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RESEARCH ARTICLE

The cheese, the worm, and the law: Grassroots legal cosmopolitanism in the Manchurian borderland, 1906–1927

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The title of this article is a reference to that masterpiece of microhistory: Carlo Ginzburg, *The cheese and the worms: The cosmos of a sixteenth-century miller*, (trans.) Anne C. Tedeschi (Baltimore, MD: Johns Hopkins University Press, 1992).

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Abstract

This article tells the story of 36 Chinese peasants and their audacious campaign to defend their private rights on two tiny islands in Manchuria from the Japanese empire and a Chinese warlord regime. A borderland in Northeast Asia, Manchuria was a site of intense inter-imperial rivalry in the first half of the twentieth century. Using newly discovered local Chinese archival documents as well as sources produced by Japanese, Korean, and American actors, I discuss how the peasants leveraged their knowledge of multiple property regimes in the borderland to delay and deflect the demands of two states. This microhistory of a transnational dispute illustrates the workings of a form of convergent legal pluralism in the Northeast Asian borderland. While historians agree that state capacity grew substantially in the East Asian borderlands in the early twentieth century, the case shows how that growth also complicated the nature of the state and created new possibilities of bottom-up socio-legal action. It exemplifies the kind of legal cosmopolitanism grassroots actors practised in a world of justice dominated by not-so-cosmopolitan nation-states.

Keywords: Manchuria; agrarian history; legal cosmopolitanism

Introduction

Sun Jingxian and Ma Weifu were Han Chinese farmers of no particular political creed.[1] Their land, situated on two small islands where the river met the sea, produced nothing

[1]This opening narrative is based on the following sources; I also provide specific source citations in the main body of the article. Court filings, peasant statements, and legal verdicts are in dossiers JC55-1-3307 安东地方审判厅为马子祥等控孙敬贤苇塘事 [Andong local court files on Ma Zixiang and others' suit against Sun Jingxian regarding reedy wetlands], JC55-1-3308 安东地方审判厅为姜兴义控孙敬贤债务事 [Andong local court's files on Jiang Xingyi's suit against Sun Jingxian regarding debt], and JC55-1-5627

spectacular, just reeds. Yet their names would make it into the archives of not just one, but two former great states. Depending on whose account is consulted, they were variously simple farmers, squatters, troublemakers, or traitors. Only one thing seemed clear: they doubled as peasant lawyers and they staged nothing short of a legal spectacle. The story started in the 1900s, when things took a wrong turn in the farmers' corner of the world. In those years, states all around them scrambled to lay claim to frontier lands like theirs in Manchuria. We do not know the date of the farmers' first encounter with scouts of the Japanese empire. But we do know that the encounter was, in the farmers' view, rather undesirable. The farmers' islets sat in the Yalu River, the border separating the expanding empire of Japan from the Great Qing. And Japanese officials decided that the farmers were an imperial problem.

Yet this would not be a story of empire building. Strangers to high diplomacy, the farmers were nevertheless vernacular experts in something just as potent: the law. The land mattered to them not because it was imperial territory, but because they had invested decades of labour to reclaim the 'riparian wasteland 淤灘' as their possession.[2] And they would spend the next decades fighting in many courts of law and in the many shadows of the law to defend their work. No legal education could have prepared them for the struggle. But their legal strategies would be of a most cosmopolitan kind. They would cobble together contractual arrangements to map Manchu customary practices onto Japanese structures of rights. They would go to Chinese and Korean courts and make their case using the transnational lingua franca of civil justice. And they would knock on the door of the local American consul. Having confronted multiple empires and consorted with actors on as many sides, they would turn the islets of reeds into webs of rights. This article is about the farmers' machinations, which spanned two decades and five legal regimes. It is also about the operations of those legal regimes in the Northeast Asian borderland. Despite pressure from the states for borderlanders to be subjects with undivided loyalty, the farmers remained recalcitrantly transnational in a space of laws and private rights. And they were aided, quite counterintuitively, by a group of state-appointed judges. The combination of circumstances allowed the farmers to venture beyond national legal formations and emerge as transnational subjects of justice. Theirs was a vernacular way to make sense of global legal modernity. One might call it grassroots legal cosmopolitanism.

安东地方审判厅为马伟甫控孙敬贤等金钱事 [Andong local court's files on Ma Weifu's suit against Sun Jingxian regarding money] at the Liaoning Provincial Archives, China; Japanese diplomatic papers and Korean peasant petitions in '鴨緑江葦州ノ所属ニ関スル係争一件 [Disputes over the belonging of the Yalu River reed islets]', vol. 1–2, 1-4-1-36 and '鴨緑江日支画界問題一件附渡船場問題、島嶼問題 [The problem of Yalu River demarcation between Japan and China, and the problems of docks and islands]', 1-4-1-53, Japanese Foreign Ministry Archives (here after JFMA); '孫敬賢盜賣國土案 [The case concerning Sun Jinxian's illicit sale of national territory', in 外交部奉天交涉署交涉節要 [Selected papers of the Fengtian Diplomatic Office, the Ministry of Foreign Affairs], most likely printed in the 1920s and now held at the National Library of China; and '奉天省长公署训令第二一三号 [Order no. 213 of the Fengtian Provincial Government]', in奉天公報 [The Fengtian Provincial Gazetteer], 23 August 1925, 1-2; and 'Illustrations of Japanese Methods of Acquiring Property in Antung', Consular Letters Sent, 2 September 1907–18 June 1908, US Consulate in Antung, China, Volume 021, RG84, US National Archives.

[2]Farmer Ma Weifu's statement to the local court at Andong on 23 August 1920, JC55-1-5627, Liaoning Provincial Archives.

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The thesis: Legal plural-cosmopolitanism and the judicial backstory of inter-imperial rivalry in a Northeast Asian borderland

This territorial dispute was a defining moment in the colonial international relations of Northeast Asia. Historians have written about the dispute in its early phase in the 1900s, using it as an example of inter-state conflict in the age of imperialism. In that narrative, the Japanese empire shaped the course of events through negotiations and clashes with the Qing state in a riparian environment.[3] These valuable contributions in international and environmental history have expertly illustrated the actions and perceptions of the state and its agents. I tell a different story from the bottom up using newly discovered local archival documents from Northeast China, where much of the drama unfolded. A legally informed cross-examination of the Japanese/Korean sources and these new documents show that Chinese farmers and local judges of various origins played a crucial role in the saga. Whereas the political regimes 'saw' the wetlands haphazardly through the lens of territorial sovereignty, local farmers, I argue, leveraged their vernacular knowledge about the pluralistic legal environment of the borderland to advance a different set of goals. They combined concepts from multiple land regimes to design a sophisticated structure of rights, which enabled their private claims of ownership to coexist in an uneasy symbiosis with the territorial claims of the two states for decades.

This microhistory of a transnational dispute, one of several hundred whose documentary trail I found in the archives of Northeast China, offers several interventions in the macroscale narrative about law and inter-state rivalry in early twentieth-century Northeast Asia. Manchuria had been the homeland of the Manchu ruling elite of the Qing empire (1644–1911), but by the turn of century, however, the region had become a battleground of three states. The Russian empire occupied the region between 1900 and 1904. After its defeat in the Russo-Japanese War (1904–1905), Russia retained its influence in the northern parts of the borderland. The Japanese empire seized control of the Korean Peninsula in 1905 and annexed Korea in 1910. From there, it extended its tentacles across the Yalu River border into Manchuria, establishing an informal sphere of influence on the Liaodong Peninsula in the south. The Qing and Republican Chinese states both claimed sovereignty over the borderland and controlled the areas outside the concession zones. After 1916, the Republican Chinese state exercised that control haphazardly through Zhang Zuolin, a Han Chinese general with an independent streak. For the quarter of a century between 1906 and 1931, the three states coexisted in an uneasy power equilibrium in the Manchurian contact zone.

[3]For an excellent account of inter-state diplomacy and Japanese deliberations at the early stage of the dispute, see Joseph A. Seeley, 'Reeds, river islands, and inter-imperial conflict on the early twentieth-century Sino-Korean border', *Water History*, vol. 12, no. 3, September 2020, pp. 373–384, p. 373. Seeley uses this history to show 'how river environments critically shape(ed) border conflicts'. I would like to thank Dr Seeley for his incisive comments on my early reconstruction of the case. Also see Chu-son Yi, '鴨緑江中洲をめぐる韓清係争と帝国日本' [The Korean-Qing dispute over isles in the Yalu River and the Japanese empire], *Nihon rekishi*, no. 763, December 2011, pp. 54–71.

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So, too, did multiple legal systems operate simultaneously in the borderland space. For much of its reign, the Qing governed Manchuria through inter-ethnic legal pluralism, subjecting Han civilians and banner people to different jurispractices.[4] These populations, in turn, developed unofficial ways to cross state-imposed legal boundaries, especially in relation to property.[5] The encroachment of the Russian and Japanese empires into the region overlaid that inter-ethnic legal pluralism with inter-imperial legal pluralism.[6] That is, each empire also brought a system of legal concepts and practices into the borderland. These two forms of legal pluralism—one from the era of the Qing conquest, the other born out of the meeting of modern empires—became enmeshed at an everyday level. Sitting at the intersection of the two layers of legal pluralism, the Manchurian farmers managed to utilize concepts and strategies from one pluralistic legal order as they negotiated their way through the other.

Their actions add to our understanding of law under empires. Historians have described two forms of bottom-up action in the context of colonial legal pluralism. Some legal actors manipulated the differences between coexisting jurisdictions to maximize their interest in what Mary Lewis called 'jurisdictional jumping'.[7] Others used indigenous legal instruments and channels to continue transnational economic activities despite the presence of European colonialism.[8] The distinctive dynamics of law in Manchuria allowed the legal actors there to do something that was different from both of the patterns above. The farmers found a middle ground between the Qing and Japanese systems of jurispractices, and used their vernacular knowledge of law to bridge the divide between those systems. Rather than manipulating jurisdictional

[4]I follow Max Oidtmann and use the term in the sense of 'a living body of legal procedures and practices that were informed by several distinctive strands of jurisprudence'. Max Oidtmann, 'A "dog-eat-dog" world: Qing jurispractices and the legal inscription of piety in Amdo', *Extrême-Orient Extrême-Occident*, no. 40, 21 November 2016, p. 153. On these different jurispractices, see, for example, Huimin Lai, *Danwen qimin: Qingdai de falü yu shehui* (Beijing: Zhonghua shuju, 2000); and Dorothea Heuschert, 'Legal pluralism in the Qing empire: Manchu legislation for the Mongols', *The International History Review*, vol. 20, no. 2, 1998, pp. 310–324.

[5]See, for example, Christopher Isett, 'Customary and judicial practices as seen in criminal sales of land in Qing Manchuria', in *Research from archival case records: Law, society and culture in China*, (eds) Philip Huang and Kathryn Bernhardt (Leiden: Brill, 2014), pp. 191–215; Shuang Chen, *State-sponsored inequality: The Banner system and social stratification in Northeast China* (Stanford, CA: Stanford University Press, 2017).

[6]The term 'legal pluralism' does not indicate a particular way of legal thinking. It describes a situation where multiple legal systems coexist in the same judicial space. See, for example, Sally Engle Merry, 'International law and sociolegal scholarship: Toward a spatial global legal pluralism', *Studies in Law, Politics, and Society*, vol. 41, 2008, pp. 149–168.

[7]Mary Dewhurst Lewis, *Divided rule: Sovereignty and empire in French Tunisia, 1881–1938* (Berkeley: University of California Press, 2014), p. 3.

[8]See, for example, Lauren Benton, *A search for sovereignty: Law and geography in European empires, 1400–1900* (Cambridge; New York: Cambridge University Press, 2010); Lauren Benton, *Law and colonial cultures: Legal regimes in world history, 1400–1900* (Cambridge; New York: Cambridge University Press, 2002); Nurfadzilah Yahaya, *Fluid jurisdictions: Colonial law and Arabs in Southeast Asia* (Ithaca: Cornell University Press, 2020); Fahad Ahmad Bishara, *A sea of debt: Law and economic life in the western Indian Ocean, 1780–1950* (Cambridge: Cambridge University Press, 2017). On legal pluralism in the western borderlands of the Qing, see Oidtmann, 'A "dog-eat-dog" world'; Eric Schluessel, *Land of strangers: The civilizing project in Qing Central Asia* (Ithaca: Columbia University Press, 2020).

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differences through forum shopping, they took advantage of the jurispractical convergence between previously separate legal worlds.[9] That is, legal pluralism in Manchuria was not just about differences, but also about the compatibility of competing yet converging legalities.

The farmers' legal sensibilities in the above context also point to a different modality of local agency in a borderland setting. An excellent body of scholarship on Manchuria has emphasized the role of local actors in the processes of state-building in the region. Nianshen Song stresses the 'problem-solving efforts' of local officials in the making of the Tumen border.[10] Alyssa Park, Sören Urbansky, and Victor Zatsepine document how migrants circumvented state-imposed restrictions through smuggling, forgery, and the 'creative use', or selective invocation, of state laws in the Sino-Russian border zone.[11] The case here moved beyond acts of state evasion or, in other words, the subaltern's art of not being governed.[12] It shows how the use of laws of property and contracts under conditions of legal pluralism changed the nature of people's engagement with the state.[13] Legally literate borderlanders did not just confront or evade the state in a state-subject relationship. Rather, these borderlanders and agents of the state both acted as active legal subjects in a polycentric judicial field, where they used the common language of civil justice to negotiate for settlements.[14] That judicial lingua franca in the transnational space allowed the farmers to reframe an issue about territorial sovereignty into a dispute over private rights and to engage state agents on a more equal footing as actors in the shadow of law. Historians of the British empire have discussed how colonizers used modern property regimes to facilitate extraction.[15] Borderlanders, however, also mobilized property regimes to aid their resistance.

[9]Pär Cassel discussed how the Qing state made sense of extraterritoriality through the lens of its own experience with legal pluralism. The case here shows how legal pluralism worked on the ground at the end of the Qing period. Pär Kristoffer Cassel, *Grounds of judgment: Extraterritoriality and imperial power in nineteenth-century China and Japan* (New York: Oxford University Press, 2012).

[10]Nianshen Song, *Making borders in modern East Asia: Tumen River demarcation, 1881–1919* (Cambridge: Cambridge University Press, 2018), pp.11–14.

[11]Alyssa M. Park, *Sovereignty experiments: Korean migrants and the building of borders in Northeast Asia, 1860–1945* (Ithaca: Cornell University Press, 2019); Victor Zatsepine, *Beyond the Amur: Frontier encounters between China and Russia, 1850–1930* (Vancouver: UBC Press, 2017); Sören Urbansky, *Beyond the steppe frontier: A history of the Sino-Russian border* (Princeton: Princeton University Press, 2020).

[12]James C. Scott, *The art of not being governed: An anarchist history of upland Southeast Asia* (New Haven: Yale University Press, 2009).

[13]On the use of contracts in domestic contexts in late imperial China, see foundational works such as Madeleine Zelin, Johnathan K. Ocko and Robert Gardella (eds), *Contract and property in early modern China* (Stanford, CA: Stanford University Press, 2004). I am intellectually indebted to the large and invaluable body of scholarship on law in late Imperial and Republican China.

[14]Private law, or civil law, refers to the set of laws on property, contracts, marriage, inheritance, and so on. It is the opposite of public law, which includes criminal and administrative laws. In matters of civil law, government entities may engage in legal disputes/negotiations as legal persons in the same way private persons do. This is different from how states act in international law. I use the term here because this distinction was explicitly present in China from the1900s onwards, although the issue remains controversial for the period before then.

[15]See, for example, Timothy Mitchell, *The rule of experts: Egypt, techno-politics, and modernity* (Berkeley: University of California Press, 2002); and Debjani Bhattacharyya, *Empire and ecology in the Bengal delta: The making of Calcutta* (Cambridge: Cambridge University Press, 2018).

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These dynamics in turn invite further interrogation of the nature of East Asian state(s) on their peripheries in the first half of the twentieth century. The farmers were able to do the above because the legal institutions of the borderland enabled them. Recent scholarship on China's borderlands has rightly highlighted the overall expansion of state capacity in these regions through migrant control, infrastructure building, cultural construction and so on.[16] The present case, however, complicates the picture by showing the dissonance within the state. Each state regime in Manchuria was in fact the uneasy coexistence of two entities or two sets of practices: the political apparatus and the institutions of justice. Whereas the political apparatuses of the state competed with other states for the control of territory, the judicial institutions exercised power by promoting other objectives such as transnational norms of legal technicality. Legal professionals of Chinese, Japanese, and Korean nationality brought those norms into the region through their shared education in a particular moment of legal modernization in East Asia.[17] The tensions between the two sets of institutions and practices within each state laid the groundwork for the open, audacious endeavours of non-state actors to engage the state in the field of law.

More broadly, this story of legal pluralism in the Manchurian borderland is also about the qualities of Eurasian cosmopolitanism. It offers an East Asian perspective on a key problem of global legal modernity: how to protect individual rights from the encroachment of modern nation-states in a global judicial framework where legal systems were themselves based on the spatial and political structures of the nation-state. In a somewhat different temporal context, European thinkers like Jürgen Habermas proposed a solution through the concept of 'international legal cosmopolitanism', which advocated for the creation of a world judicial authority above the nation-states.[18] One might argue that this case and many others like it in Manchuria and other borderlands represent other attempts, haphazard though they were, to confront the same fundamental contradiction of legal modernity. Rather than resorting to the adjudicative powers of a unified higher authority, the farmers in this case did the opposite: they drew on resources from myriad origins beyond their cultural cocoon to deflect the demands of the great states. One might say that they were also legal cosmopolitans in the sense the philosopher Debra Satz defined the term: 'neither nationality nor state boundaries, as such, have moral standing with respect to questions of justice'.[19] But

[16]On the state and its proxies in East Asian borderlands, see, for example, Song, *Making borders in modern East Asia*; Park, *Sovereignty experiments*; Hyun Ok Park, *Two dreams in one bed: Empire, social life, and the origins of the North Korean Revolution in Manchuria* (Durham, NC: Duke University Press, 2005); Prasenjit Duara, *Sovereignty and authenticity: Manchukuo and the East Asian modern* (Lanham, MD: Rowman and Littlefield, 2004); Judd Kinzley, *Natural resources and the new frontier: Constructing modern China's borderlands* (Chicago: University of Chicago Press, 2018); C. Patterson Giersch, *Corporate conquests: Business, the state, and the origins of ethnic inequality in Southwest China* (Stanford, CA: Stanford University Press, 2020).

[17]For a great overview of this legal modernization process in the Chinese legal system in Fengtian/Liaoning, see Zhang Qin, *Zhongguo jindai minshi sifa biange yanjiu* (Beijing: Shangwu yinshuguan, 2012).

[18]See, for example, Jürgen Habermas, 'The constitutionalization of international law and the legitimation problems of a constitution for world society', *Constellations*, vol. 15, no. 4, 2008, pp. 444–455; Başak Çali, 'On legal cosmopolitanism: Divergences in political theory and international law', *Leiden Journal of International Law*, vol. 19, no.4, 2006, pp. 1149–1163.

[19]Debra Satz, 'Equality of what among whom? Thoughts on cosmopolitanism, statism, and nationalism', *Nomos*, vol. 41, 1999, p. 67.

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theirs was different from the international legal cosmopolitanism of Habermas, or the 'subaltern cosmopolitan legality' the legal scholars Boaventura de Sousa Santos and César Rodríguez-Garavito proposed for the study of the contemporary Global South.[20] I discuss these theoretical implications in the conclusion.

In the next sections, I perform a close reading of the farmers' legal manoeuvres under the Japanese empire and then with/against the Chinese warlord regime under Zhang Zuolin. Of note, I describe the protagonists as 'Chinese', 'Korean', and 'Japanese' merely to indicate their primary languages; these markers do not indicate their submission to any particular political system in the region. Disaggregating language, loyalty, and law will help disentangle the complex storyline.

The case: A tale of two islands and a quagmire of many laws

The Tongdetang islands sat in the middle of the Yalu River, which separated the Qing empire from Joseon/Korea.[21] Their swampy terrains made the islets a perfect site for growing reeds, a wetland plant used widely in paper making and other industries. A group of Chinese-speaking farmers, possibly of Han ethnicity, joined forces to invest in the islets in the last decades of the nineteenth century.[22] But the enterprise brought them both profit and trouble. Korean farmers also claimed rights over the islands, and challenged the Chinese investors using both law and force.[23] The Japanese empire muddied the water even more when it took over the Korean Peninsula in 1905. The empire had little use for reeds, but Japanese officials saw in the dispute an opportunity to annex the strategically situated islets and bolster Japan's position in the geopolitical contest over the Yalu border.[24] Qing officials confronted these Japanese/Korean actors, but not always as advocates for the Chinese investors.[25] The officials appeared to have framed this as an issue of imperial sovereignty, not a problem of private rights for imperial subjects.[26] At one point, said Qing officials confiscated the land deeds of

[20]Boaventura de Sousa Santos and César A. Rodríguez-Garavito (eds), *Law and globalization from below: Towards a cosmopolitan legality* (Cambridge: Cambridge University Press, 2005), pp. 13–17.

[21]The Korean name for the islands was Hwangch'op'yŏng (黃草坪). The Chinese farmers, however, referred to the islets either as 'muddy wetlands 淤泥灘', or as Tongdetang 同德塘, the name of the corporation they founded to manage the site. I use the farmers' term here.

[22]Farmer Ma Weifu's statement to the local court at Andong on 23 August 1920, JC55-1-5627, Liaoning Provincial Archives.

[23]The above statement shows that Farmer Ma perceived that Korean farmers were doing the bidding of the Japanese empire. But the dispute predated the Japanese presence. See, for example, the Japanese official Okabe Saburō's recounting of a Korean lawsuit in his report in August 1907, in 1-4-1-36_1, vol. 1, JFMA, 485.

[24]For example, the Japanese official Fukugawa Denjirō overseeing Sinuiju made this point in his report to the Japanese Resident-General in Korea on 24 November 1909, 1-4-1-36_1, vol. 1, JFMA, 309.

[25]On the diplomatic back-and-forth between Chinese and Japanese officials, see Okabe Saburō, '両国交渉始末 [An account of the diplomacy between the two countries]', in his report to the Japanese Resident-General in Korea, August 1907, 1-4-1-36_1, vol. 1, JFMA, 482–486.

[26]Qing diplomatic note to the Japanese ambassador on 3 May 1907. Qing officials demanded that Japan join a border delineation project as a precondition for the resolution of the dispute. 1-4-1-36_1, vol. 1, JFMA, 553–554.

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the investors to assert the Qing state's power vis-à-vis both the Chinese investors and the Japanese empire.[27]

Korean farmers' claims over the islands had been about private land rights.[28] But at the turn of the century, a discourse about territory started to reframe the grievances. On another island, part of the same group at the mouth of the Yalu, a certain Korean farmer Chang Kyŏngyŏm petitioned for the Korean prefect of Ryongchŏn to defend the 'territory (Ko: kangt'o)' from Chinese harvesters, for 'the boundary (Ko: kyŏnggye) between us and them should be like a chasm'.[29] The prefect wrote approvingly of the sentiment just before the Japanese takeover of Korea. Japanese officials would later appropriate this and other exchanges as part of the Japanese pretext for 'establish(ing) Korean territorial sovereignty' (meaning colonial Japanese sovereignty) over the island group, the Tongdetang islands included.[30] After the Japanese takeover in 1905, the pro-Japanese Korean grassroots organization Iljinhoe collaborated with Japanese officials and quasi-official proxies to establish de facto Korean occupation of the Tongdetang islands.[31] In the Japanese consul Okabe's words, both parties took this as 'an issue of the state' and worked to 'aid (Japanese imperial) diplomacy'.[32]

The trilateral diplomatic manoeuvres over territorial sovereignty accomplished little beyond the creation of a massive paper trail for the case. A rare blessing to future historians, it spelled trouble for the Chinese farmers. They needed a strategy to protect their property rights at the epicentre of a brewing inter-imperial firestorm. Thankfully, nature stood on their side. Created just a few decades prior by river sedimentation, the islands straddled the centreline of the border river, making their sovereignty status impossible to determine on the map. The marshy lands were too inhospitable for permanent military installations, and the manifold river system too porous for the empires to police: neither empire could solve the problem by military force.[33] Unruly nature disrupted the nature of sovereignty at every turn.[34]

The stage was thus set for a transnational legal drama that would span more than two decades. The case developed in two phases. The first phase took place around 1907 and 1909. At that time, the Chinese farmers made a semi-secret deal with Japanese colonial officials and the local Korean government to retain the farmers' private rights over the islands. The second phase happened between 1916 and 1925. In this

[27]Japanese official Miho Gorō's report, '黄草坪葭葦刈取権買収運動関シ変更シタル形式二於イテ成功シタルニ付至急請訓ノ件 [Urgent request for guidance regarding the success in an adapted form of the campaign to purchase the right to harvest reed over Kōsōhei]', 14 February 1908, in 1-4-1-36_1, vol. 1, JFMA, 377.

[28]The Qing side of the narrative, however, indicated that some Korean farmers used Qing legal venues to resolve the conflict as a private dispute. This narrative served Qing territorial claims in the particular context in which it was found. The Japanese official Okabe Saburō recounted the Qing narrative about Korean farmers' lawsuits in his report in August 1907, in 1-4-1-36_1, vol. 1, JFMA, 485.

[29]1-4-1-36_1, vol.1, JFMA, 312.

[30]Kibe Shichi's report to the Korean resident-general, 31 January 1910, 1-4-1-36_1, vol. 1, JFMA, 310.

[31]1-4-1-36_1, vol. 1, JFMA, 416–417.

[32]1-4-1-36_1, vol. 1, JFMA, 409–410. Although the Iljinhoe and Japanese operators opted to seek de facto occupation before claiming territorial sovereignty, the variation was probably one of strategy, not objective: both parties appeared to care about the national/imperial belonging of the islands as territory.

[33]For an excellent discussion of the porosity of the river border and its environmental history implications, see Seeley, 'Reeds, river islands, and inter-imperial conflict'.

[34]Violence was also ineffective because both empires were weak on their frontiers at this time.

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decade, a new Chinese regional regime—led by Zhang Zuolin—attempted to void the deal and assert the regime's control over the reedy enterprise. The Chinese farmers thwarted the warlord regime's initiatives in Chinese and Korean/Japanese courts of law.

Case stage I: Farmers trapping empires with a contract, 1907–1909

The legal drama started with the Chinese farmers concluding a contract with agents of the Japanese empire through an unlikely route. With Qing and Japanese officials pushing their claims at the expense of the farmers' interests, the farmers' situation felt precarious. Sometime between 1907 and 1909, they decided to bypass the Chinese and Japanese authorities and look for another recourse. Interestingly, they chose the Americans.[35] The American consul in Andong, Charles Arnell, was an active participant on the local legal scene.[36] Proficient in both Chinese and Japanese, he sometimes intervened in Sino-Japanese land disputes when local inhabitants came asking for the justice of 'international law'.[37] We do not know if the farmers in our case used that same discourse about international law, but they reached out to the consul for mediation. By the Chinese farmers' account, the consul produced favourable results: '[we] signed a ten-year contract for protection with the Japanese … after the American consul mediated between us [Ch: 經美國領事通融辦理…與日人定立保護字據十年]'.[38]

This new discovery of the Chinese farmers' initiative and American involvement challenges the existing historical interpretation of the incident, which generally considers this ten-year contract a Japanese colonial imposition or an act of the states.[39] In fact, the contract was very much of the Chinese farmers' making. An analysis of the Japanese documents and the text of the contract also points in this direction. Miho Gorō, the Japanese official who closed the deal, reported that his plan involved having someone 'speak with all 36 stake-holders and listen intently to their arguments' [Ja: 能く三十六戸の株主を周説し其理論に傾聴して…].[40] The plan was

[35]The Chinese farmers' statement in a lawsuit at the Andong Local Court dated 23 August 1920, in JC55-1-5627, Liaoning Provincial Archives. Japanese colonial records do not mention American involvement.

[36]Arnell started as a Department of State student interpreter in Andong, China, and served as a Japanese interpreter for the US embassy in Tokyo as well. It is also possible that consuls Frederick Cloud and Edward Carleton Baker were also involved, as they arrived in Andong in November 1909. Congressional Records—House, 7 June 1916, 9329, in 'List of Consular Offices of the United States Corrected to March 20, 1911', *The American Journal of International Law*, vol. 5, no. 2, 1911, p. 135.

[37]Charles Arnell, 'Illustrations of Japanese Methods of Acquiring Property in Antung', Consular Letters Sent, 2 September 1907–18 June 1908, US Consulate in Antung, China, Volume 021, RG84, US National Archives. Arnell discussed a number of similar land disputes between Chinese farmers and Japanese colonial entities, reporting that his intervention had improved the conditions of the Chinese farmers. These cases, though not directly tied to the Yalu dispute, show Arnell's active involvement and serve as circumstantial evidence corroborating the Chinese peasants' account.

[38]The Chinese farmers' statement dated 23 August 1920, in JC55-1-5627, Liaoning Provincial Archives.

[39]Joseph Seeley provides a meticulous account of state diplomacy at this phase of the case. I learnt a great deal but hope to provide another perspective about the assignment of agency. Seeley, 'Reeds, river islands, and inter-imperial conflict'. Also see Chu-son Yi, 鴨緑江中洲をめぐる韓清係争と帝国日本 [The Korean-Qing dispute over isles in the Yalu River and the Japanese empire].

[40]Miho Gorō, '黄草坪葭葦刈取権買収運動関シ変更シタル形式二於イテ成功シタルニ付至急請訓ノ件 [Urgent request for guidance regarding the success in an adapted form of the campaign to purchase the right to harvest reed over Kōsōhei]', 14 February 1908, in 1-4-1-36_1, vol. 1, JFMA, 375.

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largely successful, although the contract had to be revised multiple times because the Chinese farmers refused to compromise on certain key points. The final language, which Miho presented to his Japanese superiors for review, represented the 'establishment of mutual consensus' [Ja: 双方の合意成立].[41]

The linguistic and formatting choices in the contract also indicate that the Chinese farmers were deeply involved in its creation. All three versions of the contract Miho attached to his Japanese report were in Chinese only. There was no Japanese or Korean text except for a summary that Miho provided in the report. The formatting and framing of the contract were similar to private Chinese contracts for land transfers: the text was not a list of rights and obligations, but rather a historical narrative about the deal and its origins, interlaced with set Chinese phrases for private contracts.[42] These features are all consistent with how the Chinese farmers presented the events: the farmers were active participants shaping—and possibly authoring—the contract.

Despite the conventional framing, the substance of the contract was extraordinary. The text was a hodgepodge of legal elements of curious provenance, which showcases the kinds of double-layered legal pluralism that went into its making:

> 立字據。同德塘三十六戶前在安東縣安民山下甜水溝子淤泥灘一處， 經三十六戶貧民人等栽種葦草度命，著頭牌王仁純經理。 昨于光緒三十二年十二月間， 有高麗人等將葦認為己有爭割， 三十六戶一束葦草未得， 苦情之極。為此叩懇大日本領事大人大德，救三十六戶之性命。幸蒙玉成，将葦草仍歸三十六戶， 按年收割， 以度養命， 救數十人之生活。為此， 三十六戶願將葦根後來讓為高麗產業，每年捐稅照舊章程交納高麗政府查收。十年後，高麗政府如用地皮之時， 需用若干， 任憑用去無違。立字之後， 倘有兩國爭奪葦草，由日清官長管理究辦。恐口無憑，立此字據為證。[43]

> [We] hereby sign the following written pledge: the 36 stakeholders of the Tongdetang corporation [developed] a patch of muddy wetland in the Tianshui valley under Mount Anmin in Andong County. The 36 'households' of poor people planted reeds there to sustain their livelihood, and assigned *baojia* headman Wang Renchun to manage it. However, in the 12th month of the 32nd year of Guangxu reign, some Koreans claimed the reeds as theirs and unjustly harvested it. The 36 stakeholders received nothing, and were devastated. For this reason, the 36 households begged the honourable Japanese consul to save [our] livelihood with his benevolence. Fortunately, this was done. [The two parties have agreed that] the 36 stakeholders shall continue to own the reed produce and shall harvest it every year to sustain [our] livelihood. For this, the 36 stakeholders voluntarily yield the *root of the reed* to the Koreans as Korean property. [The thirty six stakeholders] will continue to pay fees and taxes following old regulations to the Korean government. After ten years, if the Korean government wishes to

[41]Ibid., p. 378.

[42]For example, the last sentence of the text, which affirms the importance of writing down a verbal agreement, was typical in private land contracts in Manchuria. See, for example, sample contracts cited in Guozhen Yang, *Mingqing tudi qiyue wenshu yanjiu* 明清土地契约文书研究 (Beijing: Zhongguo renmin daxue chubanshe, 2009), pp. 84–85.

[43]Miho, 'Urgent request for guidance', 385.

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> *use the skin of the land*, we [the thirty six households] shall permit such use without fail. After we sign the contract, if there continue to be disputes between the two states over reed ownership, Qing and Japanese officials shall manage and resolve [those disputes]. We hereby sign this written pledge as evidence [of the agreement], for fear that the spoken word cannot be relied upon.[44]

The text was, in effect, about an international struggle over contested territory. Yet it used vernacular concepts in private law such as 'root' and 'skin' to describe the rights structure that would take shape over that territory. These concepts had no place in public international law, but were crucial in the private land market of the Qing. Historians have established that the private land regime in the Qing featured dual ownership, in which the ownership and usufruct rights of the same land could belong severally to two or more rights holders.[45] The holder of usufruct rights was said to own the 'skin' or 'face' of the land, whereas the other landowner held the 'root' or 'bone' of the land. Each right was a commodity of its own and could be transferred independent of the other. In cases where farmer A took out a state licence to reclaim land but was subsequently unable to do so, farmer B could take over through a private contract and develop the land. In such cases, farmer B would establish usufruct rights over the land, while farmer A would retain ownership over the 'root' of the land. Farmer B would pay taxes and fees to farmer A, so that farmer A could forward them to the state.[46] This dual rights structure was particularly prominent in frontier regions like Manchuria, where wasteland reclamation incentivized the practice.[47]

This disaggregation of land rights was not unique to Manchuria, but it is important for our discussion because in Qing Manchuria, the dual rights structure helped migrants manoeuvre around the state-imposed boundaries between legal/status groups. Most lands in Manchuria were held by the Qing royal household, aristocrats, or members of the banners, an institution supporting the Qing conquest elite. Among the banner lands, some were designated as private property for bannermen, while others were assigned for bannermen to use or lease.[48] Qing regulations prohibited Han

[44]Linguistically, a 'written pledge 字據' may refer to a contract, or certain other documents like a written receipt. I refer to this document as a contract because it represented a voluntary agreement between two parties, and appears to have been perceived by both parties as legally binding.

[45]Shuji Cao, *Chuantong zhongguo de diquan jiegou jiqi yanbian* 传统中国的地权结找及其演变 (Shanghai: Shanghai Jiaotong daxue chubanshe, 2014).

[46]Ibid., location 1460 in Kindle version.

[47]Guozhen Yang, *Mingqing tudi qiyue wenshu yanjiu* 明清土地契约文书研究 (Beijing: Zhongguo renmin daxue chubanshe, 2009), pp. 84–85.

[48]In Shuangcheng in northern Manchuria, for example, local authorities designated large tracts of land as private property (Ch: jichan 己产) for bannermen. Shuang Chen, *State-sponsored inequality: The banner system and social stratification in Northeast China* (Stanford, CA: Stanford University Press, 2017), p. 62. The legal status of banner lands 旗地 in southern Manchuria was more ambiguous. Individual holders of banner lands had the right to use and lease the land, and were able to transfer other rights in the land through customary arrangements. This was close to private land ownership, but was not a straightforward fee simple structure. Japanese legal observers considered these as privately owned lands. Takahashi Nobuo, 法律上の満蒙 [Manchuria and Mongolia from a legal perspective], p. 249, most likely written between 1916 and 1922, held at the Central Library of Waseda University. These banner lands 旗地 were different from banner estate lands 庄地, which were owned by royal and aristocratic households and other state entities.

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Chinese commoner migrants from buying these lands. In order to circumscribe these restrictions, Han Chinese migrants sometimes used private contracting strategies to acquire extensive usufruct rights from banner land holders without formally obtaining the title to the land.[49] In some other cases, Han Chinese migrants who reclaimed wasteland without state permission 'identified' a banner person as the nominal holder of the land, and paid for that person to perform functions as the nominal landowner before the Qing state, as if the illegally reclaimed land was legal banner land.[50] In both scenarios, the Han Chinese migrants in fact acquired or retained most real rights in the land.[51] In other words, it was customary practice for de facto landowners to create dual rights structures to evade state legal restrictions on land rights based on status and identity. There appears to have been broad judicial support for these practices: after the fall of the Qing, the Republican-era Supreme Court granted state legal protection to these customary inter-status rights structures.[52]

The Chinese farmers on the Yalu islands used the same vernacular legal terminologies to describe a strikingly similar arrangement for a border-crossing rights structure.[53] By rough analogy, like the Han Chinese migrants above, the Chinese farmers retained their usufruct rights, or what they called rights over the 'skin of the land 地皮' on the islands. They gave up the 'root' of the property to an intermediary (the local Korean government) in exchange for some measure of (Japanese) state protection over their rights. In this rights structure, the two contracting parties both held a portion of the real rights in the property, with the Chinese farmers keeping the most important right in the customary context. Aside from the terminology, the farmers' own words also confirm that this was how they understood the agreement. In their statements, the farmers distinguished this contract from a regular lease.[54] This is important because in a lease, the lessee had no property right in the land. In the present arrangement, by contrast, the farmers continued to effectively own the

[49]The banner land holders sometimes signed two documents with the Han Chinese buyers: one, a lease for presentation to the magistrate; the other a contract for conditional sale, which represented the actual arrangement. The second document was then kept from the state and enforced by local intermediaries. Christopher Isett, 'Customary and judicial practices as seen in criminal sales of land in Qing Manchuria', in *Research from archival case records: Law, society and culture in China*, (eds) Philip Huang and Kathryn Bernhardt (Leiden: Brill, 2014), pp. 191–215.

[50]For the best analysis of the practice, see Chen, *State-sponsored inequality*, pp. 89–128.

[51]Isett's research shows that in cases where Han Chinese migrants bought land from banner land holders, these (former) banner holders only retained the customary right to request supplemental payments in the future. This right was not always easy to exercise. The above indicates that the banner holder had given up most rights in the land through the transfer. See Isett, 'Customary and judicial practices'.

[52]Guo Wei (ed.),大理院判决例全文 [Supreme Court precedents in full text] (Shanghai: Wanlai, 1932), p. 29. The serial number of the precedent is 三年上字第八四五号.

[53]Vernacular terms used to describe these kinds of dual land rights structures varied from region to region. However, the gist of the notion remained consistent across the agrarian regions of the Qing. Migrants may have brought these terms to Manchuria, or they could have been local. On the migration to Manchuria, see Thomas R. Gottschang and Diana Larry, *Swallows and settlers: The great migration from North China to Manchuria* (Ann Arbor: University of Michigan Press, 2000).

[54]In his statement to the Andong Local Court on 23 August 1920, farmer Ma Weifu accused farmer Sun Jingxian of seeking to vacate the 1908 contract and turn the arrangement into a lease. This implies that Ma understood the initial agreement to be something other than a lease. JC55-1-5627, Liaoning Provincial Archives.

islands. The farmers' somewhat opaque description of the payments to the Korean intermediary also points to the same conclusion. In the contract, they said they would pay levies through the Korean authorities following 'old regulations'. However, no prior regulation existed at all for Chinese farmers to pay levies to the local Korean government. The payment the farmers promised to make in the contract was new. By 'old regulations', then, the farmers were most likely referring to existing customs generally applicable to the kind of transactions they believed this deal was comparable to. What were these transactions? In their subsequent statements, the farmers offered a clue by calling these payments a 'fee for protection 保護費'.[55] The term is reminiscent of the arrangements I described above, in which Han Chinese wasteland developers paid banner people to act as their 'landlords 東' to secure protection from the local authorities for their lands. Taken together, this shows that the Chinese farmers used the contract to reframe the politically charged territorial dispute as a private land transaction, most likely along the lines of the vernacular contracting practices in the local private land market.

This was an early form of a borderland legal strategy that would be more commonplace in the transnational land market of Manchuria in the next two decades. In other cases in the Yalu region in the early Republican period (1911–1931), Chinese landowners used customary arrangements such as conditional sale or long-term leases to circumvent new nationality-based legal restrictions and transfer usufruct rights over private lands to Korean migrants. In some of these cases, as in this island dispute, Chinese officials acquiesced in the use of these vernacular legal practices.[56] Republican-era regional land regulations required the officials to nullify such contracts altogether. In practice, however, officials often accepted the divided rights structure and then sought to prevent these rights structures from transitioning into full land ownership by foreign buyers. Existing scholarship on the politics of land in Manchuria has discussed the Chinese/Zhang Zuolin state's strategies to impose stringent nationality-based restrictions on the land market.[57] These cases above, however, show that those restrictions did not translate into reality in the fluid market of laws.

These practices also had larger implications for legal colonialism. In the 1910s, Japanese legal scholars would learn of the boundary-crossing custom between Manchu and Han landowners in the Qing and ponder over the possibility of appropriating that custom to facilitate the acquisition of private lands in Manchuria for Japanese and Korean merchants. The lawyer and journalist Takahashi Nobuo, for example, proposed sometime after 1916 that Japanese merchants could obtain usufruct rights from Chinese landowners in the same way that Han Chinese migrants obtained those rights from Manchu owners.[58] Intriguingly, however, in the Yalu island contract of 1907, it

[55]The Chinese farmers' statement in a lawsuit at the Andong Local Court dated 23 August 1920, in JC55-1-5627, Liaoning Provincial Archives.

[56]For example, in two cases in Andong and Fengcheng in the 1920s, Chinese magistrates accepted the legality of the hypothecation and conditional sale of private Chinese lands to Korean migrants, but then used financial incentives to encourage the Chinese owners to hold onto their ownership rights over the lands. See JC10-1-16807 and JC10-1-?1117, Liaoning Provincial Archives. The second document number may be missing a digit, but I found it under the title '辽宁省政府为凤城县民马海川呈王景文等盗卖国土请查办事'.

[57]For an excellent discussion of state policies on the issue, see Park, *Two dreams in one bed*, pp. 64–95.

[58]Takahashi Nobuo, 法律上の満蒙 [Manchuria and Mongolia from a legal perspective].

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was the Chinese farmers who secured usufruct rights through the same custom. That is, the Chinese farmers reversed the appropriation process and used the indigenous custom to retain land rights and resist Japanese colonization.

In addition to the dual rights structure above, the island contract of 1907 had one other mechanism of resistance built into its text. Most likely thanks to the Chinese farmers' tweaking, the language of the contract disrupted the Japanese plan to take over the islands fully at the end of the contractual period. To some Japanese officials, the document left open the possibility for the local Korean/Japanese authorities to establish full ownership over the islands in ten years: the contract already granted the local Korean government the 'root' of the reeds/lands. If, in ten years, the Korean government were to also take over the 'skin', then that would constitute full Korean/Japanese ownership of the lands. However, the contract they signed actually said something different. The document merely stated that the Chinese farmers would permit the Korean authorities to 'use 用' the 'skin of the land 地皮' at the end of the decade. This turn of phrase created significant ambiguity over what was to happen then. The difference between 'using' and 'owning' the skin of the land was not trivial in the Chinese legal vernacular. A person who had a right to 'use 用' a plot of land did not necessarily have the right to transfer that use right. By contrast, a person who owned the 'skin 地皮' of the land could transfer (or lease or pledge) the 'skin' independent of the 'root'.[59] That is, in a normative sense, a mere right to 'use' a plot of land, even if combined with ownership of the 'root' of the same land, did not constitute full ownership of the land.[60] One would need to *own* both skin and root to fully own a piece of land. But since the wording said the Chinese farmers would 'permit' the other contractual party to *use* the skin of the land in a decade, it implied that, in a decade, the Chinese farmers would remain owners of the skin of the land. In other words, by inserting the verb 'use 用' before the object of the right under discussion, the Chinese farmers limited the ability of the other contractual party to use the terms of the contract to grab the land completely in a decade. By implication, the Chinese farmers also deflected the consequential question of the island's sovereign status: they were not making a written promise for the islands to fully become Japanese state property. That full Japanese possession could have been a precondition for Japan to claim territorial acquisition by effective occupation over the islands.[61] Indeed, this was how the second phase of the legal marathon started, to which we will now turn.

[59]This was true in China proper as well as in Manchuria; depending on the region, one's ability to freely transfer one's land rights could be limited by state regulations (as in the case of some banner lands); but owning the skin of the land was generally worth more than just having use rights.

[60]This is purely normative. I do not suggest that such a peculiar rights-sharing arrangement existed in customary practice. The point is that the legal gymnastics in the language confounded the colonizers and served to delay the Japanese/Korean takeover of the land.

[61]Had the Japanese state managed to obtain full ownership of the lands on the islands, Japan could conceivably use the concept of effective occupation to advance its sovereignty claim over the islands. In public international law around this time, effective occupation required that the claimant state complete the 'actual, and not nominal, taking of possession' of the territory, and also exercise exclusive legal jurisdiction. The presence of Qing subjects on the islands with property rights defined by non-Japanese law made these claims untenable. 'Arbitral award on the subject of the difference relative to the sovereignty over Clipperton Island', *American Journal of International Law*, vol. 26, no. 2, 1932, p. 393.

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Case stage II: Farmers and warlords going to court, 1916–1925

So it was all good—until it was not. By the time the contract was up for renewal in 1916, the Qing empire had fallen. Manchuria was governed by an assertive Chinese warlord regime under Zhang Zuolin, who espoused a particular vision of territorial nationalism. That is, the regime tied private landownership to the concept of 'national territory (Ch: 國土)' and used the defence of that territory as a discursive justification for its programmes of land control.[62] The Zhang regime's invocation of this nationalism was often instrumental, but consequential. On the Yalu issue, the new regime wanted to nullify the farmers' contract with the Japanese and Koreans and take over the islands for the Chinese/Zhang state. Things started to go south for the farmers, but they would find another recourse: the courts. The Qing had started to set up new legal institutions in Manchuria in 1907 using Japanese courts as the model. By the early Republic, there had also been a shift in judicial personnel and the judicial ethos. Whereas magistrates doubled as judges in late imperial China, the new judges and prosecutors of the Republic were generally professionals with at least three years of formal legal education.[63] Many of them received this education in Japan or at Chinese law schools under Japanese jurisprudential influence. For example, Dan Yusheng, the chief judge of the Fengtian provincial high court at the time of the case, was a law graduate of Meiji University in Tokyo.[64]

As our case will show, the new judges and the Zhang regime had different priorities. Whereas Zhang prioritized mechanisms of political control, the judges valued the prevailing principles of law in Northeast Asia at the time. On civil matters, these included respecting the autonomy of contractual parties and recognizing local customs as a source of civil law. On criminal matters, the judges prioritized procedural justice. That is, following due process as outlined in the rules of procedures. None of these principles was designed to serve Zhang's version of territorial nationalism. All would prove important to the farmers' manoeuvres. The legal institutions also enjoyed some measure of independence from the regional political regimes. Although China was disintegrating politically at the time, judicial personnel reported to the Supreme Court in Beijing/Nanjing, not regional regimes like those of Zhang Zuolin.[65] This structure gave the judges substantial autonomy in Manchuria. The outcome of legal processes at the new judicial venues was often contingent upon technicalities and legal interpretation and thus highly unpredictable. When the farmers took the matter to a new-style court, they moved their dispute into a network of national/transnational judicial power. And that was how they survived the second phase of the saga.

[62]Hyun Ok Park discusses the Zhang regime's conception of national territory in Park, *Two dreams in one bed*, pp. 64–95. Park also shows that Zhang's discourse was self-serving, for Zhang was the region's largest private landowner.

[63]There is an excellent account of these general transitions in Zhang, *Zhongguo jindai minshi sifa biange yanjiu*.

[64]'Dan Yusheng单豫升',北洋官報 [The Beiyang Gazette], no. 1847, 1908, p. 8.

[65]See, for example, Zhi Wei '东三省司法现状之困难 [The present challenges of the justice system in the three eastern provinces]', Dongbei daxue zhoukan 東北大學周刊, no. 65, 22 November 1929, pp. 9–11. The author described judicial independence in Manchuria before 1928 and the importance of the connection between the judiciary in Manchuria and the Supreme Court.

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As the farmers' word play had foretold, the Korean government, now under full Japanese colonization, did not take action to 'use' the 'skin of the land' at the end of the ten-year period. It was left to the Chinese stakeholders to decide what to do with the contract. But this time, the Chinese farmers could not agree among themselves. Two factions formed, with farmer Sun Jingxian and farmer Ma Weifu as their respective leaders. Farmer Ma's faction made secret arrangements to transfer their real rights over the islands to private Korean financiers, apparently in exchange for a cash loan or payment.[66] Farmer Sun's faction moved to renew the contract for another decade with Japanese officials (in order to continue harvesting reeds under Japanese protection under the same arrangement as before).[67]

The split happened in the year 1916. The Zhang Zuolin regime had just promulgated new regional regulations to prohibit the transfer of real rights in private property to non-Chinese buyers.[68] Zhang Zuolin believed, not without good reason, that the transfer of large tracts of private lands to Japanese buyers would ultimately lead to the loss of Chinese territorial sovereignty in the contested borderland.[69] Both of the farmers' plans above involved such transfers. They both constituted a criminal offence under Zhang Zuolin's penal regime: illicitly selling national territory (Ch: 盜賣國土).

The Ma faction was undeterred. In fact, farmer Ma saw these new regional regulations as another legal resource to mobilize: they could be used to push farmer Sun out of the picture. Ma's ploy was not complex. Having concealed their own plan to monetize the islands, Ma and his followers filed lawsuits in Chinese courts alleging that Sun was treasonously giving up Chinese territory:

[66]The Andong prosecutors' report titled '孫敬賢盜賣國土案 [The case concerning Sun Jinxian's illicit sale of national territory]', in Selected papers of the Fengtian Diplomatic Office, the Ministry of Foreign Affairs, National Library of China, pp. 68–71. The prosecutors did not press charges against farmer Ma after the investigation. However, it is evident from the facts presented that Ma had transferred real rights in the islands to the Koreans in exchange for a loan. These pledges were commonplace in Manchuria at the time, sometimes as a semi-secret way to circumvent the Zhang regime's legal restrictions and sell property to foreign buyers. It is not immediately clear whether farmer Ma's was such a case, but the amount of the 'loan' was far too great for a regular unsecured loan. Whatever the case, farmer Ma was peddling his real rights in the landed property for profit, and did not wish to continue with the existing contract.

[67]As I discuss later, Japanese officials unilaterally changed the terms of the contract to make it sound like leasing at this point. The changes, however, had little practical effect.

[68]For a list of laws, regulations, and directives from the Chinese state that imposed severe punishment for people engaged in these land transactions, see Asada Kyoji, '満洲における土地商租権問題 [The problem of the commercial right to lease land in Manchuria]', in *Nihon teikokushugi ka no Manshū: Manshūkoku seiritsu zengo no keizai kenkyū*, (ed.) Akira Hara (Tokyo: Ochanomizu Shobō, 1972), pp. 315–397. The first of these statutes was the 1915 Regulations for the Punishment of Traitors 懲辦國賊條例. The Rules for the Commercial Leasing of Land 商租地畝須知, issued in the same year by the Ministry of the Interior, operationalized the Regulations. For the texts of these and other territorial laws, see Tamotsu Matsuki and Hiroyuki Yamada (eds), 支那側の商租妨害手段 [Chinese ways to hinder commercial land leasing] (Dairen: Minami Manshū Tetsudō Kabushiki Kaisha Shomubu Chōsaka, 1929).

[69]For a great discussion of Zhang's policies and thinking on the issue of private land rights, as well as the Sino-Japanese diplomacy on the issue and its impact on the life of Korean farmers, see Park, *Two dreams in one bed*.

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> [孫敬賢]將保護字據盜去, 倚作把握, 竊赴日領署呈請, 將該塘保護變租, 以圖吞霸…無非將國家領土斷送外人。日人得此大禮, 將不知若何酬謝孫氏。[70]
>
> [Sun Jingxian] stole the contract of protection, and used it as leverage to petition for the Japanese consulate to turn the protective [contract] into a lease for the wetlands. [Sun's] aim was to take over [the wetlands] for himself … This is no different than surrendering national territory to foreigners. [We] do not even wish to speculate how much the Japanese would thank Mr. Sun for such a hefty gift!

The 1907 deal was already illegal under Zhang Zuolin's land laws, but to frame Sun, Ma took it one step further: he alleged that Sun was sabotaging the 1907 deal and selling the lands outright to the Japanese. We know that this was a ploy rather than a genuine display of patriotic concerns because Ma had also filed lawsuits at a Korean court making opposite claims (also to attack Sun).[71] Zhang Zuolin's underlings learnt of Ma's allegations at the Chinese court, and ordered the local prosecutors to punish Sun Jingxian for surrendering Chinese lands to Japanese overlords.[72] That is, the Zhang regime reframed the case from a private contractual dispute into a criminal incident about China's (or the Zhang regime's) territorial sovereignty.

At this critical juncture, however, the judiciary deviated from the demands of the warlord governor. Rather than defending 'national territory' against alleged foreign aggression, the Chinese prosecutors reached out to their Japanese counterparts in Pyongyang, requesting their collaboration in the investigation into Ma's claims.[73] Apparently at a Korean site, they studied the facts and technicality of the case, focusing on notarization and contracting practices. At times they consulted the Meiji Japanese Civil Code.[74] The prosecutors then reached the conclusion that, although Sun had indeed jeopardized China's sovereignty claims over the islands in his dealings, he was to be indicted for the lesser economic crimes of embezzlement and forging private documents only. That is, the prosecutors were indicting Sun for spending too much of the corporate funds in his efforts to renew the contract, rather than for the act of making or renewing the contract. The prosecutors did not apply the Zhang regime's nationality-based land regulations prohibiting the 'illicit selling of national territory', which would have subjected Sun to harsher punishment. In their report to Zhang, the

[70]Ma Weifu's statement to the Andong Local Court on 23 August 1920, JC55-1-5627, Liaoning Provincial Archives.

[71]For the lawsuit, see 1-4-1-53, JFMA, 339–340.

[72]Farmer Ma also separately filed a complaint of the same nature with the Fengtian Provincial Government in or before 1919. The provincial authorities ordered the prosecutors in Andong to take harsh action. '孫敬賢盜賣國土案 [The case concerning Sun Jinxian's illicit sale of national territory]', *Waijiaobu fengtianjiaosheyuanshu jiaoshejieyao* [Selected papers of the Fengtian Diplomatic Office, the Ministry of Foreign Affairs], pp. 68–69.

[73]Ibid., p. 69.

[74]The Republican government had decreed that Japanese and other foreign civil codes could be used as a reference source of law in China before the promulgation of a Chinese civil code. See Xiaoqun Xu, 'Law, custom, and social norms: Civil adjudications in Qing and Republican China', *Law and History Review*, vol. 36, no. 1, February 2018, pp. 77–104.

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prosecutors remarked perfunctorily on the sanctity of territory and on Sun's folly, but in their substantial conclusion, they said that issues of sovereignty fell 'beyond the purview of a court of law 非法廳權力所能及'.[75] In other words, the prosecutors distanced themselves from Zhang's demands. On this, they had the support of the Chinese Supreme Court.[76] In a judicial interpretation for a similar case, the Supreme Court advised that there was no positive legal basis (no code in existing law) for the criminal charges the Zhang regime's land regulations prescribed for private land transfers to foreigners.

The judges in Andong and Fengtian made similar determinations.[77] They handled the case largely as a dispute between two private parties and ignored the invocation of Zhang's territorial nationalism as well as the demand for justice against Sun's alleged treason. At the criminal trial, the Fengtian Provincial High Court sentenced farmer Sun to a brief term in prison for private embezzlement, before releasing him on a pardon. Ma then filed a concurrent civil lawsuit against Sun, claiming a large amount of damages for Sun's alleged treasonous acts (selling Chinese land to foreigners). In this civil lawsuit, Ma acted as the representative of several other stakeholders. The judges did not accept Ma's arguments about Sun's treason. They ruled in favour of the other stakeholders and ordered Sun to pay them a much smaller amount for his private embezzlement and forgery only. Ma's insinuation of Sun's treason did not gain Ma any advantage in the civil suit.

One move by a civil court judge is a telling example of the judicial ethos. After Sun was convicted for embezzlement and forgery of private documents at the criminal court, farmer Ma, acting in his capacity as the plaintiff in the ensuing civil suit for damages, requested that Sun's property be seized as a guarantee for future compensation in the civil suit. Judge Mao Cheng in Andong denied the motion through a complex manoeuvre.[78] The Provisional Regulations for Criminal Procedures in effect at the time provided that the facts and culpability established in a criminal trial were legally binding for subsequent civil trial(s) arising from the same injury.[79] Sun had already been convicted in the criminal trial. It stood to reason, then, that Ma's civil claims were likely to succeed, which would be cause for the judge to find in Ma's favour on the seizure request. Ma's nationalist discourse about territory also created pressure. However, the judge cited a different provision in the Regulations for Civil Procedures, which granted him discretion to impose conditions on the plaintiff for such seizures.[80] On that basis, he ruled that the court would seize Sun's property for Ma only if Ma put up collateral to protect Sun from any financial loss resulting from said seizure. This allowed the judge to stay in compliance with the rules of criminal procedures but still effectively

[75]'孫敬賢盜賣國土案 [The case concerning Sun Jinxian's illicit sale of national territory]', p. 70.

[76]Guo Wei (ed.), 大理院解釋例全文 [The judicial interpretations of the Supreme Court in full text] (Shanghai: Wanlai, 1931), p. 768.

[77]JC55-1-5627, Liaoning Provincial Archives.

[78]Andong Local Court's decision on Ma Weifu's petition for seizure dated 28 September 1923, JC55-1-5627, Liaoning Provincial Archives.

[79]新頒中華民國刑事訴訟條例 [New regulations of criminal procedures of the Republic of China] (Beijing: Zhonghua yinshuaju, 1922), p. 7.

[80]民事訴訟條例彙編 [Compilation of regulations of civil procedures] (Shanghai: Shanghai shijie shuju, 1923), p. 430.

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block Ma's demand. We do not know whether Judge Mao knew the backstory before making the decision, but his interpretation of this second provision favoured procedural justice and equity protection for the defendant. What we do know is that Mao did not make the choice out of pro-Japanese sentiments. He would leave Manchuria after the Japanese takeover and serve in a series of key judicial posts under the Chinese Nationalist state.[81]

This was not a lone example. Other cases from the archives of Northeast China show similar judicial dynamics. Outcomes of legal processes were unpredictable for both parties and were not predetermined by the political will of any state.[82] Legal interpretation played a key role in adjudication. In a dispute between a Japanese firm and a group of Chinese borrowers in Huaide county, for example, the Chinese judges at the Liaoning Provincial High Court interpreted a politically charged dispute about the hypothec of land as a technical issue about contracts and ruled in favour of the Japanese plaintiffs.[83] In another debt dispute between the same Japanese firm and a different group of Chinese borrowers, however, the Chinese borrowers felt that the law was on their side and thus pushed the Japanese firm to initiate a lawsuit at the same court to resolve the dispute (the Japanese firm stalled and wanted to settle). Elsewhere, a panel of appellate judges ruled in favour of local farmers in Tonghua in their timber dispute with the son of a powerful Chinese general, Dong Futing, under the Zhang regime.[84] These and many other examples show that the judicial institutions of Manchuria were effective venues of dispute resolution and an overlooked space of bottom-up social action.

The Zhang Zuolin regime was displeased with these judicial outcomes.[85] So, too, was the Japanese colonial state. Japanese officials feared that these legal troubles at Chinese courts could jeopardize the Japanese plan to take over the islands. And the imperial anxieties proved true.[86] When farmer Sun walked out of jail, the wetlands were still in the Chinese farmers' hands.[87]

[81]四川高等法院公報 [Gazette of the Sichuan High Court], no. 5, 1935, pp. 45–46; 司法行政公報 [Gazette of the Administration of Justice], no. 39, 1933, pp. 110–111.

[82]Participation in civil trials was/is voluntary. Therefore, if the outcome of adjudication was predetermined and obvious, the losing party would not agree to participate in a civil trial in the first place.

[83]'为王延卿等拖欠拓殖会贷款由 [On the cases of Wang Yanqing and others defaulting on loans from the Oriental Development Company]', 1928/12-1931/03, 002-001-0027, Gongzhuling Municipal Archives.

[84]Case file on Zhang Lianrong's dispute with Dong Hanchen about timber, 1931/01, 1-1-1053, Tonghua County Archives.

[85]'奉天省長公署訓令第二一三號 [Order no. 213 of the Fengtian Provincial Government]', 奉天公報 *Fengtian gongbao*, 23 August 1925, pp. 1–2. The directive ordered Sun's arrest again.

[86]Japanese colonial officials unilaterally reinterpreted the contract as a lease around 1916, consistent with farmer Ma's allegation. However, according to a Japanese report compiled in late 1925, the farmers still occupied the islands and had stopped paying the fee (rent/protection fee/levies), thus making the Japanese/Korean interpretation wishful thinking. Farmer Sun was even able to prevent the Japanese officials from making substantial changes to the contract while he was still in a Chinese prison. 1-4-1-53_001, JFMA, 346.

[87]Some of the 36 farmers (and their descendants) continued to profit from the islands at this point. These wetlands remain Chinese territory to this day, although the peasant protagonists are probably nowhere to be found.

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Conclusion: Grassroots legal cosmopolitanism

Thirty six Chinese farmers with no particular political ideology turned two tiny islets into the site of some of the most dramatic politics of law in the Northeast Asian borderland. The case started as a diplomatic dispute over territorial sovereignty between three states. But as the local legal archives revealed, the farmers and legal professionals orchestrated a significant part of the show. Leveraging their literacy in the legal cultures all around them, the farmers reframed the international dispute into an issue about private land rights using the legal vernacular of the borderland. Their uses of law turned them into agents of history at a pivotal moment of empire-building in Northeast Asia. These legal strategies, I venture to suggest, represented a form of grassroots legal cosmopolitanism in a pluralistic borderland setting. Recognizing the cosmopolitan quality of the farmers' legal engagements offers us an opportunity to expand the discussion about cosmopolitanism and transnational legal history in the Eurasian world.

I use the term 'legal cosmopolitanism' broadly to describe legal strategies or legal thinking outside the framework of the nation-state. Such legal practices constituted responses, conscious or unconscious, to a key question in global legal modernity: how can systems of justice, which were set up within a global framework of nation-states, protect individual rights against the encroachment of said nation-states? This question is not just about Europe, even though European thinkers were among the first to formulate an answer. In the positivist jurisprudence of nineteenth-century Europe, the sovereign nation-state was the primary vessel and purpose of lawmaking.[88] Various strands of cosmopolitan legal thinking emerged as counter-currents to this state-centric/nationalist legal formula. These forms of cosmopolitan thinking often aimed to contain state nationalism and to protect individual rights at a transnational and supranational level. The legal historian Martti Koskenniemi has shown how modern European international law started as a cosmopolitan intellectual enterprise pitting a 'global public conscience' against the excesses of European nationalism in the Victorian era.[89] Twentieth-century jurists expanded these Victorian liberal sensibilities into a movement for international legal cosmopolitanism.[90] Traditional international law only regulates the relations between states and tolerates substantial differences between national legal systems with regard to their ability to protect individual rights. International legal cosmopolitans, by contrast, envision a global regime of cosmopolitan law, which 'confers on all persons the entitlement to challenge, by virtue of their shared humanity, the decisions of public officials regarding their rights'

[88]On legal positivism, sovereignty, and European-Asian relations, see Turan Kayaoglu, *Legal imperialism sovereignty and extraterritoriality in Japan, the Ottoman empire, and China* (Cambridge: Cambridge University Press, 2010), pp. 17–39.

[89]Martti Koskenniemi, *The gentle civilizer of nations: The rise and fall of international law 1870–1960* (Cambridge: Cambridge University Press, 2009).

[90]On international legal cosmopolitanism and its relationship with other forms of cosmopolitanisms, see Başak Çali, 'On legal cosmopolitanism: Divergences in political theory and international law', *Leiden Journal of International Law*, vol. 19, no. 4, 2006, pp. 1149–1163.

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in transnational institutional settings.[91] The aim of the cosmopolitan legal regime, as Jürgen Habermas put it, was to change the 'state-centered tradition of modern political thought' and offer equal protection for the human rights of all individuals, regardless of their nationality.[92]

The Manchurian farmers arguably stumbled upon a different solution to the same conundrum. The European answer to that question is universalistic. That is, it is concerned with the creation of worldwide legal institutions with final authority above the states.[93] The farmers of Tongdetang were strangers to such theories, or the universalist thinking behind them. When confronted with the territorial demands of two nation-states/empires, these Han Chinese farmers found recourse by turning to non-Chinese/non-Han legal traditions in the doubly pluralistic legal order of a transnational borderland. Their use of resources from multiple legal regimes was syncretic, and sometimes bordered on pragmatism. In that process, however, their cosmopolitan legal outlook allowed them to come up with proposals which advanced their individual rights claims before multiple great states. Boaventura de Sousa Santos and César Rodríguez-Garavito proposed to analyse the transnational legal movements from below against hegemonic globalization in the contemporary Global South through the lens of subaltern cosmopolitanism.[94] The farmers of Manchuria did not run a social movement. Nor did they look for transnational solidarity. Rather, they shared the same script of legal audacity and epistemological openness with others who each confronted the hegemonic actors of the borderland in their own individual fight. The aggregate of those confrontations, however, shows the many ways of being cosmopolitan in a not-so-cosmopolitan world.

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[91]This is how the European legal scholar Eirik Bjorge, following Alec Stone Sweet and Clare Ryan, defines legal cosmopolitanism. Eirik Bjorge, 'Legal cosmopolitanism in international law', *Global Constitutionalism*, vol. 9, no. 3, 2020, pp. 552–561.

[92]Habermas, 'The constitutionalization of international law', pp. 444–455. Hans Kelsen discussed how international law could only confer rights and impose obligations on human beings, and not states as 'super-humans'. Hans Kelsen, 'Sovereignty', in *Normativity and norms: Critical perspectives on Kelsenian themes*, (eds) Stanley L. Paulson, and Bonnie Litschewski Paulson (Oxford: Clarendon Press, 1998), pp. 525–536.

[93]Çali, 'On legal cosmopolitanism', pp. 1149–1163.

[94]De Sousa Santos and Rodríguez-Garavito, *Law and globalization from below*.

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