

Routledge Studies in the Modern History of Asia

THE COLONISATION AND SETTLEMENT OF TAIWAN, 1684–1945

LAND TENURE, LAW AND QING AND JAPANESE POLICIES

Ruiping Ye



The Colonisation and Settlement of Taiwan, 1684–1945

The dispossession of indigenous peoples by conquest regimes remains a pressing issue. This book, unlike most other books on the subject, contrasts two different colonial administrations – first the Chinese Qing Empire, then, from 1895, the Japanese. It shows how, under the Chinese legal system, the Qing managed the relationship between the increasing numbers of Han Chinese settlers and the indigenous peoples and refrained from taking actions to transform aboriginal land tenure, and how nevertheless Chinese settlers were able to manipulate aboriginal land tenure to their advantage. It goes on to examine the very different approach of the Japanese colonial administration, which following the Meiji Restoration of 1868 had begun to adopt a Western legal framework, demonstrating how this was intentionally much more intrusive, and how the Japanese modernised legal framework significantly disrupted aboriginal land tenure. Based on extensive original research, the book provides important insights into colonisation, different legal traditions and the impact of colonial settlement on indigenous peoples.

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Land Tenure, Law and Qing
and Japanese Policies

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Dates

Qing Dynasty reigns

Chongde	(1–8) 1636–1643
Shunzhi	(1–18) 1644–1661
Kangxi	(1–61) 1662–1722
Yongzheng	(1–13) 1723–1735
Qianlong	(1–60) 1736–1795
Jiaqing	(1–25) 1796–1820
Daoguang	(1–30) 1821–1850
Xianfeng	(1–11) 1851–1861
Tongzhi	(1–13) 1862–1874
Guangxu	(1–34) 1875–1908
Xuantong	(1–4) 1909–1912

Selected Japanese reigns

Meiji	(1–45) 1868–1912
Taishō	(1–15) 1912–1926
Shōwa	(1–64) 1926–1989

When the years are indicated in regnal years, it is shown by the regnal title followed by the year of reign. For example, Kangxi 23 means the 23rd year of the Kangxi reign.

Measurements

Distance: 1 *li* 里 ≈ 0.576 km
Area: 1 *jia* 甲 ≈ 0.97 hectares
 ≈ 11 *mu* 亩
1 *qing* 顷 = 100 *mu*
1 *mu* 亩 ≈ 666.67 m²
Capacity: 1 *shi* 石 ≈ 103.6 litres
1 *dou* 斗 = 0.1 *shi*

Notes

Chinese terms and names are rendered in Pinyin, unless an author's preferred spelling of name is known, or a place name has an established English spelling (for example, Taipei).

Where a Chinese language source is cited, if the source provides an English language title, it is shown in round brackets with quotation marks (for articles and book chapters) or in italics (books), otherwise the English translation of the title is included in square brackets.

All primary sources quoted are translated by the author unless otherwise stated.

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Introduction

Taiwan, an island which used to be known by Europeans as Formosa,¹ has been settled for thousands of years by aboriginal Austronesians. From the early 17th century, successive outside forces established administrations in Taiwan. The first three administrations were relatively brief and controlled only small parts of Taiwan – the Dutch East India Company for 38 years (1624–1662) in the south-west, the Spaniards for 16 years (1626–1642) in the north, and the Chinese Zheng family for 22 years (1662–1683), mainly in the southwestern plains. Following these brief periods of overseas control, Taiwan became part of the Qing Empire for over two centuries (1684–1895). This was followed by 50 years of Japanese administration (1895–1945).²

During the Qing period some aboriginal groups, mostly those that lived in the plains areas, were exposed to the Chinese culture when Han Chinese settlement spread and became acculturated. They lost their distinctive features as aborigines, and possession and control of their land.³ By the end of the Qing period, the western plains of Taiwan were fully developed as farmland and were occupied by Chinese settlers.⁴ The mountain territories were still largely controlled by the aborigines.

Having taken over Taiwan from the Qing in 1895, the Japanese administration dealt with the aboriginal groups that were still recognisable as aborigines, deprived them of their land and confined them to aboriginal reserves (*yuanzhumin baoliudi* 原住民保留地). The current Taiwan government inherited that system and has only recently started to make slight changes as a result of aboriginal rights movements.⁵

Taiwan's aborigines once occupied and controlled all land in Taiwan, but lost almost all of their land through settlement and colonisation, and aboriginal land tenure was completely transformed. A notable difference between the Qing and the Japanese administrations was the speed of land tenure changes. When the Qing ceded Taiwan to Japan, the aborigines still occupied and controlled two-thirds of the island.⁶ In contrast, 50 years of Japanese colonial rule saw most aborigines displaced and confined to small areas of aboriginal reserves, which they did not own, and which measured about one-eighth of their ancestral land.⁷ Land loss of the aborigines during the Qing period was a gradual process, at a speed much slower than that during the Japanese period, and slower than that

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in European colonies.⁸ There was no conscious deprivation of land by the Qing government.

Why did the Qing administration have different effects on Taiwan aboriginal land tenure from that under Japanese administration? From a legal point of view, what role did Qing legal system – its legal culture, administrative system and decision-making process, and its property law regime – play in the process? For example, what were the Qing policies concerning expansion to and administration of Taiwan? Was there a consistent policy rationale and if there was, what was the rationale? How did the Qing view the aborigines and their land rights, compared with the Japanese view of the colonised peoples and their land rights? How did the respective property law concepts and practice of Qing and Japan affect the aboriginal land tenure changes in Taiwan? This book explores answers to these questions.

Expansion, colonisation and legal traditions

When surveying the legal traditions of the world, Patrick Glenn raised the question of the role of law in Western expansion.⁹ Glenn also observed that the Chinese legal tradition, rooted in Confucianism and supplemented by Taoism and Buddhism, did not favour expansion and therefore “the world has never seen a form of east Asian expansion similar to that of Europe”.¹⁰

Some scholars of the history of the Qing Dynasty have opposed the view that China did not expand, or did not expand as European countries did. In recent decades Qing history scholars have challenged the traditional view that colonialism was largely associated with European countries, and have asserted that the Qing was a “colonial empire”.¹¹ These scholars argued, that similar to the European states, the Qing Empire was engaged in “imperial conquest, migration of people, and cultural and commercial exchange”,¹² and that Qing colonialism was “similar to, and partially contemporary with, that of Europe”.¹³ More specifically, one scholar has argued that the Qing administration in Taiwan was a variety of colonialism,¹⁴ a view that has been accepted by some scholars,¹⁵ although scholars specialising in the history of colonialism tend not to regard Qing rule of Taiwan as colonial.¹⁶

The different views about Qing colonialism and the Qing colonial rule in Taiwan are to some extent related to the different interpretations scholars attribute to the terms “colonial” and “colonialism”.¹⁷ The Qing colonial scholars have rarely defined “colonial” and “colonialism”, but the implication is that expansion of territories and subjugation of peoples of different cultures or ethnicities constituted colonialism. One scholar noted that China was “the metropole for colonial initiatives that span centuries and numerous, diverse cultures across a great swath of Central, East, and South-East Asia”.¹⁸ Another pointed out that the Qing was a “colonial empire that ruled over a diverse collection of peoples with separate identities”.¹⁹ Edward Said’s definition that colonialism is “the implanting of settlements on distant territory” has been employed to support the argument of Qing colonialism in Taiwan.²⁰

While the terms are capable of narrow or wide interpretation, where the interpretation differs, the substance of the term which one interpretation designates will be

different from that designated by another interpretation. The previously mentioned arguments about Qing colonialism have adopted a relatively wide interpretation of the term colonialism, and at times seem to have equated the terms colonisation and colonialism, which are closely related but not always identical.²¹

Colonisation is an activity of human society which denotes “a *process* of territorial acquisition”.²² The Qing acquired Taiwan in 1684. Chinese settlement in Taiwan increased steadily in the subsequent centuries. For most of the time the Qing government tried to contain settlement, rather than to implant settlement. However, the advance of Chinese settlement often resulted in the expansion of Qing jurisdiction. Therefore arguably Qing possession of Taiwan was a form of colonisation.

Different from colonisation, colonialism is “a *system* of domination”, domination of “people of another culture”.²³ There are three qualifications for such a domination to be colonialism – the external manipulation and transformation of the indigenous society “according to the needs and interests of the colonial rulers”; the dissimilarity between the colonisers and colonised; and the assumption that the colonisers’ culture is superior to that of the colonised which led to the imposition of the colonisers’ culture on the colonised.²⁴ In other words, the necessary ingredients for colonialism are self-interest, dissimilarity, assumption of superiority, imposition of culture, and manipulation and transformation of the indigenous society.

The Qing rulers were Manchus and Taiwan’s aborigines were Austronesians; there is no question that the rulers and the ruled were dissimilar. Generally the Manchu rulers and the Chinese officials assumed that the Manchu and Chinese cultures were superior to that of the aborigines, as evidenced in some of the official documents and private writings of the Qing period, although at times the aborigines’ culture was praised for its antiquity and innocence.²⁵ It is also arguable that Qing rulers acquired and administered Taiwan according to their own needs and interests. Therefore, the Qing domination of the Taiwanese aborigines satisfied the conditions of dissimilarity in culture, assumption of superiority and self-interest.

What remain in question are the presence, intention, method, and extent of the external manipulation and transformation of the aboriginal society and the imposition of Manchu or Chinese culture on the aborigines by the Qing government. These are the keys to deciding the nature of Qing colonisation of Taiwan. One of the most important aspects of the aboriginal society is land tenure, and the area that caused most of the grievances of indigenous peoples is the taking of land and transformation of land tenure. Land issues most fully evidenced the colonisers’ domination of the colonised, not only for the Taiwanese aborigines, but generally for all indigenous peoples.

This study examines the nature of Qing colonisation of Taiwan through analysing Qing policies towards land settlement and aboriginal land rights in Taiwan. The process and system of Japanese colonisation of Taiwan is set as a comparison to that of Qing colonisation. Scholars have more readily accepted that Japanese overseas expansion and its administration of Taiwan was colonialism than they have Qing expansion and administration of Taiwan.²⁶ This implies that there existed

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fundamental differences between Qing colonisation and Japanese colonisation of Taiwan. In fact it has been observed that:²⁷

[s]ince Japanese imperialism emulated but also stood apart from Western imperialism, the difference between Japanese and Qing colonial rule in Taiwan might be seen partly as differences within Asian colonialisms and partly as differences between Asian and Western colonialism.

One task of this book is to explore the different colonisation and expansion style of the Qing from that of Japan in the particular area of aboriginal land tenure, and to suggest the reasons for the differences from the perspective of legal traditions and systems.

The subject matter is slightly complicated by the fact that the Qing rulers were Manchus, not Chinese. Using the Manchu language archives, recent scholarship has discovered aspects of the Qing ruling house which had not been revealed in the Chinese language archives of the Qing. Known as the “new Qing history” school, the scholars stressed the Manchu characteristics and identity of the Qing ruling house. They challenged the traditional view that the Qing were sinicised, a view maintained by the “sinicisation” school of scholars.²⁸ Despite the heated debate and the important differences between these two schools, in effect the findings of the new Qing history school reveal the multi-dimensional characteristics of the Qing ruling house, but do not deny the sinicisation of the Qing as such. That is to say, in some aspects and at some levels the Qing Court was sinicised, while at others it maintained, utilised and stressed its Manchu way.²⁹ In particular, it is generally accepted that the Qing administrative institutions and legal system were mainly inherited from the previous Ming Dynasty and were largely Chinese.³⁰ Furthermore, despite the emphasis that the Manchus were not “Chinese” in its traditional sense, it has been noted that, albeit different from “the old Ming concept of an exclusively Han ethnic state”, the Qing was China, and the Qing referred to itself as such since the early decades of conquest.³¹ It had passed many of its legacies to the polity and society known as “China” today.³² For the previously mentioned reasons, the discussion of the Qing legal system in this study is in fact an examination of the Chinese legal system, although at places the system had unique Qing characteristics.

Aboriginal land tenure

Scholars supporting the colonial nature of the Qing administration in Taiwan have not examined it from the angle of aboriginal land issues; scholars who study aboriginal land issues in Qing Taiwan have not usually looked at the issues through the lens of colonisation or colonialism. Studies of Japanese colonialism and Japanese aboriginal land policies have also often been separate.

At the turn of the 20th century, the Japanese anthropologist Inō Kanori pioneered the research on Taiwan’s aborigines, Chinese land settlement in Taiwan and the Qing administration of Taiwan.³³ Inō observed that the Qing administration in

Taiwan, especially the administration of the aborigines, was largely one of neglect (*xiaoji* 消極 “passive”) before 1875, at which time the government turned active and launched campaigns to subjugate the mountain aborigines, a reaction to the Japanese invasion of southern Taiwan in 1874.³⁴ Similarly land settlement policies changed from restriction to encouragement in 1875.³⁵ The idea that the Qing were passive about and neglectful of Taiwan continued for decades in later research by Taiwanese scholars and Western scholars.³⁶

This previously mentioned view was challenged in 1993, when John Shepherd suggested that the Qing administration of Taiwan was a careful balancing act of revenue and cost.³⁷ Shepherd argued that the calculation of political economy led the Qing to devote itself to “accommodate” aboriginal land rights, which appears to mean a certain degree of recognition and protection of aboriginal land rights, or to consider the interests of both aborigines and settlers.³⁸ Shepherd made a compelling case about the Qing policy rationale, but his study concerned only the period up to 1800 – essentially the reigns of Kangxi, Yongzheng and Qianlong (1684–1795) – and only the land rights of the plains aborigines. Further, the Japanese government also had to balance revenue and administrative cost, yet it took action to reform land tenure and increase revenue, rather than to minimise cost and accommodate aboriginal land rights as the Qing did. Some other factors had caused, or influenced, the Qing and the Japanese governments to make different choices, and one of the factors was the different legal cultures and traditions on governance. The Qing applied the Chinese tradition of governance and Confucian legal thought, while Japan adopted modern legal institutions and emulated Western colonial examples. Each legal order shaped the policymaking and ultimately determined the different courses and outcomes of transformation of aboriginal land tenure.

Shepherd also pointed out that the government, the Han Chinese settlers and the aborigines were three major players in the political scene of Qing Taiwan.³⁹ Ka Chih-ming, focusing on land rights of the plains aborigines before the end of the 18th century as Shepherd did, further developed this concept and argued that Qing aboriginal land policies were a manipulation of ethnic politics.⁴⁰ Ka’s argument about ethnic politics is consistent with the fact that the Qing rulers were skilful in managing and manipulating ethnic relationships, being minority rulers over China for nearly three centuries and governing a variety of peoples. However Ka attributed the making, implementation and consequences of the Qing aboriginal land policies to a series of experiments and corrections of mistakes because of “contingencies in the course of history” (*lishi de jiyu* 歷史的機遇), before ethnic manipulation became a clear model and policies protecting aboriginal land rights were formed during the mid- to late Qianlong reign.⁴¹ This proposition suggests a lack of consistency and rationale, and is an oversimplification. Not only the Kangxi, Yongzheng and Qianlong governments (1684–1795), but throughout the whole Qing period, there was a central rationale on settlement and aboriginal land policies. The central rationale was to maintain national or regional security and social stability, and the major policy directions were adjusted according to circumstances to ensure the ultimate goal of security and stability. The goal itself,

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the methods to achieve the goal and the effects of the methods were all dictated by Qing legal culture and governance tradition.

Other scholars have also tried to find the reasons for land loss by the plains aborigines. For example, through a case study on land tenure changes of the aboriginal Anli village, Chen Chiu-kun argued that aboriginal land tenure changes were the combined effect of local officials' ineffective implementation and distortion of government policies on the one hand, and the influence of the dominating Chinese land practice and commercial economy on the other.⁴² The experience of the Anli village to some extent represented that of the plains aborigines, but Chen did not turn his attention to the higher level of governance or policymaking.

Most studies on Qing aboriginal land policies have focused on the period before 1800, and few studies have focused on policies after 1800 and about the mountain aborigines. A notable one is by Chang Lung-chih, who examined debates within the government about expanding land settlement beyond the plains areas before 1875 and the policies after 1875.⁴³ Chang concluded that 1875 signified the turning point of "Qing colonisation".⁴⁴ This confirmed the traditional view which had been expounded by Inō and accepted by subsequent scholars. Chang focused on official discussions about whether to expand government administration and allow or encourage land settlement, but did not consider aboriginal land rights as such.

There have also been studies on Japanese colonial rule and land policies in Taiwan, but each with a different focus. Essays edited by Liao and Wang examined Japanese rule in Taiwan from the angles of colonialism and modernity, colonial policy and cultural change, and literary expression, but not aboriginal land tenure.⁴⁵ Ka Chih-Ming studied the agricultural development and the colonial economy in Taiwan during the Japanese period, and only touched on land tenure where rice and sugar production was concerned.⁴⁶ The Japanese manipulation of aboriginal property rights has also been the topic of research, yet the attention was on Japanese management of the camphor forest, an aspect relating to the mountain aborigines' rights but not otherwise concerned with land tenure as a whole.⁴⁷ Where land tenure issues were studied, the focus has been on the system of aboriginal reserves during the Japanese period and the implications and challenges for the current government.⁴⁸ A work that documented the evolution of land registration systems under the Japanese and the subsequent Chinese regime had no concern with the wider context of land tenure changes.⁴⁹ All in all, none of the previously mentioned studies has given attention to the connection between the Japanese colonial style and its aboriginal land policies.

This book addresses an area that has been neglected by researchers: how the respective styles of colonisation of the Qing and Japan, each shaped by its own legal system, determined their different aboriginal land policies and changed aboriginal land tenure in Taiwan. It examines the whole length of Qing administration of Taiwan and uses Japanese policies as a comparison; it covers policies and land tenure changes about both the plains aborigines and the mountain aborigines. The study of Taiwan aboriginal land policies is put in the wider framework of the administration of Taiwan by governments whose legal systems were quite different, namely the Qing government, which in many respects was a traditional

Chinese imperial regime, and Japan, which by the time it colonised Taiwan had reformed its law along European lines and emulated a modern and European-style regime.

Overview

A central concern of this book is the connection between law and colonial policy, and their effects on aboriginal land rights. More specifically, the major questions are how, under the Qing and Japanese regimes, laws and policies regarding aboriginal land in Taiwan resulted in aboriginal land tenure changes and loss of land; and further, how the respective legal systems and legal cultures of the Qing and Japanese states influenced policymaking concerning colonisation, settlement and aboriginal land.

This book examines Qing policies towards land settlement in Taiwan, the extent of the government's recognition and protection of aboriginal land rights, the changes that the Qing property law regime brought to aboriginal land tenure, and the aborigines' interaction with the government and settlers regarding their land. The Japanese government's attitudes towards the aborigines and aboriginal land, as well as its reforms of land tenure in Taiwan, are then discussed. Ultimately, this book explores the role the Qing legal system played in shaping the policies and in transforming aboriginal land tenure, and how the Japanese legal system, largely Westernised after the Meiji Restoration in 1868, influenced Japanese colonial policies regarding aboriginal land in Taiwan.

The focus of this book is on the Qing period, and the Japanese period is discussed only for comparison purposes. Reflecting this consideration, the first five chapters concern the Qing period, and the last one, Chapter 6, concerns the Japanese period.

Chapter 1 introduces Taiwan's aboriginal groups and their land tenure, and reviews the process of land settlement before and during the Qing period. This chapter introduces the colonial past of Taiwan and forms of knowledge about the aborigines, identifies patterns of land settlement, and considers the impacts of land settlement patterns on the acculturation of aborigines. It sets the scene for later discussion.

Chapters 2 and 3 analyse Qing regulations and imperial decrees, and trace the policy trends of land settlement and aboriginal land rights during the Qing period. Chapter 2 suggests that Qing policies in Taiwan could be divided into three stages, namely the controlling settlement stage between 1684 and the end of the 18th century, the transitional stage from around 1800 to 1875, and the promoting settlement stage after 1875. This chapter argues that at each stage the determining factor for policymaking was consideration for territorial security and social stability, and this was underpinned by Chinese tradition on governance and theories about expansion.

Chapter 3 examines the Qing aboriginal land policies at the three stages identified in Chapter 2. This chapter clarifies the nature of land ownership under the Qing system, in particular the nature of government "ownership" over wasteland; investigates the extents of Qing recognition and protection of aboriginal land rights; and considers the influence of Confucian legal thought on the land policies

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and their effects. This chapter argues that the Qing constitutional framework and property law regime determined its policies on aboriginal land rights.

Chapter 4 traverses the influences of Chinese customary land practice on aboriginal land tenure. This chapter surveys land reclamation permits and land deeds; analyses the process of land grants by the government and re-grants by permit holders; and discusses the legal natures of land proprietorship, land registration and various forms of land transaction. The typical forms of transaction, *zu* 租, *pu* 贖, *dian* 典 and *mai* 賣, were fluid concepts and they together formed a spectrum of alienating land rights, with short-term lease and permanent sale at its two ends. This chapter argues that it was Chinese customary land practice that changed aboriginal land tenure most, and caused the most loss of land by the aborigines.

Chapter 5 looks into the aborigines' interaction with the settlers and the government regarding land. The aborigines resisted Han settlement, litigated for their land rights, and eventually adapted to the Chinese practice and became acculturated. Over time the aboriginal communities broke down, which further alienated the aborigines from their land. This chapter demonstrates that colonisation was a two-way contest, and the colonised reacted to defend their rights. However this at most slowed down the process of colonisation, and could not reverse the tide.

Chapter 6 discusses Japan's employment of modern international law theories in occupying the aboriginal territories of Taiwan, and its use of Western legal instruments to reform land tenure. It demonstrates how Japan, as a modernising neo-European colonial power, carried out its colonisation of Taiwan and deprived the aborigines of their land under the modernised legal framework.

This leads to the conclusion that the Qing was a coloniser of a different type, and Qing colonisation of Taiwan was different from the later Japanese colonisation of Taiwan and from the Western styles of colonisation. Shaped by its legal culture, constitutional arrangement, administrative system and property law regime, the Qing government had little or no intention and took little action to transform aboriginal land tenure, which was one of the most important aspects of aboriginal society. Rather, the Qing legal framework allowed or enabled Chinese settlers to manipulate aboriginal land tenure and impose Chinese culture on the aborigines, an effect often unintended by the government.

This study of the land tenure changes and legal traditions is grounded in its historical context and comparisons are made to colonial activities of the era concerned, rather than comparing the legal and political orders of the 18th and 19th century with the contemporary awareness of and respect for indigenous peoples' rights. Further, the terms and substance of land rights in imperial China were highly complex, and special care has been taken to distinguish the rights from ownership in the modern law.

Goals and limits of the present study

When considering the various colonial administrations and their impact on aboriginal land tenure around the Pacific, from Australia and New Zealand to Alaska, and others in between, Stuart Banner commented that “[d]ecisions made

in the [past] about how to separate indigenous people from their land . . . continue to shape our lives today".⁵⁰ This statement is no less true for Taiwan's aborigines. Like most aboriginal groups, Taiwan's aborigines are now the minority in their own country and lost most of their ancestral lands during the colonial past. They are still battling with this past and are trying to gain recognition of and protection for their land rights, among other things.

Ethnically distinct from the majority Chinese population, presently Taiwan's aborigines make up about 2.3% of the total population.⁵¹ As at 2001, aboriginal reserves measured 251,080 hectares, but the aborigines actually used only about half of the reserves. The other half were either located in remote, rocky or reservoir areas and could not be used, or were used by the government, businesses or non-aborigines.⁵² After several "return my land" (*huan wo tudi* 還我土地) movements in the 1980s and 1990s, the government established a mechanism to grant aborigines ownership over reserved land if certain conditions are met. However the percentage of aboriginal ownership remains small.⁵³

Given the continuing effects of historical events, it is hoped that interpretation of the historical government actions will provide lessons to assist current endeavours.⁵⁴ Furthermore, the experience of Taiwanese aborigines is not an isolated case. Their land tenure changes throughout the colonial history and their struggles for recognition of their rights in some aspects parallel similar loss, demands and indigenous politics in other countries, including Canada, the United States and Australia. It is hoped that this research will contribute to scholarly understanding of the international pattern of appropriation of aboriginal land and of colonialism in the age of decolonisation.⁵⁵

This study is not an ethnohistory of the indigenous peoples of Taiwan. A great deal of valuable work has already been done on this important subject.⁵⁶ Rather, the focus is on the legal traditions of the Qing Empire and, to a lesser extent, of post-Meiji Japan, and on how these legal traditions impacted on the development of policies relating to Taiwan.

This study adopts a comparative approach. The focus is more on the Qing period than on the Japanese period. There exist rich primary resources for study of Qing Taiwan, including government regulations, imperial decrees, palace memorials, administrative records, local gazetteers,⁵⁷ land deeds and officials' private writings. Many of them are collected in the *Taiwan Wenxian Congkan*, a collection of historic records and literature that has been used by scholars in previous studies.⁵⁸ Nevertheless given the large collection of the *Congkan* and this work's focus on legal analysis, this book explores details that have not been noted and reinterprets some documents that have been discussed in earlier studies. In addition, other series of primary collections are consulted, such as *Qinding Daqing huidian shili* (regulations),⁵⁹ *Huangchao wenxian tongkao* (regulations and decrees),⁶⁰ *Ming Qing Taiwan dang'an huibian* (regulations, decrees and memorials),⁶¹ *Dan Xin dang'an* (government archives)⁶² and a number of land deeds collections. As government regulations, official memorials and land transaction deeds are numerous and scattered, it is impossible to exhaust all sources and omissions are possible, although one can be confident that the available resources will have established

sufficient basis for the analysis of the general trend. Where appropriate, this work uses case studies in certain localities by way of illustration, but it does not specifically study the developments of individual places or tribes.

Land tenure changes in Taiwan during the Japanese period are discussed only briefly for the purposes of drawing the contrast and comparing the effects of the legal traditions. For the Japanese period, some primary sources, where they exist in Chinese records or have been translated to the Chinese language, are consulted. These include legislation, the administrative files of the Taiwan Governor-General's Office (*zongdufu dang'an* 總督府檔案) and other materials compiled by the colonial government. Aboriginal land tenure during the Japanese period warrants more in-depth study and could be the subject of a separate project by scholars who have the advantage of the language.

Another dimension of comparison, one between Qing Taiwan policies and Qing policies on other frontiers, can be made to help better understand patterns of Qing colonisation. As in the case of Taiwan, individual studies have been carried out regarding government settlement policies and land reclamation in other frontiers, such as Manchuria, Mongolia, the southwest provinces of Yunnan and Sichuan, and the Miao territories in Guizhou and Hunan.⁶³ There have also been works on the spread of land reclamation in China in general, as well as land reclamation activities during the Qing Dynasty.⁶⁴ Chapters 2 and 3 of this book make some brief comparisons of Qing Taiwan and other Qing frontiers, but more work can, and should, be done to study Qing settlement and colonisation of various frontiers from a comparative perspective, and to assess the likelihood and extent of any central rationale or common pattern. Similarly, the relationships between the 19th-century changes in the Japanese legal system and its general colonial policies are also worth close examination. For example, Japan's administration of the land of the Ainu (present-day Hokkaidō) before the reforms of the Meiji era bore similarities to Qing administration of Taiwan, both forming a stark contrast with Japan's Ainu policies and Taiwan policies after the Meiji reforms.⁶⁵ These potential areas of research will further inform us on the roles of legal systems in colonisation.

Notes

- 1 Formosa is Portuguese for "beautiful". In this book, Taiwan refers to the island of Taiwan, and does not include other islands or archipelagos under the jurisdiction of the Taiwan government.
- 2 The Republic of China took over Taiwan in 1945 after Japan's defeat in World War II.
- 3 The aborigines who lived in the plains areas are referred to in this book as the plains aborigines, or acculturated aborigines. A contrasting term is mountain aborigines, which refers to those who lived in the mountain areas and maintained their culture until after the Japanese occupation. Mountain aborigines are also referred to as non-acculturated aborigines.
- 4 There were 3.7 million Han settlers and they were the majority of the total population. See Chuang Chi-fa "Qingdai Taiwan tudi kaifa yu zuqun chongtu" [Land Reclamation and Ethnic Conflicts in Qing Taiwan] (2000) 36 *Taiwan shiji* 3, at 27.

- 5 See Lin Shu-Ya “Jie/chonggou Taiwan yuanzhu minzu tudi zhengce” (De-/Reconstructing the Land Policies for Indigenous Peoples in Taiwan) (PhD diss, NTU, 2007), at 91–101.
- 6 Yosaburō Takekoshi (trans George Braithwaite) *Japanese Rule in Formosa* (Longmans, Green and Co, London, 1907), at 218.
- 7 Lin Chiou-mien “Taiwan geshiqi tudi zhengce yanbian jiqi yingxiang zhi tantao” [The Evolution and Influence of Aboriginal Land Policies of Different Periods in Taiwan] (2001) 2 *Taiwan tudi yanjiu* 23, at 32.
- 8 For example, two-thirds of the Maori land in New Zealand was alienated in the first 20 years after British colonisation. See Richard Boast *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865–1921* (Victoria University Press, Wellington, 2008), at 26. In Australia, the continent was seen as terra nullius and the aborigines were deprived of their land upon European settlement. See Stuart Banner *Possessing the Pacific: Land, Settlers, and Indigenous People From Australia to Alaska* (Harvard University Press, Cambridge (MA), 2007), ch 1.
- 9 H Patrick Glenn *Legal Traditions of the World: Sustainable Diversity in Law* (5th ed, Oxford University Press, Oxford, 2014), at 272–279.
- 10 At 355.
- 11 For example, Michael Adas “Imperialism and Colonialism in Comparative Perspective” (1998) 20 *International History Review* 371–388; Nicola Di Cosmo “Qing Colonial Administration in Inner Asia” (1998) 20 *International History Review* 287–309; Peter C Perdue “Comparing Empires: Manchu Colonialism” (1998) 20 *International History Review* 255–262.
- 12 Perdue, *ibid*, at 256.
- 13 Laura Hostetler *Qing Colonial Enterprise: Ethnography and Cartography in Early Modern China* (University of Chicago Press, Chicago, 2001), at 25.
- 14 Emma Jinhua Teng *Taiwan’s Imagined Geography: Chinese Colonial Travel Writing and Pictures, 1683–1895* (Harvard University Asia Centre, Cambridge (MA), 2004), at 8–9.
- 15 For example, Robert Eskildsen “Taiwan: A Periphery in Search of a Narrative” (2005) 64 *Journal of Asian Studies* 281, at 287 and 290.
- 16 For example, Jürgen Osterhammel (trans Shelley L Frisch) *Colonialism: A Theoretical Overview* (Markus Wiener Publishers, Princeton, 1997), at 42, notes that Taiwan was “uncolonised” by the Qing.
- 17 The ambiguity of terms relating to colonisation and colonialism is often commented on, for example, see Osterhammel, *ibid*, at 4; Robert Aldrich and John Connell *The Last Colonies* (Cambridge University Press, Cambridge, 1998), at 3.
- 18 Adas, above n 11, at 371.
- 19 Perdue, above n 11, at 255.
- 20 Teng, above n 14, at 8, quoting Edward Said *Culture and Imperialism* (Random House, New York, 1994), at 9.
- 21 For a discussion of these terms, see Osterhammel, above n 16, especially ch 1 and 2.
- 22 At 4. Emphasis original.
- 23 At 4 and 15. Emphasis original.
- 24 At 15–16.
- 25 See Teng, above n 14, in general, but at 14 and 79 in particular.
- 26 For example, see Osterhammel, above n 16, at 79. For Japanese colonial empire in general, and Japanese colonial rule in Taiwan in particular, see Ramon H Myers and Mark R Peattie (eds) *The Japanese Colonial Empire, 1895–1945* (Princeton University Press, Princeton, 1984); Hyman Kublin “The Evolution of Japanese Colonialism” (1959) 2 *Comparative Studies in Society and History* 67–84; Liao Ping-hui and David Der-wei Wang (eds) *Taiwan Under Japanese Colonial Rule, 1895–1945* (Columbia University Press, New York, 2006).

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- 27 Eskildsen, above n 15, at 290.
- 28 For the Qing's retention of its Manchu heritage and identity, see Mark C Elliott *The Manchu Way: The Eight Banners and Ethnic Identity in Late Imperial China* (Stanford University Press, Stanford, 2001); Evelyn S Rawski "Reenvisioning the Qing: The Significance of the Qing Period in Chinese History" (1996) 55 *Journal of Asian Studies* 829–850; Pamela Kyle Crossley "Thinking About Ethnicity in Early Modern China" (1990) 11 *Late Imperial China* 1–35. For scholarship on the Qing's sinicisation, see, in particular, Ping-ti Ho "In Defence of Sinicization: A Rebuttal of Evelyn Rawski's 'Reenvisioning the Qing'" (1998) 57 *Journal of Asian Studies* 123–155; Pei Huang *Reorienting the Manchus: A Study of Sinicization, 1583–1795* (Cornell University, Ithaca, 2011).
- 29 A theme that runs through Elliott, *ibid.* In particular, at 3, "the Qing dynastic enterprise depended both on Manchu ability to adapt to Chinese political traditions *and* on their ability to maintain a separate identity". Emphasis original.
- 30 For example, see Mark C Elliott "Review of Pei Huang *Reorienting the Manchus: A Study of Sinicization*" (2011) 54 *Journal of the Economic and Social History of the Orient* 584, at 585. For the Qing's inheritance of its legal system from the Ming, see, in particular, Zhang Jinfan *Qingchao fazhishi* [Legal History of the Qing Dynasty] (Zhonghua shuju, Beijing, 1998).
- 31 William T Rowe *China's Last Empire: The Great Qing* (Belknap Press of Harvard University Press, Cambridge (MA), 2009), at 210.
- 32 At 287.
- 33 Inō's most notable works include *Taiwan banjin jijō* [Notes on Taiwanese Aborigines] (Taiwan Sōtokufu, Taipei, 1900), *Taiwan Banseishi* [A History of Aboriginal Management in Taiwan] (Taiwan Sōtokufu, Taipei, 1904) and *Taiwan bunkashi* [A History of Taiwan's Civilisation] (Tōkō Shoni, Tokyo, 1928). For an evaluation of Inō's contribution and lasting influence, see Paul D Barclay "An Historian Among the Anthropologists: The Inō Kanori Revival and the Legacy of Japanese Colonial Ethnography in Taiwan" (2001) 21(2) *Japanese Studies* 117–136.
- 34 Inō Kanori (trans Taiwan Historica) *Taiwan wenhua zhi* [A History of Taiwan's Civilisation] (Chinese trans Rev ed, Taiwan Shufang, Taipei, 2011), vol 3, at 284 and 300.
- 35 Part 14 "Tuozhi yange" [The History of Land Settlement], ch 1 and 2.
- 36 Examples of Taiwanese scholars that expounded this view are Tai Yen-hui "Qingdai Taiwan xiangzhuang zhi shehui de kaocha" [An Investigation of the Local Society in Qing Taiwan] (1963) *Taiwan yinhang jikan* 198, at 198; Song Tsêng-chang "Qingdai Taiwan fukun cuoshi zhi chengxiao jiqi yingxiang" [The Consequences and Influences of the Qing's Land and Aboriginal Policies in Taiwan] (1979) 30(1) *Taiwan Wen Hsien* 142, at 155. For Western scholars who follow the same view, see John Robert Shepherd *Statecraft and Political Economy on the Taiwan Frontier, 1600–1800* (Stanford University Press, Stanford, 1993), at 3.
- 37 At 5.
- 38 This theme recurs throughout Shepherd's discussion. For example, at 5, 13, 242, 306 and 396.
- 39 At 7 and 8.
- 40 Ka Chih-ming *Fantoujia: Qingdai Taiwan zuqun zhengzhi yu shufan diquan* (*The Aborigine Landlord: Ethnic Politics and Aborigine Land Rights in Qing Taiwan*) (Academia Sinica, Taipei, 2003).
- 41 See *ibid.*, in particular, at 364, 370–373, and 378.
- 42 Chen Chiu-kun *Qingdai Taiwan tuzhu diquan: guanliao, handian yu Anlishi ren de tudi bianqian 1700–1895* (*Taiwan's Aboriginal Proprietary Rights in the Ch'ing Period: Bureaucracy, Han Tenants and the Transformation of Property Rights of the Anli Tribe, 1700–1895*) (2nd ed, Academia Sinica, Taipei, 1997), in particular, at 132 and 218–219.
- 43 Chang Lung-Chih "From Quarantine to Colonization: Qing Debates on Territorialization of Aboriginal Taiwan in the Nineteenth Century" (2008) 15(4) *Taiwanshi yanjiu* 1–30.

- 44 In particular, at 4–5 and 23.
- 45 Liao and Wang (eds), above n 26.
- 46 Ka Chih-Ming *Japanese Colonialism in Taiwan: Land Tenure, Development, and Dependency: 1895–1945* (Westview Press, Boulder, 1998).
- 47 Antonio C Tavares “The Japanese Colonial State and the Dissolution of the Late Imperial Frontier Economy in Taiwan, 1886–1909” (2005) 64 *Journal of Asian Studies* 361–385.
- 48 For example, Yen Ai-ching and Yang Guo-zhu *Yuanzhu minzu tudi zhidu yu jingji fazhan* [Land Tenure and Economic Development of the Aborigine Groups] (Daoxiang, Taipei, 2004); Lin, above n 5.
- 49 Li Zhi-yin “Taiwan tudi dengji zhidu bianqian zhi yanjiu” [The Evolution of Taiwan Land Registration System] (LLM diss, Taiwan National Chengchi University, 2010).
- 50 Banner, above n 8, at 320.
- 51 Total indigenous population is about 546,700 as of December 2015. See *The Republic of China Yearbook 2016* (Executive Yuan, Taipei, 2016), at 45.
- 52 Lin, above n 5, at 84 and 110.
- 53 As at 2001, aborigines had ownership of 50,435 hectares of reserved land, about 20% of the total reserves. See *ibid.*, at 110 and 136.
- 54 The current Taiwan president, Tsai Ing-wen, recently apologised to the aborigines for the colonial past. See Austin Ramzy “Taiwan’s President Apologizes to Aborigines for Centuries of Injustice” *New York Times* (Online ed, New York, 1 August 2016), Sinosphere.
- 55 For example, Richard Boast *For the Good of the Natives: Land and Society in the Pacific 1860–1940* (book manuscript) presents the broad picture of the land tenure changes in the Pacific Rim in the late 19th and early 20th centuries.
- 56 The Japanese administration instigated the study of Taiwanese aborigines and published a series of work, including the works of Inō Kanori, noted in above n 33. More recently, Taiwan Historica published *Taiwan yuanzhumin shi* [History of Taiwanese Aborigines] (Taiwan Historica, Nantou), which includes one title on prehistory (Liu Yi-chang 2002); three titles on government policies (Fujii Shizue 2001, Peter Kang 2005 and Wen Chen-hua 2007) and two titles on the history of the plains aborigines (Chan Su-chuan and Chang Su-fan 2001, Liang Chih-hui and Chuang Yu-lan 2001).
- 57 Gazetteers (*zhi* 志) are formal records of an administrative unit, such as a county, prefecture or province. They were compiled by local governments from time to time, and include official records as well as selected private writings about the administrative unit concerned.
- 58 *Taiwan Wenxian Congkan* [Taiwan Literature and Documents Collection] (Taiwan yinhang, Taipei, 1957–1975). The Collection contains 309 titles, and in this thesis they are indicated as TWWX followed by the series number of the title.
- 59 *Qinding Daqing huidian shili* [Imperially Approved Precedents of the Great Qing Institutes, 1886] (Chinese Text Project, www.ctext.org).
- 60 *Huangchao wenxian tongkao* [Comprehensive Collection of Important Documents of the Qing Dynasty, 1797] (Chinese Text Project, www.ctext.org).
- 61 Taiwan Shiliao Jicheng Bianji Weiyuanhui *Ming Qing Taiwan dang’an huibian* [Collection of Historic Documents Concerning Taiwan During the Ming and Qing Dynasties] (Yuanliu, Taipei, 2004–2009) 110 vol.
- 62 Wu Mi-cha (ed) *Dan Xin dang’an* [Administrative Files of Danshui and Xinzhui Counties] (NTU, Taipei, 1995–2010).
- 63 For example, Robert HG Lee *The Manchurian Frontier in Ch’ing History* (Harvard University Press, Cambridge (MA), 1970); James Reardon-Anderson “Land Use and Society in Manchuria and Inner Mongolia during the Qing Dynasty” (2000) 5 *Environmental History* 503–530; C Patterson Giersch *Asian Borderlands: The Transformation of Qing China’s Yunnan Frontier* (Harvard University Press, Cambridge (MA) and London, 2006); Robert Entenmann “Sichuan and Qing Migration Policy” (1980) 4(4) *Ch’ing-shih wen-t’i* 35–54; Donald S Sutton “Violence and Ethnicity on a Qing Colonial

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Frontier: Customary and Statutory Law in the Eighteenth-Century Miao Pale” (2003) 37 *Modern Asian Studies* 41–80.

- 64 For example, Tang Qiyu *Zhongguo de kenzhi* [Land Reclamation and Colonisation in China] (2nd ed, Yongxiang, Shanghai, 1952); Peng Yuxin 彭雨新 *Qingdai tudi kaiken shi* [History of Land Reclamation During the Qing Dynasty] (Nongye, Beijing, 1990).
- 65 For the history of Japanese colonisation of the Ainu land, see Takakura Shinichiro (trans John A Harrison) *The Ainu of Northern Japan* (The American Philosophical Society, Philadelphia, 1960). Also see Tomonori Sugimoto “The Yellow Man’s Burden: The Politics of Settler Colonialism in Hokkaidō and Taiwan” (MA thesis, University of California, San Diego, 2013).