

reference =

General historical background:

大陆: 解学诗: (伪满洲国史新编)

姜念东: (伪满洲国史)

USA: Louise Young: Japan's Total Empire: Manchuria & the Cultural of Wartime Imperialism

: Prasenjit Duara: Sovereignty & Authenticity: Mandarins & the East Asia Modern History

日本: 山室信一: キタラ (Chimera) 满洲国 の 肖像

: 早稻田法学 21 卷, 1943 → 满洲国 民法 評論 & etc.

Movie: Last Emperor

TV drama: 流轉皇妃 (朝日TV) 法条 (日文): 前田達明's 史料民法典.

TV Documentary: (NHK) 撫順收容所的日子, 葫蘆島大撤退 (CCTV)
(NHK) 满洲国放送局里的太平洋戦争.

网站: (凤凰卫视) "十五年家国"
: 满洲国臨時政府网站 (a joke only!!)

: Manchukuo or 满洲国 from Wikipedia.

Articles (downloadable): Taiwan → 日本植民主義下的满洲國法制, 吳欣哲
USA → Rule of Law in a Brave New Empire, Thomas David Pulos.

History:

Remote days: "一統一宇", 入主中原, 豐臣秀吉's

dream

Ideological

support: Japan: 石原莞爾 → "total war" concept

東洋文明中心 Vs 西洋文明中心

Manchu: 鄭孝胥 → 王道樂土, 建國精

神, 五族共和, 儒家思想, ("忠君爱国" emphasised).

Generally speaking - "一个大实验室", every stakeholder wanted to make their dreams come true!!

1932-1934, Pui Yi as 執政, 建号"大同", "Republic".

1934-1945, Pui Yi as 皇帝, 建号"康德" 立宪君主, 宗教/思想改造 → 建國神廟 for worshipping "天照大神"
Law: in order to make Manchuko integrate with Japan forever

Quasi-Constitution → 国家组织法 (incorporating 人权保障法,

"Special" Criminal Law: 治安维持法, → 预防拘禁,

思想矯正法, without regular criminal procedure

Judiciary: 特别会社法: 满鉄, 满映, like English's East Indian Company!!
日条 vs 满条 (i.e. 漢, 滿人)

Legal Education: 新京法政大学 (Law School)

Legal = 大同学院 (for training senior Cadres & Government officials)

保甲制度, 街村制 adopted, i.e. collective punishment, 日本留学制度 (日本学者 fully utilize)

法曹三者 = 判事 (judge), 檢事 (procurator) 律師 & 代書士 (= Japan's & South Korea's 司法書士) 設立

(A) ① 法令沒有者, 依 custom, customary law, then 依 "條理"
(means legal principles, doctrine) it is the case
of ROC's civil code, which in turn is copied from
瑞士民法典.

② 妻為無行能力 abolished

③ 消滅时效 only applied to defence (exceptio)
but 權利沒有消滅, i.e. 抵銷 o.k.

④ 占有 → 客觀主義 ✓ 主用主義 ✗

⑤ 物上請求權 (vindictio) expressly set out ✓

⑥ "降除" in security right in real property ✗

⑦ 消費借貸 → 諾成契約.

⑧ tort (delict) 侵權 一定要有違法行為.

⑨ 总有 (i.e. 集團所有) emphasised, 因為
村落共同体.

⑩ 不動產物權變動, 登記生效主義 ✗,
vs 登記對抗主義 ✓

(B) 商事法 are fully copied from Japanese 手形法,
小切手法, 有限會社法, (but c.f.
南滿洲鐵道株式會社 as SPV for the State)

South Korea (esp. ~~the~~ ^{up to the} 60's period) is a duplicate of Manchukuo, e.g. 威權體制 under 朴正熙 or even 金日成, re to the propositions advocated by Korean academics 韓洪九, 洪淑鐘, 1954 Civil Code is substantially copied from 滿洲國民法典, Korea's 傳世權 is the "典" from Manchukuo's.

滿洲國民法典:

adopted "口語化"立法, emphasized 統制經濟,
X 個人主義 ✓ 全體主義 (國魂)

總則, 債篇, 物篇, completed in 1937,

家屬, 繼承篇, completed in February 1945 after

tremendous investigation of customs in 東北
地區, including Korean, Mongolian, Russian
customs,

(c)

case study:

康德元年上字 286 號, 最高法院

援用 ROC's precedent, ruled that "妾" is a

契約 only, but not 夫妻關係, if

"不得已之事由", 可以予以解除。

proposed setting up of 家事審判所.

主要 jurists in Manchukuo.

日籍: 我妻榮, 穗積八束.

滿籍: a Chinese trained in Japan, 村繁 as
Supreme Court President.

On final reflection:

N.B. Judiciary Independence could somehow

be maintained until the last day of
the Empire. Quare: Is it an evidence that
the Japanese from Meiji Era has become a Reichstag?