

Rule of Law in a Brave New Empire: Legal Rhetoric and Practice in Manchukuo

THOMAS DAVID DUBOIS

An inquiry into law in Manchukuo might seem, at first glance, to be something of an oxymoronic task. The state itself was created in clear contravention to international law, and when the investigation of the Lytton Commission stated as much in 1933, Japan walked out of the League of Nations, the closest the world had to an international arbitrational body at the time. Within Japan itself, the creation of Manchukuo could be considered the point of no return in the march toward wartime militarism.¹ After this event, arbitrary and military power ran roughshod over civilian institutions of governance, so much so that some scholars of Japanese

1. By far the most important work in English on the impact that Manchukuo had on Japan remains Louise Young, *Japan's Total Empire: Manchuria and the Culture of Wartime Imperialism* (Berkeley and Los Angeles : University of California Press, 1998). The titular "brave new empire" is taken from the sixth chapter of this book. On Manchukuo itself, there is a great deal of work in Japanese, some of the best of which has recently been translated into English. See for example, Shin'ichi Yamamuro and Joshua A. Fogel, *Manchuria under Japanese Dominion* (Philadelphia: University of Pennsylvania Press, 2006).

Thomas David DuBois is an associate professor of history at the National University of Singapore <histdd@nus.edu.sg>. He presented a draft of this article at the workshop "Crime, Law and Order in the Japanese Empire, 1895–1945" held in September 2006 at the Nederlands Instituut voor Oorlogsdocumentatie, Amsterdam, and would like to express his gratitude to the organizers of that workshop, particularly Robert Cribb, as well as to Chen Chao-ju, Eric Esselstrom, Ian Gordon, Bruce Lockhart, Li Narangoa, Wang Luman, and Zhang Qin for ideas and assistance, and especially to Daniel Bostman, David DuBois, Peter Post, and three anonymous reviewers for *Law and History Review* for their detailed and helpful comments on earlier versions of the text. As always, he reserves his most heartfelt thanks for Misako Suzuki.

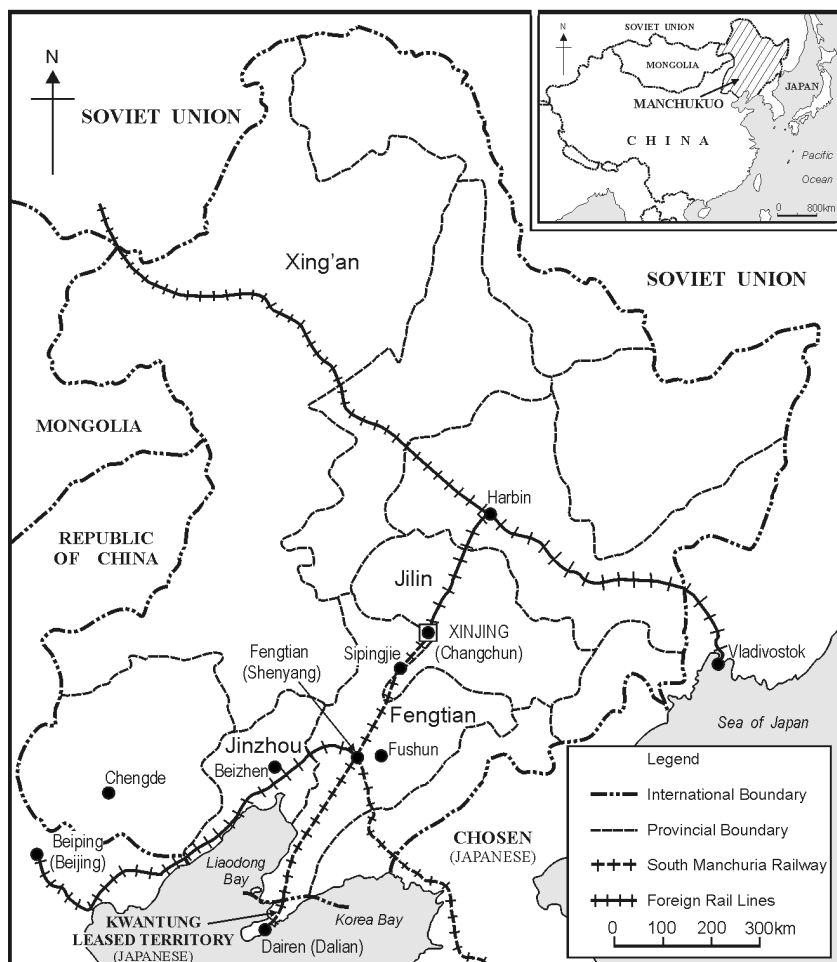


Figure 1. Manchukuo.

legal history characterize the period as the “collapse of the legal system” (*hō teisai hōkai*).²

However, authoritarian regimes do not eschew law, they actively embrace it. If positivistic law is meant to reflect the values of a society, it can as easily be directed toward morally repugnant ends, in what have been called

2. Although many of the Asian language terms used in this article could be read equally well in either Chinese or Japanese, I will provide pronunciation only in the language of the original source. The validity of the idea of legal collapse and theories for the decline of law in Japan are discussed in Watanabe Yōzō, “Nihon fashizumu hō taisai sōron” [The

“wicked legal systems.”³ To take the example of two of Manchukuo’s own contemporaries, both Nazi Germany and the Soviet Union under Stalin defended absolutism in legal terms, each developing elaborate theories of law and maintaining legal and judicial structures to match. In both cases, law was not a check on totalitarian authority, but rather a tool of it. In theory as well as practice, law in Nazi Germany was “nothing more or less than what the *Führer* decrees.”⁴ Japan, too, appealed to international law extensively in its march toward imperialism, successfully in its 1910 annexation of Korea, less so in the creation of Manchukuo two decades later. The suppression of dissent within Japan itself employed legal vehicles, most notably the catchall Peace Preservation Law (*Chi’an iji hō*) of 1925.

Yet, it would not do to portray colonial law simply as a tool of repression. Japan took great pains to justify its colonial ventures in terms of legal principles, and long before the creation of Manchukuo, law was integral to the development of Japan’s colonial empire, not only procedurally but intellectually, as well. The acquisition of Taiwan in 1895 prompted both the creation of an elaborate system of colonial governance and a wide-reaching discussion of how deeply the Taiwanese should be culturally and economically integrated into Japan, based largely around the question of whether Taiwan should be ruled under the Japanese constitution or under a separate set of colonial laws. Similar questions were subsequently raised with the acquisition of Kwantung and Korea.⁵

It should come as little surprise then that immediately after its founding, Manchukuo moved quickly to develop a legal apparatus. This was a serious project that represented a significant investment in both money and manpower and served a combination of practical and rhetorical ends. The new nation would need laws and courts not merely for internal administration but also to legitimate the state in the eyes of the international community

shape of Japanese fascist law—overview], in *Senji Nihon no hōtaisei* [The legal system of wartime Japan], ed. Tōkyō Daigaku Shakai Kagaku Kenkyūjo (Tokyo: Tokyo University, 1980), 3–70.

3. David Dyzenhaus, *Hard Cases in Wicked Legal Systems: South African Law in the Perspective of Legal Philosophy* (Oxford: Clarendon Press, 1991).

4. Michael Stolleis, *The Law under the Swastika: Studies on Legal History in Nazi Germany*, trans. Thomas Dunlap (Chicago: University of Chicago Press, 1998), 5–22; Peirs Bierné, *Revolution in Law: Contributions to the Development of Soviet Legal Theory, 1917–1938* (Armonk, N.Y. and London: M. E. Sharpe, 1990); J. Walter Jones, *The Nazi Conception of Law* (Oxford: Clarendon Press, 1939), 13.

5. Tay-Sheng Wang, *Legal Reform in Taiwan under Japanese Colonial Rule, 1895–1945: The Reception of Western Law* (Seattle and London: University of Washington Press, 2000), 36–62; Edward I-te Chen, “The Attempt to Integrate the Empire: Legal Perspectives,” in *The Japanese Colonial Empire, 1895–1945*, ed. Ramon H. Myers and Mark R. Peattie. (Princeton: Princeton University Press, 1984), 240–74.

and, more fundamentally, to define the state to itself and to its own citizens. Many elements of Manchukuo law consciously emulated that of Japan. Mirroring Japan's own experience in the late nineteenth century, the most important and sought-after indication of acceptance by the great powers was the voluntary abrogation of Western extraterritoriality, a goal that depended primarily on domestic legal reform. In other ways, Manchukuo more closely resembled the colonial experience of Korea and Taiwan. As had others in the colonies, a variety of actors in Japan and Manchukuo sought to make use of law as a civilizing agent, a tool for the reform of thought, custom, and spirit. Although putatively an independent country, the developmental nature of Manchukuo's legal institutions left them inherently weak, planting the seeds for a slide toward despotism during the later 1930s. Within a few years of its founding, after it had become clear that Manchukuo would not be accepted, neither by the Western powers nor to a large measure even by its own citizens, the Japanese empire plunged headlong into war with China and later the Allies, and the entire society, including the legal system, lurched toward a wartime footing. However, even while the use of force and control became more openly draconian, the rhetoric of law and legal developmentalism did not disappear. Instead, it grew simultaneously more intense and euphemistic about the role legal institutions would play in suppressing dissent and coercing support for the war effort.

I. Precedents—Law in the Early Japanese Empire

Having gained her first overseas possession just before the turn of the century, Japan quickly developed a distinct style of imperialism, which included attitudes toward law and legal administration. As had been the case with European empires, Japan's experience with imperialism began at home with the "internal colonization" of outlying regions, particularly Okinawa and Ezo (Hokkaido), and the extension of the unmediated authority of the Meiji state over society. Through these early experiences, reformers gained familiarity with the legal institutions of the modern state—a continental model of nested jurisdiction and right of appeal, the separation of judicial and executive power, the professionalization of legal practice and education—all were put into place to strengthen and rationalize the centralization of power, the "unifying authority of the state" over the citizen.⁶ When Japan received Taiwan from the ailing Qing as a prize of war in 1895, it was forced to decide the relative merits of direct home rule in emulation of French Algeria, or indirect rule along the lines of British India or Malaya. While

6. Wang, *Legal Reform in Taiwan*, 105.

the former would place Taiwanese subjects under the laws of the metropole, implying the ideal of their eventual assimilation and ascension to the full rights of citizenship, the latter allowed for the jurisdictional independence of Taiwan as a colony.⁷ Initially supportive of home rule, the expansionist prime minister, Itō Hirobumi, and Kodama Gentarō, newly appointed governor-general of Taiwan, eventually came to advocate the latter model, so as to allow authorities to put down any instability, particularly after the outbreak of Taiwanese armed resistance to Japanese rule. In 1896, the jurisdictional independence of Taiwan within the empire was enshrined in Title 63, which gave the governor-general the authority to institute ordinances (*ritsurei*) without interference from the Japanese Diet or Taiwanese legislative council.⁸ With relatively little oversight over colonial governance, the first two decades of Japanese rule in Taiwan were characterized by harsh security measures, such as the 1898 Bandit Punishment Law (*Hito keibatsu rei*), and the continued use of corporal punishments such as flogging, which had been outlawed in Japan itself in 1882. This policy took a sharp turn after the outbreak of the Xilai An Uprising of 1915, the brutal suppression of which was widely criticized at home, and was followed by the institution of a civilian government during the 1920s, and by a move to reshape law in Taiwan along Japanese principles. Although security concerns were such that criminal law remained bifurcated, Taiwanese in fact came to enjoy largely the same civil law as Japan, and became active participants in the legal system, albeit as litigants, rather than judges.⁹ Nevertheless, even this relatively liberal civilian regime revealed little patience for movements it considered suspect, such as that to establish a Taiwan parliament.¹⁰

The institution of a Japanese legal regime in Korea followed a similar trajectory as that in Taiwan, although important differences are also evident. In a last minute attempt to bolster its own sovereignty in the face of Japa-

7. Beyond the exigencies of colonial governance, the question of whether Japanese law should be extended to non-Japanese was also linked to an evolving sense of Japanese uniqueness. This issue became particularly emotional concerning the 1889 Meiji Constitution, which was understood to be a gift of the Meiji emperor to the Japanese people. On the evolution of Japanese images of self during this period, see Oguma Eiji, *A Genealogy of "Japanese" Self-Images*, trans. David Askew. Japanese Society Series (Melbourne: Trans Pacific Press, 2002).

8. This was somewhat circumscribed in 1906 with Title 31, which affirmed the primacy of Japanese law, but still acknowledged the validity of *ritsurei* that did not overtly violate it.

9. Wang, *Legal Reform in Taiwan*, 63–104; Paul R. Katz, *When the Valleys Turned Blood Red: The Ta-pa-ni Incident in Colonial Taiwan* (Honolulu: University of Hawai'i Press, 2005), especially 193–236 on the suppression and its aftermath in Taiwan and Japan.

10. Edward I-te Chen, "Formosan Political Movements under Japanese Colonial Rule, 1914–1937," *Journal of Asian Studies* 31.3 (1972): 477–97.

nese encroachment, Korea had begun reformation of its extant legal code in 1894–95, promulgating a criminal code (*Hyŏngpŏp taejŏn*) in 1905, the same year that Korea was named a Japanese protectorate. While Taiwan had been directly administered by Japanese governors-general from the outset, the myth of Korean sovereignty meant that power there would initially be exercised through Japanese “advisors,” including judges and procurators in all the major courts. In 1909, authority for courts was formally handed over to Japan. Yet, even after Korea was formally annexed by Japan in 1910, Korean law remained distinct. As in Taiwan, laws in Korea were made by ordinance of the governor-general (in Korean law, this provision came as Title 30), and many older laws from the protectorate period, especially those regarding security and the restriction of the press, remained in effect. As in Taiwan, the legal system in Korea nominally resembled that of Japan, but still retained distinct codes to allow for the cultural inferiority of the colonies, retaining (and indeed increasing) the use of flogging until 1920. In both Korea and Taiwan, the 1920s saw a shift toward active assimilation, not only into the “national body” (*kokutai*) of the empire, but also into the routines and regimens of the modern nation. In contrast to earlier policies, which simply policed sedition, this new focus demanded the active participation of the subject and would eventually culminate in a policy aimed at the cultural assimilation, or “imperialization” (*kōminka*, literally “the formation of imperial subjects”) of colonial populations. Throughout this period, Korea proved the more resistant to these policies—only 856 people were arrested under the Peace Preservation Law in Taiwan, as opposed to 18,600 in Korea. As a result, both formal law and extrajudicial regimes of police control and surveillance in Korea were more harshly applied and more deeply resented.¹¹

In short, by the time Japan took military control over the whole of Manchuria in 1931, it had already gained significant operational experience in the use of law in colonial governance. Although at one level, Japan was the model for law in Taiwan and Korea, colonial legal institutions were purposely hobbled, designed to remain dependent on and behind Japan. Both

11. Although already seemingly something of a dead issue, a revised *Hyŏngpŏp taejŏn* was promulgated in 1908, before being completely obviated two years later. Chulwoo Lee, “Modernity, Legality and Power in Korea under Japanese Rule,” in *Colonial Modernity in Korea*, ed. Gi-Wook Shin and Michael Robinson (Cambridge, Mass. and London: Harvard University Asia Center, 1999), 21–51; Han-kyo Kim, “The Japanese Colonial Administration in Korea: An Overview,” in *Korea under Japanese Colonial Rule—Studies of the Policy and Techniques of Japanese Colonialism*, ed. Andrew C. Nahm (Kalamazoo: Center for Korean Studies, Western Michigan University, 1973), 41–53; Wang, *Legal Reform in Taiwan*, 116–17; Wan-yao Chou, “The *Kōminka* Movement in Taiwan and Korea: Comparisons and Interpretations,” in *The Japanese Wartime Empire, 1931–1945*, ed. Peter Duus et al. (Princeton: Princeton University Press, 1996), 40–70.

Taiwan and Korea were in theory placed under the umbrella of Japanese law, but in fact they were ruled by selective ordinances issued by their respective colonial governments. Both employed the myth of citizenship and a rhetoric of responsibility, while retaining bifurcated civil codes designed to keep colonials in a subject status and frequently resorting to summary judgment and the use of special police powers in criminal enforcement. In the aftermath of rebellion during the teens, both had made the shift from the use of law simply as a deterrent to crime and sedition to the establishment of integrated legal regimes, which aimed to transform the thoughts and actions of the colonial subject. Yet even in this later period, any confidence in the transformative power of law was tentative; neither Taiwan nor Korea developed truly independent legal institutions, and both retained ready mechanisms to reassert dictatorial powers, if necessary.

II. Manchukuo to 1937

Theory and State Structure

The nation of Manchukuo was theoretically founded on a complex and fairly contradictory mix of principles, leaving the role of law in the new society somewhat unclear. At its most basic level, the creation of an independent Manchukuo was represented as a triumph of popular sovereignty, the “unanimous will of the thirty million people of Manchuria and Mongolia,” a portrayal that fit well with Wilsonian ideals of democratic self-determination.¹² For many, such claims rang hollow even at the outset and appeared to be aimed largely at convincing Western powers of the legitimacy of the new state. But they do imply a degree of affinity for the dressings, if not the genuine ideals of liberal government, of which the rule of law under a free and independent judiciary would be paramount. At the same time, even if the foundation of Manchukuo theoretically represented an act of popular will, it was still very much a created society. Japanese superiority was never in doubt. The rhetoric of statehood aside, the paternalistic attitude that Japan took toward nominally independent Manchukuo made it difficult to distinguish from a colony. This was not simply a matter of Japanese duplicity; many of the Chinese intellectuals

12. “Waga Man-Mō sanzenman minshū no inochi.” This phrase is seen in the *Declaration of the Founding of Manchukuo* (*Manshūkoku kenkoku sengen*) and often thereafter. This and other documents associated with the founding of Manchukuo are available on pages 8–15 of Yamada Rikutsui, “Manshūkoku no soshiki oyobi kokuhō kōgi” [Lectures on the organization and national law of Manchukuo], in *Man-Mō zenshū* [Complete works on Man-Mō], ed. Sonoji Hideo (Tokyo: Man-Mō School Press, 1935), 2:1–92.

who would take up positions in the Manchukuo government had openly argued that China would benefit from a period of foreign stewardship.¹³ As was the case in Taiwan and Korea, the institution and reform of law in Manchukuo was part of a package of civilizing methods imposed from above and from without, constructing a society while protecting a privileged place for Japanese citizens and interests therein. Tension between these ideals was further complicated by the rhetoric of what made Manchukuo unique. In its own propaganda, Manchukuo was not merely independent. It was a radically new and uniquely Asian form of polity, an incarnation of Japanese spiritualism taking root in a multi-ethnic state, and thus, even more than Japan itself, an exemplar for the political future of pan-Asianism.¹⁴ What role should law play in a country ruled by this unlikely mix of Asian morality and hyper-modernism, legitimized in terms of Western liberalism, yet openly disdainful of it?

Given the somewhat schizophrenic ideals officially espoused in its founding, it is not surprising to see law in Manchukuo represented in a number of strikingly different ways. Manchukuo was established amid a heavy dose of legal rhetoric, and some of the first acts taken after its founding were legal in nature. These included an appeal to the principles of international law to assure the legitimacy of the new state and promises to create a legal system in order to “protect the livelihood of the people, and increase their wealth and stability.”¹⁵ At the core of this new system, the 1932 Organic Law (Law of the Organization of the State of Manchukuo, *Manshūkoku no seiji soshiki hō*) outlined the structure of government and included a twelve-part Human Rights Protection Law. On its face, the government structure appeared designed to balance power between legislative bodies and the executive branch. To ensure the independence of the courts, the judiciary was to be a distinct branch of government, judges were appointed for life, and all judicial organs were financially under the central government so as to avoid the corruption that had supposedly characterized the previous justice system.¹⁶

Despite the appearance of balance within the government, the entire state

13. Most specifically Prime Minister Zheng Xiaoxu, who during the 1920s had accompanied the deposed Qing emperor Pu Yi into political exile in Tianjin and advocated a joint Western and Japanese administration of China. Aixinjueluo Pu Yi, *Wode qian ban sheng* [My early life] (Beijing: Qunzhong chubanshe, 2007), 178–79.

14. Prasenjit Duara, *Sovereignty and Authenticity: Manchukuo and the East Asian Modern* (Lanham: Rowman & Littlefield Publishers, 2003).

15. Xie Jieshi, “*Manshūkoku no likkoku ni tai suru kokka seiritsu ni kan suru togobun*” [Proclamation concerning the national establishment of Manchukuo] March 2, 1933, in Yamada Rikutsui, *Manshūkoku no soshiki*, 14–15.

16. *The Manchoukuo Year Book, 1943* (Xinjing: Manchoukuo Year Book Co., n.d.), 427; *Manshūkoku no kaibō* [Anatomy of Manchukuo] (Tokyo: Shinkōsha, 1932).

structure rested on the foundation of an external, spiritualist authority. Even if the state was founded on the principles of popular will, it did not serve this will through elected representation, but rather through a spiritual bond between the state and people known as the “Kingly Way” (*wangdao*). The theory of the Kingly Way was largely the personal project of Zheng Xiaoxu (1860–1938), a former official of the Qing empire, constant companion of the deposed emperor Pu Yi during the 1920s, and first prime minister of Manchukuo. It represented an attempt to meld the rhetoric of Confucian moral governance with the machinery of a modern state, thus creating the foundation of a new Asian polity. In all of its public pronouncements, the new state emphasized this spiritual core, voiced alternately as the Kingly Way or later as the equally vague “spirit of national foundation” (*jianguo jingshen*). The short declaration establishing the government of Manchukuo, uttered by the titular head of state (although not yet emperor) Pu Yi on March 9, 1932, is typical of the moral rhetoric of Manchukuo:

Humankind must value morality. Yet there is a difference between races—in which some control others while praising themselves. Such morality is very thin. Humankind must value benevolence and love. Yet there is war between nations—in which people seek to profit from other’s loss. Such benevolence and love is very thin. Our Nation has been founded on morality, benevolence and love. When racial difference and international war have been eradicated, we will see the establishment of a true paradise of the Kingly Way. The citizens of Our Nation must devote themselves to this task.¹⁷

Such statements are interesting not only for their somewhat saccharine portrayal of the new state, but equally so for what they do not mention. While these pronouncements emphasize the spiritual renaissance of the Kingly Way, they generally lack reference to law, procedure, or efficiency. Even those portrayals, such as the Declaration of Manchukuo Statehood (*Manshūkoku kenkoku sengen*), that justify the creation of the new state in terms of popular welfare, criticizing the old regime as incompetent, corrupt, and thus unable to protect the people against the twin evils of Communism and banditry, do not speak of the new state in terms of the restoration of law and order as much as this new, moral attitude toward governance.¹⁸

This is not to say that the new state was hostile to law, but rather that law was portrayed as an expression of the same spontaneous sentiment that had created independent Manchukuo. As such, law was depicted as consensual, an expression of values and purpose held in common by state and citizens. Despite its name, the Human Rights Protection Law clearly

17. Pu Yi, “Manshūkoku shisei sengen” [Declaration establishing Manchukuo], in Yamada Rikutsui, *Manshūkoku no soshiki*, 11–12.

18. In Yamada Rikutsui, *Manshūkoku no soshiki*, 8–11.

subjected individual interests to the needs of state. There was no question of this or any other law serving to safeguard the rights of individuals against the state, the idea of any such antagonism being viewed as a leftover of individualistic bourgeois liberalism.¹⁹ In Manchukuo, this was portrayed as Asian consensus culture reasserting itself against selfish Westernism. But the claim that “the people” are of one mind with the government and its institutions are common to totalitarian states.²⁰

The rhetoric of morality permeated official discourse in Manchukuo, and within it, law was treated primarily as a practical measure. Although many schools of Chinese philosophy had traditionally disdained law as corrosive of public morality, in Manchukuo it was invoked as a means to attaining the moral ends of good governance.²¹ However, even if the balanced structure of the Manchukuo government was put into place in order to maintain oversight of “government morality” (*seiji dotoku*), the nature of this moral end was often left unclear. Occasionally it was represented in terms of economic good. The Human Rights Protection Law itself includes the commitment of the government to protect citizens against usurious interest rates, or any other form of “improper economic oppression.”²² However, hostility to anything resembling Sun Yat-sen’s political doctrine of the “Three Peoples’ Principles” (which included a provision for “Peoples’ Livelihood”) and an intense paranoia over the advance of Communism ensured that this type of economic rhetoric would always remain somewhat muted.²³

19. See the criticism levied in 1941 by Japanese jurist Naka Setsuo, as cited in Wu Hsin-Che, “Ribei zhiminzhuyi xia de Manzhouguo fazhi, 1932–1945” [The Legal System of Manchukuo under Japanese Colonialism, 1932–1945] (M.A. thesis, National Chengchi University, Department of Law, 2004), 128.

20. Conversely, voicing any sort of reservations against state intrusion necessarily marks one as outside the pale of this body politic, as racially, spiritually or otherwise impure. It is seen equally in the claim of Nazi law to the collective will of the German race, or the Communist invocation of the “dictatorship of the masses.” Jones, *Nazi Conception of Law*, 17–21. While there is no room here for a full examination of the influence of fascism on Manchukuo, it is worth remembering that important Chinese figures such as Zheng Xiaoxu were vocal admirers of Mussolini. Aixinjueluo Pu Yi, *Wode qian ban sheng*, 178.

21. Any literate resident of Manchukuo would have known the Confucian maxim that “when the people are ruled by means of laws, they will seek to evade them and have no sense of shame.” It has often been suggested, most famously by Max Weber, that this cultural background continues to bias Asian civilizations against the rule of law. For a more recent example of such thinking, see Chin Kim and Craig M. Lawson, “The Law of the Subtle Mind: The Traditional Japanese Conception of Law,” *The International and Comparative Law Quarterly* 28.3 (1979): 491–513.

22. Yamada Rikutsui, *Manshūkoku no soshiki*, 19, 25–26.

23. The attempt to inculcate the new ideology of the state included purging all references to Sun Yat-sen’s Three Principles from educational materials. British Consular Report (hereafter BCR) Harbin, September 30, 1932. In *Japan and Dependencies: Political and Economic Reports, 1906–1960*, vols. 12–15 (London: Archive Editions, 1994).

More often it was represented in terms of the spiritual and moral destiny of the state, and later of the Japanese Empire. Through the rhetoric of the Kingly Way, the emperor was held up as the concrete expression of the spiritual foundation of the new state from which all political and moral authority proceeded. Closing a long essay on the history of Manchuria, Japanese army captain Okada Meitarō waxed poetic about how under the guidance of the emperor, the ruler and people were one (*kunmin ikka*).²⁴ Interpreting this often-repeated formulation to include the state would not be precisely accurate. The spiritual bond was that between the people and the emperor himself; the state and its institutions were necessary only as they were practical. The law itself was not inviolable because, according to the somewhat vexing logic of one source, “from the legal standpoint, the Emperor is the source of all authority.”²⁵ While the rhetoric of imperial divinity would take on a much greater significance during the 1940s, even in this earlier period, the division between the emperor and government mirrored that between the moral basis of the state and its everyday procedural concerns. At a fundamental level, the law of Manchukuo was a celebration of this same consensus, a concrete expression of social harmony and universally held values, and only secondarily a tool of practical governance.

At the same time, the appeal to law was important for legitimating Manchukuo in the eyes of the outside world. In a general sense, possession of a modern legal code was held up as a hallmark of an advanced civilization, a designation that Japan itself had worked long and hard to attain. Over the previous decades, attention to international criticism had motivated not only the revision of criminal procedure inside Japan, but also the laborious attempt made to justify events such as the annexation of Korea not simply by force of arms, but within the letter of international law.²⁶ The most prized mark of Japan’s entry into the family of “civilized nations,” and the standard

24. Okada Meitarō, “Manshū rekishi kōza” [Lectures on the history of Manchuria], in *Man-Mō zenshū* [Complete works on Manchuria and Mongolia], ed. Sonoi Hideo (Tokyo: Man-Mō School Press, 1935), 1:1–188, esp. 177–88.

25. *The Manchoukuo Year Book*, 1943, 165. This had not always been the case, even in Japan. A few short decades earlier, the question of whether the Japanese emperor should have primacy over law or the reverse had been the topic of a debate among legal scholars that turned, significantly, on interpretations of the 1889 Constitution. See Kenneth Colegrove, “Powers and Functions of the Japanese Diet,” *American Political Science Review* 27.6 (1933): 885–98.

26. On the evolution of legal arguments behind the creation of Manchukuo, particularly the role of Nazi and Soviet theory, see Matsui Yoshiro, “Nihon gunkoku shugi no kokusai hōron—Manshū shihen keisei” [The international legal theory of Japanese militarism—the development of the “Manchurian Incident”], in *Senji Nihon no hōtaisei* [The legal system of wartime Japan], ed. Tōkyō Daigaku Shakai Kagaku Kenkyūjo [Tokyo University Social Science Research Institute] (Tokyo: Tokyo University, 1980), 361–405.

for which they fought tirelessly in Manchukuo, was revision of extraterritoriality. This provision was introduced by many Western powers in their treaties with China and Japan (and later by Japan in China and Korea) and allowed the former to try its own citizens for offenses committed within the territory of the latter, on the grounds that Asian judicial systems were excessively violent and unreliable. For western-oriented reformers in Meiji Japan, such a characterization had been particularly grating, and with the help of European advisors, Japan had managed to reform its code to secure abrogation of extraterritoriality by the late nineteenth century. It now faced a similar battle in Manchukuo by virtue of preexisting treaty obligations on what had previously been Chinese soil.²⁷

However, the decision for Manchukuo to honor extraterritoriality clauses in existing treaties was made voluntarily by Japan. It was motivated by two considerations, the desire to court Western approval for the new state and, more fundamentally, the need to maintain the special rights enjoyed by Japanese commercial interests (particularly in the semi-colonial territories administered by the South Manchuria Railway) and citizens until a judicial system tailored to Japan's liking had been established.²⁸ As such, the road to ending extraterritoriality turned around two somewhat contradictory principles: the manipulation of the Manchukuo judicial system to enshrine special rights for Japan and the courting of other extraterritorial powers (all Western) to recognize these changes as reforms and voluntarily surrender their own rights. The high profile of this emotional issue is seen in the amount of attention it received in legal circles in Manchukuo and Japan. In December 1933, a joint conference of thirty-six Japanese and native officials of Manchukuo convened in the city of Fengtian to discuss the legal basis of Japanese abrogation of extraterritoriality. This was followed by a series of similar meetings in 1934 and 1935.²⁹ Nor was the attention to this

27. For a contemporary perspective on the end of extraterritoriality in Japan, see William P. Ker, "Treaty Revision in Japan: A Survey of the Steps by Which the Abolition of Foreign Privilege Was Accomplished in the Island Empire," *Pacific Affairs* 1.6 (Nov. 1928): 1–10. For some of the cultural issues surrounding extraterritoriality, particularly the role of settler colonists in lobbying against its abrogation, see Elizabeth Kolsky, "Codification and the Rule of Colonial Difference: Criminal Procedure in British India," *Law and History Review* 23 (2005): 631–84.

28. Among other places, the intention to honor existing treaty obligations is stated in the *Declaration of the Founding of Manchukuo*. Soejima Shōichi, "'Manshūkoku' tōchi to chigai hōkan teppai" [Governance and the abolition of extraterritoriality in "Manchukuo"], in *Manshūkoku no kenkyū* [Research on Manchukuo], ed. Yamamoto Yūzo (Tokyo: Ryokuin, 1995), 131–55. See also the statement by Foreign Minister Xie Jieshi in Yamada Rikutsui, *Manshūkoku no soshiki*, 14–15.

29. BCR Fengtian (now known as Shenyang; sources occasionally refer to this city as Shengjing, or by its older name of Mukden), March 31, 1934; Soejima Shōichi, "'Manshūkoku' tōchi," 136–40.

question restricted to Manchukuo; these meetings were widely publicized within Japan, in no small part to mollify fears among domestic investors and settlers over a potential loss of Japanese privileges in Manchuria.³⁰

In an allied effort, the new government immediately began taking steps to promulgate a constitution. Diplomats observing the new state had expected such a step to be taken immediately and, through 1936, were promised the immanent release of a Manchukuo constitution.³¹ They were somewhat mollified by the promulgation of the Organic Law in 1932, which was then revised in 1934 to reflect the accession of Pu Yi to emperor. The delay in promulgating the actual constitution was a surprise to observers, many of whom were already convinced that this would be nothing more than a cosmetic document, imposed by Japan with little debate or controversy.

Yet controversy there was, because the constitution of Manchukuo could potentially establish precedents that would influence the entire empire, including Japan itself. Although legal scholar Mitani Takeshi characterized the Manchukuo Constitution as an imperfect copy of the 1889 Meiji Constitution, the structure of government outlined in the 1932 Law of the Organization of the State of Manchukuo was in fact adapted largely from the Republic of China. This was primarily to ensure a smooth transition between the two governments, but also because Chinese and Japanese jurists and jurisprudence were already quite close. Indeed, the Chinese government structure and legal codes as they appeared in the 1930s had themselves been very heavily influenced by Japanese advisors a generation earlier. Nevertheless, small but revealing differences separated Manchukuo from both China and Japan. Like that of the Republic of China, the government of Manchukuo was divided into Legislative, Judicial, Cabinet and Oversight Yuan, the latter omitting the Examination Yuan. Other differences were more fundamental. While the both the Chinese Legislative Yuan and the Japanese Imperial Diet had the power to propose, pass, and veto laws, the Legislative Yuan of Manchukuo was restricted to assisting (*yokusan*) in this function. The Manchukuo Legislative Yuan did have the power to reject laws, but this rejection was not binding and could easily be overturned. In theory, this was because the Manchukuo legislature was not an expression of popular will, but rather of

30. On Japanese economic interests, see Hikita Yasuyuki, "Kyū 'Manshū' ni okeru kigyōkatsudō no sōgōteki kenkyū [Japanese investment to Manchuria and the establishment of Zaibatsu subsidiaries], in 1997–1999 *nendo kagaku kenkyūhi hojyokin kiban kenkyū* [Research based on 1997–1999 Science Research Grant], ed. Suzuki Kunio 3 (2000): 91–128. On the diversity of Japanese interests within Manchukuo, see Taura Masanori, "Manshūkoku ni okeru chigai hōken Teppai mondai" [The problem of extraterritoriality revision in Manchukuo], in *Shokuminchi teikoku Nihon no hōteki tenkai* [The development of law in the colonial Japanese empire], ed. Asano Toyomi (Tokyo: Shinzan sha, 2004), 212–53. The four hundred thousand Japanese in the lands granted by treaty to the South Manchurian Railway were organized and surprisingly vocal opponents of abrogation.

31. BCR Fengtian, November 21, 1933; BCR Fengtian, January 18, 1936.

imperial benevolence, and served at the convenience of the emperor. According to Mitani, it also reflected the image that some had for the future of Japan, with power centralized at the expense of a severely weakened Imperial Diet. Given its lack of any real power, it was very difficult to find recruits for this body; British consular reports paint a rather sad picture of the 1934 Manchukuo legislature as thirty-nine “more or less reluctant nominees of Japan.”³²

Code and Judicial Reform

In addition to the structure of government, Manchukuo also provisionally employed the legal codes and judicial system of the Republic of China. Again, this was both a convenience and a reflection of the deep affinity between the two legal systems brought about by more than three decades of Japanese tutelage. Since the late nineteenth century, Japan had served as the most important source of knowledge and training for Chinese reformers and jurists on western systems of governance. Students in Japan and China translated large numbers of Japanese legal dictionaries and texts, such as the *Complete Six Codes* (*Roppō zenshō*), in the process adopting or redefining numerous new legal terms into the Chinese language. These texts and ideas were employed in the bout of political reforms that followed the disastrous Chinese defeat in the Sino-Japanese War (1894–1895) and foreign suppression of the Boxer Uprising (1899–1901), which included plans to modernize the legal system. The highpoint of this effort was the drafting of a new Chinese legal code (1906–1907) in which Japanese jurists such as Okada Asatarō, Matsuoka Yoshimasa, and Shida Kōtarō played a key role. Although this proposed code was eventually rejected by the Qing, in part because it relied too heavily on Japanese legal neologisms, it did differ significantly from its Japanese predecessor, both in order to incorporate elements of earlier Qing law, and because Japanese advisors such as Okada had sought to include certain reforms that they had been unable to affect at home.³³ Japanese influence on Chinese law continued after the

32. Mitani Taichirō, “Manshūkoku kokka taisei to Nihon no kokunai seiji” [The national form of Manchukuo and domestic politics in Japan], in *Iwanami kōza kindai Nihon to shokuminchi* [Iwanami lectures in modern Japan and colonialism], vol. 2, *Teikoku tōchi no kōzō* [Lectures on Imperial rule], 179–213, esp. 186–87; *Manshūkoku no kaibō*, 12; BCR Fengtian, December 24, 1934.

33. Dan Fenno Henderson, “Japanese Influences on Communist Legal Language,” in *Contemporary Chinese Law: Research Problems and Perspectives*, ed. Jerome Alan Cohen (Cambridge: Harvard University Press, 1970), 158–87. Gao Haifeng, “Lun Riben dui Qingmo fazhi de yingxiang” [On the influence of Japan on the legal system of the late Qing], in *Zhongguo falushi yanjiu* [Research on Chinese legal history], ed. Ye Xiaoxin and Guo Jian (Shanghai: Xuelin chubanshe, 2003), 527–43.

Chinese Revolution of 1911, and accelerated during the early Republican period. Most of the laws newly promulgated during the period 1914–1930 were either heavily influenced by Japanese law (as in the five-part Civil Code of 1929–1930) or directly copied from Japanese statutes (as were the Civil Procedure Regulations 1922, Criminal Procedure Law 1928, and numerous acts of commercial and shipping law).³⁴

Japanese influence was especially strong in the Chinese Northeast, which in the 1920s boasted one of the most advanced legal systems in the country. Beginning with its transition from military to civilian rule in 1907, the province of Fengtian was quick to adopt the various nationally mandated legal reforms instituted, first by the ailing Qing and later by Republican reformers. These reforms aimed at rationalizing and bureaucratizing the legal system, ensuring an independent judiciary, creating district courts, and accrediting judges and court officers. Despite the ongoing military hostilities between the Manchurian strongman Zhang Zuolin and his rivals to the south, such reforms were actually instituted in Fengtian more aggressively and successfully than elsewhere, the reasons being the high degree of security and prosperity enjoyed in Fengtian under Zhang Zuolin (who preserved his own territory by fighting his battles elsewhere) and the activism of local Chinese elites in building the court system as a bulwark against the unusually aggressive application of Japanese consular jurisdiction.³⁵ In contrast to the common image of the Republican-era Northeast as backward and lawless, Fengtian in 1926 had more modern courts than any other province. These courts were arranged and administered according to the regulations of the Republic of China and staffed by well-qualified jurists and administrators, many of whom were trained overseas, especially in Japan.³⁶

On this foundation, the new government promised the promulgation of new legal codes in accord with the “national feelings” (*guoqing*) of Manchukuo. Like the writing of a constitution, the revision of laws proved to be an unexpectedly complicated process, reflecting debates and interests that extended beyond Manchukuo itself. Given Mitani’s suggestion that the weakening of the Manchukuo legislature represented precisely what some had hoped to enact in Japan, it is not difficult to see the revision of the Manchukuo codes as in many ways setting the precedent for issues of significance for the future direction of the Japanese empire as a whole. It

34. Soejima Shōichi, “‘Manshūkoku’ tōchi,” 132–35.

35. Eric W. Esselstrom, “Rethinking the Colonial Conquest of Manchuria: The Japanese Consular Police in Jiandao, 1909–1937,” *Modern Asian Studies* 39.1 (2005): 39–75.

36. Zhang Qin, “Civil Justice in Early Twentieth-Century Northeast China: Fengtian Province, 1900–1928” (Ph.D. diss., Department of East Asian Studies, McGill University, 2005), 69–112.

also explains the numerous bemusing delays in their promulgation.³⁷ The real work on code revision began in the spring of 1933 with the convening of a Law Inquiry Commission. This was followed by similar meetings through 1935. As with the constitution, these meetings employed high-ranking Japanese jurists and were the subject of interest of legal journals in Japan.³⁸ Over the next few years, a number of commercial laws were enacted, but formal codes were not promulgated until early 1937, a full five years after the formal founding of Manchukuo.³⁹

Yet even as new codes were being produced, nominally temporary police powers, designed to free authorities to punish rebellion, remained in effect. Clearly, the maintenance of law and order was at no point compromised; before and after the promulgation of the formal codes, numerous law-making authorities of Manchukuo also produced volumes of specific penal statutes. Nevertheless, police also retained sweeping authority to make arrests on charges of political crime, the sort of generally defined powers enshrined in the 1932 Provisional Law for the Punishment of Political Criminals to prosecute any behavior that “undermined the state.” This law was the vehicle for various waves of mass arrests made before the visit of the Japanese prince Chichibu to Manchukuo in 1934 and the three-day visit of the Emperor Puyi to Harbin in September 1935, which prompted preemptive detention of 2,000 Chinese and 400 Russians.⁴⁰ It clearly served the purposes of the authorities to leave these laws in effect precisely because they were open ended. An ongoing dispute between the

37. British consular reports from the early 1930s express dismay at the many delays in the promulgation of a new constitution and legal codes. One early report noted hopefully that “The reform of the judiciary, the revision of codes, and the training of judges and police have been considered, and will probably be put into effect in the near future.” BCR Fengtian, November 21, 1933. This sentiment is expressed again in BCR Harbin, December 31, 1935 and Fengtian, January 18, 1936.

38. Nominally temporary security laws, such as the 1932 Provisional Law for the Punishment of Political Criminals (*zanxing cheng zhi pantu fa*), remained in effect throughout the life of Manchukuo. This purposefully open-ended law, which was modeled on the equally vague Peace Preservation Law in Japan, stipulated death or life imprisonment for “those who engage in rebellion or undermine the foundation of the state.” Fang Jue and Yao Yunpeng, “Ri-Wei Fushun difang fayuan he Fushun jianyu” [Fushun local courts and prisons in Japanese Manchuria], in *Zhimin zhengquan* [Political rights of colonies], ed. Sun Bang et al. (Changchun: Jilin renmin chubanshe, 1993), 467–75. Soejima Shōichi, “‘Manshūkoku’ tōchi,” 135.

39. Nineteen thirty-seven saw the promulgation of a Criminal Code (January 4), Criminal Procedure Law (March 8), Commercial, Shipping, Storage, Maritime Commerce laws (May 13), Civil Code (June 17), and Civil Procedure Law (June 30). For a complete list, see Soejima Shōichi, “‘Manshūkoku’ tōchi,” 135. See also BCR Fengtian, January 18, 1936; December 31, 1937.

40. One high profile example was the arrest of sixty Chinese Christians on general anti-Manchukuo charges, which was taken as a general attempt at intimidation of the missionaries. BCR Fengtian, January 4, 1936; Harbin, September 30, 1935; Fengtian, March 31, 1935.

Jilin Board of Education and local missionary schools over whether Christian students had to participate in state-sponsored sacrifices to Confucius was consistently complicated by the fact that nobody seemed to know precisely what regulations on such attendance were. However, this lack of precision always worked in the favor and largely for the convenience of the Manchukuo state. In this case, the content of the law remained a matter of far greater importance to the missionaries, who attempted to invoke their rights against openly hostile local authorities.⁴¹

Court Personnel and Practice

The reform of the judiciary proceeded slightly more quickly than had the laws. Like the codes, the preexisting courts were to be retained until a structural reform could be enacted. However, judicial reform began one year sooner, with the meeting in Fengtian of the First National Judicial Assembly on June 20–25, 1932, followed by a second assembly on August 15–20, 1933. During the latter, it was decided that the head of the investigation arm of the High Court would visit “civilized countries,” most obviously Japan, to seek models that could be employed in Manchukuo. The main goals of judicial reform were the restructuring of jurisdictions and the replacement or retraining of personnel. For the former, work began on a Courts Reorganization Law at the beginning of 1934, and the law itself was promulgated in January 1936, to take effect on July 1 of that year. This law replaced the Chinese system with the four-tiered structure of Supreme, High, District, and Subdistrict Courts employed in Japan. Procurates (*jiancha yuan*), responsible for both the investigation and prosecution of crimes, would be attached to, but remain independent of the courts at each level. This process vastly expanded the number of courts. In 1928, the province of Fengtian had eighteen courts: one High, twelve District, and five Subdistrict. In 1943, the same province had nearly three times that number: three High Courts, twenty-seven District, and thirty-two Subdistrict. Nationwide, Manchukuo had 16 High Courts, 125 District, and 156 Subdistrict courts, with a careful delineation and division of responsibilities and jurisdictions among these levels.⁴²

41. BCR Harbin, September 30, 1935.

42. In the previous system, local courts were part of the county government and were run by county level officials, such as the county judge (*xian sifa gong*) and trial officers (*chengshen yuan*). During the late 1920s, these were gradually replaced by three layers of modern courts. Zhang Qin provides a detailed examination of this complicated, and not strictly linear, transition. It is also worth noting that the boundaries of Fengtian did shift somewhat during this period. Zhang Qin, “Civil Justice,” 72–78; *The Manchoukuo Year Book, 1943*, 428–29; Shōichi, “‘Manshūkoku’ tōchi,” 140–41; Fang Jue and Yao Yunpeng, “Ri-Wei Fushun,” 469–70.

Table 1. Number of Courts in Fengtian Province and Manchukuo

	Fengtian 1928	Fengtian 1943	Manchukuo 1943
High	1	3	16
District	12	27	125
Subdistrict	5	32	156
Total	18	62	297

Source: Zhang Qin, "Civil Justice in Early Twentieth-Century Northeast China," 72–78; *The Manchoukuo Year Book, 1943*, 428–29.

The courts were administered by a combination of Japanese (from Japan and Manchukuo) and Manchukuo Chinese. By design, Japanese jurists were always intended to be dominant. In 1933, Furuta Masatake, the director of the General Affairs Bureau of the Department of Justice, initiated the "Hire Japanese Jurists Plan" (*Nihon shihōkan shōei keikaku*), by which all courts were to include a combination of Japanese and Chinese judges.⁴³ Japanese jurists were thus imported in large numbers, first to serve as experts in the reform of the Manchukuo legal system, and later to make up shortfalls in its personnel. Resident and visiting Japanese jurists formed the bulk of the numerous committees charged with the reform of Manchukuo law, and these were joined by judges recruited for the Supreme, High, and District Courts. As such, demand for Japanese jurists constantly exceeded supply. The Manchukuo government requested judges from Japan in December 1932. Twenty took up positions in 1933, followed by another thirty in 1934.⁴⁴

Most Japanese appointments were initially filled by experienced judges or legal scholars. The 1934 consultative committee included two and four judges from the Osaka and Tokyo District Courts, respectively. The 1935 committee included three professors from Tokyo Imperial University.⁴⁵ Furuta Masatake was himself formerly a public procurator of the Japanese Supreme Court. The first major change occurred after 1934, when most Chinese personnel retained from before the founding of Manchukuo were replaced en masse. As part of this reform, Japanese advisors were to be attached to every court and procuratorial office, including those at the new subdistrict level. This expansion of Japanese participation in the judicial system required a large number of individuals such that, by 1935, recruitment of high quality Japanese personnel was becoming a problem

43. Wu Hsin-Che, "Ribei zhiminzhuyi xia de Manzhouguo," 96–101.

44. The practice of importing foreign judges to sovereign states was not unique to Manchukuo—it was also common in newly independent nations of Latin America. Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002), 213, n. 4, 219.

45. Soejima Shōichi, "'Manshūkoku' tōchi," 135.

throughout the civil administration.⁴⁶ This prompted the hiring of second or third tier choices. When trained jurists were not available, positions would be given to inexperienced jurists who had passed the bar exam and, failing that, to ordinary Japanese.⁴⁷

It is difficult to assess the ideology of jurists coming to Manchukuo at this stage, or to generalize about how they saw themselves with regard to the legal community of Japan or the empire. However the world saw Manchukuo, it is clear that at least some of the Japanese who participated in its construction did sincerely believe the official ideals of the state, particularly during the early years.⁴⁸ Even cynical observers in the British Fengtian Consulate were forced to admit that “many of the higher Japanese officials are men of ability and integrity, and among them are doubtless some who desire to create for Manchukuo some real independence,” and that while Manchukuo was clearly designed to “subserve the political, military and economic purposes of Japan, . . . it is accompanied by a sincere, if incidental purpose to improve the lot of the Manchurian people.”⁴⁹ Japanese authorities clearly approached the legal realm with a reformist zeal, engineering a great deal of communication between the legal communities in Manchukuo and Japan. The two communities shared a surprising sense of common purpose, and communication did indeed travel both ways. Not only did Japanese jurists take up positions in Manchukuo, large numbers of Manchukuo jurists also attended state-sponsored field and study trips to Japanese courts. The development of law in Manchukuo remained a topic of consistent concern in Japan, as evinced by the frequent reportage of topics related to Manchukuo in publications such as the Tokyo-based *Legal News* (*Hōritsu Shimbun*). However, although Manchukuo was encouraged to create a distinct legal community, it was still a dependant one. Japan continued to maintain a tutelary presence in the formation of Manchukuo law, a relationship expressed most concretely in the formation of the Japan-Manchukuo Legal Advisory Society (*Nichi-Man hōsōkai*). Even steps such as the 1936 creation of a Manchukuo Bar Association and journal publication of Manchukuo Supreme Court rulings beginning the same year projected only a limited degree of jurisdictional independence. Identical steps had already been taken decades earlier in the colonial judiciaries in Korea and Kwantung.⁵⁰

46. Fang Jue and Yao Yunpeng, “Ri-Wei Fushun,” 468. On Furuta, see BCR Fengtian, March 31, 1934.

47. Soejima Shōichi, “‘Manshūkoku’ tōchi,” 141.

48. See for example, Mariko Asano Tamanoi, “Knowledge, Power, and Racial Classifications: The ‘Japanese’ in ‘Manchuria,’” *Journal of Asian Studies* 59.2 (2000): 248–76.

49. BCR Fengtian, December 24, 1934.

50. *The Manchoukuo Year Book, 1943*, 437–39; Supreme Court [Manchukuo], *Saikō hōin hanketsurei* [Rulings of the Supreme Court]. Unnumbered volume, vols. 5–8, 1940–1945 (Xinjing: Hōsōkai, 1935). Some of these cases are repeated in Supreme Court [Manchukuo],

Chinese participation was diverse and characterized by a high turnover of personnel. For the first two years, most courts (particularly at the lower levels) retained their original staff in temporary positions. Many of these courts were themselves of relatively recent vintage. The District Court of Fushun, for example, had only been established in 1929. In 1931, even before the formal declaration of Manchukuo, the head judge Chen Jizu was replaced by Sun Zhenkui, who himself only remained at the bench until the national overhaul of judicial personnel in 1934, at which time he was replaced by Xu Yongli. Again, this turnover was by design, and the shortage of Chinese personnel it created was to be abated by training new jurists in Manchukuo law. This was carried out in two phases. In 1934 a legal college was founded in the capital, Xinjing (modern Changchun) at the cost of 320,000 *yuan*, followed in 1937 by a full law faculty at the newly established Manchukuo Foundation University. There was no shortage of applicants to these schools. In the first entrance examination for the law college, 1,210 local candidates in Fengtian, Xinjing, and Harbin competed for one hundred places. In subsequent years, the school continued to enroll sixty to seventy students per year for the three-year course, which was taught by Japanese instructors and included extensive Japanese language training.⁵¹ Like those who participated in the regime in other capacities, the large numbers of Chinese who sought and gained admission to Manchukuo law schools were clearly driven by a variety of incentives. British observers surmised that most were motivated by simple “self-preservation,” but perhaps equally true is the suggestion by Japanese examiners that these recruits represented a stratum of society that had been oppressed under the previous regime.⁵²

On the whole, this massive effort at judicial reform seems to have pro-

Saikō hōin minji hanketsurei shū [Collected civil rulings of the Supreme Court], vol. 5 (Xinjing: Hōsōkai, undated), and in *Manshū shihō kyōkai* [Manchukuo judicial work group], ed., *Manshū teikoku saikō hōin hanketsurei yōran* [Collected civil rulings of the Supreme Court of the Empire of Manchuria] (Xinjing: Ganshōdō, 1938). Cases from Kwantung appear in Kawabata Gen'ichirō, ed., *Kantō kōtō hōin jōkoku bu hanrei shū* [Collected rulings of the Kwantung High Appellate Court], vol. 1 (Dairen: Hōritsu jippō, 1926); and Kwantung Territory High Court, *Kantō todokufu kōtō hōin min, keiji hanrei shū* [Civil and criminal rulings of the Kwantung Territory High Court], (Dairen: Manshū Nichinichi, 1915). These materials are housed in the Hokkaido University and Shenyang Provincial Libraries.

51. *The Manchoukuo Year Book, 1943*, 435–36; Fang Jue and Yao Yunpeng, “Ri-Wei Fushun,” 468; BCR Fengtian, September 30, 1934; BCR Fengtian, December 24, 1934; Soejima Shōichi, “‘Manshūkoku’ tōchi,” 141–42. There is slight discrepancy between Soejima and the consular reports concerning the exact numbers enrolled.

52. BCR Fengtian, December 24, 1934; Mutō Tomio, Jiang Jinshu, and Sugawara Tatsurō, “Sifabu faxuexiao ruxue shiyan weiyuan zhi ganxiang” [Reflections from the Judicial Law College Entrance Examination Committee], *Hōsō zasshi* 1.1 (1934): 112–30.

duced poor results. Clearly it was an object of high priority; in 1934 alone, over one million *yuan* were allocated for highly visible projects related to judicial reform. Japanese commentators characterized the previous system as slow, inefficient, and corrupt. Yet by 1937 many felt that little of substance had changed.⁵³ Despite the rhetoric of checks within the government, the judiciary, as with the whole of the civil administration, remained clearly subordinate to the interests of the military, particularly the Kwantung Army, a state of affairs that quickly eroded the idealism and real power of civil officials. This malaise, plus the shortage of trained manpower that it engendered, brought the operation of the courts to a frustratingly slow pace.

The inefficiencies and limited real power of Manchukuo courts are seen in case of Simon Kaspe, a French Jewish pianist who was kidnapped in Harbin by Russian criminals in 1933 and then murdered when no ransom was forthcoming. The ongoing attempt to court the Russian community (both as local enforcers within Harbin and for the conduct of espionage in the Soviet Far East) and general anti-Jewish sentiment among the local police ensured that the investigation into his murder by Harbin officials remained a half-hearted affair at best. The Japanese chief of police in Harbin publicly declared that leniency should be offered, as the ransom was supposedly to be used for "patriotic" (i.e., anti-Soviet) purposes, and throughout the investigation, the Japanese-controlled press printed anti-Jewish and Freemason articles. The investigation committee itself included a "local scoundrel" named Martinoff, who British consular observers suggest may have been involved in the crime itself. Despite a reorganization of court districts in northern Manchukuo aimed specifically at speeding up procedure, by 1936 the case had still produced no judgment, leading these same observers to characterize the much-touted reforms as "little better than mere talk."⁵⁴

The Kaspe case demonstrates the ease by which the power of the courts could be hijacked, leading to the question of whether the entire system existed simply for show. Clearly many within the government were sincerely devoted to legal reform and did retain the sense that the creation of a viable legal system was vital not only to the proper administration of Manchukuo, but also to the civilizational ideals of the Japanese empire. The

53. *The Manchoukuo Year Book*, 1943, 427.

54. BCR Fengtian, December 24, 1934; BCR Harbin, October 1, 1936. Another example of the dismay at the courts felt by these observers concerned the Murata case, in which the case of a Japanese employee accused of embezzling money from a British firm was especially slow in being brought to trial. BCR Fengtian, September 30, 1935. Nor was this the first time that open anti-Soviet sentiment would be expressed in Japanese courts. When in 1929 a sixteen-year-old White Russian youth tried to assassinate the Soviet consul to Dairen (Dalian), killing his secretary instead, nineteen Japanese lawyers volunteered to work for his defense, and the local Japanese population was said to be "entirely on the side of the accused, although he was clearly guilty." BCR Dairen, April 10, 1929.

1932 “Summarized Directions for the Guidance of Manchukuo” sums up this transformative mission for the legal realm, emphasizing the importance of “aiding the development of Manchukuo law according to local custom, and encouraging a respect for law.”⁵⁵ Similarly, the direction of civil law to the ends of social engineering are seen in the reform of Inheritance Law, which in considering the status of concubines and illegitimate children, and the legality of customs such as marriage of close relatives, had to weigh the legal enshrinement of local practices against the need to reform “evil customs.”⁵⁶ Yet, despite the good intentions of many, the courts remained a captive institution, beholden both to the Japanese legal system and to the real power holders in the military and police.

In sum, by 1937 law and legal reform in Manchukuo had already received years of sustained attention and investment and had served a variety of practical and rhetorical ends. The beginnings of a constitutional law and revision of Manchukuo legal codes were obvious requirements of good governance, also serving as public statements of the meaning and structure of the new state. The expanded court system was among the most far-reaching arms of the government, particularly through the proliferation of new, local judicial organs. The legal system and legal education were effective conduits for recruiting both Japanese and Chinese civilian officials into Manchukuo bureaucracy. Yet these achievements aside, the practical limits of law in Manchukuo were plainly evident. As a whole, the civilian government was limited in the scope of its power: in theory, it served at the pleasure of the emperor; in fact, it was beholden to the military. Even after years of costly reform, the courts remained slow and inefficient, the long-promised constitution had not been promulgated, and no nation except Japan appeared likely to even consider taking up the call to surrender extraterritorial rights. To a degree, the rhetorical significance of law made up for its practical limitations. The language of law undergirded the legitimacy of the state, even as the law directed itself toward spiritualist, rather than liberal, ends. Yet the inherent weakness of Manchukuo’s legal institutions, tolerable during a period of relative peace and security, remained in place, and these would prove fatal in the face of the coming crisis.

55. *Manzhouguo zhidao fangzhen yaogang*, cited in Soejima Shōichi, “‘Manshūkoku’ tōchi,” 140.

56. This reform commenced with a massive ethnographic project that attempted to establish the traditional practices of each of the five races of Manchukuo. Chikusa Tatsuo, *Manshū shinzoku sōzoku hou no yōkō* [Overview of family inheritance law in Manchuria]. *Nihon rippō soshō*, 26 (Tokyo: Nihon hōri kenkyūkai, 1943). *The Manchoukuo Year Book, 1943*, 441–42.

III. Changes after 1937

As Manchukuo followed Japan into militarist totalitarianism, edging toward conflict first with China and later with the Western powers, enthusiasm for the putative ideals of the new state quickly evaporated, as did interest in appeasing world opinion with promises of a new and independent nation. During the late 1930s, diplomatic and legal niceties quickly fell by the wayside, prompting the passage of ever more sweeping police powers, particularly under the conveniently broad umbrella of “bandit suppression.” This is the image that most will undoubtedly have of law in Manchukuo—a cynical, repressive, and typically “wicked” legal system. Yet even during this period, legal procedure was not abandoned. If anything it increased as a law of emergency, temporary provisions, and emergency courts. Moreover, even as the practice of law became increasingly repressive and secretive, the rhetoric of legal developmentalism remained attractive.⁵⁷

British consular reports from the mid-1930s paint a picture of both Chinese and Japanese officials in Manchukuo growing increasingly cynical and opportunistic. Much of this change was the result of resignations by earlier officials, such as those in May 1935, when much of the Cabinet resigned their posts. Although ineffective, many in this first wave of officials, such as Zang Shiyi, the governor of Liaoning Province from 1930–1932, who was later reluctantly convinced to become the head of the Civil Administration Bureau in Manchukuo, had been credited with bringing some degree of competence and respectability to the new government. Perhaps the greatest loss was the idealistic architect of the Kingly Way, Premier Zheng Xiaoxu, who is frequently portrayed as somewhat pathetic and powerless, yet “the only Chinese personality of integrity” in the government. The invasion of the Chinese heartland, and complete reorganization of the Manchukuo government along more totalitarian lines in 1937, prompted a second mass resignation of many such officials, including Feng Hanqing, the Minister of Justice.⁵⁸ Despite the consistently rosy picture painted of Manchukuo

57. It is worth noting that such emergency powers had been invoked much earlier to crush rebellion in Taiwan and Korea. Nor were they unique to Japan or Manchukuo. I suspect that the 1920 Emergency Powers Act in Britain probably influenced the way in which similar conditions were later instituted in the Japanese colonies. For a theoretical and historical introduction to the rhetorical significance of emergency law, see Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2003).

58. On the 1937 reorganization, see Zhang Runsheng, *Wei Manzhouguo shi xinbian* [Newly compiled history of the pretender Manchukuo] (Beijing: Renmin chubanshe, 1995), 413–20.

for the Japanese public, it became increasingly difficult to recruit talented Japanese officials, as well. Here, the greatest problem was the common knowledge that the true power in Manchukuo was not with the civilian government, but the Kwantung Army. Even high-ranking positions in the government were filled by mediocre talents, because "no Japanese with first class qualifications is willing to accept so equivocal a post." Perhaps the best evidence of the complete disappearance of any former devotion to the ideals of Manchukuo independence among Japanese administrators was the fact that the mass resignation of Chinese officials in 1937 was joined by only one such action by a high-ranking Japanese.⁵⁹

At the same time, Japan became increasingly disinterested in appeasing world opinion and more willing to act unilaterally in Manchukuo. Consular observers, never really sympathetic to claims of Manchukuo statehood, commented in 1937 that the independence of Manchukuo was "increasingly a sham."⁶⁰ Earlier efforts to persuade Western powers to legitimate Manchukuo by voluntarily abrogating extraterritoriality changed after 1936 into veiled threats that extraterritoriality for non-recognizing powers would simply be revoked, and in practice, the extraterritoriality of British subjects and interests was increasingly ignored.⁶¹ The rationale for this change in attitude was both that the Manchukuo legal system had now matured and, further, that the continuance of extraterritoriality had been granted as a courtesy in light of former treaties and that such relations technically could not exist between states that did not maintain formal diplomatic representation.

At the same time, legislation was prepared for the abolition of Japanese extraterritoriality. This initiative was portrayed as evidence of the reform of the Manchukuo legal system. But in fact it represented the increasingly direct administration of Manchukuo by Japan and, thus, the legal enshrinement of the special rights that Japanese interests already enjoyed.⁶² Japan

59. BCR Fengtian, January 18, 1936; BCR Fengtian, December 31, 1937.

60. BCR Fengtian, January 6, 1937.

61. Before 1941, Americans and Canadians enjoyed somewhat better treatment. Again, this newly aggressive stance was not unique to Japanese imperialism. The Chinese National People's Congress announced a similar policy in May 1931, just months before the Kwantung Army initiated military action in Manchuria. Donald A. Jordan, "The Place of Chinese Disunity in Japanese Military Strategy during 1931," *The China Quarterly* 109.1 (1987): 42–63.

62. BCR Fengtian, January 18, 1936; Fengtian, September 4, 1936; Fengtian, September 7, 1937; Fengtian, December 31, 1937; Fengtian, January 16, 1939. Zhang Runsheng further notes that the abolition of extraterritoriality also streamlined direct administration over Japanese assets, particularly the holdings of the SMR, thus freeing up 65 million yen and large numbers of personnel, who were then channeled into the Manchukuo government. Zhang Runsheng, *Wei Manzhouguo*, 421–26. Beyond Manchukuo, war with China prompted legal

formally surrendered extraterritoriality in Manchukuo on November 5, 1937, less than two months after the outbreak of war, by which time many Western interests had already fled the country. Even then, the greatest obstacle to abrogation was not fears of Western condemnation, but the vocal objections of Japanese living in Manchukuo. Not surprisingly, this transition was portrayed by Japan as a glowing triumph. Looking back on this event, the 1943 *Yearbook of Manchukuo* stated entirely without irony that, “surveying the conditions following the abolition of extraterritoriality, it may be stated with good reason that the Japanese residents of Manchukuo have suffered no abridgement of rights.”⁶³

During this same time, the Kingly Way as the moral principle of state was being gradually replaced by a nascent attempt to build the cult of the Manchukuo emperor, and this elevated sense of imperial privilege was increasingly used to bypass the supposed primacy of law. The cult of the Manchukuo emperor had begun to develop under official auspices during the mid-1930s, and his divinity was itself legally enshrined in the Religions Law of 1938. Most elements of emperor worship in Manchukuo were directly copied from that in Japan. These included mass veneration of imperial regalia and rescripts—in May 1939, the fifth promulgation anniversary of one such rescript prompted a rally attended by 50,000 members of the state-sponsored Concordia Association.⁶⁴ It also included increasingly strong rhetoric that located the foundation of the state and its authority to rule in the person of the emperor, rather than popular will. Again, this was not entirely new. According to an emergency provision of the Organic Law of 1934 (the year that Pu Yi ascended to the throne), laws were considered by the Privy Council but promulgated on the authority of the emperor (a point that seems not to have complicated the legal enshrinement of imperial divinity four years later). However, with the outbreak of war, such rhetoric intensified. According to an official source from 1943, all authority in Manchukuo (as in Japan) proceeded from the emperor, who then delegated the actual operation of state machinery to the fallible beings in government.⁶⁵ While seemingly nothing more than propaganda, the location of legal authority in the person of the emperor allowed unlimited latitude to arbitrary rule, while preserving the language of law and legality. This was perhaps best exemplified in the

centralization and integration throughout the empire under the Japanese aegis; not coincidentally, this was roughly the time that Taiwan and Korea were formally brought into the Japanese legal system. Wu Hsin-Che, “Ribei zhiminzhuyi xia de Manzhouguo,” 109–13.

63. Taura Masanori, “Manshūkoku ni okeru chigai hōken”; Soejima Shōichi, “‘Manshūkoku’ tōchi,” 150–54; *The Manchoukuo Year Book*, 1943, 439.

64. BCR Fengtian, January 6, 1937; April 2, 1938; June 20, 1939.

65. *The Manchoukuo Year Book*, 1943, 165.

final outcome of the Kaspe trial. Despite obvious official sympathy for the six defendants, in 1936 a Harbin court had found them guilty under banditry laws and sentenced all to death without possibility of appeal. However, the case was ordered for retrial in January 1937 under the old Criminal Code, a maneuver that allowed the murderers to retroactively appeal to a general Imperial Amnesty of March 1, 1934. When summing up the original guilty verdict, the judge had stated that the offense of the accused "could not be pardoned by either God or man," prompting the author of the Harbin consular intelligence to comment that "apparently the Emperor of Manchukuo is more than human or divine, since he thought fit to exercise his imperial clemency in such a particularly revolting case of murder."⁶⁶

In a similar fashion, the increasingly intrusive role of the state and erosion of personal rights were given a legal foundation in the name of national emergency. Again, 1937 was the watershed. The "totalitarian" reorganization of the government on July 1 of that year placed great discretionary power in the hands of the central government and was followed by "the enforcement of a stream of laws in keeping with such a structure."⁶⁷ These included acts such as the Manchurian National Mobilization Law, which was promulgated on February 26, 1938, enforceable in "times of emergency," and conferred wide powers over property and individual action. The Defense Law of April 1 of the same year created provisions for military tribunals and establishment of a National Defense Command with dictatorial powers. However, even if these new laws surprised some contemporary observers, the seeds of wartime legislation had been planted much earlier. For example, the logic of the 1932 Provisional Law for the Punishment of Political Criminals, which was used to weed out "those who opposed the direction of national thinking," reached its climax with the promulgation of the appropriately ominous-sounding Thought Rectification Law (*sixiang jiaozheng fa*) of 1944.⁶⁸ The laws that grew increasingly broad and draconian during the 1940s all had roots reaching back to the founding of Manchukuo.

This period also saw the imposition of preventative detention and summary trial of "thought criminals" (*sixiang fan*). Both tactics had been successfully deployed before elsewhere in the Japanese empire. Following re-

66. BCR Harbin, December 4, 1937.

67. BCR Fengtian, December 31, 1937

68. BCR Fengtian, December 31, 1937; April 2, 1938. Yao Hongshan "Wei-man Siping jianchating jianjie" [Brief introduction to the Siping Procuracy], in *Zhimin zhengquan* [Political rights of colonies], ed. Sun Bang et al. (Changchun: Jilin renmin chubanshe, 1993), 475–84, esp. 484. In keeping with both the centralization of power, and the new emphasis on public security, the maintenance of order after 1937 was to be pursued jointly by the police and the army. Zhang Runsheng, *Wei Manzhouguo*, 414.

bellions in 1898, authorities in Taiwan had established a system of temporary courts that remained in place until the 1919 reforms. Although Taiwan had remained peaceful thereafter, a 1936 Law for the Protection and Observation of Thought Criminals created a special police and “Thought Procuracy,” who were assisted in their work by the wide powers granted under the Law for the Protection and Observation of Thought Criminals, promulgated in the same year.⁶⁹ In Korea, such policies were pursued with even greater enthusiasm.⁷⁰ In Manchukuo, a special Public Security Division was established in 1938 to “strengthen the safeguard against ‘ideological’ offenses,” and in that same year each High Court was instructed to create a special Public Security Court (*zhi'an ting*) in order to deal with five particular types of crime, each of which was in some form or another grounded in disloyalty to the state.⁷¹

The trend toward summary judgment further accelerated in the latter half of 1941, as Japan prepared to expand the scope of the war effort. No doubt prompted by the need to deal with large numbers of cases, decisions in special courts were speedy and final. The “Special Procedures for the Trial of Internal Security Cases in Internal Security Courts,” released on August 25, 1941, stipulated that the accused in such courts had no right of defense or appeal. To this, a Manchukuo version of the Japanese Peace Preservation Law of December 27, 1941, added that “in order to strengthen cooperation between the Public Security Courts and the military police,” cases related to internal security would be tried on the spot.⁷² By 1942, these courts were being established at every level of the legal system. In that year, Imori Shigetō, a graduate of Tokyo Imperial University who had been a High Court judge in Manchukuo since 1938, was sent to establish a Public Security Court at the High Court in Jinzhou. As was usually the case, he officially took the role of assistant head, leaving the titular headship

69. Wang, *Legal Reform in Taiwan*, 116.

70. Chulwoo Lee, “Modernity, Legality and Power in Korea,” 45–49.

71. As recounted by Yao Hongshan, the five crimes were: civil disorder (*nei luan zui*), disloyalty (*beipan zui*), endangering national communications (*weihai guojiao zui*), high crimes against the Military Plan Protection Law (*junji baohu fa zhi zhongzui*), and high crimes against the Provisional Law for the Punishment of Political Criminals (*zhanxing cheng zhi pantu zhi zui*). Yao Hongshan, “Wei-man Siping jianchating jianjie,” 471.

72. Many of the security laws promulgated during this period appear to have been the personal initiative of Nakai Kyūji, a Japanese jurist who was made an advisor (*canshi yuan*) to the judiciary over the prison system in 1941, and head of the Thought Rectification Department (itself under the judiciary) in 1943. He was captured by Soviet troops in November 1945 and placed on trial for war crimes in Fushun in 1954. His confession, “I murdered 93,000 Chinese” (*wo haisile 93,000 ming Zhongguo ren*) is available in various collections of post-war confessions, such as *Zui'e de zīgongzhuang—Xin zhongguo dui Riben zhan fan de lishi shenpan* [The most horrible confessions—new China casts history’s judgment on Japanese war criminals] (Beijing: Jiefang jun, 2001).

to a Chinese jurist. According to Iimori's own account, between the years 1942 and 1945, this single court sentenced 1,700 to death and 2,600 to life imprisonment, figures that were probably not atypical of other similar sized courts in Manchukuo.⁷³

Not surprisingly, these and other organs of the Manchukuo judiciary operated with a great deal of discretionary power. This was particularly true of Japanese officials. As had Iimori in Jinzhou, the Japanese official in the Siping District Procuratorial Office technically sat in an advisory role, as the assistant head. In reality this office, which was held by Matura Kazuo from 1937, wielded what was described as almost absolute power, not only over Siping itself, but also of nearby subdistrict offices, such as Xing'an. Moreover, the training of native officials meant that by the 1940s, such power was necessarily not always held by a Japanese. In 1942, Wang Wenrong, a Chinese graduate of the Legal Training College in Xinjing, was appointed to be head of the Beizhen subdistrict Procuratorial Office. Although real power was most often vested to a Japanese vice-official, Wang (who like all graduates of the Legal Training College was fluent in Japanese) appears to have wielded real power, particularly after the passage of the Thought Rectification Law in 1944. On one occasion, a peasant attending a periodic market was captured and taken into custody for suspicion of seditious activities. Wang was notified of this by telephone and instructed police to hold the man until he was able to review the case. On this word, the man was held for a number of months and finally died of illness while in custody.⁷⁴

The question then is whether these courts made any attempt at real justice or were simply a vehicle for the meting out of arbitrary punishments designed to cow the local population. To be sure, the entire system was brutal. Particularly in the Public Security Courts the accused had no chance to face their accusers, and evidence was often obtained from nameless informers in the Japanese intelligence structure. Torture was routinely employed to obtain evidence and confessions, and death of suspects while in custody was very common. Yet equating the courts with violence is a very simplistic answer. Brutality (albeit to a significantly lesser degree) was very much a feature of the preexisting Chinese penal system, and much of the violence of criminal investigation and punishment in Manchukuo took place behind

73. *The Manchoukuo Year Book, 1943*, 437; Iimori Shigetō, "Tebie zhi'an ting de faxisi shenpan" [Fascist judges of the Special Public Security Courts], in *Zhimin zhengquan* [Political rights of colonies], ed. Sun Bang et al. (Changchun: Jilin renmin chubanshe, 1993), 485–93. While this statement appears to have been collected in China, probably under duress, it is worth noting that Iimori continued to express sympathies for the Chinese communists after his return to Japan.

74. Yao Hongshan, "Wei-man Siping jianchating jianjie," 484.

closed doors, rather than on public display. Moreover, in Manchukuo, as much as in Taiwan and Korea, the subject population did participate willingly in the legal system, as litigants in civil suits, which suggests that at least they did not regard the courts simply as monuments to terror.⁷⁵ Perhaps most compellingly, the facile portrayal of the Manchukuo legal system as nothing more than a sham intended to cast a veil of legitimacy over a network of state terror raises the obvious question of why authorities would have found such an arrangement worth the continued investment in precious human and material resources.

Perhaps the most intriguing evidence comes from the court statistics themselves. Not surprisingly, the number and severity of criminal sentences increased with the rising insurgency and deterioration of the war effort. Between 1933 and 1935, the Fengtian High Court had delivered one hundred twenty-four sentences of death, or heavy imprisonment. One decade later, the Public Security Court in Jinzhou (a neighboring and comparably sized jurisdiction) handed down roughly 4,300.⁷⁶ Certainly in the Public Security Courts, trial seems to have been tantamount to conviction. Early in 1943, while Yokoyama Mitsuhiko was the vice head of the High Court in Jinzhou, the Japanese intelligence network managed to infiltrate the Communist underground, leading to the arrest of over five hundred individuals from May through August. Of these, nearly two hundred were charged by the Public Security Court and tried by the Chengde District Court. All were convicted—seven were sentenced to death, 120 to more than ten years imprisonment, 73 to less than ten years.⁷⁷

However, given the high rate of convictions, the relatively low proportion of death sentences might seem surprising. Nationally, the number of arbitrary arrests rose dramatically in the final years of the war. According to one estimate, six thousand were taken to Thought Rectification Centers (*sixiang jiaozheng yuan*) in 1943, eight to ten thousand the following year, and twelve to fifteen thousand in 1945. In 1943, the police began the preventative arrest of “vagrants,” also in large numbers; one sweep in three cities

75. Fang Jue and Yao Yunpeng, “Ri-Wei Fushun,” 471; Yao Hongshan, “Wei-man Siping jianchating jianjie,” 478–80. A large collection of land disputes tried by Japanese courts in occupied Beijing appears in *Pekin chihō hōin minji hanketsu oyobi saitei* [Cases and judgments in Beijing local courts], which was published in *Shina toshi fudōsan kankō chōsa shiryō* [Collected investigations on land customs in Chinese cities], vol. 7 (Dairen: Mantetsu chōsabu, 1941–1942). Outside of Manchukuo itself, Philip C. C. Huang has effectively refuted the notion that Chinese claimants always preferred informal arbitration to formal adjudication. See, for example, his “Civil Adjudication in China, Past and Present,” *Modern China* 32.2 (2006): 135–80.

76. Fang Jue and Yao Yunpeng, “Ri-Wei Fushun,” 470; Iimori Shigetō, “Tebie zhi’an ting de faxisi shenpan,” 485.

77. Iimori Shigetō, “Tebie zhi’an ting de faxisi shenpan,” 488–89.

led to more than 7,400 arrests. Housing large numbers of prisoners was a problem that Japan had faced before, but was certainly ill equipped to do in late period Manchukuo. The answer, and according to Zhang Rusheng, the most likely the reason for the arrests, was to send the prisoners to conscript labor. This theory seems plausible, given that the once plentiful supply of labor from North China began to dry up during the early 1940s, creating serious labor shortages in Manchukuo by 1943.⁷⁸

At the same time, ordinary and Public Security Courts in theory each maintained distinct jurisdiction. The latter did not try ordinary crimes, only violations of the vague police and security ordinances. Toward the end of the regime, the majority of prosecutions were shunted into the latter category. This was not only procedurally easier, it also euphemized the proliferation of resistance movements as simple banditry. Official statistics provide a particularly interesting portrayal of the state of crime in Manchukuo. These divide cases into ordinary crimes (of which burglary, larceny, gambling, and murder comprise the majority) and violations of special laws and regulations. Although both categories of crime had existed from the outset, over the life of the state, the latter rapidly expanded far out of proportion to the former. Statistics from 1933 show that most of the 25,538 persons convicted of crimes in Manchukuo were charged with ordinary crimes, gambling, theft, and assault being the most prominent. Only 6,865 were convicted under special laws and more than half of these were for crimes related to opium. Ten years later, the number of convictions for ordinary crimes had just over doubled, while those convicted under

Table 2. Criminal Convictions in Manchukuo, 1933 and 1943

	All convictions	Ordinary crimes	Special laws and regulations	Special laws and regulations not counting opium laws
1933	25,538	18,673	6,865	3,337
1943	77,997	43,901	34,096	30,612
% change	305%	235%	497%	917%

Source: *Shihō bu sōmu ji chōsa ka* [Judicial department, general affairs section, investigations office], *Manshū teikoku shihō tōkei nenpō* [Empire of Manchukuo judicial statistics annual report]: (Fengtian: Shihō bu sōmu ji chōsa ka, 1935), 148–58; *The Manchoukuo Year Book, 1943*, 431–32, 440.

78. Zhang Runsheng, *Wei Manzhouguo*, 656–60. David Tucker, “Labor Policy and Construction in Manchukuo,” in *Asian Labor in the Wartime Empire: Unknown Histories*, ed. Paul H. Kratoska (Armonk, N.Y. and London: M. E. Sharpe, 2005), 25–60. See also Thomas R. Gottschang and Diana Lary, *Swallows and Settlers: The Great Migration from North China to Manchuria* (Ann Arbor: Center for Chinese Studies, University of Michigan, 2000), especially 127–33.

special laws and regulations grew by a factor of five. Of these, the number convicted for opium related offenses remained roughly constant, at about 3,500. In contrast, the ranks of those convicted under the broadly applied “Robber and Bandit Suppression Law” and the equally vague violation of “Police Regulations” grew most rapidly. Clearly these two categories, comprising over twenty-six thousand cases in 1943 alone, are catchalls for general seditious activity. Yet it is no coincidence that this growing number would be separated from the ten individuals convicted of “rebellion” under the criminal code or the 189 being held for “revolution” in Manchukuo prisons.⁷⁹

IV. Conclusions—Legal Institutions and Culture in the Wartime Empire

Throughout the thirteen years of its existence, from before its formal founding to its final days on the front lines of the defense of Japan, Manchukuo remained a highly legalistic state and society. Yet, despite the brevity of its history, the use made of law in the early and late years of Manchukuo did change tangibly during this period. At the outset, the creation of a legal system appears most prominently in the context of empire building. In this sense, the courts and codes imposed by Japan were no different from the package of schools, civic and commercial organizations, or other institutions that an efficient colonizing power would set up in a new land. But because Manchukuo was so clearly meant to serve as an organizational and spiritual model for a future pan-Asian empire, all of these institutions were open to greater visibility and arguably more was at stake in their success. By the late 1930s, and increasingly so thereafter, the point of emphasis changed. The exercise of law became less an issue of social construction and more overtly aimed at control—stopping the partisan insurgency and ensuring uninterrupted production for the sake of the war effort.

79. Convictions under special opium laws numbered 3,528 and 3,484 in 1933 and 1943, respectively. *Shihō bu sōmu ji chōsa ka* [Judicial department, general affairs section, investigations office], *Manshū teikoku shihō tōkei nenpō* [Empire of Manchukuo judicial statistics annual report] (Fengtian: Shihō bu sōmu ji chōsa ka, 1935), 148–58; *Manchoukuo Year Book, 1943*, 431–32, 440. While there is no need for a detailed outline here, suffice it to say that Manchukuo faced a massive partisan resistance, much of which was integrated with or sympathetic to the rapid expansion of the Communist guerilla movement in North China. Even taking into account that materials published in China tend to downplay the contribution of non-Communist resistance, there exists ample documentary evidence on the scale of the Communist movement in Manchukuo. Li Yunchang et al., eds., *Chengde kang-Ri douzheng shiliao xuan* [Selected historical materials on the anti-Japanese struggle in Chengde] (Beijing: Renmin ribao chubanshe, 1997) is a typical example.

For each period, however, it could be argued that these same aims might have been as well achieved without law. The formation of a modern legal system was an important element of Manchukuo's attempt to project a progressive image. Had this been nothing more than an effort to bamboozle foreign diplomats, it would have been easy enough to trot out a sham constitution, without the years of delay that promulgation actually required. And there certainly would have been no need to establish and maintain a court system that was far more extensive and costly than anything the area had previously seen. Moreover, the language of and attention to law actually intensified after the commencement of hostilities in China, a time when diplomacy largely fell by the wayside and the maintenance of domestic order could arguably have proceeded on the basis of simple military terror. This there certainly was, but it was wedded to the legal system, one that took great pains to separate prosecution of insurgency from ordinary criminal law, euphemizing the former as "banditry" rather than the more telling charges of rebellion or treason.

One reason for the continued importance of law lies in the nature of Manchukuo itself. Long dismissed as a simple "puppet" of Japanese militarism, Manchukuo has of late received a great deal of scholarly attention as the first instance of what Prasenjit Duara has called a "new imperialism," founded not on subject colonies but on unequal alliances of putatively sovereign states.⁸⁰ In its own rhetoric, Japan was not a colonizer, but a force for liberation and spiritual rejuvenation, and as such it required the voluntary acquiescence of its Asian brothers. This same type of relationship would be repeated a decade later during the Cold War, as the nations of the world aligned along two poles in Moscow and Washington. Like the relationship between Japan and Manchukuo, these alliances were forged with all the tools of power politics, but ostensibly based on ideological allegiance, not of governments but of awakened nations, who had to regularly demonstrate their active, voluntary, and spontaneous support for the greater cause championed by the metropole.

Although Manchukuo was always a client of Japan, more or less visibly under military occupation, this ideological impetus was of very real significance, and the rhetoric of legal developmentalism was fundamental to it. In practical terms, it would be far from realistic to say that the legal

80. Prasenjit Duara, "The New Imperialism and the Post-Colonial Developmental State: Manchukuo in Comparative Perspective," *Japan Focus*, January 30, 2006. <http://www.japan-focus.org/products/details/1715> (accessed February 12, 2007). For the enduring influence of Manchukuo on post-war politics, see Suk-Jung Han, "Those Who Imitated the Colonizers: The Legacy of the Disciplining State from Manchukuo to South Korea," in *Crossed Histories: Manchuria in the Age of Empire*, ed. Mariko Asano Tamanoi (Honolulu: University of Hawai'i Press, 2005), 165–83.

institutions in Manchukuo were ever intended to be independent from Japan.⁸¹ As scholarship on legal resistance, protest, and contest has so amply demonstrated, law is also a definitive public discourse.⁸² However, the fact of resistance through law should not allow us to lose sight of the obvious fact that both practically and discursively, the legal realm is overwhelmingly dominated by the state. Particularly in the hands of a colonizing power, legal regimes have an obvious pedantic and transformative potential, both in terms of the individual and the relationship between the individual and society.⁸³ Beyond the impact of the law on individuals, the formation of legal institutions also defines the nature and ambitions of the state itself.⁸⁴ Manchukuo had putatively willed itself into existence as a sovereign state, but one that was by design spiritually dependent on Japan. It should be no surprise then, that Manchukuo legal institutions would mirror this same dependence, even at the outset. This left these institutions chronically weak. Procedurally speaking, they were not very different from those established in Korea or Taiwan, a fact that would ultimately facilitate the slide toward legal despotism. Yet the rhetorical importance of law was not merely as outward-looking propaganda. It supported the ongoing self-definition of the state and its place in the empire and also ensured that law and legality would remain discursively important even after this despotism had taken root.

81. I address the independence of the Manchukuo judiciary in a forthcoming article.

82. For a sampling of the issues surrounding the control over the public discourse of law, see Mindie Lazarus-Black and Susan F. Hirsch, *Contested States: Law, Hegemony, and Resistance* (New York: Routledge, 1994).

83. This is particularly so in the context of colonial law. See Sally Engle Merry, *Colonizing Hawaii: The Cultural Power of Law* (Princeton: Princeton University Press, 2000); Sally Engle Merry, "Law and Colonialism," *Law and Society Review* 25 (1991): 899–922; Benton, *Law and Colonial Cultures*.

84. Julia C. Strauss sees these same motives at work in the impractically ambitious and ultimately impotent political reforms attempted by the Chinese Republic. Julia C. Strauss, "Creating 'Virtuous and Talented' Officials for the Twentieth Century: Discourse and Practice in *Xinzheng* China," *Modern Asian Studies* 37 (2003): 831–50.

