

# The Issue of Women's Property Inheritance Rights in the Legislative Process of Manchukuo's Law of Kinship and Inheritance\*

TAN Juan

## Abstract

After the founding of Manchukuo in 1932, all citizens, except Japanese nationals, were subject to civil law in the Republic of China. Dissatisfied with the law that recognized equal inheritance rights for men and women, local judicial officers conducted a nationwide survey of family customs to draft new statutes after 1937. This study aims to draw on the documents concerning the debates of the time on the status of women using historical documents such as the *Records of the Deliberation on the Outline of the Law of Kinship and Inheritance*.

The Civil Code Investigative Committee drafted a unified set of statutes for Manchu, Han, Mongolian, and Muslim citizens and completed the Outline of the Manchukuo Law of Kinship and Inheritance in February 1942. The Japanese and a few Chinese members attempted to draft statutes based on the principle of gender equality; however, many Chinese members, citing Manchu and Han customs, refused to recognize women's rights to inheritance. In the end, the latter faction's opinion was incorporated into the law, legalizing patrilineal family organization and upholding the patrilineal inheritance of family headship (*zongtiao* 宗祧). What had been legitimized, however, was not a customary family system per se, but rather the reform of traditional family customs, resulting in the separation of the right to property inheritance from that of *zongtiao* inheritance; the former recognized wives' and daughters' right of inheritance in the absence of male offspring and wives' claim to their own separate property.

The social context in which this law was drafted was that the firm perception favoring women's inheritance of property had already permeated public opinion in Manchukuo. Men valued consanguinity more than *zongtiao* inheritance and did not oppose women inheriting family wealth. Considering the above context of legislative decisions, the author concludes that Manchukuo society was characterized by the weakening of the traditional Chinese kinship system, which accompanied colonial modernization.

**Keywords:** Manchukuo, the Law of Kinship and Inheritance, the right to inherit property, gender order, colonial modernization

## Introduction

Manchukuo was founded in 1932 under Japanese influence in northeastern China and collapsed after Japan's defeat in 1945. Although it took the form of an independent state,<sup>1)</sup> it is sometimes referred to as a Japanese colony, because all real power was monopolized by Japanese military officers, civil officials, and advisors. However, to maintain the appearance of an independent state, the Japanese rulers in power attempted to establish the minimum requirements for an independent Manchukuo state. One such requirement was the judicial system.

Manchukuo began compiling laws and regulations in 1932 and promulgated the Penal Code, Civil Code (excluding kinship and inheritance), Company Law, and other laws just before the abolition of extraterritorial jurisdiction and the transfer of administrative power over land affiliated with the South Manchuria Railway Company to Manchukuo (in December 1937). All these statutes were based on and differed little from Japanese law.<sup>2)</sup> On the contrary, the Law of Kinship and Inheritance, which belonged to the Civil Code,<sup>3)</sup> was “a complicated law that had a strong ethnic flavor and had to be legislated after careful study of customary practices, and since it was also an important code closely related to the daily lives of the people, it was difficult to legislate quickly and was left for a later date.”<sup>4)</sup> The legislation of the Law of Kinship and Inheritance in Manchukuo began in 1939 and was promulgated on July 1, 1945, just prior to Japan's defeat in World War II. According to the *History of Manchukuo*, this law, “while following the customary patrilineal principle, also recognized the legal status of women to some extent in accordance with the demands of the new era, and established various provisions that differed from customary practices.”<sup>5)</sup> How did this law that recognized the legal status of women in the colonial state of Manchukuo develop, and how did it relate to the colonial rule? These are issues central to understanding gender order and colonial rule in Manchukuo.

Suetsugu Reiko compares the Manchukuo Law of Kinship and Inheritance to the Civil Codes of Japan and the Republic of China to affirm the improved status of women and evaluates the role played by Hozumi Shigetō 穂積重遠 and other Japanese jurists involved in drafting the law.<sup>6)</sup> However, according to the *History of Manchukuo*, the Chinese jurists were deeply involved in the legislation of the Law of Kinship and Inheritance. “Manxi (Mankei 滿系, referring to Chinese)<sup>7)</sup> committee secretaries deliberated day after day with great enthusiasm, feeling that this legislation was their work. No previous legislation had been so careful, and at the same time, so committed

to it by the Manxi people.”<sup>8)</sup> However, as neither study was based on historical sources related to the process of creating the Law of Kinship and Inheritance, they were unable to demonstrate the roles played by the Japanese and Chinese jurists. It is also unclear what perceptions led jurists of the time to recognize women's legal status to some extent, since neither study drew on documents concerning the debates of the time on the status of women. Therefore, this paper aims to fill in the gaps in both studies by using historical documents such as the *Records of the Deliberation on the Outline of the Law of Kinship and Inheritance* (*Shinzoku keishōhō yōkō shingiroku* 親屬繼承法要綱審議錄), which is the proceedings of the meeting of the committee preparing the law.

This study focuses on women's rights to inherit property. Faced with the challenges of incorporating the diverse customs of various ethnic groups and identifying and reforming the changing status of these customs, jurists conducted surveys on customs, interviewed civilians, and debated legislative policies on the issue. Although the Manchukuo Law of Kinship and Inheritance was never enforced because of the collapse of the state, its legislative process reflects the transformation of the gender order under Manchukuo rule and the attitude of the Manchukuo government toward such an order. Gender is the force that creates the social structure of a society and is the basis on which hierarchies are made.<sup>9)</sup> Thus, we can explore some aspects of Manchukuo's social structure and governing philosophy through debates over women's rights to property inheritance at the time.

In the following sections, we will first summarize the legal and customary family systems in Manchukuo, and then examine the diversity of customs in multi-ethnic Manchukuo and the legislative policies of jurists. We also discuss the “Outline of the Law of Kinship and Inheritance” passed in February 1942 by the Civil Code Investigative Committee of Manchukuo and examine its provisions on women's rights to inherit property by comparing them with customary practices. Furthermore, through an analysis of the deliberation process of the outline, the participation of the Manchukuo judiciary in its preparation will be clarified. Finally, we examine the social background of the legislation through the opinions of private citizens and explore the relationship between changes in women's rights, as seen in the Law of Kinship and Inheritance, and colonial rule.

## 1. Legal System Regarding Women's Right to Inherit Property after the Establishment of Manchukuo

On March 9, 1932, shortly after the establishment of Manchukuo, the Order of Instruction No. 3 was promulgated regarding the judicial system in Manchukuo.<sup>10)</sup> According to this decree, the laws of the Republic of China that were in force in the past were applied to Manchukuo. However, the policy was not to use the laws of the Republic of China as they were but to use only those that were compatible with the national conditions of Manchukuo. The parts of the Civil Code of the Republic of China adopted in Manchukuo were the General Principles (which came into effect in 1929), Obligations and Rights in Rem (in 1930), and Kinship and Inheritance (in 1931). The scope of application of the law was also limited. For Manchukuo nationals other than the Japanese, including the Manchu, Han, Hui, and Mongolian peoples, the Part of Kinship and Inheritance of the Republican civil code were applied. The Republican code was also applied to White Russian émigrés. “As to the matters concerning the family status of Japanese nationals were to be governed by the laws and regulations of Japan in accordance with the treaty.”<sup>11)</sup> The term “Japanese” here includes Koreans and Taiwanese. In other words, the Japanese laws of kinship, inheritance, and family registration were applied to the Japanese nationals living in Manchuria, the colonial Korean ordinances of civil affairs and family registration were applied to the Koreans, and Taiwanese laws and regulations were applied to the Taiwanese.

The Part of Kinship and Inheritance of the Civil Code of the Republic of China provided for women's right to inherit property as follows: Lineal descendants, regardless of gender, shall be listed as the first in line, and wives of the deceased shall be recognized as having the same right of inheritance as a lineal descendant.<sup>12)</sup> In other words, this law was based on gender egalitarianism and recognized equal property inheritance rights for men and women.<sup>13)</sup> It did not recognize the patriarchal institution of property that maintains the traditional Chinese extended family, but also abolished the patrilineal inheritance of family headship (*zongtiao* 宗祧; literally, ancestral temple), which was a prerequisite for property inheritance in the traditional family system.<sup>14)</sup>

However, the Manchukuo judicial bureaucracy was dissatisfied with this aspect of the Republican civil code. Chikusa Tatsuo,<sup>15)</sup> Counselor at the Department of Justice, who drafted the Manchukuo Law of Kinship and Inheritance, later stated as follows:

The Part of Kinship and Inheritance in the Republican civil code was considered necessary, for the realization of the society that based on the Three Principles of the People, the guiding principle of the Guomindang, to be distributed promptly to change the people's way of thinking and to facilitate the realization of the party's platform. The idea was based on a highly innovative principle and was motivated by the voices of some advocates at the time who believed in the expansion of women's rights. Although China and Manchuria have always been countries with strong patrilineal familism, they abandoned familism in favor of equality between men and women by following individualism . . . those laws, completely divorced from real life, are generally not enforced, and the people are extremely dissatisfied with the laws. Moreover, as an independent state, Manchukuo was not allowed to continue relying on foreign laws to apply to its citizens.<sup>16)</sup>

In other words, from the vantage point of the Japanese judicial bureaucrats, the Part of Kinship and Inheritance of the Civil Code of the Republic of China was foreign law, drafted under the principle of gender equality, and did not fit the reality of Manchukuo's patrilineal family system. Zhu Guangwen, a Chinese judicial official and another drafter of the Manchukuo Law of Kinship and Inheritance, criticized the Republican civil code abolishing the distinction between *zongqin* 宗親 (blood kinship of male lineage originating from the same ancestor, including women who did not marry out and the wives of male lineage blood relatives) and *waiqin* 外親 (kinship arising with the maternal family) on the principle of gender equality and insisted on maintaining the traditional Chinese family, an association consisting of *zongqin* with the same surname, rather than a mixture of people with different surnames.<sup>17)</sup>

## 2. Legislative Policy on the Law and Ethnic-Specific Customary Practices

### 2.1. Legislative Policy on the Law of Kinship and Inheritance

Immediately after the abolition of extraterritoriality in December 1937, the Department of Justice of Manchukuo began researching the customary family system in Manchuria and drafting laws of kinship and inheritance. In March 1939, the Civil Code Investigative Committee was established, the first part of which deliberated on the law.<sup>18)</sup> In September 1938, Chikusa Tatsuo, a judge in the Tokyo District Court, was assigned as a counselor to the

Department of Justice for drafting the law. Zhu Guangwen, a graduate of the Fengtian Public College of Law, was the Chinese drafting member. He was appointed as a justice of the Supreme Court after the establishment of Manchukuo and had been in Japan in 1934 under the dispatch of the Department of Justice to study the Japanese judicial system. According to Professor Mura Kyōzō of Kenkoku University, “There is a strong desire among the Manxi (*Mankei*) to enact the Manchurian law of kinship and inheritance based on Manxi customs, but it is widely believed that the responsibility for drafting the law rests mainly on his [Zhu Guangwen] shoulders.”<sup>19)</sup> Hozumi Shigetō, a professor at Tokyo Imperial University, and Nakagawa Zennosuke 中川善之助, a professor at Tohoku Imperial University, were also consultants for the legislation.<sup>20)</sup>

After receiving an order to draft the law, Chikusa and Zhu collected materials, conducted a literature review, and investigated the customs on site. In June 1939, the first subcommittee of the Civil Code Investigative Committee decided on the legislative principles of the Law of Kinship and Inheritance as follows:<sup>21)</sup>

First, the Japanese (Mainlander, Korean, and Taiwanese) shall be subject to the Japanese laws and regulations, and a unified code shall be enacted for the Manchu, Han, Mongolian, Huijiao, and other peoples. However, for those with different customs, some room shall be left for customary practices, and for the White Russians, the majority shall be left to customary practices. Second, the customs of each ethnic group should be carefully studied and respected as far as possible to preserve the good morals and manners of the East and to prevent any disconnection between law and actual life. However, any points considered harmful should be reformed to promote culture. Third, consideration shall be given to ensure that the law is compatible with the construction of a new order in East Asia.

The Civil Code Investigative Committee decided to create a unified code for the non-Japanese for the construction of a new order in Greater East Asia, believing that “Common laws will, in the long run, create common manners and customs, and leading to common moral convictions [ . . . ] will unite the peoples and help to consolidate the cohesion within the East Asia Co-prosperity Sphere.”<sup>22)</sup> At the same time, fearing that “if the majority of the people lose their sympathy and become antagonistic, it will have unfavorable consequences for the politics of Manchukuo,”<sup>23)</sup> they decided to create the law

of kinship and inheritance that would respect customary practices. From the viewpoint of the committee, it was possible to make the unified code based on Eastern Morality (*Tōyō dōgi* 東洋道義) because the customary family system of the Mongolian and Huijiaoren<sup>24)</sup> peoples at that time were not different from those of the Manchu and Han. This “Eastern Morality” meant “respecting family, worshipping ancestors, and adopting a patrilineal principle.”<sup>25)</sup> This was the basis of the Manchu-Han family system of the time. In other words, the legislative policy of the Civil Code Investigative Committee was mainly to respect the customs of the Manchu-Han family system. Furthermore, the committee, respecting the customs, wanted to “make some reforms while ensuring that the people do not disengage from the government”<sup>26)</sup> to improve the culture. Thus, women's right to inherit property became the focus of the issue of how to strike a balance between respect for customs and reform.

## 2.2. Discrepancies between the Committee's Perception and the Reality of the Customary Practices

First, the Department of Justice surveyed Han customs in Harbin from November 5 to 18, 1940. In a Han family, each family member may own separate property or personal property in addition to the family property.<sup>27)</sup> A wife is not entitled to inherit her deceased husband's property, but if she has a son, the son inherits that property. If there is no son, she must adopt a male, for her husband, from the same patriline as the family headship heir (*sizi* 嗣子) to inherit the ancestral temple. The *sizi* shall then inherit this property as the heir to the *zongtiao*. If there are no sons, adopted *sizi*, or other successors, daughters can inherit the property for the first time.<sup>28)</sup>

In other words, Han families have two inheritances: those of the *zongtiao* and property. Only the heir to the *zongtiao* could inherit the property. Heirs to the *zongtiao* were limited to males only; daughters could not become the heirs, nor could they have the right to inherit property. In the absence of sons, adopted *sizi*, or anyone who could inherit, daughters could inherit property; however, the existence of the institution of *sizi* adoption, in which parents and grandparents could also be heirs, meant that daughters rarely inherited property. Nevertheless, with the institutional laxity of extended families, many separate properties were owned by individual family members, in addition to the family property that supported the institutions.

The customs of the Manchu Banner people (*qiren* 旗人) were investigated in Shuangcheng 雙城 County, Binjiang 濱江 Province from October 9 to 14,



1941. According to the survey records, their customs were almost the same as those of the Han people.<sup>29)</sup>

The Mongolian customs were investigated in Hailar City, Xing'anbei 興安北 Province from October 9 to 20, 1941, and in Wangye Miao 王爺廟 Street, Xing'annan 興安南 Province from September 22 to October 2, 1942. In Mongolian households, the family income was the family property. Family members were not allowed to own their separate property. A wife might bring livestock from her parents' house, but this was treated as family property. The *zongtiao* inheritance was not practiced; however, a *sizi* might be adopted to continue direct lineage. At the time of a husband's death, if he had a son, the wife had no inheritance rights. If there were no sons, the wife could inherit her husband's property. However, she could not remarry with the inherited property. Daughters were not granted inheritance rights, but were given a marriage fee. Even if there was only one daughter, she should be married out and the property should be inherited by the adopted *sizi*, if any, or by a relative with the same surname.<sup>30)</sup>

According to a survey of Huijiaoren customs conducted at mosques (*qingzhen si* 清真寺) in Xinjing 新京 Special City from June 11 to July 10, 1941, each family member may own his or her separate property. The Hui people did not originally have the custom of *sizi* adoption, but because of the influence of the Manchu-Han customs, they sometimes adopted an heir for patrilineal *zongtiao* inheritance. Daughters did not have the *zongtiao* inheritance rights, but they have the right to inherit family property.<sup>31)</sup> They also have the right to inherit separate property; that is, although the husband is the first in line of succession to the wife's separate property, the daughter inherits in second place, as well as the son.<sup>32)</sup>

As noted above, the customary family systems of the Manchu-Han, Hui, and Mongols were not necessarily the same. Unlike the Manchu and Han, the Mongolian and Huijiaoren families did not originally have the practice of *zongtiao* inheritance. In other words, while the Manchu-Han people did not recognize women's rights to inherit property, Mongolian families recognized the wife's rights, and Huijiaoren families recognized the daughter's rights to some extent. Differences were also observed between the Mongolian and Huijiaoren families. While the Huijiaoren, like the Manchu and Han, recognized family members' separate property owing to modernization, the Mongolians still maintained a strict institution of family property. The perception of the Civil Code Investigative Committee that the Manchu, Han, Mongolian, and Huijiaoren peoples have the same customs of kinship and inheritance differs from the reality of the family system in Manchukuo. When



the customs of the various ethnic groups are contrasted with the legislative policy mentioned above, it becomes clear that the policy emphasized only the customs of the Manchu and Han, and not those of the other ethnic groups. Some Japanese jurists opposed this legislative policy.

Regarding the idea of legislating special family laws for the Mongolian people, Mura Kyōzō stated, "I wonder about the fact that Mr. Chikusa said . . . that he was convinced that the Manchu-Han and Mongolian customs are similar and that there would be no great obstacle to legislating them as one. . . . Is there a gap between the customary similarity and the legislative unification?" He pointed out that "it would be better to legislate the Mongolian Family Law, which is differentiated from the one for Han people, for the sake of the Inner and Outer Mongolians, who have strong political sentiments." Finally, no modifications were made based on these suggestions, and the legislation proceeded according to a policy biased toward the customs of Manchu and Han family institutions.<sup>33)</sup>

### **3. The Making Process of Manchukuo's Law of Kinship and Inheritance and Its Outline**

#### **3.1. Legislative Process of Manchukuo's Law of Kinship and Inheritance**

From April to July 1941, the first drafting committee of the Civil Code Investigative Committee met 37 times. The outline proposal drafted by Chikusa Tatsuo was discussed, and it became the first draft of the outline. The meeting participants included nine Chinese members and a small number of Japanese members who accompanied the customs survey and were familiar with the customs. The second draft of the outline, prepared by the second drafting committee from July 4 to 26, 1941, was submitted to the second subcommittee on July 29 and was adopted almost verbatim, except for a few minor changes. In October 1941, a customs survey of the Manchu, Han, and Mongolian peoples was conducted to determine whether there were problems with implementing the second draft of the outline. This draft was presented to Professors Hozumi and Nakagawa for their consideration in November. In January 1942, the third drafting committee and subcommittee met to discuss the questions and opinions of the two professors and prepared a final draft of the outline.<sup>34)</sup> On February 9, 1942, the second grand committee approved this final draft as the Outline of the Law of Kinship and Inheritance. After three and a half years of work, the Law of Kinship and Inheritance of Manchukuo

was promulgated as a statute on July 1, 1945.<sup>35)</sup>

Thus, it can be seen that the passage of the outline was important in drafting the law. In the following section, we review the provisions regarding women's right to inherit property in the outline.

### 3.2. Women's Right to Inherit Property in the Outline

The outline still held for the patrilineal principle of the family institutions. As a result, it legislated the patrilineal institutions of family property, which were most important for maintaining the patrilineal family institutions, as it was customary. However, there were also reforms to customs. For example, family members were allowed to own their income and other assets as separate properties. The outline also adopted an institution of separate properties for husband and wife, denying the husband the right to control, use, and profit from the wife's separate property (e.g., dowry, self-earned property, etc.). Next, we examine women's right to inherit property.

The heirs to the family property shall be (1) sons, (2) unmarried daughters, (3) wives, (4) fathers, (5) mothers, (6) grandfathers, (7) grandmothers, (8) married daughters and sons who have married out<sup>36)</sup> and not become the *sizi*, (9) brothers, (10) unmarried sisters, and (11) other family property owners in the same household. If there is a son, the daughter shall not be granted the right to inherit the family property but shall instead receive an equivalent amount from the inheritance. If there are no sons, the right of inheritance is granted to the unmarried daughter as the second in-line, although the daughter may not marry out with the family property. The right to inherit the family property of a married daughter shall be recognized only when there are no heirs up to the seventh rank.

As for the wife's right to inherit family property, if there are lineal descendants of the first and second ranks as mentioned above, the wife's right to inherit is not recognized, and a necessary and reasonable amount of endowment (living expenses in old age) is given to her, as is customary. If there is no successor of the first or second ranks, the right of inheritance is granted to the wife as a person of the third rank.

The inheritance of separate property was not directly related to the issues of the household and *zongtiao*; therefore, it was determined exclusively on the basis of affection. The scope and order of heirs to separate property were (1) sons and daughters, *sizi*, adopted sons and daughters, and spouses; (2) parents; (3) brothers and sisters; (4) grandparents; and (5) owners of family property in

the household.<sup>37)</sup>

The outline was based on patrilineal principles, but it also made the following reforms to the customary family institutions. It distinguished the inheritance of property from that of *zongtiao*, and while it did not grant women the right to the latter, it recognized the right to the former to some extent. In other words, in the absence of a son, a daughter was allowed to inherit the family property with no *sizi* adoption. Therefore, the inheritance ranks of unmarried daughters and wives were raised to the second and third places, respectively. Furthermore, apart from family property, family members' separate property was institutionalized and equal inheritance rights were granted to men and women over separate property. At that time, the recognition of separate property was said to be an indication that the family, as an institution, had lost its value and authority.<sup>38)</sup>

Therefore, although the Outline of the Law of Kinship and Inheritance reformed the customary patrilineal family institutions, why did it fail to uphold the principle of gender equality and grant women the same right to inherit property as men? How was this outline, which recognized women's inheritance rights to some extent, developed? In the next section, we discuss how the Japanese and Chinese jurists participated in the development of this outline through deliberation.

#### 4. Manchukuo Judicial Officials' Perception of Women's Right to Inherit Property

##### 4.1. Women's Right to Inherit Property Discussed by the Subcommittee

Before drafting the Law of Kinship and Inheritance, the first subcommittee met in June 1939 to study legislative issues and customs survey methods. As shown in Table 1, the subcommittee had fifteen participants, of whom four were Chinese, ten were Japanese, and Lin Fenglin, an official at the Department of Justice, was Taiwanese. Women's status and property inheritance rights were also discussed at this meeting.

First, on the issue of gender inequality, Acting Chairman Ino Eiichi<sup>39)</sup> and Sugawara Tatsurō 菅原達郎 argued that men and women should be equal. In response, Zhu Guangwen defended male-centeredness, saying that gender equality is ideal, but he wondered whether women have the ability to be equal. Chikusa Tatsuo said of women's inheritance of property and raised the following question:<sup>40)</sup>

According to custom, only men can inherit property, and women do not have the right to inherit. . . . Manchurian customs are extremely male-dominated. Therefore, the recognition of equality between men and women in all areas, as in the case of the applied [Republican] law of kinship and inheritance, may be too far removed from reality. . . . To what extent should this be harmonized?

However, the debate did not follow this question. Instead, the issue of whether women should be granted the right to inherit property became a heated debate between Zhu and Sugawara.

Zhu Guangwen said, “The inheritance of *zongtiao* is to be allotted only to the male members of the same clan (*tongzong* 同宗). This is based on the idea of maintaining the family in perpetuity, and property is inherited by the male members of the same clan, with no inheritance allowed to women”; “The family is based on the male lineage and independent; so, ideally, the male line should inherit the property.”<sup>41)</sup> From the perspective of maintaining patrilineal families, he argued that women should not be allowed to inherit property. In response to Zhu’s assertion, Sugawara said, “The idea of not recognizing women’s right to inherit is an old and erroneous idea, and I think it would be better to liquidate it at this time . . . cannot think that girls should not be allowed to inherit *zongtiao*”; “On the basis of the five ethnic groups, we want to adopt only unavoidable customs. . . . Can’t the Manchu and Han people abandon the notion that they do not recognize women’s rights to inheritance?”<sup>42)</sup> He criticized the Manchu-Han practice of inheritance and insisted on women’s rights to inherit property.

In response to these conflicting views, Acting Chairman Ino again proposed a compromise, but the subcommittee ended without a clear answer to women’s right to inherit property. While only one member, Zhu Guangwen, denied women’s right to inherit property, a total of five members supported the idea, with Tong Yi 童沂 and Zou Zongmeng 鄒宗孟<sup>43)</sup> suggesting that men and women should have equal inheritance rights, and Chen Shijie 陳士杰 suggesting that unmarried women should be given half the share of men and married women should be given only one-tenth of the share of men. Other than Sugawara and Ino, a few Japanese expressed their opinions. According to Chikusa, these Japanese jurists were unfamiliar with Manchukuo customs and could not participate in the discussions.<sup>44)</sup> Therefore, it was proposed that a preparatory committee for the subcommittee be established to collect the opinions of the Chinese jurists and hold steady discussions. The preparatory

committee was a drafting committee as described below.

#### 4.2. Women's Right to Inherit Property Discussed in the Drafting Committee

The first drafting committee met from April to June 1941, with participants as shown in Table 2: nine Chinese, five Japanese, and one Taiwanese, Lin Fenglin. A large number of Chinese participants were included. A relatively small number of Japanese participants had accompanied the customs survey and were familiar with Manchukuo customs. Steady discussions were held and much of the content related to the drafting of the Law of Kinship and Inheritance was discussed and decided at the meeting.

First, there was a heated debate about daughters' rights to inherit family property in the presence of sons. There were two positions among the Chinese jurists: one that recognized women's rights (Wang Mengling 王夢齡, Yu Yun'ge 許雲閣, Zou Zongmeng) and one that did not (Zhu Guangwen, Tong Yi, Cheng Yiming 程義明, Wei Chengzhi 衛成志). Wang Mengling said, "Inheritance rights should be equal for men and women. . . . Women make up half of the population, and they are not inferior to men by birth,"<sup>45)</sup> and insisted on women's right to inherit family property from the standpoint that women should be regarded as citizens of the nation, and their status should be recognized equally with that of men. Tong Yi denied women's right to inherit family property by emphasizing the patrilineal *zongtiao* inheritance, saying, "Our *zongtiao* inheritance does not concern women, and property is only one of the effects of *zongtiao* inheritance. . . . Allowing women the right risks disrupting the family institutions."<sup>46)</sup>

The changes in Tong Yi's arguments should be noted. After advocating for equal inheritance rights for men and women in the subcommittee, Tong began to deny women's right to inherit family property in the drafting committee. The reason for this change is unclear, but given that all Japanese jurists affirmed women's right to inherit property, while some Chinese jurists denied it, it may be related to the fact that many participants in the drafting committee were Chinese jurists, who mainly discussed the issue. In addition, many Chinese jurists spoke up, whereas the Japanese jurists did not. However, the Japanese jurist, Toya Masaya 戸矢雅弥 affirmed women's right to inherit family property, and based on the world situation said, "It is not only a matter of civil law but also a principle of general law and the most correct from a humanitarian standpoint that no country in the world makes any discrimination based on gender."<sup>47)</sup> Koishi Toshio 小石寿夫 argued for

women's position because women often lose lawsuits. Finally, the outline adopted the arguments of Zhu Guangwen, Tong Yi, and others, who maintained the patrilineal *zongtiao* inheritance and emphasized the customary Manchu-Han family institutions of not allowing women the right to inherit family property.

Regarding a daughter's right to inherit family property in the absence of a son, Zhu Guangwen argued that the right to inherit family property should be recognized because, starting from the fact that a daughter is a biological child and a *sizi* is not, it is natural human nature to love a daughter who is one's own child. Other Chinese jurists agreed with this proposal. However, Koishi Toshio, the only Japanese jurist to speak on the issue, pointed out a contradiction in Zhu's statement. According to Koishi, if the patrilineal family institution is to be thoroughly adhered to, it would be appropriate to deny inheritance rights to girls, not only in the case of sons, but also in the case of *sizis*.<sup>48)</sup> Ultimately, Zhu Guangwen's opinion was incorporated into the draft outline, and Koishi's opinion was not adopted. Zhu Guangwen's opinion was also adopted regarding the inheritance share of daughters in the absence of sons.<sup>49)</sup>

Women's rights to inherit separate property were also discussed. First, based on the social situation of many urban dwellers and the spread of individualism, the right of family members to separate property in addition to family property was recognized.<sup>50)</sup> Since separate property, which was distinguished from family property, had no relationship with the maintenance of the family institution, Chikusa proposed, "How about allowing equal inheritance for men and women with regard to separate property?"<sup>51)</sup> Chikusa's proposal was opposed by Zhu Guangwen from the standpoint of maintaining the family institution. Chikusa disagreed with Zhu and said, "If we do this, women will have almost no inherited property. Even if the male-centered family institution is to be maintained, it would be too much for women."<sup>52)</sup> In the end, Chikusa's opinion was adopted, and equal inheritance rights in separate property were recognized for men and women.

The above is a review of the deliberative process of the Outline of the Law of Kinship and Inheritance through the Subcommittee and the Drafting Committee. In general, the Japanese jurists advocated reforming the customs of the Manchukuo family system and recognizing equal property inheritance rights for men and women. Most Japanese jurists who participated in the drafting committee were familiar with Manchukuo customs and had participated in customs surveys. With the knowledge of the customs, they started with the theory of gender equality and insisted on reforming the

Manchukuo customs by recognizing women's right to inherit family property. This is exactly what was stated in Article 2 of the legislative policy. In other words, from their perspective, the Manchukuo custom of discriminating between men and women was bad. In contrast, the legislative opinions of the Chinese jurists were not monolithic. While some Chinese jurists, like the Japanese, advocated reforming the customs and recognizing equal inheritance rights for men and women, others, like Zhu Guangwen, insisted on maintaining the patrilineal family organization and denied women the right to inherit family property. As a result, the Outline of the Law of Kinship and Inheritance adopted the opinions of some Chinese jurists who insisted on a patrilineal family organization in the inheritance of family property, and the opinions of some Japanese and other Chinese jurists who insisted on equal inheritance rights for men and women in the inheritance of separate property. In other words, conflicts among jurists during the deliberation process appeared as a compromise in the outline, and women's right to inherit property was somewhat recognized. The legislative advisors, Professors Hozumi and Nakagawa, did not raise any objections to women's right to inherit property. The above-mentioned content regarding women's right to inherit property was finally codified under the Law of Kinship and Inheritance.

A daughter's right to inherit the family property in the case of a son was not recognized, but that of a daughter who did not marry out in the absence of a son was recognized. The reason for this recognition is thought to have been a change in the customary institution of *sizi* adoption. According to Chikusa, "Under the old law, a *sizi* had to be a person related by blood to the ancestor, since an heir was exclusively for the ancestor. However, there are now considerable opinions that the institution of *zongtiao* inheritance should be abolished, and it has become necessary to consider the institution of *sizi* not only in terms of the ancestor, but also for the parent."<sup>53)</sup> As a result, a new provision, "a person with a different surname may be made a *sizi*," was incorporated in the outline. A child born to a son-in-law or daughter can become a *sizi* and inherit the family property. This is roughly equivalent to a daughter inheriting the family property. In other words, if the right to inherit the family property is recognized for daughters who do not marry out in the absence of sons, not only can the family system be maintained, but it also makes sense to recognize women's right to inherit. This content is also considered eclectic.

What legislative opinions did the people living in Manchukuo hold about the creation of this law of kinship and inheritance, which was directly related to their own real lives? How were their opinions reflected in the law? In the



next section, we examine the opinions of private citizens through the records of the customs survey (the subjects of the survey were mostly men) and women's roundtable discussions.

## 5. Private Legislative Opinions

### 5.1. Legislative Opinions Found during the Customs Survey

According to the legislative opinion of the Han people in Harbin, women should be granted the right to inherit property. The reason for this was that "parents want to give their daughters inheritance because they are their children, too."<sup>54)</sup> The Han people of the Yanji region of Jiandao Province shared the same opinion and insisted on women's right to inherit property.<sup>55)</sup> The Mongolians' opinions varied, but many said that women should be granted the right to inherit. The reason for this was the same as that of the Han people: "The daughters are closer to parents than *sizi* in terms of consanguinity; so, it is against human nature not to grant inheritance rights to daughters."<sup>56)</sup> Furthermore, the Huijiaoren people insisted that women's inheritance rights be determined according to the Qur'an.<sup>57)</sup> In the survey, the Manchu Banners suggested that women should not be granted the right to inheritance: "The purpose of inheritance is primarily to pass on *zongtiao*, followed by inheritance of legacy; the purpose of passing on *zongtiao* is to perpetuate the lineage and keep the ancestral rites alive; and the purpose of inheriting property is to ensure that the ancestral legacy remains intact and to continue the family. Therefore, those who have no heirs should adopt the heir and let the *zongtiao* perpetuate and carry on the legacy. It is customary for only boys to perpetuate the *zongtiao* and carry on the lineage, while girls eventually marry out and take on a different surname . . . cannot enjoy this right."<sup>58)</sup> They also referred to *zongtiao* inheritance as a reason for not recognizing daughters' right to inheritance.

Thus, from the legislative opinions presented during the survey mentioned above, it can be seen that most opinions are in favor of granting women the right to inherit property. The divergence of opinions lies in the perception of the relationship between *zongtiao* and property inheritance. The Manchu Banners, who opined that the right should not be recognized, emphasized *zongtiao* inheritance and associated property inheritance to it. In contrast, those who suggested recognizing the right emphasized the importance of distant or close kinship in the family system rather than

ancestral rites. By contrasting these legislative opinions with the Outline of the Law of Kinship and Inheritance, it can be said that the opinions of the private sector were reflected in the legislation. The outline could not abolish *zongtiao* inheritance because it adopted a patrilineal family system. Unlike custom, however, the outline did not adhere to this family system. By separating property inheritance from *zongtiao* inheritance, the outline did not recognize women's right to inherit *zongtiao*, but it recognized their right to inherit property to some extent.

## 5.2. Legislative Opinions of Women at the Women's Roundtable

The Law of Kinship and Inheritance affected not only men but also women. The Department of Justice believed that "even though the Law of Kinship and Inheritance is the law that most deeply concerns the interests of women, the above-mentioned customs survey and legislative opinions were all made by men, and this could lead to a failure to reflect the opinions of women, who make up half of the entire nation, in legislation."<sup>59</sup> Thus, it held two women's roundtable discussions to hear their legislative opinions. The first was the "Manxi Women's Roundtable on Legislation of Kinship and Inheritance," held on July 29, 1940. The female participants are named in Table 3; most were middle-aged women in their late 30s or older.

The female participants first presented their legislative opinions on daughters' inheritance rights, with five supporting the rights and two (Sun Jingxuan 孫靜軒 and Wu Peilan 吳佩蘭) opposing them. Mrs. (the wife of) Lu Jingxin 遼景新 said, "If there were a girl and a boy, it would be better to give the girl a small inheritance right by will. For example, if there were 100 assets, 50 for the boy, 30 for the girl, and the remaining 20 for the mother's maintenance. . . ." <sup>60</sup> She argued that instead of equal inheritance rights for men and women, there should be different inheritance rights for them. In response, Wu Peilan said, "It is not good to recognize the right of inheritance because when a woman marries, she leaves her parents' family and becomes a member of another family. Granting that right would mean taking the family property with her."<sup>61</sup> She denied women the right to inherit, fearing that it would drain the family property.

As for the wife's right to inherit property, all members agreed it should be recognized. Sun Jingxuan affirmed the wife's right to inherit property if she had no child, but Mrs. Lu Jingxin argued that there should be no restriction on the wife's right to inherit property, saying "Regardless of whether she has

children or not, the property must be distributed equally with her children. If the child is an unfilial son and the surviving wife has no property, she will have to suffer maltreatment by the child and will not be able to make a living.”<sup>62)</sup>

Since the women who participated in the first roundtable discussion were limited to the wives of government officials or merchants, it can be said that their opinions lacked generality, but it is true that many of them affirmed the rights of daughters and wives to inherit property. However, they did not demand equal inheritance rights for men and women.

The second meeting was the “Manxi Young Women’s Roundtable on Kinship and Inheritance,” held on April 19, 1941. The women who attended this meeting were named in Table 4; many of them were young women in their teens and twenties. The women were encouraged to “frankly express their opinions on kinship and inheritance from various perspectives.”<sup>63)</sup> First, all the women agreed with the Sun Huiqing’s 孫惠卿 opinion and strongly rejected the husband’s marital rights.<sup>64)</sup> According to Sun Huiqing, “All men and women should be equal, and if man has rights as a husband, then woman should also have same as a wife.”<sup>65)</sup> They affirmed the daughters’ right to inherit property. Sun Huiqing and Yang Yinjun 楊隱君 also fully affirmed the wife’s right to inherit property. According to Yang Yinjun, “The husband’s property is the wife’s property. When the husband dies, it only means that there is one less administrator than before; so now the wife is, of course, the owner of the property.”<sup>66)</sup> All female participants in this roundtable were employed and likely to be financially independent. Therefore, it is likely that they were trying to affirm women’s rights more strongly than middle-aged women who were housewives. In addition, their statements suggest that they may have been influenced by the idea of gender equality at school or in the workplace. Their profession required a certain level of expertise, and these women were elite women in Manchukuo with at least a secondary education.

We have seen the legislative opinions of women. Many asserted women’s rights to inherit property more aggressively than men. In other words, they argued that women should be granted the right to inherit property based on the idea of gender equality, regardless of whether they have sons. Manchukuo’s Outline of the Law of Kinship and Inheritance, which denied equal rights to men and women to inherit property in the Republican civil code, did not incorporate everything that women wanted. Nevertheless, as a type of legislative opinion and social situation, the women’s arguments must have served as reference material for the legislation. Chikusa, referring to the opinions of the women at the second roundtable, stated, “Your new opinions are valuable materials, and I believe that Counselor Zhu agrees with me on

this point. . . . We are planning to enact rational and progressive laws by referring to the past and incorporating new ideas into them.”<sup>67)</sup>

In general, it can be seen that it was a social consensus in Manchukuo to affirm women's right to inherit property to a certain extent. Men affirmed it because they valued the closeness of kinship more than *zongtiao* inheritance. Women affirmed it based on the idea of gender equality. This general public perception served as reference material for the enactment of the law. Chikusa always considered citizens' opinions during the deliberation process. For example, when the first drafting committee discussed women's rights to family property inheritance, in response to Wang Mengling's comment that women's views were necessary, Chikusa immediately referred to the opinions of women at the roundtable discussions and asserted, “We held two roundtable discussions of women to hear their opinions, and there were many who argued that women should be given the right to inherit.”<sup>68)</sup>

## Conclusion

Many Japanese jurists worked on legislation in Manchukuo.<sup>69)</sup> Their role in the enactment of laws has been evaluated in many studies.<sup>70)</sup> However, unlike previous legislation, Chinese jurists were often involved in the legislation of the Law of Kinship and Inheritance. It is clear from the deliberation process of the law that both the Japanese and Chinese jurists participated in its creation. The Japanese jurists, including Sugawara Tatsurō, and some Chinese jurists tried to create a law that would grant men and women equal rights to inherit property based on the idea of gender equality. However, Zhu Guangwen and other Chinese jurists denied women's rights in an attempt to maintain customary Manchu and Han patrilineal family systems. Eventually, the opinions of Zhu Guangwen and others were incorporated into the law and a patrilineal family system was enacted. However, the customary family system was not enacted into law as it was. The opinions of the Japanese and some Chinese jurists were also considered, and reforms were made to the customary family system. The resulting law maintained the patriline of *zongtiao* inheritance, but separated property inheritance from *zongtiao* inheritance, recognizing the inheritance rights of daughters and wives on family property in the absence of sons and inheritance rights on separate property. In other words, the family system under Manchukuo's Law of Kinship and Inheritance was not entirely patrilineal.

In terms of the social background of these legislations, many of the

private legislative opinions affirmed women's rights to inheritance. Men valued kinship more than patriline and affirmed the right of daughters to inherit property. Women affirmed women's rights based on the idea of gender equality. The role of these opinions as reference material for legislation cannot be overlooked. This is because one of the purposes of the customs survey by the Department of Justice was to reflect the will of the people in the legislation.<sup>71)</sup>

Furthermore, if we consider the social conditions under which the above legislative opinion emerged, the increase in the number of urban dwellers and the spread of individualistic thought that accompanied colonial modernization led to the existence of separate properties of family members in addition to the family property that maintained the institution of extended family. This was a manifestation of the upheaval of the patrilineal kinship system and may also have been an occasion for changes in the existing gender order. In other words, the upheaval of the patrilineal kinship system enabled women to maintain their status in the family institution. This is precisely what has emerged in the form of legislative opinions affirming women's inheritance rights. Therefore, the change in women's right to inherit property under Manchukuo's Law of Kinship and Inheritance also reflects a change in the family situation in the real society. It can be said that this change in the family situation in Manchukuo was a product of colonial modernization under Manchukuo rule. In this article, we have only highlighted the connection between the changing family situation and colonial modernization and left the discussion of the specific relationship between the two for another article.

## Notes

- \* This paper is an English translation of the following article by the author: Tan Juan 譚娟, “‘*Manshūkoku shinzoku keishōhō*’ rippō katei ni okeru josei zaisan sōzokuken no mondai” 「満洲国親属繼承法」立法過程における女性財産相続権の問題, *Tōyō gakuho* 東洋学報 99, no. 3 (2017): 01–025.
- 1) See Yamamuro Shin'ichi 山室信一, “‘*Manshūkoku*’ no hō to seiji: Josetsu” 「満洲国」の法と政治：序説 [Prolegomena of the law and politics in Manchukuo], *Jinbun gakuho* 人文学報 68 (1991): 129–152.
- 2) Soejima Shōichi 副島昭一, “‘*Manshūkoku*’ tōchi to chigaihōken teppai” 「満洲国」統治と治外法権撤廃 [Governance of Manchukuo and the abolition of the extraterritorial jurisdiction], in “*Manshūkoku*” no kenkyū 「満洲国」の研究 [A study of Manchukuo], ed. Yamamoto Yūzō 山本有造 (Kyoto: Kyōto daigaku Jinbun kagaku kenkyūjo 京都大学人文科学研究所, 1993), 135.
- 3) While kinship in Japanese (*shinzoku* 親族) includes not only male lineage but also spouses and in-laws, kinship in Chinese (*qinshu* 親属) refers only to the *tongzong qin* 同

宗親, or kinship connected by male lineage. Thus, Part IV of the Civil Code of Manchukuo, the Law of Kinship and Inheritance was named *Qinshu jicheng fa* 親屬繼承法.

- 4) Zhu Guangwen 朱広文, Chikusa Tatsuo 千種達夫, and Lin Fenglin 林鳳麟, “Shinzoku keishōhō no rippō hōshin ni tsuite” 親屬繼承法の立法方針について [On the legislative principles of the Law of Kinship and Inheritance], *Hōsō zasshi* 法曹雑誌 9, no. 5 (1942): 1.
- 5) Manshūkoku shi hensan kankōkai 満洲国史編纂刊行会, ed., *Manshūkoku shi* 満洲国史 [History of Manchukuo], vol. 2, *Kakuron* 各論 [Specific remarks] (Tokyo: Man-Mō dōhō engokai 満蒙同胞援護会, 1971), 404.
- 6) Suetsugu Reiko 末次玲子, “‘Ōdō rakudo’ no jendā kōsō” 「王道楽土」のジェンダー構想 [The gender concept in the “odo rakudo”], in *Higashi Ajia no kokumin kokka keisei to jendā: Joseizō o megutte* 東アジアの国民国家形成とジェンダー：女性像をめぐる [Gender and nation-state formation in East Asia: On the image of women], ed. Hayakawa Noriyo 早川紀代 et al. (Tokyo: Aoki shoten 青木書店, 2007), 309.
- 7) After the establishment of Manchukuo, the Han, Manchu, Mongolian, and Hui people who lived in Manchukuo were called Manxi (literally, Manchurian) instead of Chinese.
- 8) *Manshūkoku shi*, 2:404. Recent studies have continued this argument. See Wu Lüyan 呉旅燕, Zhang Chuang 張闖, and Wang Kun 王坤, *Wei Manzhouguo fazhi yanjiu* 偽満洲国法制研究 [A study of legal system of pseudo-Manchukuo] (Beijing: Zhongguo zhengfa daxue chubanshe 中国政法大学出版社, 2013).
- 9) Mitsunari Miho 三成美保, Himeoka Toshiko 姫岡とし子, and Kohama Masako 小浜正子, eds., *Jendā kara mita sekaishi: Rekishi o yomikaeru* ジェンダーから見た世界史：歴史を読み替える [Rereading world history from a gender perspective] (Tokyo: Ōtsuki shoten 大月書店, 2014), 15.
- 10) “Laws and ordinances previously in force shall be applied uniformly, provided that they do not conflict with the purpose of the founding of the nation, national conditions, or laws and ordinances . . .” (“Manshūkoku jūyō hōrei shōkai” 満洲国重要法令紹介 [Introduction to the important laws of Manchukuo], *Hōsō zasshi* 1, no. 1 [1934]: 102).
- 11) Chikusa Tatsuo, “Mibun kankei to minsekihō” 身分関係と民籍法 [Family relationship and the Law of Civil Registry], *Hōsō zasshi* 8, no. 6 (1941): 101.
- 12) Guomin zhengfu 国民政府, ed., *Zhonghua Minguo Minfa Qinshu Jicheng* 中華民國民法親屬繼承 [Civil Code of the Republic of China: Kinship and inheritance] (Shanghai: Huiwentang xinji shuju 会文堂新記書局, 1932), 37–38.
- 13) The kinship and inheritance parts of the Republican civil code, which recognizes women's right to inherit property, have been highly praised by many studies. For example, He Liping 何黎萍, “Zhongguo funu zhengqu caichanquan he jichengquan de douzheng licheng” 中国婦女争取財產權和繼承權的闘争歷程 [Chinese women's struggle for property and inheritance rights], *Beijing shehui kexue* 北京社会科学, no. 4 (1998); Zheng Quanhong 鄭全紅, “Lun Minguo shiqi nuzi de caichan jichengquan” 論民国時期女子的財產繼承權 [On women's right to inherit property in the Republican period], *Shehui kexue jikan* 社会科学輯刊, no. 2 (2005); etc. However, this law, which was drafted in the midst of a political struggle between the Nationalist and Communist parties, also had its limitations in guaranteeing women's rights. For more information, see Chūgoku joseishi kenkyūkai 中国女性史研究会, ed., *Chūgoku josei no*

- 100 nen: Shiryō ni miru ayumi* 中国女性の一〇〇年：史料にみる歩み [100 years of Chinese women: Progress through historical documents] (Tokyo: Aoki shoten, 2004), 118.
- 14) In traditional Chinese extended families, the family members live together in the same house, which is called *tongju gongcai* 同居共財 (living together and sharing property). The economic basis of an extended family is the patrimony system, where the patriarch has the right to manage and dispose of the family property. Inheritance in Chinese private law involves two aspects: assuming the obligation to offer ancestral rites to the ancestors including the deceased (*zongtiao* inheritance) and, as its result, inheriting the property rights that belonged to the deceased (property inheritance). Both aspects are inseparable. See Shiga Shūzō 滋賀秀三, *Chūgoku kazokuhō no genri* 中国家族法の原理 [The principles of Chinese family law] (Tokyo: Sōbunsha 創文社, 1976), 109–124.
  - 15) Chikusa Tatsuo (1901–1981) graduated from the School of Law, Waseda University, and served as a district court judge in Nagano, Yokohama, and Tokyo. He advocated for the colloquialization of legal writing and put his ideas into practice in Manchukuo by drafting the Manchukuo Law of Kinship and Inheritance. Counselors were engaged in the investigation and drafting of judicial laws and regulations, and because of their important responsibilities, up-and-coming and talented persons with legal education and experience in judicial affairs were selected for this position.
  - 16) Chikusa Tatsuo, “Manshūkoku shinzoku keishōhō no rippō hōshin to yōkō” 満洲国親属継承法の立法方針と要綱 [Legislative principles of the Law of Family and Succession of Manchukuo], *Waseda hōgaku* 早稲田法学 [Waseda law review] 21 (1943): 1–2.
  - 17) Zhu Guangwen, “Manzhonguo zhiding qinshu fa yi cai jia shu zhuyi hu yi cai geren zhuyi hu” 満洲国制定親属法宜採家屬主義乎宜採個人主義乎 [Is familism or individualism better for kinship legislation in Manchuria?], *Hōsō zasshi* 5, no. 1 (1938): 34–39.
  - 18) The Civil Code Investigative Committee was divided into three parts. The first part was responsible for the preparation of the Law of Kinship and Inheritance, the second part for the Law of Civil Registry and the Law of Personal Status Litigation, and the third part for the Law of Bankruptcy and the Law of Arbitration.
  - 19) Mura Kyōzō 村教三, “Manshū hōsei gakkai no sobyō (ni)” 満洲法政学界の素描 (二) [The jurisprudential circles in Manchuria, Part 2], *Hōsō zasshi* 8, no. 2 (1941): 152.
  - 20) Hozumi Shigetō was a representative of the democratic ideology of 1920s Japan, and was outspokenly opposed to the authoritarian patriarchal system, even at the Ad Hoc Commission on the Legal System (*Rinji hōsei shingikai* 臨時法制審議会), which sought to strengthen the patriarchal institutions. Nakagawa Zennosuke, a student of Hozumi, worked to dismantle the old family institution.
  - 21) Chikusa, “Manshūkoku shinzoku keishōhō,” 8.
  - 22) Zhu, Chikusa, and Lin, “Shinzoku keishōhō,” 580.
  - 23) Zhu, Chikusa, and Lin, “Shinzoku keishōhō,” 579.
  - 24) The term *Huijiaoren/Kaikyōjin* 回教人 (“people of Islam”) refers to Chinese Muslims, and according to the 1940 Manchukuo Provisional Census, most Muslims living in Manchukuo were Chinese-speaking Muslims, or Hui in modern Chinese. See Chikusa



Tatsuo, *Manshū kazoku seido no kanshū* 満洲家族制度の慣習 [A research on the custom of family system in Manchuria], vol. 1 (Tokyo: Ichiryūsha 一粒社, 1964), 360. For convenience, the terminology used in this paper is taken directly from the historical documents.

- 25) Chikusa Tatsuo, *Tōa hōchitsujo no kensetsu to sono rippō* 東亜法秩序の建設とその立法 [Construction of East Asian new legal order and its legislation] (Tokyo: Nihon hōri kenkyūkai 日本法理研究会, 1943), 44.
- 26) Chikusa, *Tōa hōchitsujo*, 578.
- 27) In traditional Chinese families with cohabitation and common property, family members did not own personal property, and all their income was attributed to family property. Separate property in this context refers to the personal property owned by family members separately from the family property. On the contrary, the separate property in the traditional extended family consisted of 1) the separate property of *fang* 房 (couple's room, i.e., husband and wife) including gifted property and the wife's dowry, and 2) the wife's separate property, i.e., personal belongings. See Shiga, *Chūgoku kazokuhō*, 511–521.
- 28) Manshūkoku Shihōbu 満洲国司法部, ed., *Manshū kazoku seido kanshū chōsa* 満洲家族制度慣習調査 [Survey of customary family institutions in Manchuria], vol. 1, *Harubin oyobi Enkitsu chiho* 哈爾濱及延吉地方 [Harbin and Yanji region] (Tokyo: Yūhikaku 有斐閣, 1944), 15–205.
- 29) Chikusa, *Manshū kazoku seido no kanshū*, 1:759–897.
- 30) Chikusa, *Manshū kazoku seido no kanshū*, 1:27–217.
- 31) Even in the case of a brother or adopted brother as *sizi*, unmarried daughters have the right to inherit the family property. If there is no brother or adopted brother as *sizi*, the daughters who have married out shall have the right to inherit the family property together with the other successors.
- 32) Chikusa, *Manshū kazoku seido no kanshū*, 1:371–532.
- 33) Mura, “Manshū hōsei gakkai,” 152.
- 34) Chikusa, “Manshūkoku shinzoku keishōhō,” 5–7.
- 35) *Manshūkoku shi*, 2:403.
- 36) A man's marriage into his wife's family as a husband is called *ruzhui* 入贅/*nyūfu* 入夫.
- 37) Chikusa Tatsuo and Lin Fenglin, “Shinzoku keishōhō yōkō kaisetsu” 親屬繼承法要綱解説 [Commentary on the outline of the Law of Kinship and Inheritance], parts 1–5, *Hōsō zasshi* 9, nos. 5–10 (1942).
- 38) Kumihara Masao described this as follows: “Modern capitalist economic organization has given rise to the idea of individualism. As a result of the development of the idea of the individual, the first thing that emerges within the family organization is a conflict of interest in property among family members. Family members began to own the results of their own labor as their so-called separate property, without being subject to the control of the organization. In this way, the foundation of family property is weakened. The modern Chinese people have a family system, both customary and de facto, and have a patrimonial system as an objective basis for it. However, it is also undeniable that the patrimonial system is gradually collapsing under the influence of social and cultural development” (Kumihara Masao 組原政男, “Ie no tōsei: Munōryokusha seido ni kanren shite” 家の統制：無能力者制度に関連して [Household control: Regarding incapacitated person], *Hōsō zasshi* 3, no. 6 [1936]:

- 34).
- 39) Ino Eiichi 井野英一 (1884–1944) graduated from the School of Law of Tokyo Imperial University, with a degree in German law. He served as the head of the Tokyo District Court and as a justice of the Supreme Court before being transferred to Manchukuo in 1935. It was said that few legal texts in Manchukuo were not under his influence in drafting judicial laws and regulations (Mura, “Manshū hōsei gakkai,” 148).
- 40) Manshūkoku Shihōbu, *Shinzoku keishōhō yōkō shingiroku* 親屬繼承法要綱審議録 [Records of the deliberation on the outline of the Law of Kinship and Inheritance] (n.p.: Manshūkoku Shihōbu, 1942), 12.
- 41) *Shinzoku keishōhō yōkō shingiroku*, 12–13.
- 42) *Shinzoku keishōhō yōkō shingiroku*, 32–33.
- 43) Zou Zongmeng (1893–?) was a graduate of the Faculty of Law, Kyoto Imperial University. He was a lecturer at the National University of Peking and a judge in the Beijing High Court. After the establishment of Manchukuo, he served as President of the Jilin High Court, President of the Mudanjiang District Court, and Chief of Section III, Bureau of Civil Affairs (*Minshi si* 民事司), Department of Justice.
- 44) *Shinzoku keishōhō yōkō shingiroku*, 75.
- 45) *Shinzoku keishōhō yōkō shingiroku*, 138–139.
- 46) *Shinzoku keishōhō yōkō shingiroku*, 139.
- 47) *Shinzoku keishōhō yōkō shingiroku*, 144.
- 48) *Shinzoku keishōhō yōkō shingiroku*, 153.
- 49) Zhu’s opinion was that the inheritance of a daughter shall be one-half of the entire family property, and if there are several daughters, this inheritance shall be divided equally among them. If gifts are received within a certain period of time, the property shall be combined (*Shinzoku keishōhō yōkō shingiroku*, 156–157).
- 50) According to Chikusa, “In urban areas, especially among the commercial and industrial classes and salaried workers, there are more and more people who, even if they have joint family property at home, use their own income for their own living expenses and, if there is a surplus, either with the approval of the family or secretly, put all or part of it into their own personal property. . . . If there is a member of a farm family who works in the city, it is natural that he will have his own property. In other words, as the family system has been forced to be modified to be more individualistic, the family-community relationship regarding property has also become more individualistic. Therefore, this outline also recognized this trend and allowed family members to own their income and other assets as their separate property” (Chikusa and Lin, “Shinzoku keishōhō yōkō kaisetsu,” part 2, *Hōsō zasshi* 9, no. 6 [1942]: 42–43)
- 51) *Shinzoku keishōhō yōkō shingiroku*, 205.
- 52) *Shinzoku keishōhō yōkō shingiroku*, 210.
- 53) Chikusa, “Manshūkoku shinzoku keishōhō,” 55.
- 54) Chikusa Tatsuo, *Manshū kazoku seido no kanshū*, vol. 3 (Tokyo: Ichiryūsha, 1967), 157.
- 55) Chikusa, *Manshū kazoku seido no kanshū*, 3:578.
- 56) Chikusa, *Manshū kazoku seido no kanshū*, 1:187–188.
- 57) Chikusa, *Manshū kazoku seido no kanshū*, 1:508–509.
- 58) Chikusa, *Manshū kazoku seido no kanshū*, 1:865–867.
- 59) “Shinzoku sōzoku no rippō ni kansuru Mankei fujin zadankai” 親族相続の立法に関する満系婦人座談会 [Manxi women’s roundtable on legislation of kinship and

- inheritance], *Hōsō zasshi* 8, no. 5 (1941): 95.
- 60) "Shinzoku sōzoku no rippō," 103.
- 61) "Shinzoku sōzoku no rippō," 103–104.
- 62) "Shinzoku sōzoku no rippō," 104.
- 63) "Mankei seinen fujin no shinzoku sōzoku zadankai" 満系青年婦人の親族相続座談会 [Manxi young women's roundtable on kinship and inheritance], *Hōsō zasshi* 8, no. 9 (1941): 99.
- 64) The husband's right here is the husband's right to consent to the wife's acts.
- 65) "Mankei seinen fujin," 105.
- 66) "Mankei seinen fujin," 107.
- 67) "Mankei seinen fujin," 109.
- 68) *Shinzoku keishōhō yōkō shingiroku*, 149.
- 69) Chikusa, "Manshūkoku shinzoku keishōhō," 6.
- 70) E.g. Koguchi Hikota 小口彦太, "Manshūkoku minpōten no hensan to Wagatsuma Sakae" 満州国民法典の編纂と我妻栄 [Compilation of the Civil Code of Manchukuo and Wagatsuma Sakae], in *Hōritsu seido* 法律制度 [Legal institutions], ed. Ikeda On 池田温 and Liu Junwen 劉俊文, vol. 2 of *Nitchū bunka kōryūshi sōsho* 日中文化交流史叢書 [Japan-China cultural exchange history series] (Tokyo: Taishūkan shoten 大修館書店, 1997), 325–361; Yasuda Toshiaki 安田敏朗, "Nihongo hōritsu buntai kōgoka to 'Manshūkoku': Chikusa Tatsuo o megutte" 日本語法律文体口語化と「満洲国」：千種達夫をめぐって [Colloquialization of Japanese legal writing and "Manchukuo": On Chikusa Tatsuo], *Hitotsubashi ronsō* 一橋論叢 128, no. 3 (2002): 294–309.
- 71) When conducting a customs survey of the family system, Chikusa argued that one of the purposes of the survey was to obtain the public's legislative input as follows: "In Manchuria, there is no parliament, making it difficult to reflect the will of the people in legislation. Therefore, it was decided to broadly listen to the public's opinions on legislation through a survey of customs" (Chikusa, *Manshū kazoku seido no kanshū*, 1:9).

## Appendix

Table 1. Participants of the First Subcommittee of the Civil Code Investigative Committee

Acting Chairman	Ino Eiichi (Deputy Chief Justice of the Supreme Court)
Drafting Members	Chikusa Tatsuo (Counselor, Dept. of Justice) Zhu Guangwen (Counselor, Dept. of Justice)
Members	Chen Shijie (Chief Justice of Xinjing High Court) Shibata Kentarō 柴田健太郎 (Deputy Chief Justice of Xinjing High Court) Sugawara Tatsuō (Director of Bureau of Civil Affairs, Dept. of Justice) Manzai Kikurō 万歳規矩楼 (Justice [ <i>shenpan guan</i> 審判官] of the Supreme Court) Shinzeki Katsuyoshi 新関勝芳 (Counselor, Dept. of Justice)
Secretaries	Nishio Kiwamu 西尾極 (Chief of the Section I, Bureau of Civil Affairs, Dept. of Justice) Ogi Teiichi 小木貞一 (Counselor, Dept. of Justice) Watanabe Yasutoshi 渡辺泰敏 (Chief of the Section II, Bureau of Civil Affairs, Dept. of Justice) Yoneda Masakazu 米田正弼 (Counselor, Bureau of Legislation [ <i>Fazhi chu</i> 法制処]) Zou Zongmeng (Chief of the Section III, Bureau of Civil Affairs, Dept. of Justice) Tong Yi (Justice of the Supreme Court) Lin Fenglin (Official, Dept. of Justice)

Source: *Shinzoku keishōhō yōkō shingiroku*, 1.

Table 2. Participants of the First Drafting Committee of the Civil Code Investigative Committee

Director, Bureau of Civil Affairs, Dept. of Justice	Manzai Kikurō
Counselor, Dept. of Justice	Zhu Guangwen
Do.	Chikusa Tatsuo
Do.	Kamura Mitsuo 嘉村満雄
Director, Bureau of Execution ( <i>Xingxing si</i> 行刑司), Dept. of Justice	Wang Mengling
Chief Justice of Xinjing High Court	Chen Shijie
Superintending Prosecutor, Xinjing High Public Prosecutors Office	Cheng Yiming
Chief of the Section III, Bureau of Civil Affairs, Dept. of Justice	Zou Zongmeng
Chief of the Documentation Section, Dept. of Justice	Wei Chengzhi
Chief of the Legal Affairs Section, Bureau of Criminal Affairs ( <i>Xingshi si</i> 刑事司), Dept. of Justice	Tong Yi

Supervising Judge ( <i>jiandu shenpan guan</i> 監督審判官), Xinjing Sub-district Court	Koishi Toshio
Official at the Dept. of Justice	Lin Fenglin
Do.	Yu Yun'ge
Do.	Wu Duosen 吳多森
Employee, South Manchuria Railway Co.	Toya Masaya

Source: *Shinzoku keishōhō yōkō shingiroku*, 74–75.

Table 3. Participants of the First Ladies' Roundtable

Name	Occupation	Age
Mrs. Song 宋	Wife of the Counselor, Metropolitan Headquarters, Concordia Association of Manchukuo	57
Mrs. Wang 王	Wife of the Director, Bureau of Execution, Dept. of Justice	37
Sun Jingxuan	Director, Moral Education Department, Moral Association ( <i>Dōtoku sōkai</i> 道德總會)	54
Wu Peilan	Chief of the Training Section, Moral Association	35
Mrs. Lu Jingxin	Wife of the Changchun District Head, Concordia Association of Manchukuo	39
Mrs. Tao Jingxin 陶景新	Merchant	56
Wangli Xueting 王李雪亭	Merchant	42

Source: "Shinzoku sōzoku no rippō," 95.

Table 4. Participants of the Second Ladies' Roundtable

Name	Occupation	Age
Wang Xiuying 王秀英	Professor, Girls Higher Normal School	33
Fu Xizhen 傅喜珍	Assistant Editorial Examiner ( <i>bianshen guan zuo</i> 編審官佐), Dept. of Civil Affairs	32
Sun Huiqing	Reporter of the newspaper <i>Datongbao</i> 大同報	26
Shang Biqing 尚璧清	Clerk at the State Council Secretariat	25
Yang Yinjun	Teacher, Xinjing Girls National High School	24
Zhang Yunying 張雲影	Law firm clerk	20
Jin Wei 金薇	Tourist Attendant, Xijing Transport Co.	19
Chang Xiangri 常向日	Singer, Pailu ( <i>Baile</i> 百樂) Gramophone Co.	18

Source: "Mankei seinen fujin," 99.