinese characters. So this Formulary is for the wider world of people who only understand the syllabary. They will easily grasp its meaning.

This code is instituted only for warriors. It is not our intent to alter Kyoto's laws or procedures or the *ritsuryō* in any way. While the teaching of law [*ritsuryō*] is certainly a wonderful thing, the best we could hope for would be if one or two in a hundred thousand can apply it to the lives of warriors or common people. For the rendering of legal opinions we have [had] to depend on court officials well versed in statutory law, of which there are several different ones [collections and interpretations]. We hear that people are therefore confused. Given this, we have written down these protocols of judgment to make them knowable even to the illiterate. If people in Kyoto criticize them, let them know this and persuade them.

With awe and respect,

Jōei 1 (1232) 09/11

[from] Governor of Musashi (Hōjō Yasutoki) (Seal)

[to] Governor of Suruga (Hōjō Shigetoki)

2. A Plan for the Warriors

The letter says the Formulary was purposefully written in *kana* script, marking it as exclusively for warriors. Matters in the capital (Kyoto) and its *ritsuryō* law were not to be affected. To understand the true meaning of this statement, we have to examine the existing state of law in the society of the 1230s.

The so-called 'world of the warrior' is said to have begun almost a century earlier, with the Hōgen and Heiji coups (1156 and 1159, respectively), when the [Ise] Taira under their commander Taira no Kiyomori (1118-81) gained increasing military authority in the capital. Its formation continued through the Gempei War, when Minamoto no Yoritomo gained victory over the Ise Taira forces and instituted the Kamakura shogunate. During this period of roughly thirty years, the earlier *ritsuryō* polity was in no way abolished. Indeed that Minamoto no Yoritomo established the seat of his power in eastern Japan at Kamakura was in and of itself an attempt to escape the influence of the central Kyoto court—he was staking his claim in the distant eastern

provinces. Above all, that was a choice made with appreciation for the ongoing existence and power of the Kyoto court.

Overall, medieval society can be seen as having been divided into three spheres of authority – that of the court, the Kamakura shogunate, and estate proprietors (many of them religious institutions, temples and shrines). Each had its own laws, applicable within their jurisdictions. Remember too that the earlier *ritsuryō* legal system was still extant, and it remained an important body of precedents for the court and proprietors during Kamakura times (1185-1333). That is why, in the foregoing letter, Yasutoki indicates that he values court law and recognizes the limits of the Formulary, as applicable to shogunal housemen.

Even more than laying out Yasutoki's reasons for (creating) the protocols, Yasutoki's letter was written for those in the capital to read as an explanation. Nonetheless, even from very early on there were already efforts to extend the judicial protocols beyond their intended limits.

The context for those efforts was the Jōkyū War of 1221, in which forces recruited by the retired monarch Go-Toba (1180-1239, r. 1183-98) attempted to defeat a shogunal army to disestablish Kamakura's power. When the shogunate won, however, it enabled the extension of Kamakura's authority into west Japan, into the estate and other provincial holdings of royals and nobles who were sympathetic to Go-Toba. So was the relationship between court and shogunate permanently altered, with the shogunate increasing its influence over society and the Kyoto court as well. Still later, after attempted invasions by the Mongols in the 1270s and 1280s when warrior land holdings and livelihoods fell into greater disorder, the importance of shogunate law and courts increased even more.

From the beginning there was a difference between rulers and ruled in understanding concerning how shogunal law should be applied. And given the significant instability of society in the 1230s [it was a time of serious famine and plague], the effectiveness of these rules depended largely on the ruled—the shogunate itself waited for complaints to resolve or negotiate. Another point is that at the time law was applied on an ad hoc basis, according to the specifics of the particular case. Nor were the jurisdictions of court, estate proprietors, and warriors clearly defined.

3. Contents of the 1232 Judicial Formulary

The best known phrase in Yasutoki's letter is, "We have written this Formulary in keeping with reason." In other words, it elaborates what is "reasonable" (*dōri*). This reasonability was the practical morality of warrior society based on its common social norms—it represents norms of acceptable behavior in the warrior society over which Yasutoki presided as the leading shogunal administrator of the day.

Kamakura law was seen as the embodiment of "reason," which the powerful could not determine arbitrarily. It is often asserted that by basing the Formulary not on the laws of the court but on the concept of reason accepted by eastern warriors who were shogunal housemen, Hōjō Yasutoki was both consolidating the warrior class and separating it from the authority of the Kyoto court.

At this point we should ask how warrior law was distinguished from courtier law, and what relationship was there between the two types of law?

Clause 8: The 20-Year Land Possession Law

The matter of land for which one has an order supporting one's claim but which has not been under one's control for some years.

As to the above: if the land has been under active control for twenty years, then in keeping with the precedent of the Taishō (Yoritomo's) house, the land cannot be returned regardless of the propriety of the claim. On the other hand, those who falsely claim to have actively controlled the land for this period and to have received orders confirming this fact, they shall not keep the land.

This clause states that if one has exercised the right of land possession continuously for 20 years, after that period has passed, it is not subject to claims demanding its return. This rule is known as the "Twenty-year Land Possession Law." It resembles a modern statute of limitations. Actually, it was not revolutionary: this 'possession law' was first articulated in the mid-Heian period, as the estate (*shōen*) system developed. Its primary purpose was to deal with people who had an order from the shogunate giving them rights to the land, but who never exercised those rights and then suddenly claimed active management of the land. The twenty-year limit was arbitrary but it spread throughout warrior society and was truly epochal.

Another notable point here is the phrase, "in keeping with the precedent of the Taishō house." The Taishō here refers to Yoritomo, Commander of the Right Inner Palace Guards. The phrase indicates that the precedent from Yoritomo's era. This was an attempt to look back to the first shogun to increase the protocol's value and validity, even if the twenty-year limit was a new element. It echoes Clause 7 in the Formulary too—it states that the law had not changed since the reign of Yoritomo and the subsequent regency of his widow, the nun shogun Hōjō Masako.

We see here that the Formulary's content is clearly based on existing protocols and custom. But, in fact, this is not simply due to reasonability. Decisions as to what to include and exclude reflect the intentions of shogunal authorities and were expressions of their authority. That said, what about the relationship with courtier law?

4. The Formulary and Courtier Law

Clause 41: The Matter of Slaves and Menials

As to the above, in keeping with the precedent of the Taishō house, if there is no legal action relating to their ownership for ten years, then there shall be no change in ownership regardless of the propriety of the claim.

Further, as to the males and females born to slaves, while there may be details in the law, in keeping with a precedent of the same time, males shall go with the father and females with the mother.

In the first half of this clause there is a ten-year limitation on claiming ownership, but in the second half we see a stipulation that daughters should go with their mothers and sons with their

fathers. The clause also says “while there may be details in the law,” referring to *ritsuryō* laws. Let’s look back at those laws.

The Essential Extracts (*Hossōshiyōshō*) is a representative interpretation of [late Heian] courtier law, based on the opinions of the legal scholars of the time. It says, “it does not matter if the child is a boy or a girl, it will go with its mother.” In contrast, the Formulary states, “males shall go with the father, and females with the mother.” In truth, this is probably a custom with a long history. Specifically, Clause 41 takes a custom and uses it in opposition to “the [*ritsuryō*] law.” From this, we can see that the shogunate was quite consciously asserting its own ideas.

5. The Formulary’s Legitimacy

The next thing that we should examine closely is the legal basis for the Formulary, as “the precedents of the Taishō house.” As noted earlier, however, the rule in Clause 41 is based on a social custom of significant historical depth. There was really no need to attribute it to the Taishō house. Nevertheless, since it contravenes *ritsuryō*, citing its roots in the Taishō’s era gave it a special legitimacy for Kamakura’s housemen, allowing shogunal authorities to avoid direct confrontation with courtier law.

It goes without saying that the Formulary considers courtier law as its foundation. Yasutoki was conversant with “the study of *ritsuryō* law” (*myōhōgaku*). The Formulary was based on the laws and customs of society at the time. It was also created by the intention of shogunal authorities. Even as they deliberately distanced themselves from court law, shogunal lawmakers valued and emphasized it. In this way the Kamakura shogunate built an independent legal world, one that gradually expanded beyond the world of warrior housemen to take its position at the very center of the medieval world. The Formulary of Adjudication of 1232 was therefore an epochal development of its time.