Comparing Legal Cultures:
Civil Case Settlements in Local Courts in Early Modern Mongolia, Japan, and China

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목 차

[국문 요약]

근세 아시아에서의 민사안건 처리 실태
-몽골과 일본, 중국의 사례에 대한 비교법 문화론적 시점에서의 일고찰-

근세 국가에 의한 사회 통치에 있어 지방법정(지방의 재판소)은 중요한 역할을 담당하고 있었다. ‘국가-지방법정-사회’라는 구조는 한 국가의 그 사회에 대한 정치적・이데올로기적 기본 이념을 뒷받침할 뿐만 아니라, 지방법정의 구조와 기능은, 국가가 어느 정도까지 사회에서 정의를 실현시키고자 하였는가 하는 점을 반영한다. 즉, 국가가 제도적으로 어디까지 사회에 관여하고 있었는가라는 물음은, 사회정의의 실현이라는 관점에서 국가를 이해하는 데도 유익한 시사점을 제공한다.

본 논문은 근세 몽골, 일본, 중국의 지방법정에서의 민사안건 처리를 비교 검토하고 있다. 이를 행함에 있어 법문화론적 시각을 채용한다. 본고는 이를 통해 근세 동북아에서의 지방법정의 사안처리 실태와 그에 대한 비교법제사적 시점에서의 이해에 기여할 수 있기를 희망한다. 이들 근세 국가들에는 ‘민사’와 ‘형사’라는 안건 분류가 이루어지고 있었다. 다만, 더 강하게 국가 측의 기능을 반영한다고 할 수 있는 형사재판에 비하여, 민사안건은 더 넓게 국가와 사회의 관계를 보여준다고 생각된다.

근세의 지방법정에서 작성되었던 재판기록문서를 주된 단서로 삼아, 본고에서는 지방법정에서의 민사안건 처리 실태에 대해 기술하고 비교 검토를 행한다. 이 때, 각 국의 재판실무가

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가진 가장 현저한 특징에 기초하여 다음의 세 가지 다른 모델로 나누어 고찰한다. 즉 '실용본위 재판' 모델(몽골), '잘 조직된 재판' 모델(일본), '관료적 매니지먼트' 모델(중국)이 그것이다.

이 세 가지 모델에서의 민사안건 처리를 비교검토하면, 어느 모델이든지 지방법정에서의 민사안건의 건수가 형사안건보다도 적다는 동일한 경향이 분명해졌다. 이 경향은 나아가 민사안건은 법정에 의하지 않고 해결되는 것이 장려되고 있었다는 점을 시사하고 있다. 그러나 이는 결코 지방법정이 민사안건을 아무런 제도적 구제의 여지도 없이 민간사회에 던져버리고 있었다는 의미는 아니다. 오히려, 지방법정은 사회 말단에 있는 외곽기관이나 지방유력자로 하여금 민사안건 처리를 행하게 하고 있었다. 그러나 이들 중개역의 성격과 거기에서의 민사안건 처리 방식은 서로 차이점이 있었다. 이처럼 다른 문화를 보이는 지방법정의 모델들은 최종적으로는 국가의 통치구조의 차이로 환원될 수 있다고 생각된다.

[주제어] 법문화, 민사안건, 지방법정, 지방재판소, 근세, 동북아

Ⅰ. Introduction

In the early modern states, one of the touchstones of state governance in society was the function of local courts. Local courts were places where state institutions and civil society met each other. The local courts were originally designed by the central—or in some states regional—governments to implement state administration and to ensure social stability.[1] Regarding this social stability, local courts were concerned with punishing criminals whose offences were perceived as harmful to "public order" and delivering justice in civilian disputes brought before them. For the civil side, the local courts were the final recourse for dispute resolution, though people would have generally distrusted the courts, believing they existed to exert a suppressive power and, in some cases, extract economic resources from them.[2]

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1) For a broader discussion on, and literature review of, state-society relations, see Jefferey M. Sellers, "State-Society Relations", in ed., Mark Bevir, *The SAGE Handbook of Governance* (Los Angeles; London; New Delhi; Singapore; Washington: SAGA, 2011), Chapter 9, pp. 124–41.

2) Mark A. Allee, *Law and Local Society in Late Imperial China: Northern Taiwan in the Nineteenth Century* (Stanford, California: Stanford University Press, 1994), p. 2. The distrust of local courts by litigants seems also to be common in present-day European societies. See Marina Kurkchiyan, "Comparing Legal Cultures: Three Models of Court for Small Civil Cases", *Journal of Comparative*

Notwithstanding the partial mismatch between state intentions and societal reactions concerning the local courts, the design of the framework of state-court-society reflects a state's political and ideological attitudes toward society. Moreover, the structure and function of local courts again demonstrates the degree to which the state intends to deliver justice within a society. The question of how far state institutions systematically reach into social affairs helps us understand the state in terms of the implementation of social justice. This issue is not only a modern concern that is applicable to current complex state-society relations, but it can also be applied to early modern states. To understand well the roles of local courts, it is essential to grasp what kinds of cases were dealt with before them.

This study looks at local court practices in early modern Mongolia, Japan, and China. It has become common knowledge, as we shall discuss later, that there was a kind of division between what we now call "civil cases" and "criminal cases" in these early modern Asian societies. Cases from both categories, however, were in practice initiated—and concluded, if possible—before a local court, and judgements on criminal cases could be reviewed by the relevant upper courts. Moreover, the handling of criminal and civil cases in local courts shared widely similar procedures. Nonetheless, it was common practice in these countries for civil cases to be dealt with in local courts. This means that civil cases are more important for us to assess state-society relations than criminal cases, which more evidently reflected the way the state functioned rather than its relationship with society.

This paper thus limits its scope to civil cases. As a first step to comparing civil case practices in early modern Asia, this study focuses on the cultures of

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Law 169, 5:2 (2010). Moreover, the distrust of national institutional and political authority in economically developed nations, according to Hugh Heclo, is growing. On this point, see Hugh Heclo, *On Thinking Institutionally* (Oxford; New York: Oxford University Press, 2008), pp. 11–43.

civil case settlements in local courts in early modern Mongolia, Japan, and China. Fortunately, some case records of the local courts of these countries still remain, enabling us to dig into the court cultures under which the records were made. Although these early modern case records cannot inform us about all aspects of the legal culture of any single court at the time, they provide most significant information on local court practices, including who settled a case and in what way, how case records were made, and so forth. Since each country mentioned above has retained several collections from different local courts, it is impossible to discuss all of them in this paper. Rather, this paper focuses chiefly on one collection from each country in which the author conducted extensive research.[3)]

This paper takes a legal-cultural perspective rather than a strict legal or socio-legal approach. In its most general sense, as David Nelken puts it, the concept of a legal culture is "one way of describing relatively stable pattern of legally oriented social behavior and attitudes".[4)] Although the idea of a legal culture has been criticized by many scholars as being about everything and nothing, as Marina Kurkchiyan points out, it can be used as an overarching concept to explore the complexities that exist between law and society.[5)] This paper traces the legal culture of civil case settlements in local courts in the three countries using three different models based on their salient feature: the "utilitarian justice" model (Mongolia), the "well-organized justice" model (Japan), and the "bureaucratic management" model (China). It argues that these different models of court culture can be attributed to the respective state apparatus of each

3) The selection of three states as the subject of this paper was partly determined by the fact that the author is able to read the primary sources from these countries. The cases of Korean, Manchu, and Tibet are also the academic concern of the author, but they will be discussed on another occasion.

4) David Nelken, "Using the Concept of Legal Culture", *Australian Journal of Legal Philosophy* 29 (2004), p. 1.

5) Marina Kurkchiyan, "Comparing Legal Cultures: Three Models of Court for Small Civil Cases", *Journal of Comparative Law* 169, 5:2 (2010), p. 169.

country.

The local court cultures of these early modern Asian countries are comparable because they share common dimensions. Aside from the aforementioned common grounds regarding local court practices, these three states also shared similar features such as that judges were regular administrators, unlike their Western counterparts who usually came from the legal profession. However, at the same time, these Asian states showed differences regarding their local court systems, including the origin of the judge, detailed judicial procedures, the documentation of settled cases, and the surrounding sociohistorical environment, which are the main subjects of this paper. It is the author's hope that this paper will contribute to a comparative understanding of local court cultures and legal practices in early modern Asia. In the following, the author will first describe the three models mentioned above, and then discuss them from a comparative perspective.

Ⅱ. The "Utilitarian Justice" Model: The Case of Qing Mongolia

During the seventeenth and eighteenth centuries, all Mongolian kingdoms and principalities were put under the rule of two empires: Manchu-Qing and Tsarist Russia. The Qing dynasty, which succeeded in ruling the majority of Mongolia, governed the Mongols using a "banner-league"(*qosiγu-čiγulγan*) organization. This system—especially the banner institution—was a military-administrative system, with its origins in the Manchu institution, but it was built largely on the basis of the Mongolian indigenous political structure. The banner organization, which varied largely in area and population, was the basic state administrative organ which formed a league together with other banners. The banner government office was called "Seal Place [or Office]" (*tamaγa-yin*

γaǰar [*yamun*]) and played the role of banner court. Some existed not in a moveable tents (i.e., the *ger*) but in stable buildings.[6]

Typically, a banner was governed by a banner chief, who was a hereditary nobleman native to the banner.[7] While the banner chief was the supreme ruler in his banner, he was in charge of implementing imperial duties such as providing the Qing government with corvée from his banner and reporting serious cases that had occurred in his banner to the respective upper institutions. In return, the Qing government granted the banner chief imperial peerage with a salary and guaranteed his local lordship over the banner. To govern the vast and densely populated countryside in the banner, the banner chief appointed officials as his representatives, most of whom were located in local areas, while dozens would have worked at the central government office of the banner.[8] Like the daimyo in Tokugawa Japan, but unlike local magistrates in Qing China mentioned later, the banner chiefs in Qing Mongolia (1635–1911) bore "feudalistic" characteristics.

In some banner government offices in Qing Mongolia, judicial records included—but were not often separated into—criminal ("serious cases" [*kündü kereg*]) and civil cases ("minor cases" [*köngen kereg*]).[9] The judicial records

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6) According to archival sources, it seems that the infrastructural condition of a banner office influenced the banner's production of public documents. Put simply, those banners who had immovable office buildings tended to produce and preserve more documents than banner offices that existed in gers.

7) There were two exceptional banners: banners governed by officials dispatched by the Qing court in Beijing; and the lama banners, each of which was ruled by a reincarnated lama. For a general introduction to the banner-league system in English, see Sechin Jagchid and Paul Hyer, *Mongolia's Culture and Society* (Boulder: Westview Press, 1979), pp. 318–35; and Christopher P. Atwood, *Encyclopedia of Mongolia and the Mongol Empire* (New York: Facts On File, 2004), pp. 30–32.

8) On the peerage of banner chiefs and the banner bureaucratic system, see Sechin Jagchid and Paul Hyer, *Mongolia's Culture and Society* (Boulder: Westview Press, 1979), pp. 320–25. For a detailed case study, see Khohchahar Erdenchuluu, "Shindai Mongoru no Arasha ki ni okeru saiban", *Hogakuronso*, 170.1 (Oct. 2011), pp. 115–19; 170.2 (Nov. 2011), pp. 137–54.

9) The Mongolian terms used for "serious cases" and "minor cases" were not always "*kündü kereg*" and "*köngen kereg*" respectively. In Qing Mongolia, "serious cases" were also referred to as "*amin qulaγai-yin kündü kereg*" ("serious cases of homicide and theft") and "minor cases" as "*baγa saγa kereg*"("small cases").

served to document handled cases as unchangeable decisions that bore the authority of a final judgement (like *res judicata*), and would have been referred to when similar cases cropped up later.[10] For this purpose, judicial records were typically made in a compressed form, including only useful information, such as the date, facts or testimonies, the judgement, and, in some banners, names of the court officials who heard the case. In other words, the original legal documents involving a case, such as petitions and draft judgements, were not kept as evidence. This way of documenting a case reflects the highly authoritative nature of the decision made at the banner government office.

An example of a civil case record can be found from the Alasha Banner judicial documents, one of the biggest collections of the same kind from Qing Mongolia. This case was about a dispute over pastureland that occurred between the nomads and was settled at the Alasha Banner government office, under the instruction of the banner chief, in 1805. The whole document reads as follows (The underlines in the translation below were added by the author. For images of the record, see Figure 1):

> One case: Eighteen people—including Dasi, a runner at the rank of Ten Households, Γaltu, a head of Ten Households, soldiers Lhaǰab, Čempil, Qongγoi, and Mendü—who were all living in the areas of Western Damba and Siraγool, and who belonged to a corps commanded by the captain Lhahavan, came to the banner government office together and complained that Bandi, with a rank of vice-captain, was digging a well north of a ridge called Del'ulaan, on which their pastoral ground was located. If he was successful and found water from the well and herded his livestock in the surroundings, they would lose their pastoral ground, which was important for their livestock, and would suffer losses. This case was dealt with under

10) Khohchahar Erdenchuluu, "Arasha ki saiban kiroku bunsho to sono shoshiki", *Nairiku Ajia shi kenkyū* 25 (2010), pp. 80–81.

an instruction of the banner chief in the following way: if water was found in the well Bandi was digging, all people living in Damba and Siraγool area would be allowed to use the well; from then on, no one must make a dispute by digging a well within the area around Bandi's well, especially south and north of the well. The west part extended to the north side of Gederen; the east part was along the edge of desert and through the north of Qamaγultu. This instruction is a permanent law, and was written down on a piece of paper with a public seal and was handed over to Dasi, a runner at the rank of Ten Households, Γaltu, a head of Ten Households, and soldier Lhaǰab. The names of officials present at [the government office] during its handling: banner vice-chief Namǰil (with identification mark), banner-commander Qongǰid (with identification mark), banner vice- commander Darimabala (with identification mark), lieutenant general Yangpil, lieutenant colonel Tegüs, captain Lamaǰab (with identification mark), captain Erinčin, captain Bayasqulang.[11]

As shown by the different style underlines, this civil case record is composed of three major parts: the content of complaints, the judgement, and the list of banner government officials.[12] These are considered to be the main parts of a typical case record. It is evident from this case that the records were made to document settled cases as unchangeable authoritative decisions. The nature of these records is reflected in the phrase: "This instruction is a permanent law". There was a practical intention to this, as it could be referred

11) Archival manuscript, No.101-4-38, pp. 17–19, the Alasha Left Banner Archives, Inner Mongolia Autonomous Region, the People's Republic of China. In the translation, the format of the original writing has not been maintained and the public seal and identification marks of the officials who judged the case have been omitted. For an analysis of this case, see Khohchahar Erdenchuluu, "Land Tenure in Pre-modern Mongolia: An Approach Based on New Sources from the Qing Era", in *ЧИН УЛС БА МОНГОЛЧУУД*, CNEAS Report (Sendai: Meirinsha, 2014), pp. 271–72.

12) For more detail on the structure of the Alasha Banner judicial documents, see Khohchahar Erdenchuluu, "Arasha ki saiban kiroku bunsho to sono shoshiki", *Nairiku Ajia shi kenkyū* 25 (2010), pp. 84–87.

to in the future when dealing with similar cases, since the decision became a "permanent law".

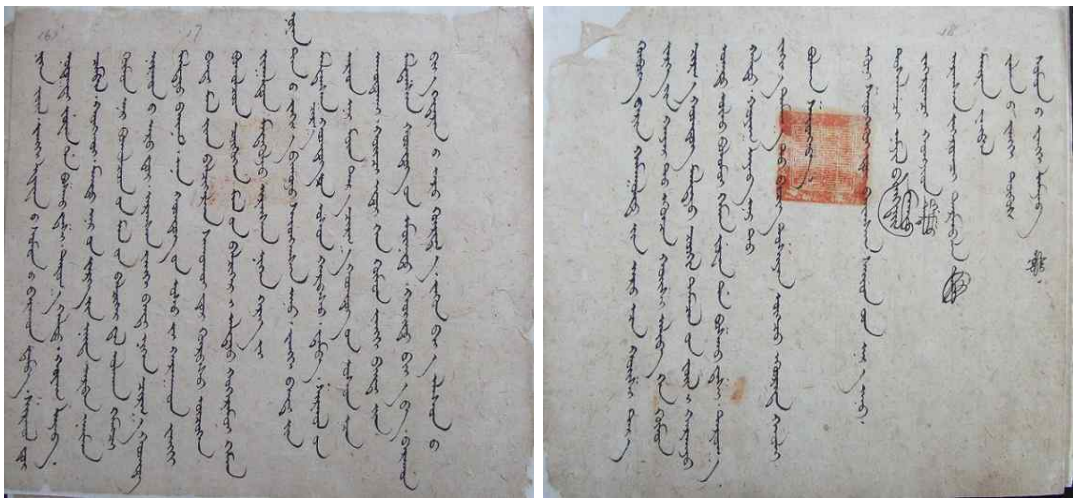

Figure 1: Pages 17 (left) and 18 (right) of archival manuscript, No. 101-4-38, pp. 17–19, the Alasha Left Banner Archives.[13)]

This case also informs us of the way in which a civil case was adjudicated in the Alasha Banner government office. That is, the cases brought before the banner government office were first heard by government officials in conference. After the hearing, these officials made a draft of their preliminary judgement and submitted it to the banner chief, who was generally absent at the hearing but giving orders on preliminary decisions from his palace. The final judgement was pronounced by the banner government officials who heard the case after the banner chief had given them an order either approving or correcting the draft judgement. At the end of the case record, those who joined the trial put their identification mark under their name within the list of officials. A public seal was affixed at the end of the judgement, usually on the word "judged" *(sidkebe)* or "concluded" *(dayusqaba)*.

13) The files of Alasha Banner judicial documents are generally about 26.5–29 cm in width and 24.5–27 cm in height. The exact size of the documents shown in the photos needs to be checked.

The procedure of civil case settlements in the Alasha Banner government office described above needs further evaluation. First, as described, the hearing of the case and drafting of the preliminary judgement were made by the officials in conference. On the one hand, this joint trial system served to achieve the stability of law and the impartiality of justice, and created a sense of predictability in law for the public. On the other hand, it functioned to prevent and reduce any arbitrariness by the banner chief who had made the final judgement on the case. Second, the practice of placing identification marks at the end of a judgement in a case record had a practical aim: the judging officials could be asked to provide more information on the case they had settled when the court faced a similar case in the future. It also meant that the officials who joined the trial were not responsible—at least in theory—for the final decision, which was a matter for the banner chief.

There are other civil case records remaining from Qing Mongolia, examples of which are the civil case records of the Hangin Banner.[14] These civil cases were independently recorded from the criminal cases. For instance, civil case records from this banner contain cases involving engagement, divorce, and adoption, etc.[15] Among these, divorce records made up the majority of the cases. The divorces recorded includes cases settled both in the banner office and in the countryside by local officials or others, as well as divorce by agreement. This fact suggests that civil cases could be brought before either the banner office or the local officials residing in the countryside. This system provided the litigants with flexibility in choosing a court for their case (they usually decided where to submit their litigation in consideration of the distance required to travel), while encouraging people to handle their civil disputes in

14) The Hangin Banner, as well as the Alasha Banner, were located in the southwestern part of what is today Inner Mongolia Autonomous Region in the People's Republic of China.

15) Archival manuscript, No. 57-1-75, Ordos City Archives, Inner Mongolia Autonomous Region, the People's Republic of China.

a less costly and cumbersome way. The intention behind this system was practical and was reflected in the saying “cases from the countryside are settled in the countryside” (*kegere-yin kereg-yi kegere ni*).

Ⅲ. The “Well-Organized Justice” Model: The Case of Tokugawa Japan

Tokugawa Japan (1603–1868) was organized into two types of regional administrative systems under the control of the *bakufu* central government: the *tenryō* (天領), territories that were under the direct control of the *bakufu*; and the *han* (藩), autonomous domains that were under the indirect control of the *bakufu*, but were ruled by daimyo. The domains, which occupied three-quarters of the country, enjoyed greater autonomy in their administration and finance, except for some restraints from the *bakufu*.[16] The domains had the authority to promulgate their own laws, but the content of their laws were largely influenced by the relationship with the *bakufu*. That is, the laws of the domains that had closer relations with the *bakufu* tended to be drafted in the line of central government law, and the more distant relation the domain had with the central government, the more independence they had when drafting laws.[17]

In Tokugawa Japan, civil cases were classified as *deiri suji* (出入筋), differing from criminal cases, which were referred to as *ginmi suji* (吟味筋).[18] According to archival sources, it seems that in some regions these two types

16) R.H.P. Mason and J.G. Caiger, *A History of Japan*, Revised Edition (Tokyo; Rutland, Vermont; Singapore: Tuttle Publishing, 1997), p. 198.

17) Murakami Kazuhiro and Nishimura Yasuhiro, eds., *Shiryō de yomu Nihon hōshi* (Kyoto: Hōritsu Bunkasha, 2013), p. 51.

18) For a compact introduction to the *ginmi suji* and *deiri suji* systems of the *bakufu*, see Asako Hiroshi et al., eds., *Nihon hōsei shi* (Tokyo: Seirin Shoin, 2013), pp. 228–40.

of cases were recorded and preserved separately.[19] Both types of the local case records in question were made at the office of a local magistrate. The local magistrates, typically called *bugyō* (奉行), were in fact administrative officials and delivering justice was only one part of their duties.[20] While the magistrates who were responsible for the territories directly governed by the *bakufu* were appointed by the central government, those who worked within the domains—typically called *kōri bugyō* (郡奉行)—were appointed by the daimyo.

One of the civil case collections remaining from Tokugawa Japan is the *kōri* magistrate documents from the Matsue domain (present-day Shimane Prefecture). This collection contains 129 individual civil cases handled at the local court run by the *kōri* magistrate, covering 1750 to 1872. The collection includes cases involving civil disputes that can be divided into more than ten categories, such as mountains, boundaries, and so forth (see Table 1). Among them, cases related to mountains (*sanron* 山論) and boundaries (*umiyama-zakai* 海山境, *mura-zakai* 村境) number 51, or about 40 percent of the total. Unsurprisingly, this rate reflects the agricultural and geographical features of the Matsue domain which faced the Japan Sea. Another notable characteristic of the collection is that cases settled between the years 1841 and 1867 are about half of the total. This is seemingly a reflection of the socioeconomic changes in late Tokugawa Japan.

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19) For example, the criminal case records from Nagasaki City of Tokugawa Japan, named *Hankachō* (犯科帳), consist of 145 files containing more than 8,000 cases. On the *Hankachō*, see Morinaga Taneo, *Hankachō: Nagasaki bugyō no kiroku* (Tokyo: Iwanami Shoten, 1993). In addition, a typical example of civil case records are those of the Matsue domain, which will be discussed in this paper.

20) Asako Hiroshi et al., eds., *Nihon hōsei shi* (Tokyo: Seirin Shoin, 2013), p. 224.

Table 1: The types and numbers of civil cases in the *kōri* magistrate documents

Years / Types	~1750	1751~1780	1781~1810	1811~1840	1841~1867	1868~1872	Total
Mountains	2	3	10	9	11	2	37
Boundaries	1	1	6	3	3		14
Fishing				2	5	4	11
Business				1	4	2	7
Monetary				3	5	3	11
Real Property					4	3	7
Inheritance					6	1	7
Temple/Shrine		1		3	9	1	14
Shipwreck					9		9
Others			1	1	9	1	12
Total	3	5	17	22	65	17	129

Source: Shimane kenritsu toshokan, *Shimane kenritsu toshokan shozō Matsue han kōri bugyō sho bunsho chōsa mokuroku*, (jōkan) (Matsue: Shimane Kenritsu Toshokan, 2001), "kaidai" (解題, Bibliography with Explanatory Notes), p. 10.

Each case in the collection is preserved in a bag, an Edo-era practice from which the term *ikken-bukuro* (一件袋, "a bag with one case") was derived. The bags, varying in size, are made of paper and the twisted string tying the opening side of the bags is also paper. On the front side of the bags, basic information of the case within it is described, and on the back side is information on the related district and the number of the box in which the bag is preserved. The author examined the contents of a bag, which contained a case and was numbered by the archivist as No. 200 and preserved in the Shimane Prefectural Library (Shimane kenritsu toshokan). A translation of the words written on the front and back of this bag is as follows (also refer to Figure 2):

[Front side]: Settled on the first day of the sixth month, 1848. This case is about a dispute, started in 1839, over the placement of *futamata* fishing nets. After having argued for many years, the Kizuki side, to whom the netting was previously allowed,

and the Hinomisaki side, have now reached an agreement and willingly withdrew the litigation. Magistrate of Kando and Iishi districts, Ichigawa Toraich

[Back side]: Of Kizuki and Hinomisaki, preserved in box no. three.

Although case No. 200 was settled not by an official adjudication, but by agreement between the parties before a trial, it shows that the front side of the bag contains the contents of the date when the case was concluded, the abstract of the case, and the name of the magistrate who dealt with the case. Each bag or case contains from 10 to over 100 documents, including petitions, responses from defendants, and drafts of official correspondence. These documents are packed carefully and divided into different levels of bands. For example, case No. 200, with 129 documents in total, is divided into two large bundles; one of them is packed into a smaller bag with writing on two sides, and the other is only tied up together with a twisted string. Within each of these two groups of documents, there are many small bundles of documents, that is, 15 and 12 small bundles each.[21] Each document within the bag was written in a quite detailed manner. Overall, the documents are carefully organized and preserved.[22]

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21) For more details, see Shimane kenritsu toshokan, *Shimane kenritsu toshokan shozō Matsue han kōri bugyō sho bunsho chōsa mokuroku* (jōkan) (Matsue: Shimane Kenritsu Toshokan, 2001), pp. 174–79.

22) On the studies of *kōri* magistrate documents, see Andō Masahito, "Matsue han kōri bugyō sho 'minji soshō bunsho' no shiryō gaku teki kenkyū", in eds. Takagi Shunsuke and Watanabe Kōichi, *Nihon kinsei shiryō gaku kenkyū: Shiryō kūkanron e no tabidachi* (Sapporo: Hokkaido Daigaku Shuppankai, 2000), pp. 111–57; *Edo jidai no gyojō arasoi: Matsue han kōri bugyō sho, bunsho kara* (Kyoto: Rinsen Shoten, 1999); and Hashimoto Seiichi, "Meiji shoki no chōshō jimu: Matsue han kōri bunsho o tegakari ni", *Hōseishi Kenkyū* 61 (2011), pp. 1–50. See also Ningen bunka kenkyū kikō kokubungaku kenkyū shiryōkan, ed., *Kinsei no saiban kiroku,* shiryō sōsho 9 (Tokyo: Meicho Shuppan, 2007), pp. 20–37, 313–415.

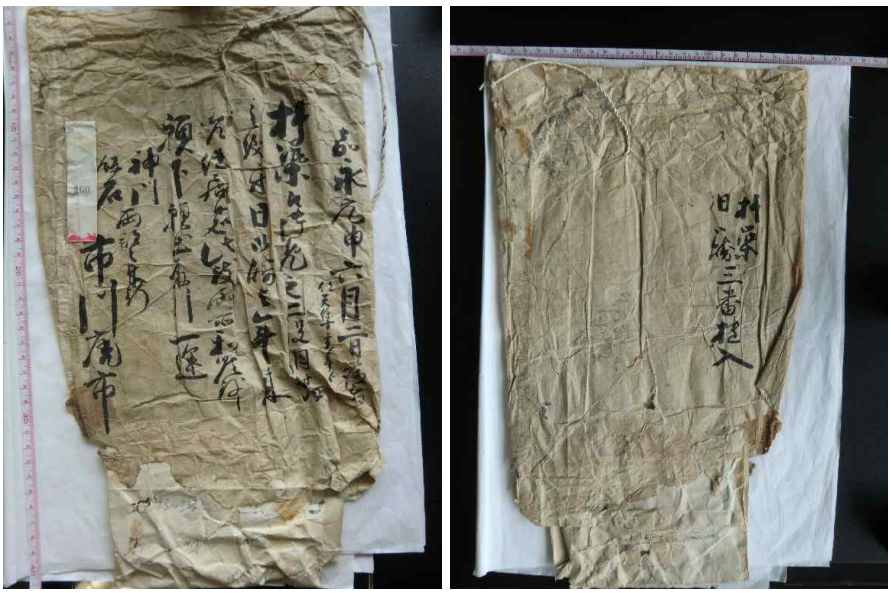

Figure 2: The images of the front and back sides of the bag, in which case No. 200 is contained, from the *kōri* magistrate documents (34×22 cm).[23)]

The judicial system of the Matsue domain was strictly organized. The administrative hierarchy of this domain was as follows: the lord (*ryōshu* 領主) at the top, followed by the council committee (*shiokisho* 仕置所), its assistant committee (*soeyakusho* 添役所), the executive office (*goyōsho* 御用所), the district magistrate (*kōri bugyō*), the district family (*kōri ke* 郡家), and the village head (*shōya* 庄家). It seems that a petition that was submitted to the *kōri* (or district) magistrate passed before the village head first and the district family second, before reaching the litigation court. Some civil cases were judged by a magistrate after receiving an order from the council committee. The *kōri* magistrate documents from the Matsue domain show that this hierarchal administration was strictly followed in practice and almost all official communications between the different offices were documented.[24)]

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23) Front side: 嘉永元年申六月二日落着／但天保十亥年ら／杵築江御免之二股網場／之義二付日御碕与年来／差縺居候処此度両所和順致し／願下願出取引一途／神門／飯石／両郡々奉行／市川虎市; Back side: 杵築／日御碕／三番櫃入.

24) On law and justice under the direct rule of *bakufu*, see Ōhira Yūichi, *Kinsei Nihon no soshō to hō* (Tokyo: Sōbunsha, 2013).

Civil complaints reported to the magistrate were required in writing. In other words, oral complaints were typically not considered to be acceptable. Direct appeal to the upper institution was legally not allowed. It seems that public authorities usually did not actively intervene in civil disputes which were considered to have been personal matters. Nonetheless, once a civil dispute was appealed to and settled by the domain authority, the case was legally ended and repetition was not permitted. As mentioned, a civil petition should have gone through the village head and the district family before reaching a magistrate. This rule demonstrates on the one hand the seriousness of the civil litigation process, and indicates on the other hand the fact that many civil disputes were settled at the level of village head or district family.

Ⅳ. The "Bureaucratic Management" Model: The Case of Qing China

In ruling China, the Qing government adopted Ming institutions such as the Grand Secretaries, the Six Boards, the Imperial (or Civil Service) Examination, and the legal code, etc.[25] Justice was administered by the various levels of bureaucracy in Qing China (1644–1911). At the central government of the dynasty were the Three Judicial Offices (*sanfasi* 三法司) reviewing the cases reported from the Board of Punishment and under the authority of the emperor. At the provincial level, the Surveillance Commissioner (*anchashi* 按察使), who was responsible for judicial and investigative matters, worked under the direct control of the Provincial Governor (*xunfu* 巡撫) or Governor-General (*zongdu*

25) The Qing government was not a complete replica of the Ming government, for it had its own unique institutions such as the Eight Banners, the Court of Colonial Dependencies (*Lifanyuan*), the Imperial Household Department (*naiwufu*), and the Grand Council (*junjichu*).

総督). The typical district organization in the country was the county (*xian* 県), which was headed by a magistrate who was in charge of, among other things, hearing most cases that came to trial.[26]

The district magistrate was the representative of the emperor, but had to pass the imperial examination before being appointed to the post. A magistrate was not allowed by law to hold office in his native province, and had to follow the rule of periodical transfer. The officials were attached to their official career, driven by personal ambition and loyalty to kin. Thus, as Sybille van der Sprenkel points out, they usually did not think about service to the wider public. They were "doing what could be justified in terms of rules and instructions, or evading them to the extent they could 'get away with it'; maintaining or restoring an appearance of order; reporting to superiors what the latter would like to hear".[27] Magistrates were in charge of dealing with cases and would be punished if they neglected their duties. As such, the magistrate was quite bureaucratic in nature and this made the local administration of justice "bureaucratic management".

The equivalent to civil cases in Qing China were "minor matters" (*xishi* 細事), conventionally meaning marriage and real property cases, etc (*huhun tiantu* 戶婚田土). In contrast, criminal cases were typically referred to as "serious matters" (*zhong'an* 重案), which usually indicated cases such as homicide,

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26) New intermediary local units such as department (*zhou* 州) and subprefecture (*ting* 庁) were added in addition to the county. Between the regional and local levels, there were prefectures (*fu* 府), as well as *zhili zhou* (直隸州) and *zhili ting* (直隸庁) which were directly attached to the provincial government. For a brief introduction to judicial institutions in Qing China, see Shiga Shūzō, *Shindai Chūgoku no hō to saiban* (Tokyo: Sōbunsha, 1984), pp. 11–22, and Endym Wilkinson, *Chinese History: A New Manual,* Fourth Edition (Cambridge, Mass.: Harvard University Asia Center for the Harvard-Yenching Institute, 2015), pp. 253–68. For more detailed studies on legal institutions in Qing China, refer to Sybille van der Sprenkel, *Legal Institutions in Manchu China: A Sociological Analysis* (New York: Humanities Press INC, 1962).

27) Sybille van der Sprenkel, *Legal Institutions in Manchu China: A Sociological Analysis* (New York: Humanities Press INC, 1962), pp. 54–55.

robbery, and theft (*mingdao* 命盜). Roughly speaking, cases belonging to the civil category were matters for the district office (i.e., the *yamen* 衙門), while cases belonging to the criminal type might have been reviewed by upper institutions, right up until the emperor.[28] According to David C. Buxbaum, the civil case terms meaning marriage and real property etc., seem to him to refer to specific sections in the legal code, such as *hulü* (戶律, Household Statutes) or *hunyin* (婚姻, Marriage).[29]

In district offices, which are said to have numbered around 1,500 in total, case records were produced intensively, and a few of them still remain today.[30] An example of a collection of district-level case records from Qing China is the Danxin documents of northern Taiwan, covering 1776 to 1895.[31] This is a well-studied cache of local cases, with the images now available online.[32]

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28) This division was also marked by the application of the "five punishments" (*wuxing* 五刑), that is, cases applicable to the punishments of beating by light stick or cane (*chi* 笞), or by heavy stick or rod (*zhang* 杖) were decided by the magistrate, while others cases responding to the punishment of penal servitude for a fixed term (*tu* 徒), life exile (*liu* 流), and death (*si* 死) were required to be reviewed by respective upper institutions. See Endym Wilkinson, *Chinese History: A New Manual,* Fourth Edition (Cambridge, Mass.: Harvard University Asia Center for the Harvard-Yenching Institutes, 2015), pp. 311–12.

29) David C. Buxbaum, "Some Aspects of Civil Procedure and Practice at the Trial Level in Tanshui and Hsinchu from 1789 to 1895", *The Journal of Asian Studies* 30.2 (Feb., 1971), p. 262.

30) The paucity of district-level judicial records from Qing China is said to have been caused by fires set sometimes during the Taiping Rebellion and through to the Cultural Revolution. See Matthew H. Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford, California: Stanford University Press, 2000), p. 17.

31) The Ba County documents and Nanbu County documents from Sichuan Province are said to have been larger in number than the Danxin documents. Matthew H. Sommer has conducted intensive research on the sections relating to sex and wife-selling. See Matthew H. Sommer, *Polyandry and Wife-Selling in Qing Dynasty China: Survival Strategies and Judicial Interventions* (Oakland, California: University of California, 2015), and *Sex, Law, and Society in Late Imperial China* (Stanford, California: Stanford University Press, 2000).

32) For studies on the Danxin documents see, for example, Mark A. Allee, *Law and Local Society in Late Imperial China: Northern Taiwan in the Nineteenth Century* (Stanford, California: Stanford University Press, 1994) and David C. Buxbaum, "Some Aspects of Civil Procedure and Practice at the Trial Level in Tanshui and Hsinchu from 1789 to 1895", *The Journal of Asian Studies* 30.2 (Feb. 1971), pp. 255–79. For images of the Danxin documents, see National Taiwan University Library, at: http://dtrap.lib.ntu.edu.tw/DTRAP/index.htm

It contains 1,161 cases in total and 574 (49.4 percent) were classified as administrative. Of the remaining 587 civil and criminal cases, 37.8 percent were civil complaints and 62.2 criminal.[33] According to Mark A. Allee, some cases contain more than 100 documents and there is one case, which he examined, that has more than 200.[34] Judicial case files are said to have been preserved chiefly for periodic reviews by upper bureaucratic institutions.

These local case records demonstrate that the litigation process at local courts was quite formal. First, a petition written in an official format was required. Second, the petition could be submitted to the court only on certain days of a month, except for the period between April and July in the lunar calendar, in which all petitions were prohibited aside from certain immediate cases. Third, the process from receiving a petition to concluding a case underwent a course of formal procedures. And finally, a document-checking technique was set to prevent changes to documents by runners or scribes of the court.[35] All these characteristics of civil case-settling procedures reflected a formalism that provided the magistrates with a systematic—as well as safer—way of administering justice.

However, the workload may have been cumbersome for a magistrate if all civil cases had gone through these formalistic procedures. Terada Hiroaki examined a civil case file (No. 22615) from the Danxin collection.[36] This case was about a dispute over an inheritance among family members, submitted in 1893. Although the case concluded with an agreement between the two parties,

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33) Mark A. Allee, *Law and Local Society in Late Imperial China: Northern Taiwan in the Nineteenth Century* (Stanford, California: Stanford University Press, 1994), p. 10.

34) *Ibid*, p. 13.

35) For a detailed introduction to the types and characteristics of the Danxin documents, see Shiga Shūzō, "Tanshin tōan no shoho teki chishiki: Soshō anken ni arawareru bunsho no ruikei", in *Tōyō hō shi no tankyū: Shimada Masao hakushi shōju kinen ronshū* (Tokyo: Kyūko Shoin, 1987), pp. 253–86.

36) See Terada Hiroaki, "Chūgoku shindai minji soshō to 'hō no kōchiku': "Tanshin tōan" no ichi jirei o sozai ni shite", in ed., Nihon hō shakai gakkai, *Hō no kōchiku* [*Hō shakai gaku*, 58] (Tokyo: Yūhikaku, 2003), pp. 56–78.

it took one and a half years after being brought to court. The case file contains 41 documents of seven kinds, including petitions.[37] As figure 3 shows, the petition was written on official paper with a fixed format, and there are several imprints of different seals that may demonstrate the checking process.

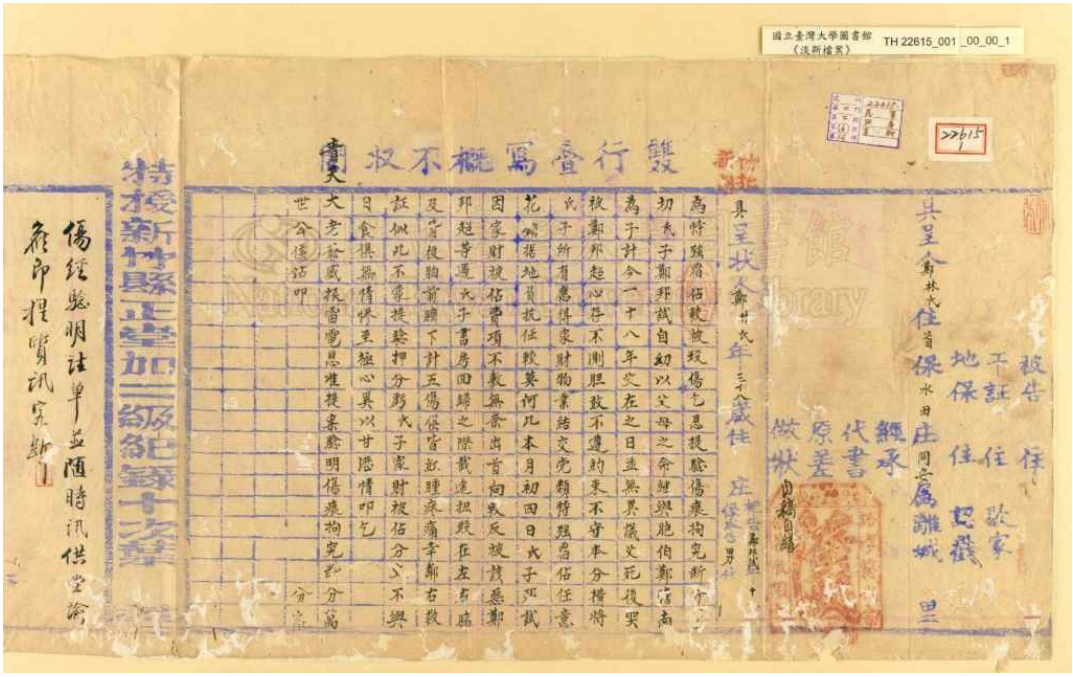

Figure 3: The main part of the first petition by the plaintiff, case No. 22615, Danxin collection (the size of the whole document is: 30.3×76.3 cm).[38]

The crucial motivation for a magistrate, as mentioned, was fulfilling his given duty in as safe a way as possible. For this reason, it was probably the case that the magistrates would not have actively been involved in civil case adjudication. It seems that many civil cases brought before the local courts were settled through mediation by the magistrate, without issuing a judgement. This practice reflects the prevailing notion that civil disputes were "ideally to be resolved through mediation and compromise without recourse of the court".[39]

37) For more details, see *Ibid*, pp. 57–58. For the images of all documents in the case, see http://www.darc.ntu.edu.tw/simple-search?query=22615&forwardTo=/newdarc/darc-result.jsp&doTreeView=true&start=null

38) Source: http://www.darc.ntu.edu.tw/handle/1918/108482?doTreeView=true&forwardTo=/newdarc/darc-item-window.jsp&query=22615

This can also explain why civil case records are smaller in number than criminal ones, a fact that is seen in the Danxin documents. It should be noted that even among the civil case files, more than a few of them are incomplete. The reason is most likely that the majority of such cases were dropped by the litigation parties who had reached an agreement on their cases before a judgement was issued.

Ⅴ. The Legal Cultures and Practices of Civil Case Settlements

The division between civil and criminal cases—whether conventionally or institutionally—in the three countries reflects the different attitudes of the state judiciary toward civil disputes and crimes. The civil cases were regarded as personal matters, so the states preferred to settle them locally. In contrast, the criminal cases—specifically the serious crimes—were perceived as public affairs, so many state institutions tended to be involved in punishing the criminals. The civil cases reflected everyday life more so than the criminal cases. The three countries show a similarity regarding the practice of civil case settlements, that is, the number of civil case records from the local courts was smaller than that of criminal cases. This suggests that civil cases were encouraged to settle by not resorting to local courts.

However, this did not mean that the local courts left those civil cases without any institutional arrangement for civil society. The local courts discussed in this paper demonstrate that they often resorted to their local agents to settle civil cases in the countryside. In Qing Mongolia, officials who resided

39) Mark A. Allee, *Law and Local Society in Late Imperial China: Northern Taiwan in the Nineteenth Century* (Stanford, California: Stanford University Press, 1994), p. 11.

in the countryside as the agents of banner chiefs settled civil cases by either adjudication or mediation. Many civil cases in Tokugawa Japan are assumed to have been settled by mediation by the village head or the district family.[40] Similarly, local magistrates in Qing China often required the local gentry to resolve civil disputes in the villages. However, unlike the agents in the countryside in banners in Qing Mongolia, the local gentry in Qing China were not official agents of the district magistrate. In Tokugawa Japan, due to being agents of both the daimyo and village, the district family and village head appeared to reside in the middle ground between the Mongolian and Chinese cases.

This institutional difference in the local approaches to civil case settlements corresponds to the different state structures in the three countries. Qing Mongolia and Tokugawa Japan adopted a "feudalistic" system under which the banner chiefs and daimyo were allowed to govern their native region. The landed, hereditary nature of these lords resulted in more social involvement, as they placed their agents at the bottom of society. In contrast, Qing China employed a bureaucratic form of governance that had less active involvement with local society. With its feudalistic government style, I assume that Mongolia's mobile lifestyle facilitated a flexible, utilitarian approach to the administration, including civil case settlements. In contrast, the sedentary, closed environment of Tokugawa Japan might have been one of the conditions for well-organized governance, though Japan's uniqueness and strictness in social governance cannot be explained in terms of only environmental conditions. As the agricultural Chinese case demonstrates, how strictly a society was governed by a state largely depended on the nature of the state agents and their relations with local society.

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40) On dispute resolution in local society in Tokugawa Japan, see Herman Ooms, *Tokugawa Village Practice: Class, Status, Power, Law* (Berkeley and Los Angeles: University of California Press, 1996).

As the structure and contents of the case records indicated, in Qing Mongolia it was uncommon to spend a long time with many official documents to solve a civil case, as, for example, nine years with 129 documents for a case in Tokugawa Japan and one and a half years with 41 documents in Qing China, as discussed above. The banner court gathered all those who were involved in the dispute to make an authoritative investigation once a civil case litigation was received. There was no need to ask a defendant(s) to submit a formal response with documents to the original petition of the plaintiff, as practiced in Tokugawa Japan. Nor was it necessary to submit a new petition for the same case by the same plaintiff, as was widely practiced in Qing China. The fact-checking was authoritatively conducted by the banner court. In this regard, it is possible to say that the Mongolian court was highly efficient in settling civil cases.

Regardless of whether direct or indirect, the local courts in the three countries represented state power in society. Nonetheless, it is assumed that the courts in the three countries were perceived by the public differently. For litigants, going to a local court seems to have meant finding a clear line between right and wrong by the judges in Qing Mongolia and Tokugawa Japan. Generally speaking, the eventual decision on a civil case by the banner chief or daimyo was the law. Law was something that was given by the lords. By contrast, making a decision over a civil case was largely a compromising process between right and wrong in Qing China, and nothing was clear-cut in right and wrong in a civil case. Where to draw the line between right and wrong depended largely on the interpretation of all elements involving a case, such as the surrounding situation, social relations, common sense, and so on. For a litigant in Qing China, going to court often meant finding a reasonable answer, rather than a certain law or judgement, in his dispute.[41)]

The case records from the three countries represent the bulk of local court

legal documents that emerged in the eighteenth to nineteenth centuries in northeast Asia, a fact that demonstrates the development of state governance in society. A comparison of the local court practices of civil case settlements in early modern Japan and China suggests that the court cultures were quite different, except for the use of Chinese characters in legal documents. The influence of Chinese legal culture gradually increased in early modern Mongolia when it was ruled by the Qing dynasty, in regard to the style of legal documents, the nature of the hearings, and so forth. To better understand the legal cultures of civil case settlements in a broader northeast Asian sphere, it is essential to look at the cases of early modern Korea and Manchu, in addition to the three countries examined in this paper.

▌References

Allee, Mark A., *Law and Local Society in Late Imperial China: Northern Taiwan in the Nineteenth Century* (Stanford, California: Stanford University Press, 1994).

Andō, Masahito 安藤正人, "Matsue han kōri bugyō sho 'minji soshō bunsho' no shiryō gaku teki kenkyū" 松江藩郡奉行所「民事訴訟文書」の資料学的研究, in eds., Takagi Shunsuke 高木俊輔 and Watanabe Kōichi 渡辺浩一, *Nihon kinsei shiryō gaku kenkyū: shiryō kūkan ron e no tabidachi* 日本近世史料学研究――史料空間論への旅立ち [Studies on Early-modern Documentary Sources in Japan] (Sapporo: Hokkaido Daigaku Shuppankai, 2000), pp. 111–57.

_____, *Edo jidai no gyojō arasoi: Matsue han kōri bugyō sho bunsho kara* 江戸時代の漁場争い 松江藩郡奉行所文書から (Kyoto: Rinsen Shoten, 1999).

Asako, Hiroshi 浅古弘 et al., eds., *Nihon hōsei shi* 日本法制史 (Tokyo: Seirin Shoin, 2013).

Atwood, Christopher P. *Encyclopedia of Mongolia and the Mongol Empire* (New York: Facts On

41) On the nature of civil case justice in Qing China, see Terada Hiroaki (trans. Peter Neustupny) "The Crowded Train Model: The Concept of Society and the Maintenance of Order in Ming and Qing dynasty China", in *Law in a Changing World: Asian Alternatives* (Franz Steiner Verlag Stuttgart, 1998), pp. 100–109; and "Chūgoku shindai minji soshō to 'hō no kōchiku': "Tanshin tōan" no ichi jirei o sozai ni shite", in ed., Nihon hō shakai gakkai, *Hō no kōchiku*, [*Hō shakai, gaku*, 58] (Tokyo: Yūhikaku, 2003), pp. 56–78.

File, 2004).

Buxbaum, David C., "Some Aspects of Civil Procedure and Practice at the Trial Level in Tanshui and Hsinchu from 1789 to 1895", *The Journal of Asian Studies*, 30.2 (Feb. 1971), pp. 255–79.

Erdenchuluu, Khohchahar, "Shindai Mongoru no Arasha ki ni okeru saiban" 清代モンゴルのアラシャ旗における裁判 (The Judicial System of the Alaša Banner in Qing Mongolia), *Hogakuronso* 法学論叢 (*Kyoto Law Review*), 170.1 (Oct. 2011), pp. 101–19 (Part One); 170.2 (Nov. 2011), pp. 136–61 (Part Two); 170.3 (Dec. 2011), pp. 119–39 (Part Three).

_____, "Arasha ki saiban kiroku bunsho to sono shoshiki" アラシャ旗裁判記録文書とその書式 (Judicial Document of the Alaša Banner: An Analysis of Its Style), *Nairiku Ajia shi kenkyū* 内陸アジア史研究 (*Inner Asian Studies*), 25 (2010), pp. 75–95.

_____, "Land Tenure in Pre-modern Mongolia: An Approach Based on New Sources from the Qing Era", in *ЧИН УЛС БА МОНГОЛЧУУД (Daiqing Dynasty and Mongolians)*, CNEAS Reports (Sendai: Meirinsha, 2014), pp. 267–78.

Hashimoto, Seiichi 橋本誠一, "Meiji shoki no chōshō jimu: Matsue han kōri bunsho o tegakari ni" 明治初期の聴訟事務——松江藩郡奉行所文書を手がかりに (On Civil Court System and Civil Procedure *(chosho-jimu)* of Matsue-han from 1868 to 1871), *Hōseishi Kenkyū* 法制史研究 (*Legal History Review*), 61 (2011), pp. 1–50.

Heclo, Hugh, *On Thinking Institutionally* (Oxford; New York: Oxford University Press, 2008).

Jagchid, Sechin and Hyer, Paul, *Mongolia's Culture and Society* (Boulder: Westview Press, 1979).

Kurkchiyan, Marina, "Comparing Legal Cultures: Three Models of Court for Small Civil Cases", *Journal of Comparative Law* 169, 5:2 (2010), pp. 169–93.

Mason, R.H.P. and Caiger, J.G., *A History of Japan*, Revised Edition (Tokyo; Rutland, Vermont; Singapore: Tuttle Publishing, 1997).

Morinaga, Taneo, *Hankachō: Nagasaki bugyō no kiroku* 犯科帳——長崎奉行の記録—— (Tokyo: Iwanami Shoten, 1993).

Murakami, Kazuhiro 村上一博, and Nishimura, Yasuhiro 西村安博, eds., *Shiryō de yomu Nihon hōshi* 史料で読む日本法史 (Kyoto: Hōritsu Bunkasha, 2013).

Nelken, David, "Using the Concept of Legal Culture", *Australian Journal of Legal Philosophy*, 29 (2004), pp. 1–26.

Ningen bunka kenkyū kikō kokubungaku kenkyū shiryōkan 人間文化研究機構国文学研究資料館, ed., *Kinsei no saiban kiroku* 近世の裁判記録, shiryō sōsho 資料叢書 9 (Tokyo: Meicho Shuppan, 2007).

Ōhira, Yūichi 大平祐一, *Kinsei Nihon no soshō to hō* 近世日本の訴訟と法 (Tokyo: Sōbunsha, 2013).

Ooms, Herman, *Tokugawa Village Practice: Class, Status, Power, Law* (Berkeley and Los Angeles: University of California Press, 1996).

Sellers, Jefferey M., "State-Society Relations", in ed., Mark Bevir, *The SAGE Handbook of Governance* (Berkeley: University of California Press, 2011).

Shiga, Shūzō 滋賀秀三, "Tanshin tōan no shoho teki chishiki: Soshō anken ni arawareru bunsho

no ruikei" 淡新檔案の初歩的知識——訴訟案件に現れる文書の類型——, in *Tōyō hō shi no tankyū: Shimada Masao hakushi shōju kinen ronshū* 東洋法史の探求 島田正郎博士頌壽記念論集 (Tokyo: Kyūko Shoin, 1987).

_____, *Shindai Chūgoku no hō to saiban* 清代中国の法と裁判 (Tokyo: Sōbunsha, 1984).

Shimane kenritsu toshokan 島根県立図書館, *Shimane kenritsu toshokan shozō Matsue han kōri bugyō sho bunsho chōsa mokuroku* (jōkan/ kakan) 島根県立図書館所蔵松江藩郡奉行所文書調査目録 [上巻・下巻] (Matsue: Shimane Kenritsu Toshokan, 2001/ 2002).

Sommer, Matthew H., *Polyandry and Wife-Selling in Qing Dynasty China: Survival Strategies and Judicial Interventions* (Oakland, California: University of California, 2015).

_____, *Sex, Law, and Society in Late Imperial China* (Stanford, California: Stanford University Press, 2000).

Sprenkel, Sybille van der, *Legal Institutions in Manchu China: A Sociological Analysis* (New York: Humanities Press INC, 1962).

Terada, Hiroaki 寺田浩明, "Chūgoku shindai minji soshō to 'hō no kōchiku': "Tanshin tōan" no ichi jirei o sozai ni shite" 中国清代民事訴訟と「法の構築」——『淡新档案』の一事例を素材にして, in ed., Nihon hō shakai gakkai, *Hō no kōchiku* 法の構築 [*Hō shakai gaku*, 法社会学, 58] (Tokyo: Yūhikaku, 2003), pp. 56—78.

_____, (trans. Peter Neustupny) "The Crowded Train Model: The Concept of Society and the Maintenance of Order in Ming and Qing dynasty China", in *Law in a Changing World: Asian Alternatives* (Franz Steiner Verlag Stuttgart, 1998), pp. 100—109.

Wilkinson, Endym, *Chinese History: A New Manual*, Fourth Edition (Cambridge, Mass.: Harvard University Asia Center for the Harvard-Yenching Institute, 2015).

<Abstract>

Comparing Legal Cultures:
Civil Case Settlements in Local Courts in Early Modern Mongolia, Japan, and China

Chuluu, Khohchahar E.*

Local courts in early modern countries were important state organs that played a critical role in governing society. The design of the framework of state-court-society reflects a state's political and ideological attitudes toward society. Moreover, the structure and function of local courts demonstrates the degree to which the state intends to deliver justice within a society. The question of how far state institutions systematically reach into social affairs helps us understand the state in terms of the implementation of social justice. As a first step to exploring and comparing local court practices in early modern Asia, this study focuses on the cultures of civil case settlements in local courts in early modern Mongolia, Japan, and China. There was a division between what we now call "civil cases" and "criminal cases" in these societies. Civil cases are more important than criminal cases for us when assessing state-society relations, as they more evidently reflected the interaction between state institutions and the local society.

Based on case records from early modern local courts, this paper traces

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the legal culture of civil case settlements in local courts in the three countries using three different models based upon their respective salient feature: the “utilitarian justice” model (Mongolia), the “well-organized” model (Japan), and the “bureaucratic management” model (China). A close comparison shows that the three countries exhibited similarities regarding the practice of civil case settlements, that is, the number of civil case records from the local courts was smaller than that of criminal cases. This suggests that civil cases were encouraged to settle by not resorting to local courts. However, this did not mean that local courts left civil cases without any institutional arrangement for civil society. The local courts discussed in this paper demonstrate that they often resorted to their local agents to settle civil cases in the countryside, although in different ways. The author argues that these different models of court culture can be attributed to the respective state apparatus of each country.

[Key Words] Legal Culture, Civil Case, Local Court, Early Modern Period, Northeast Asia

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