

The State and Freedom in Manchukuo: On the Enactment of the Law for the Protection of Human Rights[†]

HIGUCHI HIDEMI

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Author's Statement

This article examines the nature of the Manchukuo state by looking at both the legal character and the historical context behind the enactment of the Law for the Protection of Human Rights. How states position the concept of freedom has been a key factor in shaping their character, particularly in the modern era. Taking Manchukuo as a case study, this article analyzes that character from this perspective, aiming to reassess Manchukuo—long regarded as a Japanese “puppet state”—through the lens of both historical and political scholarship.

Introduction

The Law for the Protection of Human Rights (*Jinken hoshō-hō* 人權保障法; below, Human Rights Protection Law) was one of the earliest statutes promulgated in Manchukuo. On 9 March 1932, the day Aisin Gioro Puyi 愛新覺羅溥儀 assumed the position of chief executive (*shisei* 執政), it was issued as Directive No. 2 (*Kyōrei dai ni gō* 教令第二号), alongside his other orders: Directive No. 1, the “Government Organization Law” (*Seifu soshiki-hō* 政府組織法), and Directive No. 3, “Provisional Adoption of Previous Laws and Ordinances” (*Shibaraku jūzen no hōrei o en'yō suru no ken* 暫ク従前ノ法令ヲ援用スルノ件). Together, these became some of the “fundamental laws concerning the organization and functions of the state.”¹ Although no constitution was ever enacted in Manchukuo, the Human Rights Protection Law was counted as one of the country’s “basic laws,”² and in the early years of the state’s founding the three

† This article is a translation of Higuchi Hidemi 樋口秀美, “Manshū koku ni okeru ‘kokka’ to ‘jiyū’: ‘Jinken hoshō hō’ no seitei o megutte” 満洲国における「国家」と「自由」—「人權保障法」の制定をめぐる一, *Kokugakuin zasshi* 國學院雜誌 123: 3 (2022), pp. 1–22. Translated by Dylan L. Toda.

¹ Hidaka, *Manshūkoku kōbō taii*, p. 25. Hidaka Minoō 日高巴雄 was at the time an Army secretary and legal officer.

² According to Tejima Tsuneyoshi 手島庸義, councilor (*sanjikan* 参事官) in the Legislative Section (Hōseisho 法制処) of Manchukuo’s General Affairs Agency (Sōmuchō 総務庁), “basic law” (*kihon-hō* 基本法) refers to “fundamental

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directives mentioned above were regarded as “a de facto constitution.”

As Historical Source 1³ below shows, the Human Rights Protection Law “guaranteed the freedoms and rights of the people of Manchukuo and set forth their obligations.”⁴ At the same time, however, the contents of the law were abstract. According to Rōyama Masamichi 蠟山政道, professor at Tokyo Imperial University, who participated in the “Consultative Conference on Legal Systems and Economic Policy in Manchuria and Mongolia” (Manmō ni okeru hōsei oyobi keizai seisaku shimon kaigi 滿蒙に於ける法制及經濟政策諮問會議) convened by the Kwantung Army’s Government Affairs Department (Tōchibu 統治部) in January 1932, many of its provisions were imitations of Western “human rights declarations” of “modern individualist states,” and its wording also resembled that of the Constitution of the Empire of Japan and the Provisional Constitution of the Republic of China.⁵ Hence, “the immediate aim” of the Human Rights Protection Law “lay more in the political than in the strictly legal realm.” It had the character of “a statement of policy or program regarding rights established by means of legislation,” and “most of the public rights it sets forth do not, on the basis of this law alone, produce direct legal effects. Only once the various systems related to these public rights have been fully developed can individuals, for the first time, lodge negative or positive claims against the state.”⁶ For example, Article 6 of the Human Rights Protection Law recognized the right of the people of Manchukuo to petition the state. However, for state organs to accept such petitions required the specification of the “procedures prescribed by law,” and without this, there was no means to actually file them.⁷

With the above in mind, this article examines the Human Rights Protection Law in Manchukuo. As far as I have been able to determine, research on the history of Manchukuo has produced virtually no studies that actively take this law itself as an object

laws concerning the composition of the state, the structure of governance, and the operations of government” (Tejima, *Manshūkoku kibon-hō gaisetsu*, pp. 10–11).

³ Manshūkoku Hōrei Shūran Kankōkai, *Manshūkoku hōrei shūran*, 2:6–7. Following the adoption of the imperial system on 1 March 1934, Imperial Edict No. 12 revised the preamble of the Human Rights Protection Law to read: “The emperor, who governs Manchukuo, shall—except in time of war or extraordinary emergency—safeguard the freedom and rights of the people and define their duties in accordance with each article of this law, without deviation.” See Hase, *Manshū teikoku shuyō hōrei kaisetsu*, 71–72.

⁴ Hidaka, *Manshūkoku kōhō taii*, pp. 49–50. In this paper, “the people”/“person” (*jinmin* 人民) follows Tejima’s definition: “Natural persons who, as constituent members of the state, permanently belong to it.” While Tejima notes that “the people are also referred to as ‘nationals’ (*kokumin* 国民),” Manchukuo in fact lacked a nationality law in the strict sense. According to Tejima, however, even without a nationality law, “who counts as a Manchukuo person is determined entirely by unwritten customary law,” and especially after the promulgation of the Provisional Civil Status Law (*Zankō minseki-hō* 暫行民籍法) on 1 August 1940, this customary conception of “nationality” (*kokuseki* 国籍) took concrete form: an individual’s status as a Manchukuo person was thereafter officially certified through registration in the civil-status registers prescribed by that law. Tejima, *Manshū teikoku kibon-hō shakugi*, pp. 105–7.

⁵ Rōyama, “Seiji,” p. 104.

⁶ Tejima, *Manshū teikoku kibon-hō shakugi*, pp. 112–13.

⁷ Onoe, *Manshūkoku kibon-hō taikō*, pp. 129–30; Takahashi, *Manshūkoku kibon-hō*, pp. 108–10.

of analysis. This neglect is likely due to the preconception that a “puppet state” such as Manchukuo could not possibly guarantee the freedoms and rights of its people. Yet the Human Rights Protection Law is more important for its political than for its legal value. We must not only look at the literal meaning and interpretation of its provisions or its level of social realization; we must also pay attention to the law’s political aims and political effects. In what follows, I trace the process by which the law was drafted as well as the broader historical context surrounding its promulgation, and clarify its significance from the standpoint of political history.

The ultimate aim of this article is to analyze the structure of the Manchukuo state by examining how the concept of freedom was defined and positioned through the Human Rights Protection Law.

In nineteenth-century Western Europe, as J. S. Mill defined it, liberty was understood as the opposite of power. He interpreted it in terms of the principle of self-protection: “one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion.”⁸ In the twentieth century, however, scholars emerged who criticized as “nineteenth-century” the “binary structure” of the state—made up of oppositions such as freedom and power, state and society, society and the individual. One such figure was Carl Schmitt, professor at the University of Berlin and one of the theoretical supporting pillars of Nazi Germany. Schmitt advanced a totalitarian conception in which “the state of the twentieth century” should be a political unity based on a “threefold structure.” In his 1933 work *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit* (State, Movement, People: The Three Elements of the Political Unity), he writes as follows:⁹

The liberal conception of the state and constitution proceeds from a simple and immediate opposition between the state and the private individual. Only on the basis of this opposition does it appear natural and meaningful to build an entire edifice of legal-protection measures and institutions designed to shield the helpless, defenseless, poor, isolated individual from the powerful Leviathan called ‘the state.’ ... The fundamental and freedom-rights of the liberal-democratic system of state and constitution are, in their meaning, essentially rights of the private individual.

⁸ Mill, *On Liberty*, p. 223. In this paper, “liberty” corresponds to Mill’s definition: “not the so-called Liberty of the Will, so unfortunately opposed to the misnamed doctrine of Philosophical Necessity; but Civil, or Social Liberty (p. 217).”

⁹ Schmitt, *Gesammelte Schriften* 1933–1936, pp. 74–95. Maruyama Masao 丸山眞男 published a translation of this text in July 1939, the foreword of which bears reading. See Maruyama, *Senchū to sengo no aida: 1936–1957*, pp. 36–42.

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And solely for this reason can they be regarded as ‘non-political.’ ... Most of the institutions for legal protection in the so-called constitutional state have a rationale only insofar as they serve to safeguard the poor individual. All of this, however, becomes utterly meaningless once strong collective associations or organizations occupy the non-state, supposedly ‘non-political’ sphere of freedom, and once these non-state (but by no means non-political) ‘self-organizations’ gather isolated individuals ever more tightly together on the one hand, and on the other confront the state ... They become the real and effective bearers of political decisions and the wielders of the instruments of state power. Yet they rule from out of the sphere of the individual that is free of state and constitutional constraint, a sphere that is not ‘public,’ and thereby escape every form of political responsibility and danger. ... Within the constitutional order of the liberal-democratic Rechtsstaat, they can in legal terms never appear as what they actually are in political and social reality, because the liberal two-part schema has no place for them.

As this makes clear, how one defines the concept of freedom, and how one situates it within the state, is closely tied to how the state itself is structured. It is for this reason that this article takes up the Human Rights Protection Law as a lens through which to examine the distinctive features of Manchukuo’s state structure.

1. The Plan to Build a “Manchuria-Mongolia Free State”

The drafter of the Human Rights Protection Law can be presumed to have been Matsuki Tamotsu 松木-侠. Matsuki was born in 1898 in Tsuruoka 鶴岡 City, Yamagata Prefecture, graduated from the Faculty of Law at Tokyo Imperial University in 1922, and in May of the same year entered the South Manchuria Railway Company (Minami Manshū Tetsudō Kabushiki Kaisha 南満洲鉄道株式会社, hereafter Mantetsu).¹⁰ During his time at Mantetsu he published works on issues such as commercial lease rights in Manchuria and the Pact of Paris, showing that he already possessed a strong command of law and treaties.¹¹ After the Manchurian Incident began, Matsuki was commissioned by the Army Ministry (Rikugunshō 陸軍省) to serve as international law adviser to the Kwantung Army. Around 10 October 1931 he visited Itagaki Seishirō 板垣征四郎, the Kwantung Army’s senior staff officer.¹² At that meeting, Itagaki requested that he “draft a blueprint for the new state to be built in Manchuria.” Matsuki later recalled that he then “devoted all his energy to the government organization, the founding declaration

¹⁰ For Matsuki’s biography, see Matsuki, “Kōkyōsho-an daiichian.”

¹¹ Matsuki, *Shōso mondai ni tsuite*; Matsuki, “Roshi kan no funsō to fusen jōyaku narabi ni Kokusai renmei.”

¹² Matsuki, “Manshū kenkoku no rinen to sore o meguru hitobito.”

and foreign policy declaration, and the basic legal system that would underpin them.” As a result, “the Government Organization Law and the Human Rights Protection Law took shape in this way, and the central and local administrative structures and basic legal system were also completed.” Staff officer Katakura Tadashi 片倉-衷 likewise recognized Matsuki’s achievements, praising him as “the foremost contributor to the founding of the country, with many of the various laws and declarations having been drafted by his hand.”¹³

On 22 January 1932, a meeting was held at the Kwantung Army Headquarters attended by Chief of Staff Miyake Mitsuharu 三宅光治, Itagaki, staff officers Ishiwara Kanji 石原莞爾 and Katakura, and Dohihara (Doihara) Kenji 土肥原賢二, head of the Fengtian (Shenyang) Special Service Agency (Hōten tokumu kikan 奉天特務機関). At this meeting, “they discussed Advisor Matsuki’s draft proposals concerning the supreme organ of the new Manchuria-Mongolia state, the Human Rights Protection Ordinance, and the exchange memoranda, and so on, and decided on their general outlines.” In response, Matsuki accelerated preparations for the new state’s legal system, and at the 27 January meeting at Tanggangzi 湯崗子, the “Outline of the Order of the Steps for Founding the State” (*Kenkoku junjo no yōkō* 建国順序の要綱) was adopted.¹⁴

This “Outline” is the document “Steps for Constructing the New Manchuria-Mongolia State” (*Manmō shinkokka kensetsu junjo* 滿蒙新国家建設順序), dated 27 January 1932 and preserved in the Ishiwara Kanji Papers in the Modern Japanese Political History Materials Room of the National Diet Library.¹⁵ It proposed forming a “Central Political Affairs Committee” (Chūō seimu iinkai 中央政務委員会) chaired by Zhang Jinghui 張景惠, former administrative director of the Special District of Eastern Provinces (Dongsheng tebiequ 東省特別区), with the chairs (governors) of the three provinces of Fengtian (Zang Shiyi 臧式毅), Jilin (Xi Qia 熙洽), and Heilongjiang (Ma Zhanshan 馬占山) as members, to prepare for the establishment of the new state. As matters requiring preparation, it listed, alongside the national name, national flag, and central and local administrative systems, two legal instruments: a “State Organization Law” (*Kokka soshiki-hō* 国家組織法) and a “Human Rights Protection Ordinance” (*Jinken hoshō jōrei* 人權保障条例). By this point, the first and second drafts of the Human Rights Protection Law—titled “Human

¹³ Katakura, “Mōshiokuri jikō”; Katakura, “Shokan hikae.”

¹⁴ Manshūkoku-shi Hensan Kankōkai, *Manshūkoku-shi: Sōron*, pp. 199–200.

¹⁵ “Ishiwara Kanji kankei monjo,” R3–46.

¹⁶ *Ibid.*, R3–31.

¹⁷ *Ibid.*, R3–40. A document believed to be the third draft of the Human Rights Protection Ordinance survives in the National Archives (“Shōwa zaiseishi shiryō,” vol. 5, no. 185; JACAR A09050414900). Compared with the Second Draft, it contains only slight differences in wording; however, its preamble differs in the following way. Most notably, the designation of the head of state is changed from “president” to “chief executive” (*daishisei* 大執政): “Relying upon the trust of the entire nation to govern the Free State of Manchuria-Mongolia, the chief executive hereby

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Rights Protection Ordinance” (Historical Sources 2 and 3)^{16, 17}—appear to have already been prepared. What is striking about both drafts is that throughout their full text they use “Manmō Jiyūkoku 滿蒙自由国” (“Manchuria-Mongolia Free State”) as the name of the new state. What sort of state concept did this “Manchuria-Mongolia Free State” proposal embody? And what meaning was attached to “freedom” in this context? To consider these questions, let us go back slightly in time.

The “Manchuria-Mongolia Free State” proposal was based on two earlier documents: Matsuki’s own “Outline of a Constitution for the Republic of Manchuria and Mongolia” (*Manmō Kyōwakoku tōchi taikō-an* 滿蒙共和国統治大綱案), dated 21 October 1931,¹⁸ and the “Program for the Construction of a Northeastern Provinces Free State” (*Tōhoku jiyūkoku kensetsu kōryō* 東北自由国建設綱領; hereafter, Kanai Proposal), dated 23 October and submitted to Kwantung Army Headquarters under the name of the chair of the Manchuria Youth League by Kanai Shōji 金井章次, head of Mantetsu’s Health Section (Eiseika 衛生課).¹⁹ In the former, Matsuki envisioned the new state as a constitutional polity, with the central administrative system consisting of four chambers—legislative, judicial, executive, and supervisory—under a president (*daisitō* 大總統). For the local administrative system, he wrote that “the scope of direct government administration should be kept as small as possible, and the number of officials limited, with administration carried out on an autonomous basis.” The “local self-governing bodies” he had in mind here were cities and counties, while the “provincial governments” would be “responsible for supervising and guiding the local self-governing bodies (cities and counties),” thus limiting the role of the provinces.

The Kanai Proposal, by contrast, was drawn up less by Kanai alone than in the context of debates over the creation of a Self-Government Guidance Department (Jichi shidōbu 自治指導部). After the beginning of the Manchurian Incident, public order collapsed across Manchuria and public peace maintenance associations were formed at city and county levels. In Fengtian (Shenyang), the Liaoning Public Peace Preservation Association was formed earlier than elsewhere, on 24 September 1931, with Yuan Jinkai 袁金凱 (member of the Northeastern Political Affairs Committee [Dongbei Zhengwu Weiyuanhui 東北政務委員會]) and adviser at the headquarters of the Northeast Border Defense Army [Dongbei bianfangjun 東北边防軍]) as chair and Kanai as adviser.²⁰ The Kwantung Army, however, was particularly concerned with maintaining public order

pledges to the entire nation that, except in time of war or extraordinary emergency, he shall safeguard the freedom and rights of the people and define their duties in accordance with the following:”

¹⁶ “Ishiwara Kanji kankei monjo,” R1–295.

¹⁷ See the second attachment to “Jichi shidōbu kankei nisshi.”

²⁰ Shibutani, “‘9.18’ jihen chokugo ni okeru Shenyang no seijijōkyō.” Regarding Kanai before and after the outbreak of the Manchurian incident, see also Mori, “Manshūkoku kenkoku kōsaku to Kanai Shōji.”

outside Fengtian and securing the cooperation of these localities for the new state. To address this problem, to Itagaki Kanai recommended Nakanishi Toshikazu 中西敏憲, who had previously served as head of Mantetsu's Local Affairs Section (Chihōka 地方課) and in other posts.

On 22 October 1931 Nakanishi visited Itagaki.²¹ Itagaki told him, "At present it is difficult to foresee when a new regime will be formed. Until a unified new regime can be firmly established, I would like you to think of some method by which each county can continue to function smoothly and live like an organic cell."²² That same night, Nakanishi drafted a document titled "Policy and Outline for Establishing a Local Self-Government Guidance Committee" (*Chihō jichi shidō iinkai setchi hōshin oyobi yōryō* 地方自治指導委員会設置方針及要領). It proposed that the Self-Government Guidance Department created in the new state dispatch guidance officers to the various counties along the Mantetsu lines, who would then implement county self-government, and that "influential individuals or organizations" should be made to form "county self-government executive committees"²³ capable of carrying out that self-government. On the basis of this policy and earlier proposals such as the "Republic of Manchuria and Mongolia" plan long advocated within the Manchuria Youth League (Manshū Seinen Renmei 滿洲青年連盟),²⁴ the Kanai Proposal was drafted. From the standpoint that "in order for the Guidance Department to send guidance officers and make it truly easy for them to do their work and produce results smoothly, it is essential, in light of common conceptions of the state, that they be granted rationality or legality as soon as possible,"²⁵ it argued for the necessity of creating a new state.

The Kanai Proposal set out the structure of local self-government and, on that basis, the form of rule in the new state as follows. A governor would be appointed in each county, and that governor would be required to follow the resolutions of the county self-government council on important matters. The representatives of the county self-government councils would then form a provincial executive committee, which would take over the functions of the provincial public peace preservation associations. The representatives of these associations would, in turn, organize the "Northeast Free State Central Executive Committee" (Tōhoku jiyūkoku chūō shikkō iinkai 東北自由国中央執行委員会). The head of state, or "president" (*sōtō* 總統), would be chosen by resolution of

²¹ "Jichi shidōbu kankei nisshi," entry for 22 October 1931. While no author is listed, comparison with Nakanishi's recollections (Nakanishi, "Jichi shidōbu sōsetsu no kaiko," pp. 63–65), suggests that he is the principal narrator.

²² Nakanishi, "Jichi shidōbu sōsetsu no kaiko."

²³ "Chihō jichi shidōbu setchi yōryō" 地方自治指導部設置要領, in "Ishiwara Kanji kankei monjo," R1–6.

²⁴ Mori, "Manshūkoku kenkoku kōsaku to Kanai Shōji." Regarding the league's activities during this time, see also Okabe, "Shokuminchi fashizumu undō no seiritsu to tenkai."

²⁵ Nakanishi, "Jichi shidōbu sōsetsu no kaiko."

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this central executive committee.

On 31 October, Nakanishi visited Kwantung Army Commander Honjō Shigeru 本庄繁 and, based on the circumstances up to that point, explained the “future policy and methods of the Guidance Department” as follows:²⁶

The aim is to grasp the broad outlines of county administration and guide it in accordance with the principle of good government through non-action, proceeding gradually. The first objective of good government is the stabilization of popular feelings and the winning of the people’s willing acceptance. The stabilization of popular feelings lies in the maintenance of public order. Special effort must be devoted to strengthening small-scale self-defense measures, such as the *baojia* 保甲 system and other means. For the people’s acceptance, we aim to break with the old warlord regimes to eliminate unjust exactions and reform and reduce taxes. As for officials, we aim to improve their treatment and suppress corruption. By doing so, we will make the people concretely feel that they benefit from Japanese guidance. Although we speak of self-government, we do not envision electoral self-government in a nation under the rule of law, but entirely mean good governance through consultation of those with local reputation and virtue.

On 1 November, the Self-Government Guidance Department was formally established. As a result, even before the central government of the new state was created, guidance officers were successively dispatched to counties along the Mantetsu lines. In November alone, county self-government councils were formed in seven counties—Changtu, Benxi, Andong, Kaiyuan, Huaide, and Tieling. In December, guidance officers went to another eleven counties, including Fengcheng, and after the fall of Jinzhou on 3 January 1932, they were also dispatched to eight counties in western Liaoning, such as Jin and Fushun.²⁷

A problem soon emerged, however, in the radical development of self-government in some localities under certain guidance officers. For example, Kai Masaharu 甲斐政治, dispatched to Tieling County, carried out what he called “a shock therapy that would overturn existing conceptions” in order to win the trust of the local public peace preservation association, which had shown no reaction to the visit of the guidance officer. On 25 November he promulgated the “Constitution of the Self-Governing County of Tieling” (*Tetsurei jichi-ken kenpō* 鉄嶺自治県憲法), declaring that “the county is a fully self-governed body,” and abolished the existing Tieling County Self-Government Council, establishing instead a self-government executive committee with Wang Minggui

²⁶ “Jichi shidōbu kankei nisshi,” entry for 31 October 1931.

²⁷ Manshūkoku-shi Hensan Kankōkai, *Manshūkoku-shi*, pp. 158–59.

王名貴, a local “man of virtue and reputation,” as chair.²⁸ Alarmed by the overhaul of the county government, the Fengtian provincial government (which had been created on 10 November when the Liaoning Public Peace Preservation Association was dissolved) appointed a new county magistrate and sent him to Tieling. Kai, however, returned to Fengtian and directly appealed to Kanai—by then an adviser to the provincial government—who rescinded the appointment.²⁹

Such moves by the self-government guidance officers were liable to conflict with efforts to establish a central government for the new state. From late October 1931, the Kwantung Army, with Dohihara at its center, had been carrying out operations to bring Puyi out of Tianjin and install him as head of the new state. On 13 November Puyi arrived at a hot spring inn in Tanggangzi and began preparations for state-building.³⁰ On 17 November his close aide Zheng Xiaoxu 鄭孝胥, who would later become Manchukuo’s first prime minister, submitted to him a general outline of the administrative system, proposing the creation of a Privy Council as the central military organization, a National Treasury Bank for financial administration, and Provincial Supervision Offices for administrative oversight, all premised on the establishment of a centralized state.³¹

Under these circumstances, it appears that Matsuki drew up his “General Outline for the Establishment of the Manchuria-Mongolia Free State” (*Manmō Jiyūkoku setsuritsutan taikō* 滿蒙自由国設立案大綱), dated November 1931, with the aim of preventing contradictions between the center and localities in the state-building operations.³² This outline likewise discussed the form of the “Manchuria-Mongolia Free State” and the steps for its establishment. As the principles of the new state, it proposed “eliminating warlord politics on the basis of civilian government,” and “entrusting as much of national administration as possible to the self-government of the people and reducing the scope of direct administration by officials.” Regarding city and county self-government in particular, it stated that this would be “a special feature of the Manchuria-Mongolia Free State, based on China’s native conception of self-government, whereby each county and city is governed by the free discretion of the people and at their own expense.” At the same time, the outline also addressed the policy for establishing the central government. While acknowledging that “state-building consists, on the one hand, of consummating the self-government of the lower-level political organs—that is, the counties and cities—

²⁸ “Kyōwakai-shi shiryōshū” 1.

²⁹ Manshūkoku-shi Hensan Kankōkai, *Manshūkoku-shi*, pp. 160–61.

³⁰ Zhongguo Lishi Bowuguan, *Zheng Xiaoxu riji*, vol. 4, entry for 13 November 1931.

³¹ *Ibid.*, entry for 17 November 1931.

³² This draft is attached to Kantō Army Staff Chief Miyake Mitsuharu’s communication no. 33 (19 November 1931; entitled “Manmō jiyūkoku settei-an sōfu no ken” 滿蒙自由国設定案送付ノ件; to Vice Chief of Staff Sugiyama Gen 杉山元), in “Shōwa shichi-nen Man-mitsu dainikki.”

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and, on the other hand, of establishing the independence of the upper-level organ—that is, the provinces—and gradually moving toward the creation of a central regime, and that both must be carried out while maintaining full coordination and control between upper and lower organs,” it argued that, ideally, “it would be best to first establish a strong central government for state-building and unify the provinces under it.” Yet as this was difficult to realize immediately, it would instead be preferable for “each province or region to declare its independence from the central government of China,” then “form a central government on a federated-province self-government basis, and only thereafter gradually expand the powers of the central government.”

In the process of constructing the new state and, after its founding, in shaping its structure, the key issues thus became how to allocate powers between the central and local governments, where to draw the line between direct administration and self-government, and how to coordinate and control the relationship between the two. These issues were discussed in the Kwantung Army’s newly established Government Affairs Department, which replaced the Third Section (Daisanka 第三課) on 15 December 1931. This department was created to advance preparations for state-building while inheriting administrative, economic, and other operations previously handled by the Third Section.³³ Its head and staff were military civilian employees, with former Mantetsu employees such as Department Chief Komai Tokuzō 駒井徳三, Deputy Chief Takebe Jiemon 武部治右衛門, Administrative Section (Gyōseika 行政課) Chief Matsuki Tamotsu, Transportation Section (Kotsūka 交通課) Chief Yamaguchi Jūji 山口重次, and General Affairs Section (Shomuka 庶務課) Chief Koreyasu Masatoshi 是安正利 placed at its core.³⁴

From 15 to 26 January 1932, in order “to gather the wisdom of specialists to serve as reference in deciding the basic principles for constructing the new Manchuria-Mongolia state,” the Government Affairs Department convened the aforementioned “Consultative Conference on Legal Systems and Economic Policy,” inviting university professors such as Rōyama and leading figures from chambers of commerce and industry.³⁵ Rōyama participated in the Legal System Committee (Hōsei iinkai 法制委員会) organized by the Administrative Section. Minutes survive for three sessions of this committee, held from the 16th to the 18th.³⁶ Alongside the new state’s national defense and foreign policy, the central and local administrative systems and the relationship between both were taken up as important agenda items.

³³ Manshūkoku-shi Hensan Kankōkai, *Manshūkoku-shi*, pp. 195–196.

³⁴ Matsuki, “Manshū kenkoku to Mantetsu shain.”

³⁵ Manshūkoku-shi Hensan Kankōkai, *Manshūkoku-shi*, p. 201.

³⁶ Kantōgun Tōchibu Gyōseika, 関東軍統治部行政課, “Hōsei iinkai shingi jikō gaiyō” 法制委員会審議事項概要, in “Shōwa zaiseishi shiryō” (JACAR A09050414400).

Rōyama was the only external member of the Legal System Committee. Komai served as chair, and the other members were drawn largely from the Government Affairs Department and the Kwantung Army staff.³⁷ As a result, the main speakers in the discussions were Matsuki and Rōyama. At the outset of the first meeting, Matsuki raised the issue of establishing a central government. As a major principle for the new state, he expressed the desire “to proceed in accordance with the spirit of autonomous freedom, that is, self-government,” but pointed out that the various provinces of Manchuria were in “mutually antagonistic positions,” and that in Fengtian Province “each county has self-government under the Guidance Department.” Under such circumstances, he asked the attendees whether there might be any concrete means “for achieving unification as quickly as possible.” In response, Rōyama asked, “What is the Self-Government Guidance Department’s relationship to the provincial organization and the unified framework?” suggesting that it might be possible to achieve unification by extending the activities of the Guidance Department beyond Fengtian Province. Takebe supplemented this by noting that “it is unacceptable to leave in place the current situation in which the fall of the Zhang 張 regime has left the provinces isolated and in opposition,” while Matsuki explained that if the situation were left unattended, there was a risk that one or another province might “side with the Nanjing government,” and that it was therefore necessary to make the new state a “unified and independent” one.

At the second meeting, Matsuki stated that the powers of the provincial governors should be weakened and that the provinces should be made into “merely relay organs for transmitting orders from the central government to the various counties.” At the third meeting he added, “What degree and scope of functions should be allowed for the county self-governing bodies?” and suggested that the authority over policing and taxation should be granted to the counties. Rōyama answered that if a Ministry of Civil Administration (Minsei-bu 民政部) or similar organ were created at the center to unify and supervise orders from the central government, this would pose no problem.

Based on the Legal System Committee’s deliberations, the “County Administration (Draft)” (*Kensei (an)* 県政 (案))³⁸ and “Provincial Office System (Draft)” (*Shō kōsho kensei (an)* 省公署官制 (案))³⁹ appear to have been included as the proposals for the local administrative system in the “Steps for Constructing the New Manchuria-Mongolia State” of 27 January 1932 mentioned above. The former stated in Article 1 that “the county is a juridical person under the supervision of the state,” thereby clarifying the relationship of coordination and control between the center and the counties. It also

³⁷ “Manmō ni okeru hōsei oyobi keizai seisaku shimōn kaigi (an)” 滿蒙ニ於ケル法制及經濟政策諮問會議(案), in “Ishiwara Kanji kankai monjo,” R3–32.

³⁸ “Shōwa zaiseishi shiryō,” JACAR A09050414300.

³⁹ Ibid., JACAR A09050414800.

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provided that county governors would be appointed by the chief executive upon the recommendation of the minister of civil administration (Article 21). The existence of county self-government councils was recognized, and councilors were to be appointed by the county governor from among men over thirty years of age who had resided in the county for more than two years, on the basis of their tax payment amount, knowledge, experience, and reputation (Article 6). The county budget and accounts, as well as the collection of county taxes, were to require resolutions of the self-government council (Article 11). The latter draft limited the powers of the provincial governor over county governors to “direction and supervision” (Article 5). However, it also established police bureaus within the county public offices, while having police affairs within provinces being handled by their respective governments (Article 11).

As this shows, the “freedom” posited in pre-foundation visions of the Manchukuo state corresponded to “local self-government” in the sense of separation from the government of the Republic of China and from the existing regimes of the Three Eastern Provinces. It did not refer to individual freedom as one of the natural rights that developed in modern Western thought—in other words, as a divinely endowed human right—but rather to the collective autonomy of grassroots governments at the level of cities and counties and the free discretion exercised within that sphere. In the state-building operations following the outbreak of the Manchurian Incident, at a time when there was no prospect for establishing a central regime or securing the cooperation of former high-ranking officials of the Three Eastern Provinces or provincial-level politicians with Japan, the Kwantung Army sought to utilize existing city and county-level structures of reputed people, granting them discretionary authority in order to secure both public order and cooperation with Japan. Once prospects for establishing a central regime became clearer, it then sought to chart a course toward the construction of a unified state by curbing the intermediate provincial powers while strengthening coordination and control between the center and the county self-governing bodies.

At this point, however, another question arises. As far as the above developments are concerned, recognizing the discretionary authority of local self-governing bodies and drafting a Human Rights Protection Law that recognizes the full range of individual rights appear to involve somewhat different purposes. Then, for what reasons, and through what process, was the Human Rights Protection Law itself drawn up? And how did it relate to the issue of state-building?

These are the questions I will examine in the next section.

2. The Enactment of the Human Rights Protection Law

On 26 January 1932, the day before the above-mentioned “Steps for Constructing the New Manchuria-Mongolia State” was decided, the Kwantung Army drew up a document titled “Concept of the New Manchuria-Mongolia State” (*Manmō shinkokka no gainen* 滿蒙新国家ノ概念).⁴⁰ It set out five items as the basic policy for constructing the new state. The first three read as follows:

1. On the basis of the principle of the kingly way (*ōdō shugi* 王道主義), remove the evils of warlord tyranny and, in particular, adopt the principle of separating military and civil administration to sweep away the evils of local warlord strongholds.
2. Adopt centralization in order to consolidate the foundations of the new state, but in light of the abuses of bureaucratic politics in the past, respect existing customs and establish a system of local self-government.
3. Take the maintenance of public order as the foremost element of good government and seek thereby to stabilize popular sentiment; by law and ordinance guarantee the rights of the people, lighten the burdens on the masses, and in so doing promote the welfare of their livelihoods.

The first and second items reflect the course that state-building efforts had taken up to that point. What deserves particular attention is the third. In other words, apart from the granting of collective autonomy, a move to guarantee the full range of individual rights emerged somewhat later, and more slowly, than the activities of the Self-Government Guidance Department during the state-building process. In its “Propaganda Guidelines” (*Senden yōryō* 宣伝要領), also dated 26 January,⁴¹ the Kwantung Army likewise listed, among the points to which “special attention should be paid” in the propaganda up to the establishment of the new state, the claim that “the guarantee of the people’s rights cannot be sought under warlord rule,” and used this to argue for the “necessity of constructing a new, independent state” to replace the regime of the Three Eastern Provinces. Put differently, the Human Rights Protection Law was drafted with an eye to its propaganda effect: by emphasizing the difference between the old regime of the Three Eastern Provinces and the new state, it was meant to enhance the latter’s centripetal force.

Under what historical conditions, then, did this emphasis on differentiating old and new regimes through the enactment of the Human Rights Protection Law arise? This is connected to the fact that, following the clash on 4 November 1931 between the Kwantung Army’s subordinate Nenjiang Detachment and the Heilongjiang Provincial

⁴⁰ “Ishiwara Kanji kankei monjo,” R3–44.

⁴¹ “Senden yōryō,” 26 January 1932, *ibid.*, R3–45.

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Army, the Kwantung Army launched operations to occupy Northern Manchuria. On 19 November the Second Division took Qiqihar. Furthermore, late January 1932—when the “Concept of the New Manchuria-Mongolia State” and the “Steps for Constructing the New Manchuria-Mongolia State” cited above were drafted—was just before the capture of Harbin the following month (the city fell on 5 February). The occupation of Northern Manchuria made it necessary to extend guidance in self-government beyond the counties along the Mantetsu line—to the counties along the Chinese Eastern Railway and those along the Shenhai 瀋海, Datong 打通, Huhai 呼海, Taosuo 洮索, and Qike 齊克 lines constructed under the regime of the Three Eastern Provinces. In January 1932 the Self-Government Guidance Department issued its “Letter to the Thirty Million People of the Four Northeastern Provinces” (*Tōhoku yonshō sanzenman minshū ni tsuguru no sho* 東北四省三千万民衆ニ告グルノ書),⁴² declaring that it had “dispatched guidance officers to more than twenty of the fifty-eight counties ... in Fengtian Province and is working hard to implement good government, and that it now seeks to extend this to the whole province by expanding its scope.” According to Kasagi Yoshiaki 笠木良明, head of the department’s Liaison Section (Renrakuka 連絡課), guidance officers were dispatched in that same month to seventeen counties along the Shenhai line.⁴³

However, regions outside the Mantetsu line area—particularly Northern Manchuria—had not been within Japan’s sphere of influence prior to the Manchurian Incident. Rather, they were in a situation in which “as an empire, Japan had previously exercised no national control there and had left the area alone, with the result that even guarantees for the lives and property of Japanese subjects (Japanese nationals and Koreans) were far from sufficient.”⁴⁴ Accordingly, as Yamaguchi Jūji, who played a central role in these efforts, put it, what was required in Northern Manchuria was less self-government guidance in the strict sense than work that had the character of “local security operations” and “political pacification in the course of military operations.” In his words, “We had no idea whether the county magistrates and officials would side with us or not, and yet they had armed police forces of between five hundred and two thousand men. We had to plunge into their midst, win over the hearts and minds of officials and people alike, maintain order in the counties, and, as they were, turn them toward the new state”⁴⁵

Yamaguchi began his activities in Northern Manchuria after the capture of Qiqihar. On 18 November 1931 he, together with Koreyasu Masatoshi and others, was ordered by the Third Section of the Kwantung Army Staff Office to form a “Political Operations

⁴² “Kyōwakai-shi shiryōshū” 1.

⁴³ Kasagi, “Manshū shinkokka kensetsu to jichi shidōbu no shimei.”

⁴⁴ Satō Yūsuke 佐藤勇助, “Hāshi o chūshin to suru Hokuman sangyō kaihatsu hōsaku-an” 哈市ヲ中心トスル北滿産業開發方策案, December 1931, in “Kantōgun sanbōbu dai-sanka tsuzuri.”

⁴⁵ Yamaguchi, “Jikyoku shori to Manshū jihen”; Yamaguchi, “Manshū kenkoku to Ozawa Kaisaku,” p. 303.

Group” (Seiryaku-han 政略班) and “devote himself to postwar arrangements” in Qiqihar after its capture. This group consisted of an Industrial Section—Koreyasu, Akasegawa Yasuhiko 赤瀬川安彦, Gotō Tōru 後藤亨, and Suzuki Teruyuki 鈴木輝行—and a Railway Section—Yamaguchi and Hamamoto Kazuto 浜本一人. For its activities, the Kwantung Army set forth the following policy: “Because in Northern Manchuria, unlike in Fengtian, everything is to be made autonomous on the Chinese side, you are to refrain from interference and limit yourselves to investigation and supervision.”⁴⁶ Within the Political Operations Group, the three members of the Industrial Section—Koreyasu, Akasegawa, and Gotō—had previously served on a committee (with Koreyasu as chair)⁴⁷ that had been tasked with seizing and disposing of Zhang Xueliang’s 張學良 assets, which included not only his personal property but also the public property of the regime of the Three Eastern Provinces and enterprises jointly operated by the state and private capital. It is therefore likely that the Industrial Section was expected to conduct surveys aimed at seizing public property in Qiqihar and, more broadly, in Heilongjiang Province. The work of the Railway Section, by contrast, was to take over, rehabilitate, and fully reopen the Qike Railway.⁴⁸

What is noteworthy here is the meaning of “autonomous on the Chinese side” mentioned in the above-quoted policy. In practice, this meant that, in a situation where it was difficult to dispatch self-government guidance officers to the various counties of Northern Manchuria and form political self-governing bodies such as those being created in Southern Manchuria, the aim was to elicit cooperation with Japan from local chambers of commerce and agricultural associations independently of the will of provincial and county governments or local military forces. This was because “organizations such as agricultural associations, chambers of commerce, and federations of the executives of banks and railways” focused “their goals on the revival of commerce and the reopening of railways.”⁴⁹ Moreover, in Northern Manchuria “the principle remained, above all, that public order came first,” so that operations were accompanied by danger, while the number of agents that could be dispatched was limited: “a handful of operatives, with only minimal funds, had to continue their struggle in remote areas across the whole of Manchuria.”⁵⁰ This too became a factor in arousing the autonomy of Chinese people. In fact, Akasegawa and others carried out surveys of four figures—Wang Yutang 王玉堂, vice

⁴⁶ Yamaguchi, *Manshū kenkoku: Manshū jihen seishi*, p. 200.

⁴⁷ “Gakuryō gyakusan seiri iinkai” 学良逆産整理委員会 in “Dai-sanka tsuzuri.”

⁴⁸ Yamaguchi, *Manshū kenkoku: Manshū jihen seishi*, pp. 204–09.

⁴⁹ *Ibid.*, p. 214.

⁵⁰ Koyama, *Manshū Kyōwakai no hattatsu*, p. 39. In the counties of southern Manchuria, a total of 107 autonomy instructors had been dispatched to 37 counties by March 1932 (Fujikawa, *Jitsuroku Manshūkoku ken sanjikkai*, pp. 190–91.)

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chair of the Heilongjiang General Chamber of Commerce (Heilongjiang zongshānghui 黑龍江總商會), Wang Xiangxian 王向賢, a standing committee member, and executive committee members Qu Wentan 曲文潭 and Han Xinglou 韓星樓—for “investigating the circumstances of commercial and industrial circles and the populace in the Heilongjiang Provincial Capital.”⁵¹

The Agricultural Associations and Chambers of Commerce “each had organizational networks in every county.” In the case of the agricultural associations, “the basic unit of organization was the *tun* 屯, which were then grouped into townships and counties in a pyramid structure; they even took care of public works and security in the counties on their own.”⁵² Thus, even without formal self-government guidance, it was comparatively easy to obtain cooperation from the farmers and merchants under their umbrella. Yamaguchi, who was himself also an executive of the Self-Government Guidance Department, later reflected on the differences between their activities in Southern and Northern Manchuria:

In Northern Manchuria as well as in Southern Manchuria—in Southern Manchuria it was a matter of county administration reform. Under the guidance of the Self-Government Guidance Department, we turned the existing bureaucratic county administration into self-government of the nation. In Northern Manchuria, we transformed Zhang Xueliang’s feudal warlord autocracy into county-level self-governing bodies. From these experiences we came to realize clearly that within civil society there existed the chambers of commerce and agricultural associations—solid self-governing, national self-governing organizations with no equivalent in Japan. ... From the *tun* head to the township head—what in Japan would be the county-level—these organizations, together with the county chambers of commerce, had well-ordered systems extending from the county down to the smallest village unit. ... So we ... had the idea of “getting hold of” the chambers of commerce and agricultural associations. Rather than gathering individual members one by one, [it was enough] if we could bring the chambers of commerce and agricultural associations over to our side.⁵³

Activities in Northern Manchuria intensified in May 1932. The immediate trigger was the anti-Manchukuo, anti-Japanese movement that became increasingly active in Northern Manchuria in response to the defection of Ma Zhanshan 馬占山—who had

⁵¹ Akasegawa Yasuhiko 赤瀬川安彦 and Ishikawa Den 石川傳, “Kokuryōkō sōshōkai chōsa hōkoku no ken” 黑龍江總商會調查報告ノ件 23 November 1931, in “Dai-sanka tsuzuri.”

⁵² Yamaguchi, “Manshū kenkoku to Ozawa Kaisaku,” p. 164.

⁵³ Yamaguchi and Ōminato, *Manshū jihen / Manshū kenkoku hidan (1)*.

initially compromised with the Kwantung Army to become Minister of Military Affairs (Gunseibu 軍政部) in the Manchukuo government and governor of Heilongjiang, but then broke away little more than a month after the state's founding. These operations were commonly referred to as the "Special Operations in Northern Manchuria" (*Hokuman tokubetsu kōsaku* 北滿特別工作), and their stated aim was "to disseminate the founding spirit of the state in various parts of Northern Manchuria, to initiate a movement for harmony, and thereby to contribute to the suppression of rebels."⁵⁴ The body responsible was the Manchuria Concordia Party (Manshū kyōwa-tō 滿洲協和党), founded on 15 April 1932 as the predecessor of the Manchukuo Concordia Association (Manshūkoku kyōwa-kai 滿洲国協和会). After the dissolution of the Self-Government Guidance Department, Yamaguchi, together with long-time comrades from the Manchuria Youth League such as Ozawa Kaisaku 小澤開作, formed this party as an organization "for fostering the founding spirit of the state and facilitating the implementation of government policies."⁵⁵ On 2 May the Kwantung Army entrusted the Concordia Party with actual responsibility for operations in Northern Manchuria.⁵⁶

In the Special Operations in Northern Manchuria, sixty-four operatives—thirty-two Japanese and thirty-two Chinese—were divided into sixteen teams of four. While attached to the Kwantung Army or Manchukuo Army, they "carried out various internal and external operations against the enemy."⁵⁷ The mention of "against the enemy" here reflects the fact that operations in Northern Manchuria included not only work among ordinary farmers but also efforts to induce the defection of organizations and armed forces engaged in anti-Manchukuo, anti-Japanese movements. That is, the aim was "to make the local troops and populaces understand the basic aims and course of the new state, to strive to eliminate and refute rumors, baseless allegations, schemes, and plots, and thereby bring them into obedience to the new state."⁵⁸

One glimpse of the activities of a special team can be obtained from the report of the "Nehe Team," which was dispatched to Nehe County, Heilongjiang Province.⁵⁹ The team stayed in Nehe for about a week, from 20 to 27 June 1932. The county lay in a remote area, reached only after a journey of about eight hours from Qiqihar. On the evening of the 20th, upon arriving in the county, the team first paid a visit to the county government office. Concrete operations began the next day. They designated the week from the

⁵⁴ "Manshū Kyōwakai Hokuman tokubetsu kōsaku shōhō."

⁵⁵ Yamaguchi, *Manshū kenkoku no rekishi*, p. 29.

⁵⁶ Yamaguchi, "Manshū kenkoku to Ozawa Kaisaku," p. 259.

⁵⁷ "Manshū Kyōwakai Hokuman tokubetsu kōsaku shōhō."

⁵⁸ "Gyakuto chintei senden kōsaku yōryō," pp. 74–85.

⁵⁹ "Manshūkoku Kyōwakai Hokuman tokubetsu kōsaku shōhō" 滿洲国協和会北滿特別工作詳報 no. 32 (2 July 1932), in "Yamaguchi Jūji Monjo," 51.

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21st as a “week of celebrations for the founding of the state” and had the national flag raised at every household. They also visited the county’s various institutions, distributing propaganda leaflets and pamphlets and explaining the founding spirit of Manchukuo. The local military, public security organs, police, and self-defense groups, however, “did not harbor deep goodwill toward the new state”; if anything, “until recently the atmosphere had been rather strongly opposed.” Although the troops had been reorganized as the Fourth Infantry Brigade of the Manchukuo Army and its commander, Xu Baozhen 徐宝珍, had declared his obedience, some of the soldiers even tore down the slogans in support of the new state that the Nehe Team had posted in the town. The team subsequently held round-table talks with the county magistrate and leading figures in the agricultural and commercial associations, as well as lecture meetings for the general populace and a celebratory march for the founding of the state. At these events, they not only distributed propaganda leaflets to county residents but also handed out free medicine and rice.

What emerges from these activities is the importance placed on propaganda within the Special Operations in Northern Manchuria. For their propaganda work there, the Manchuria Concordia Party brought with them pamphlets, leaflets, posters, photographs, films, and phonographs.⁶⁰ Among these materials was the pamphlet “All Patriots of the Nation, Join Hands!” (*Zenkoku no aikokusha yo te o nigire* 全国ノ愛国者ヨ手ヲ握レ), which Yamaguchi had prepared as a propaganda brochure when founding the Concordia Party and which was also taken along for the Special Operations in Northern Manchuria.⁶¹ According to his recollections, around one hundred thousand copies in Japanese and Chinese were printed and distributed.⁶² Noteworthy is that this pamphlet propagandized for Manchukuo while explicitly referring to the Human Rights Protection Law. It asserted that, with the outbreak of the Manchurian Incident as a turning point, “warlord-ruled Manchuria became overnight an independent state of the kingly way and democracy,” and then, in explaining what “democratic politics” meant, it quoted specific provisions of the Human Rights Protection Law: “freedoms have been established” (Articles 1 and 8), “property rights are guaranteed” (Articles 2 and 9), “political rights have been established” (Articles 4 and 5), and “the people are equal without discrimination” (Article 4).

If, then, the Human Rights Protection Law was enacted with propaganda operations in Northern Manchuria in mind, which parts of the law had the greatest propaganda effect? In the “Guidelines for Propaganda Operations for Suppressing Traitors” (*Gyakuto chintei senden kōsaku yōryō* 逆徒鎮定宣伝工作要領) that Yamaguchi prepared for the operatives,

⁶⁰ “Gyakuto chintei senden kōsaku yōryō.”

⁶¹ “Kyōwakai-shi shiryōshū” 2.

⁶² Yamaguchi Jūji, “Igi mōshitate riyū genkō” 異議申立理由原稿, in “Yamaguchi Jūji monjo,” 223.

there is a passage stating: “List the unjust policies of the former warlord regime and compare them with the policies of freedom and equality in the democratic politics of the new state. However, toward a populace strongly imbued with an exclusionary spirit, do not initially preach a doctrine of harmony; simply foster a broad sense of dissatisfaction with the old politics.”⁶³ In other words, merely appealing in general terms to the guarantee of universal human rights, modeled on Western law codes, would have little effect; what was needed were distinctive provisions that would highlight the differences between the old and new regimes in Manchuria.

From this perspective, the revisions made in the second draft of the “Human Rights Protection Ordinance” are particularly significant. The most striking difference between the first and second drafts lies in the fact that Articles 10 to 12—“the only three provisions in the Human Rights Protection Law worthy of attention,” as Rōyama put it⁶⁴—appeared for the first time in the second draft. Whereas the first draft made broad reference to universal human rights such as bodily and political freedoms and the protection of private property, Articles 10 to 12, introduced from the second draft onward, concentrated on economic rights. These three provisions, therefore, were key articles in clarifying the differences between the old and new regimes.

Let us consider them one by one. Article 10 recognized “freedom of joint economic management.”⁶⁵ Generally speaking, “in countries that recognize purely individual freedom, freedom of joint management is in fact prohibited, on the grounds that it hinders individual freedom.” This is because joint management leads to cartels and trusts and gives rise to “the evils of capitalist monopoly.” In contrast, Manchukuo explicitly recognized the freedom of such joint management. As explained by Tejima Tsuneyoshi 手島庸義, councilor (*sanjikan* 参事官) in the Legislative Section (Hōseisho 法制処) of Manchukuo’s General Affairs Agency (Sōmuchō 総務庁), in his 1940 work *Commentary on the Fundamental Laws of the Manchurian Empire* (*Manshū teikoku kihon-hō shakugi* 満洲帝国基本法釈義), the aim was “to guarantee the freedom to form small and medium-sized enterprises to counter the pressure of large capital, associations of entrepreneurs to rationalize business operations, and workers’ organizations to improve working conditions.”⁶⁶ Article 10, then, appears to have been drafted with the existence of the agricultural and commercial associations—major targets of operations in Northern Manchuria—in mind.

Article 11, for its part, was grounded in the perception that “before the founding

⁶³ Yamaguchi, “Gyakuto chintei senden kōsaku yōryō,” p. 81.

⁶⁴ Rōyama, “Seiji,” p. 104.

⁶⁵ Takahashi, *Manshūkoku kihon-hō*, p. 101.

⁶⁶ Tejima, *Manshū teikoku kihon-hō shakugi*, p. 122.

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of Manchukuo, the people suffered on the one hand under the warlords' oppressive extraction of taxes and levies by force, and on the other groaned under the economic exploitation of moneylenders charging usurious interest and of commercial capital.⁶⁷ The enactment of this article thus had "historical reasons prior to the founding of the state,"⁶⁸ and it lent itself well to emphasizing the contrast between the old and new regimes. A pamphlet by the Army Ministry's Investigation Group (Chōsahan 調査班), *On the Process of the Establishment of Manchukuo and Its State Structure* (Manshūkoku seiritsu no keii to sono kokka kikō ni tsuite 満洲国成立の経緯と其国家機構に就て; pub. 4 April 1932), likewise had this provision in mind when it remarked: "It is a striking new feature that cannot be overlooked that the Human Rights Protection Law has a modern, socially legislative character, for example in the provision that the people of Manchukuo shall be protected from high interest, profiteering, and all forms of unjust economic pressure."⁶⁹

Article 12 stipulated that the people were entitled to use and enjoy the benefits of such state facilities as railways, parks, and postal services, and such local facilities as waterworks, hospitals, assembly halls, and libraries.⁷⁰ When the state builds a railway, for instance, the people gain the convenience of transportation. Yet Yamaguchi recalled his experience in September 1931, when he was involved in taking over and rehabilitating the Shenhai Railway, as follows.⁷¹ The rehabilitation efforts were originally intended to restart operations on a railway previously managed by the regime of the Three Eastern Provinces by forming a new Railway Security and Maintenance Association with shareholders, railway employees, and the railway guard troops under the banner of "autonomous rehabilitation."⁷² Yamaguchi explained that the Shenhai Railway

was in origin a joint-stock company of twenty million yuan, with half the shares contributed by the private sector. We were not sure whether the shareholders would be willing to participate. Unexpectedly, however, they were delighted to do so. When we looked into it more closely, it turned out that these shareholders existed in name only; in fact, when the Shenhai line was built, each county along the route had been allocated a quota of shares through its Chamber of Commerce and compelled to put up money. ... The shareholders told us ... "We, too, were grateful that a railway was being built, but once it was completed ... the warlords' freight was given priority for freight cars, and moreover it was transported at half the regular rate, practically for

⁶⁷ Ibid., p. 131.

⁶⁸ Onoe, *Manshūkoku kihon-hō taikō*, p. 127.

⁶⁹ Rikugunshō Chōsahan, *Manshūkoku seiritsu no keii to sono kokka kikō ni tsuite*, p. 28.

⁷⁰ Takahashi, *Manshūkoku kihon-hō*, p. 111.

⁷¹ Yamaguchi, "Manshū kenkoku no omoi de." p. 53.

⁷² Yamaguchi, "Jikyoku shori to Manshū jihen."

free, while our shareholders' goods were carried at the full normal rate, and even then we could hardly get any freight cars assigned to us. ... Because the political merchants enjoyed these advantages in railway transport ... we were no longer able to compete with them once the railway was built. ... There would be nothing that would please us more than if management were reformed on a fair basis."

Article 12 was drafted in light of such cases, on the premise that "the people should be guaranteed the right to share in these facilities without distinction based on unreasonable grounds such as race, religion, family status, or wealth."⁷³

Conclusion

In Manchukuo, the meaning of "freedom" corresponded to forms of local autonomy positioned in opposition to the Chinese National Government and the regime of the Three Eastern Provinces. Yet its meaning diverged somewhat between Southern and Northern Manchuria. In Southern Manchuria, "freedom" referred to political autonomy: county-level communities, while making use of existing elite networks, were induced to form self-government associations, which were granted discretionary powers and made responsible for part of county administration. In Northern Manchuria, by contrast, it referred to the autonomy of local economic organizations. Because Japanese influence in the north was weaker than in the south, and public order unstable, it was difficult to dispatch guidance officers from the Self-Government Guidance Department and have political autonomy function in the same manner as in Southern Manchuria. For that reason, efforts focused on engaging the existing agricultural and commercial associations, securing public order through their cooperation, and thereby also drawing support from the farmers and merchants under their umbrella.

Manchukuo's Human Rights Protection Law was drafted with a view to its propaganda value for maintaining order and winning cooperation in Northern Manchuria. As Rōyama perceptively observed, maintaining public order required "a certain degree of acceptance on the part of the residents," and thus it was necessary "to satisfy the natural sense of justice possessed by the governed, as well as their simple notions of freedom."⁷⁴ Accordingly, the Protection Law did not merely offer a broad guarantee of universal human rights, in the manner of analogous modern Western statutes; it also inserted provisions protecting economic rights in a way that took account of Manchuria's distinctive characteristics and historical conditions.

When one considers Manchukuo's state structure in light of the nature of "freedom"

⁷³ Hidaka, *Manshūkoku kōhō taii*, p. 61.

⁷⁴ Rōyama, "Seiji," p. 101.

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in the country and the political significance of the Human Rights Protection Law, it appears that in its early years the state assumed a form of national corporatism. Within the Manchukuo Concordia Association, too, many believed that the country should adopt a cooperative, corporatist structure. A document written by individuals close to Yamaguchi, titled “Manchukuo Concordia Association Construction and the Necessity of Establishing an Industrial Control Bureau” (*Manshūkoku kyōwakai kensetsu to sangyō tōseikyoku setchi no hitsuyō* 満洲国協和会建設ト産業統制局設置ノ必要)⁷⁵ listed among the “main points of Manchukuo’s governance” the “advancement of rural autonomy,” and, as necessary efforts toward that end, it advocated “guiding county self-government,” “promoting the founding spirit of the state and the movement for ethnic concord,” and achieving the “completion of rural cooperatives.” This indicates that the Manchukuo central government sought to extend state power by bringing under its control indigenous intermediate self-governing bodies—whether county self-government associations in Southern Manchuria or agricultural and commercial associations in the north.

Yet, as seen in Nazi Germany and Fascist Italy, national corporatism readily turns toward authoritarianism. This is because interest groups such as labor unions and employers’ associations become subject to state supervision through laws and regulations in exchange for their participation in national politics. From this perspective, a problem arises from the fact that the freedoms recognized in the Human Rights Protection Law were not rights wrested by the people themselves through confrontation with state power, but were granted as part of Manchukuo’s good-government ideology. Interpretations of freedom in Manchukuo were shaped according to state priorities and were susceptible to change at the discretion of those in power. In *Commentary on the Fundamental Laws of the Manchurian Empire*, Tejima contrasted pre-nineteenth-century conceptions of freedom with that of Manchukuo, explaining:⁷⁶

The freedom guaranteed by the Human Rights Protection Law is neither the “freedom of human beings”—that is, the supranational, natural rights endowed at birth of the so-called eighteenth-century type—nor the “freedom of the people” of the so-called

⁷⁵ “Ishiwara Kanji kankei monjo,” R7–135. On the cover there is a note regarding “Yamaguchi’s proposal” to establish the Kyōwa Bank. In addition, Koyama Sadatomo 小山貞知, former director of the Manchuria Youth League and later a member of the Central Secretariat of the Kyōwakai, similarly stated: “The new state of Manchukuo should, as far as possible, leave rural villages in a state of self-governance and promote the spread of rural cooperatives. Industries that the villages cannot handle should be placed under state control, and the profits from them should be used to insure against losses to agriculture and animal husbandry caused by natural disasters, thereby ensuring the livelihood of the people” (Koyama, “Kyōwa undō no konpon seishin”). Also, note that here, I am using “corporatism” to refer to “a particular mode by which the interests of civil society, organized into groups, are linked to the structure of state decision-making.” “State corporatism” denotes a system in which such structures of interest representation are formed under the initiative and direction of the state. (Schmitter, “Still the Century of Corporatism?” pp. 7–48).

⁷⁶ Tejima, *Manshū teikoku kihon-hō shakugi*, p. 111.

nineteenth-century type, which stands in opposition to the state and is guaranteed by the constitution, such that some aspects may not be infringed except by ‘laws’ enacted with the participation of an elected assembly, and others may not be infringed even by such laws unless the constitution itself is amended. Rather, it is a freedom that, by being recognized, encourages the manifestation of individual initiative and contributes to realizing the national ideal and promoting the development of the state as a whole. In other words, the freedom recognized for the people of Manchukuo is freedom within the limits of service to the state as a whole—a freedom under state control, the so-called twentieth-century freedom.

Tejima, however, had not always held the above interpretation. In the preface to the same work, he candidly acknowledged the influence of Carl Schmitt, stating: “At present, all the states of humanity—regardless of East or West, and regardless of whether they desire it or not—are facing a transitional moment as they shift from the old liberal order to the new totalitarian order, that is, from the dualistic state to the tripartite state as described by Carl Schmitt; accordingly, theories of the state and other fundamental doctrines of constitutional law exhibit unprecedented confusion and instability.”⁷⁷ The content of Manchukuo’s concept of freedom appears to have gradually changed from the moment of its founding, in tandem with transformations in its state structure.

Through what process of transformation, then, did Manchukuo ultimately arrive at its final form? Addressing that question is a task for subsequent papers.

Historical Source 1: Human Rights Protection Law

Relying upon the trust of all the people to administer the governance of Manchukuo, the chief executive hereby pledges to all the people that, except in time of war or extraordinary emergency, he shall safeguard the people’s freedoms and rights and shall define their duties in accordance with the following articles:

Article 1

The people of Manchukuo shall not have their personal liberty infringed. Restrictions by public authority shall be as prescribed by law.

Article 2

The people of Manchukuo shall not have their property rights infringed. Restrictions justified by the public interest shall be as prescribed by law.

⁷⁷ *Ibid.*, p. 1.

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Article 3

Regardless of race or religion, all people of Manchukuo shall enjoy equal protection of the state.

Article 4

The people of Manchukuo shall have the right, as prescribed by law, to participate in the public affairs of the state or of local bodies.

Article 5

The people of Manchukuo shall have, as prescribed by law, the equal right to be appointed as officials and public employees, and shall bear the duty to assume other honorary posts.

Article 6

The people of Manchukuo may submit petitions in accordance with procedures prescribed by law.

Article 7

The people of Manchukuo shall have the right to receive adjudication by judges established by law.

Article 8

When the rights of the people of Manchukuo are infringed through unlawful dispositions of administrative offices, they may request redress in accordance with provisions prescribed by law.

Article 9

The people of Manchukuo shall not, except pursuant to law, be subjected to taxation, requisition, or fines under any pretext.

Article 10

The people of Manchukuo may, so long as it does not contravene the public interest, organize cooperatively in order to protect and promote their economic interests.

Article 11

The people of Manchukuo shall be protected from high-interest lending, profiteering, and all other forms of unjust economic oppression.

Article 12

The people of Manchukuo shall equally have the right to enjoy various facilities established at public expense by the state or local bodies.

Article 13

This Law shall come into force on the ninth day of the third month of the first year of Datong (9 March 1932).

Historical Source 2: First Draft of the “Human Rights Protection Ordinance”

Relying upon the trust of the entire nation to govern the Free State of Manchuria-Mongolia, the president hereby pledges to all the nation that, except in time of war or extraordinary emergency, he shall safeguard the freedom and rights of the people and define their duties in accordance with the following:

1. The people of the Free State of Manchuria-Mongolia shall not be arrested, detained, interrogated, or punished except pursuant to law.
2. The people of the Free State of Manchuria-Mongolia shall not be subjected under any pretext to taxation, requisition, or fines except pursuant to law.
3. The people of the Free State of Manchuria-Mongolia shall not have their property rights infringed. Restrictions or dispositions justified by the public interest shall be established by law, and except in special cases, shall be accompanied by appropriate compensation.
4. The people of the Free State of Manchuria-Mongolia shall have freedom of residence, movement, travel, and business within the country; provided, however, that restrictions may be imposed by law when harmful to public order or good morals.
5. The people of the Free State of Manchuria-Mongolia shall have freedom of religion; however, this shall not apply to matters harmful to social life.
6. The people of the Free State of Manchuria-Mongolia shall not have their freedoms of assembly, association, publication, and expression curtailed; however, this shall not apply to cases harmful to public order or public morals.
7. The people of the Free State of Manchuria-Mongolia may freely travel, migrate, and communicate and trade with foreigners; restrictions thereon must be established by law.

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8. Except in special cases prescribed by law, the secrecy of letters and other communications of the people of the Free State of Manchuria-Mongolia shall not be violated.

9. Except as prescribed by law, the people of the Free State of Manchuria-Mongolia shall not have their residences entered.

10. The people of the Free State of Manchuria-Mongolia shall be eligible, in accordance with provisions of law, to be appointed as officials and public employees.

11. The people of the Free State of Manchuria-Mongolia shall have the right to the equal protection of the state before all laws and ordinances.

12. The people of the Free State of Manchuria-Mongolia shall have the right to receive trial by judges established by law.

13. The people of the Free State of Manchuria-Mongolia shall have the right to petition the president in accordance with procedures prescribed by law.

14. When the rights of the people of the Free State of Manchuria-Mongolia are infringed through unlawful dispositions of administrative organs, they may request redress in accordance with provisions prescribed by law.

15. The people of the Free State of Manchuria-Mongolia shall bear the duty to assume honorary posts as prescribed by law.

16. The people of the Free State of Manchuria-Mongolia shall bear the duty to undertake all public burdens equally, as prescribed by law.

Historical Source Source 3: Second Draft of the “Human Rights Protection Ordinance”

Relying upon the trust of the entire nation to exercise the governing authority of the Free State of Manchuria-Mongolia, the president hereby pledges to the entire nation that, except in time of war or extraordinary emergency, he shall safeguard the freedom and rights of the nation and define their duties in accordance with the following:

1. The people of the Free State of Manchuria-Mongolia shall not have their personal liberty infringed. Restrictions by public authority shall be as prescribed by law.

2. The people of the Free State of Manchuria-Mongolia shall not have their property rights infringed. Restrictions justified by the public interest shall be as prescribed by law.
3. Regardless of race or religion, all people of the Free State of Manchuria-Mongolia shall enjoy the equal protection of the state.
4. The people of the Free State of Manchuria-Mongolia shall have the right, as prescribed by law, to participate in the public affairs of the state or of local bodies.
5. The people of the Free State of Manchuria-Mongolia shall have, as prescribed by law, the equal right to be appointed as public officials, and shall bear the duty to assume other honorary posts.
6. The people of the Free State of Manchuria-Mongolia may submit petitions in accordance with procedures prescribed by law.
7. The people of the Free State of Manchuria-Mongolia shall have the right to receive trial by judges established by law.
8. When the rights of the people of the Free State of Manchuria-Mongolia are infringed through unlawful dispositions of administrative offices, they may request redress in accordance with provisions prescribed by law.
9. Except pursuant to law, the people of the Free State of Manchuria-Mongolia shall not be subjected under any pretext to taxation, requisition, or fines.
10. The people of the Free State of Manchuria-Mongolia may, so long as it does not contravene the public interest, organize cooperatively in order to protect and promote their economic interests.
11. The people of the Free State of Manchuria-Mongolia shall be protected from high-interest lending, profiteering, and all other forms of unjust economic oppression.
12. The people of the Free State of Manchuria-Mongolia shall equally have the right to enjoy educational and cultural facilities established at public expense by the state or local bodies.

(Translated by Dylan L. Toda)

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