

Going to court: The transformation of judicial consciousness in Taiwan under Japanese rule

Keywords: modern, tradition, Taiwanese, court, adjudication, prosecutor, lawsuit, legal consciousness

With the advent of the influence of Western powers in East Asia, Taiwan encountered its first exposure to law derived from the modern West (hereafter “modern law”) when the island was ceded to the prewar Japanese Empire by Qing China under the Treaty of Shimonoseki in 1895. The Taiwanese people, who were composed of Han Chinese immigrants and indigenous peoples who had been partly assimilated by those Chinese immigrants, then had access to a modern/Western court system that was created and implemented by Japanese authorities, the only non-Western colonialist regime, from 1895 to 1945. How and to what extent did the Taiwanese people transform their “judicial consciousness” in such a unique situation over these fifty years?

First, this book confirms that differences exist between modern law and Han Chinese traditional law. Referring to the *Tan-hsin Archives* (淡新檔案), the records of judicial administrations in Taiwan under the Qing Dynasty, the author argues that

magistrates in Qing China used “didactic conciliations” to resolve disputes among people, an approach that was neither adjudication according to the law nor mediation achieved through the consent of the disputing parties (Picture 1).

Meanwhile, modern judges make decisions based merely on the legal reasoning and facts submitted by parties assisted by attorneys at law, whereas traditional magistrates took into consideration all regulations and facts when making judgments. However, members of the general public preferred to employ private “litigation masters” to help them. Similarly, the prosecutor representing the state in prosecuting crimes in modern accusatory procedures has no actual counterpart in Han Chinese tradition. Taking advantage of the Taiwanese lack of familiarity with modern law, the Japanese colonialists allowed a local administrative official to resolve civil disputes through “didactic conciliation” and the police to summarily decide many minor crimes when they established modern courts in colonial Taiwan.

However, especially from the 1920s to the outbreak of war in 1937, the Taiwanese people gradually came to prefer adjudication by the courts to resolve their civil disputes, as illustrated in my previous study (see References).

This book further asks what kinds of individual Taiwanese people went to court and therefore possibly transformed their traditional judicial consciousness to a modern one in the Japanese administrative period. With personal data from 48,338

civil lawsuits and 82,407 criminal lawsuits of the Taipei District Court in the newly discovered Taiwan Colonial Court Records Archives (TCCRA) (日治法院檔案) (Picture 2), this study has investigated the specific backgrounds of the people who had access to the court and their behaviors in proceedings from 1895 to 1945. Many statistical analyses have been conducted on the basis of variables such as (1) the causes, years, or results of lawsuits; (2) the ethnic, sexual, or regional attributes of the parties; and (3) the characteristics of the attorneys at law or prosecutors. Some interesting findings are mentioned below.

Regarding the intersection of the causes and withdrawal of lawsuits, the withdrawal rate for “rice for rent” disputes (11.6%), which were common in traditional Han Chinese society, was higher than that for modern commercial disputes (7.5%) because people needed the courts to adjudicate modern commercial disputes under the modern law, with which they were not familiar. In contrast, if “rice for rent” disputes were resolved in their own, traditional way, the parties would withdraw the lawsuits from the court. This finding is confirmed by the intersection of causes and appeals, in which the appeal rate for “rice for rent” lawsuits (21.5%) was much higher than that for modern commercial lawsuits (5.8%) because parties who were unable to reach a compromise and withdrew their lawsuits often continued to fight each other in the court proceedings. Furthermore, regarding the intersection of

causes and years, after Japanese modern civil and commercial laws began to be applicable to Taiwan in 1923, the rate of “rice for rent” lawsuits decreased (from 50.1% in 1895-1922 to 45.2% in 1923-1936), but the rate of modern commercial lawsuits greatly increased (from 17.5% in 1895-1922 to 69.7% in 1923-1936) (Table 1). In sum, the merchant class had easier access to the courts and thus more easily transformed its judicial consciousness than the farmer class during the Japanese administrative period.

People who lived in Taipei City were fortunate in having a greater opportunity to change their legal consciousness in colonial Taiwan. According to the statistics, among the parties in civil lawsuits at Taipei District Court from 1920 to 1945, 56.5% lived in Taipei City, but only 7.3% lived in Keelung City and Keelung County because the residents of Keelung were far from the court building, located in the center of Taipei City, and thus needed large amounts of time and money to gain access to the court. The inferior position of residents of Keelung in the transformation of legal consciousness resulted from the insufficient judicial investment of the government rather than from an ideology such as Confucianism.

Regarding the issue of gender, unsurprisingly, the great majority of plaintiffs was male in the surveyed civil lawsuits. However, the intersection of plaintiffs’ backgrounds and causes indicate that male plaintiffs constantly filed lawsuits for

“money” (82.4%) but very seldom for “family affairs” (2.7%); in contrast, although female plaintiffs frequently filed lawsuits for “money” (48.3%), they also often filed for “family affairs” (35.0%) to combat the superiority of the male in society (Table 2 and Picture 2). During the Japanese period, males had more opportunity to transform their judicial consciousness through access to court than females, but the difference should not be overestimated.

Finally, this study found that the duty of the prosecutor was performed by a police officer in 25.3% of all criminal lawsuits in Taipei District Court before the 1919 judicial reform. In addition, people were adjudicated guilty in 28.7% of all criminal lawsuits in the same court after 1924 in simplified proceedings in which a prosecutor accused a defendant of a crime merely by written documents without oral arguments in a trial (Table 3). Moreover, the majority of crimes were tried by the police, rather than the court. Accordingly, the criminal justice system in colonial Taiwan actually prevented the general public from learning the role of a prosecutor, who was absent under Han Chinese traditional law, in the modern criminal court.

Picture 1: A party agreed to follow the instructions of a magistrate and promised not to complain again in the *Tan-hsin* Archives.

Picture 2: In the Taiwan Colonial Court Records Archives, a woman filed a civil lawsuit to share the family property, employing a Japanese lawyer.

Table 1: The intersection of causes and years in civil lawsuits

Table 2: The intersection of plaintiffs' backgrounds and causes in civil lawsuits

Table 3: The intersection of types of prosecutors and types of judgments in criminal lawsuits

Author

Tay-sheng Wang

NTU Chair Professor, College of Law, National Taiwan University

E-mail: tswang@ntu.edu.tw

References

Wang, Tay-sheng, 2015, *Legal Reform in Taiwan under Japanese Colonial Rule (1895-1945): The Reception of Western Law*, paperback edition, Seattle: University of Washington Press.

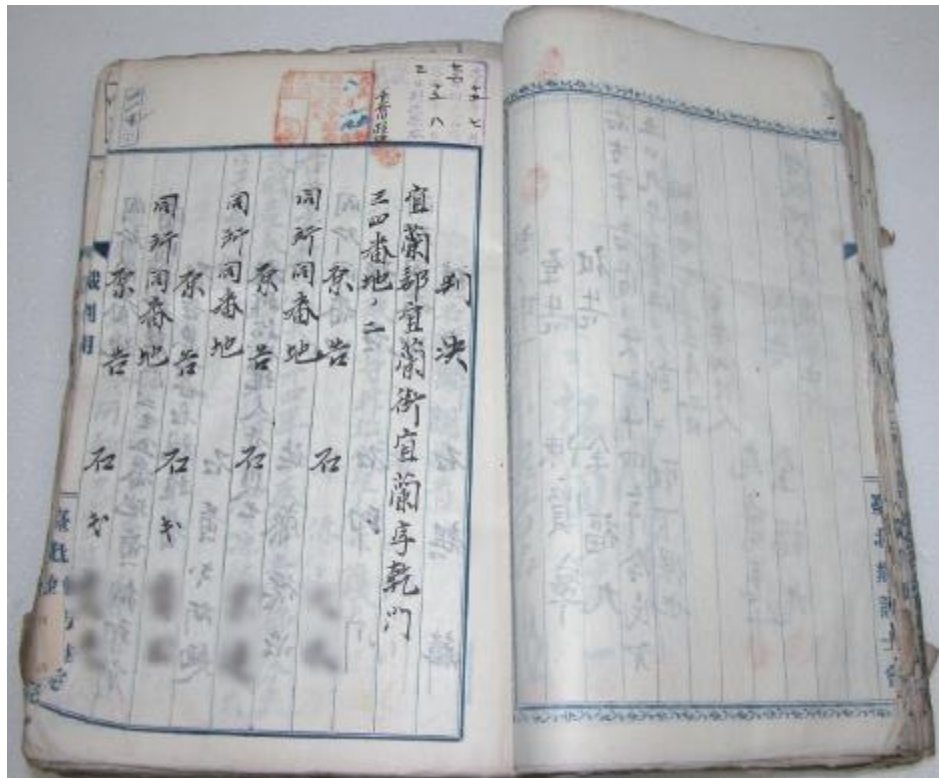
Wang, Tay-sheng, 2017, *去法院相告：日治台灣司法正義觀的轉型* [Going to

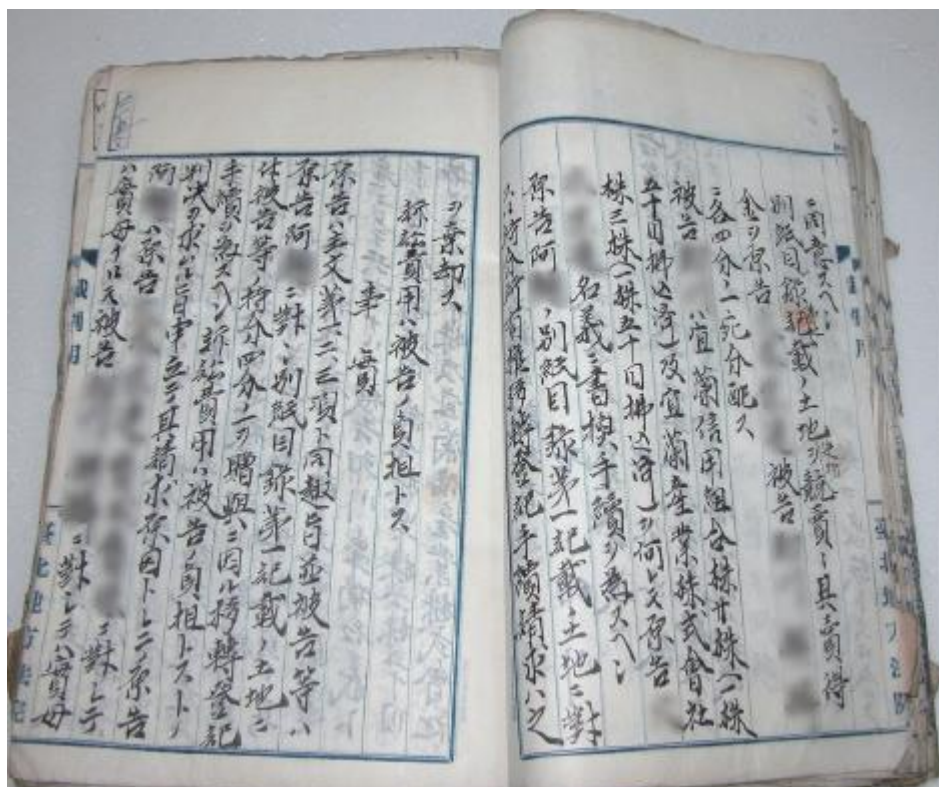
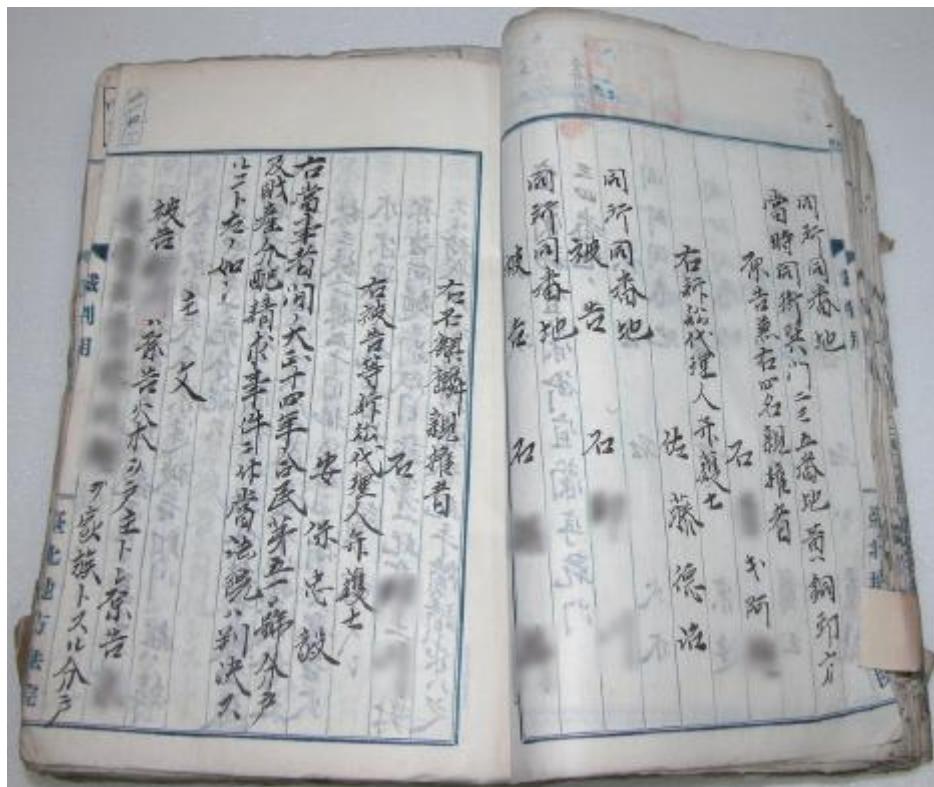
Court: The Transformation of Judicial Consciousness in Taiwan under Japanese

Rule 〕, rev. ed., Taipei: National Taiwan University Press.



Picture 1: A party agreed to follow the instructions of a magistrate and promised not to complain again in the *Tan-hsin* Archives.





Picture 2: In the Taiwan Colonial Court Records Archives, a woman filed a civil lawsuit to share the family property, employing a Japanese lawyer.

Table 1: The intersection of causes and years in civil lawsuits

案由分類		年代			總和	
		1895- 1922	1923- 1936	1937- 1945		
人事	個數	767	1,412	333	2,512	
	百分比	30.5%	56.2%	13.3%	100.0%	
土地	個數	1,386	927	225	2,538	
	百分比	54.6%	36.5%	8.9%	100.0%	
建物與船舶	個數	378	758	696	1,832	
	百分比	20.6%	41.4%	38.0%	100.0%	
金錢	個數	12,973	21,265	4,630	38,868	
	百分比	33.4%	54.7%	11.9%	100.0%	
物品	個數	591	595	157	1,343	
	百分比	44.0%	44.3%	11.7%	100.0%	
米穀	個數	713	644	67	1,424	
	百分比	50.1%	45.2%	4.7%	100.0%	
商事	現代 商業案件	個數	490	1,953	2,804	
		百分比	17.5%	69.7%	12.9%	100.0%
	非現代 商業案件	個數	787	1,089	247	2,123
		百分比	37.1%	51.3%	11.6%	100.0%
總和		個數	18,085	28,643	6,716	53,444
		百分比	33.8%	53.6%	12.6%	100.0%

Table 2: The intersection of plaintiffs’ backgrounds and causes in civil lawsuits

		主要案件類型								總和
		人事	土地	建物與 船舶	金錢	物品	米穀	商事		
								現代商 業案件	非現代商 業案件	
原告為女性	個數	1,465	208	244	2,023	50	88	83	11	4,172
	百分比	35.0%	5.0%	5.8%	48.3%	1.2%	2.1%	2.0%	0.3%	99.6%
原告或法定代理人 之一為女性	個數	78	112	53	443	16	64	26	2	794
	百分比	10.7%	15.3%	7.3%	60.6%	2.2%	8.8%	3.6%	0.3%	108.7%
原告為男性	個數	949	2,004	1,365	29,297	1,007	1,161	1,732	1,666	39,181
	百分比	2.7%	5.6%	3.8%	82.4%	2.8%	3.3%	4.9%	4.7%	110.2%
原告為非自然人	個數	14	206	156	6,925	262	107	269	1,113	9,052
	百分比	0.2%	2.7%	2.1%	92.2%	3.5%	1.4%	3.6%	14.8%	120.5%
資料不明	個數	6	8	14	180	8	4	13	12	245
	百分比	1.6%	2.1%	3.8%	48.3%	2.1%	1.1%	3.5%	3.2%	65.7%
總和	個數	2,512	2,538	1,832	38,868	1,343	1,424	2,123	2,804	53,444
	百分比	5.2%	5.3%	3.8%	80.4%	2.8%	2.9%	4.4%	5.8%	110.6%

Table 3: The intersection of types of prosecutor and types of judgment in criminal

lawsuits

			裁判類型									總和
			判決	豫審	開席 判決	略式 命令	公判 調書	私訴	故障	其他	資料 不明	
檢察官 類型	無檢察 官	個數	781	32	8	23,660	8,097	13	2	3	187	32,783
		百分比	2.4%	0.1%	0.0%	72.2%	24.7%	0.0%	0.0%	0.0%	0.6%	100.0%
	專業檢 察官	個數	33,324	32	362	14	6,216	608	24	3	32	40,615
		百分比	82.0%	0.1%	0.9%	0.0%	15.3%	1.5%	0.1%	0.0%	0.1%	100.0%
	警察官 代理	個數	8,680	26	164	0	0	131	7	0	1	9,009
		百分比	96.3%	0.3%	1.8%	0.0%	0.0%	1.5%	0.1%	0.0%	0.0%	100.0%
總和		個數	42,785	90	534	23,674	14,313	752	33	6	220	82,407
		百分比	51.9%	0.1%	0.6%	28.7%	17.4%	0.9%	0.0%	0.0%	0.3%	100.0%