

Spotlight

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NTU Professor Provides Insightful Look into Taiwan's Legal History

With abundant materials and archives in NTU, the College of Law is famous for studies on Taiwan's legal history. The key person who has established this field is Prof. Tay-sheng Wang (王泰升), one of the most respected legal historians in East Asia. His seminal book, *Legal Reform in Taiwan under Japanese Colonial Rule*, has been published in English, Chinese, and Japanese.

Prof. Wang was appointed Distinguished Professor in 2006 and NTU Chair Professor in 2014 at NTU. Besides these honors, he has also received a number of academic awards. He is the only scholar in Taiwan's legal community to have received the Academic Award of Humanities and Social Science from the Ministry of Education of Taiwan, and won the Excellent Research Award of National Science Council of Taiwan three times. In addition, Prof. Wang is a recipient of the Lifetime Achievements Award from the University of Washington School of Law for his scholarly excellence and innovation.

Adopting a Taiwan-centered approach to legal history research, Prof. Wang argues that Taiwan's diverse legal cultures are derived from multiple origins. The first legal system in Taiwan was the laws of indigenous peoples. Next, under the rule of foreign regimes, Taiwan encountered pre-modern Western law, traditional Chinese law, as well as pre-war Japanese law and Republican Chinese law, both of which had the same root in modern European law. The legal traditions of Han Chinese and indigenous peoples as well as the legal modernity from the West have shaped contemporary Taiwanese law and culture, transforming Taiwan into a liberal and democratic country in which the supra majority of population are Han Chinese.

However, Prof. Wang notes that indigenous peoples and their cultures had been seriously downplayed in the positive laws of Taiwan for a long time. The Dutch and Spanish colonists (1624-1662) claimed their sovereignty over Taiwan, and treated indigenous peoples (the "Formosans") as subjects. In contrast, the Koxinga regime (1662-1683), established by Han Chinese, considered obedient indigenous peoples to be barbarians rather than civilized subjects, and set up a boundary to block off the indigenous peoples who were not governed by the regime. The local government of the Qing Dynasty (1683-1895) adopted a similar legal policy toward indigenous peoples in Taiwan, dividing them into "plains aborigines" (mature barbarians) and



NTU Chair Professor Tay-sheng Wang holding his book, *The Establishment of Taiwan's Legal History*

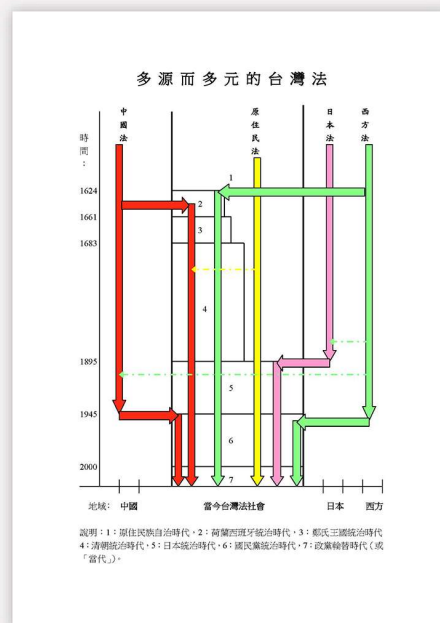


Chart indicating the multiple origins in Taiwan's diverse legal cultures



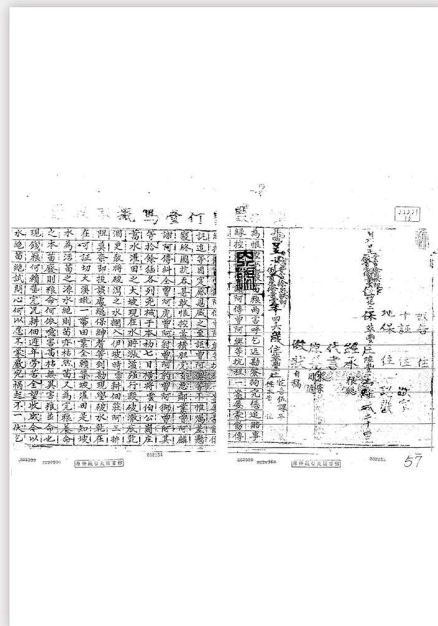
"mountain aborigines" (raw barbarians). During this period, Han Chinese settlers gained control over the land of plains aborigines step by step, and assimilated them gradually. After 1874, the Qing Empire began to manage the land of mountain aborigines, who have faced the threat of assimilation by Han Chinese from then onward. Under Japanese administration (1895-1945), plains aborigines were legally merged into the Taiwanese (the "islanders"), whereas mountain aborigines experienced a decrease in both living space and population. In post-war Taiwan (1945-present), KMT continued to divide mountain aborigines according to whether they lived in the mountain areas or the plain areas. Moreover, the scope and living space of indigenous peoples were further reduced by the KMT regime until Taiwan's legal attitude toward indigenous peoples underwent a major change in the 1990s.

Prof. Wang also analyzes the backgrounds of the four generations of Taiwanese legal scholars in post-war Taiwan, explaining how historical circumstances have shaped their characteristics and concerns. According to Prof. Wang, the majority of the first generation of Taiwanese legal scholars were from Mainland China who learned legal science in late Qing and Republican China with influence from pre-war Japan, whereas the minority of them were native Taiwanese trained in legal science of pre-war Japan during Japanese colonization. By contrast, the second generation of legal scholars, most of whom were native Taiwanese, introduced liberal and democratic jurisprudence existing in Europe and Japan to Taiwan during the post-war era. They regarded foreign legal institutions and legal interpretations as an advanced model for domestic laws to follow. After the lifting of martial law in 1987, Taiwan's legal science became more open and diverse than before, and the third generation of legal scholars played a leading role in legal reform. The fourth generation of legal scholars are no longer mere receivers of foreign legal theories; instead, they have tried to voice and share their opinions on legal issues in the international community.

More importantly, Prof. Wang explains how modern laws and the concept of constitution, first introduced and practiced by Japanese colonists for their own interests, have come to be used by native Taiwanese as a powerful means to strive for liberalism and democracy against the minority rule of Japanese colonists and later those Mainlanders who monopolized political power in post-war Taiwan. Coincidentally, many Mainlanders and KMT supporters also resorted to liberal constitutionalism as a source of power against the new administration when the Mainlanders failed to dominate Taiwan's politics in the 1990s and especially after the KMT became the opposition party in 2000. With the efforts of previous legal scholars,



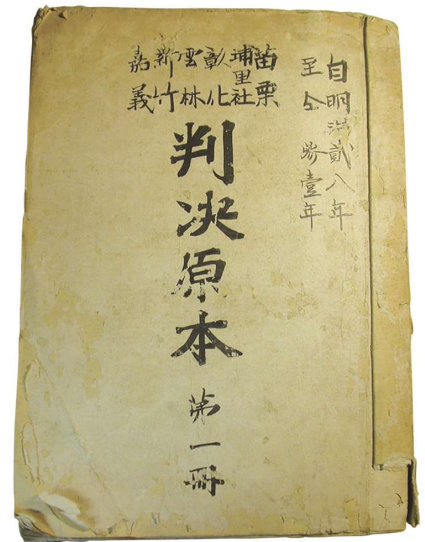
Chieftain of the Taroko people in the Atayal ethnic group



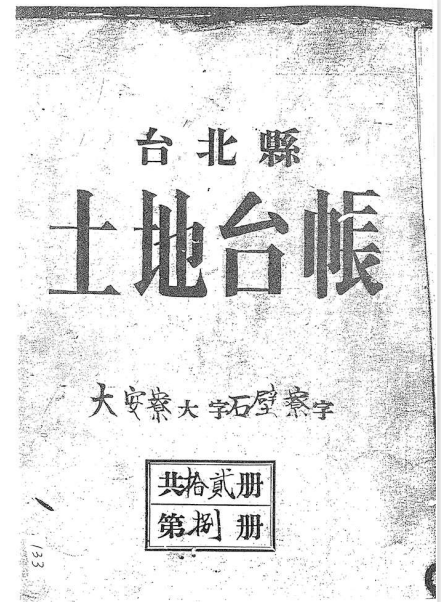
Tan-Hsin Archives, the local Qing government's administrative and "judicial" files of Northern Taiwan

Taiwanese people have successfully shaped a liberal and democratic legal system after terminating the authoritarian rule of KMT, and transformed Taiwan into a liberal and democratic country in East Asia.

(Source: Prof. Tay-sheng Wang)



Original Copy of the Judgment of colonial district courts since 1895



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