A New Look at the *Taiwan Shihō*: A Re-examination of the Thought-Processes in the Making of a Report in Colonial Taiwan

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I. General Remarks and Methodology

Over a period of many years, tensions between colonial rule and social systems of indigenous peoples have been a topic of absorbing debate. In particular, the tense relationship between colonial rule and indigenous land systems has been the subject of great interest. Until now, many studies have been pursued by various methods and on the basis of the abundant historical materials, but it seems that no firm conclusions have been reached.

Among the many materials on this issue, one of the most curious and important is the report of the colonial field surveys conducted at that time. Concerning colonial Taiwan[1)], for instance, the "*Taiwan Shihō* [臺灣私法]" is a particularly famous and important text, and it has proved to be indispensable for Chinese legal studies. It was the exceptional result of extensive research conducted on the old laws and customs by a specially-formed commission named the Rinji Taiwan Kyūkan Chōsakai [臨時臺灣舊慣調查會, The Commission for the Investigation of Traditional Customs in Formosa] in colonial Taiwan, from 1901 to 1911. The editor was the famous legal scholar, Santarō OKAMATSU [岡松參太郎][2)], who was—at that time—a professor at Kyoto Imperial University [京都帝國大學]. The book may be called the starting point of Chinese legal studies in modern Japan and had a strong impact on Japanese legal scholarship. Moreover, it is a key text in academic historiography. The *Taiwan Shihō* is, even now, one of the fundamental 'classics' and provides the starting point for all scholars working in this field.

Of the *Taiwan Shihō*, some scholars have made particular mentions. For example, professor Shūzō SHIGA [滋賀秀三], highly evaluated the book and wrote, "...it does not always satisfy our intellectual curiosity, but so often, the arguments that we offer in the area of legal studies have

been already constructed elaborately in this book. We have to check the *Taiwan Shihō* first at the beginning of our research, and the book will continue to occupy an important position for a long time".[3)]

On the other hand, Masao FUKUSHIMA [福島正夫], belittled the *Taiwan Shihō*, and wrote, "...He (Izutarō SUEHIRO [末弘巖太郎]) sounded an alarm bell to scholars in its inappropriate fashion of distorting the reality of Chinese practice in order to make it fit the structure of Western-made concepts. This is one of the attacks against the *Taiwan Shihō*. There are two issues. One is the unsuitableness of applying modern legal concepts, such as the right of ownership, to pre-modern norms. The other is the inadequateness of building a total structure of pre-modern norms by using a modern legal system".[4)]

However, this comment of FUKUSHIMA, is overly harsh and has little scientific basis. And yet, exhaustive investigation and textual-critique of this definitive book, the *Taiwan Shihō*, has never been given before now. Too frequently, scholars have simply speculated regarding the text, or, what is worse, the text has been treated as a "Bible" and uncritically accepted. All too often there is nothing very solid behind this kind of "research". One-sided, unsupported assumptions mean nothing. Solid arguments given by exhaustive textual-critique are absolutely indispensable and crucially important for developing an understanding of this canonical text.

To find convincing support in the text, one of the most successful methods is 'stratigraphic textual-critique' in which the evolution of the text is carefully examined.

Unfortunately, in the case of the *Taiwan Shihō*, no drafts (handwritten manuscripts) are left, even in the OKAMATSU Santarō Archives[5)] in Waseda University [早稻田大學]. To follow the history of the compilation of the text, another method needs to be followed in this case. Fortunately, the *Taiwan Shihō* has favorable conditions for the process of its emergence to be examined in other ways.

The *Taiwan Shihō* was not produced all at once. Rather, the authors[6)] consulted interim reports, which were in order (or 'strata')—the *Provisional*, *First*, and *Second Report*s. The *Taiwan Shihō* was the third, comprehensive, and "Final" report of the commission. In order, the reports are:

[0] *Taiwan Kyūkan Seido Chōsa Ippan* [臺灣舊慣制度調查一斑, *Provisional Report on Investigations of Laws and Customs in the Islands of Formosa*], Rinji Taiwan Tochi Chōsakyoku, 1901.

(An English translation of this report was published: Santaro OKAMATSU, *Provisional Report on Investigations of Laws and Customs in the Islands of Formosa*, Kobe: Kobe Herald, 1902)〔abb. as the '*Provisional Report*'〕

[1] *Rinji Taiwan Kyūkan Chōsakai Daiichibu Chōsa Daiikkai Hōkokusho* [臨時臺灣舊慣調查會第一部調查第一回報告書, *The First Report on Investigations of Laws and Customs in the Islands of Formosa*], Rinji Taiwan Kyūkan Chōsakai, 1903.〔abb. as the '*First Report*'〕

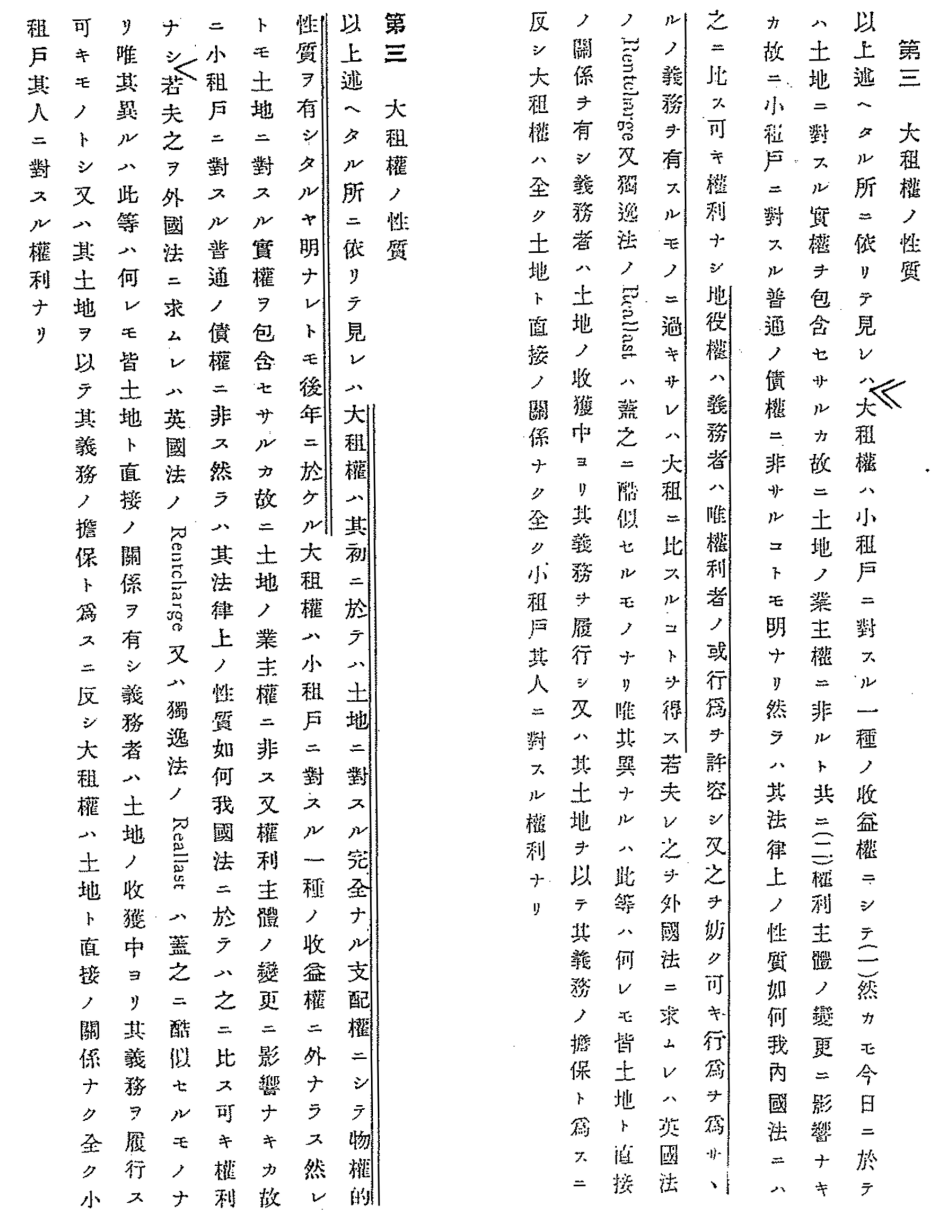
[2] *Rinji Taiwan Kyūkan Chōsakai Daiichibu Chōsa Dainikai Hōkokusho* [臨時臺灣舊慣調查會第一部調查第二回報告書, *The Second Report on Investigations of Laws and Customs in the Islands of Formosa*], Rinji Taiwan Kyūkan Chōsakai, 1906.〔abb. as the '*Second Report*'〕

[3] *Rinji Taiwan Kyūkan Chōsakai Daiichibu Chōsa Daisankai Hōkokusho–Taiwan Shihō* [臨時臺灣舊慣調查會第一部調查第三回報告書 臺灣私法, *The Third Report on Investigations of Laws and Customs in the Islands of Formosa–The Taiwan Shihō*], Rinji Taiwan Kyūkan Chōsakai, 1910–11.〔abb. as the '*Taiwan Shihō*'〕

Reading the reports, one after another, one might feel a sense of "déjà vu". The fact is that the authors frequently cut and pasted earlier versions of the text—sometimes they added a few extra words, sometimes they deleted words or phrases—and sometimes they 'reused' text from earlier versions.

By comparing[7] the *First Report*'s text with the *Second Report*'s, and the *Second Report*'s text with the *Taiwan Shihō*'s (so to speak, by collating the 'strata below' with 'strata above'), a lot of evidence on the elaboration of the final text can be clearly found. By identifying differences in each iteration, a trace of something that had been written and then erased can be identified. The evidence of this process of 'polishing' can provide vital clues in the reconstruction of the process of the making of the *Taiwan Shihō*.

By way of an example of this method, please consider Figure 1. A part of the text from the *First Report* and the *Taiwan Shihō* are placed together. At first glance, one can notice that the two texts are almost identical, but with only superficial differences. Actually, for the most part, the *Taiwan Shihō* is basically a patchwork from the former reports. At the same time, the authors of the *Taiwan Shihō* inserted some words (see the part with the double-line in the *Taiwan Shihō*) at the point of ≪, and deleted some words (see the part with a line at the *First Report*) at the point of <.



第三　大租權ノ性質

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The *Taiwan Shihō* (1910) ← The *First Report* (1903)

Figure 1: example of collation

Today, no draft that shows directly the editing process remains, but by the collation of texts, in this way, the process of elaboration can be clearly reconstructed.

Perhaps the authors of the *Taiwan Shihō* polished the draft again and again. These elaborations—by changing the text in this way—must have had particular reasons. Through an examination of the text, these moments of change are fixed because the points of publication of these reports are already known. Furthermore, these changes in the text themselves afford clues to ascertain the reasons for the choice of language. By following these changes in the texts chronologically, the process of thought by which the 'conclusion' of the *Taiwan Shihō* was reached can be clearly demonstrated to us.

Moreover, to investigate the background and clarify the context, a prosopographical method can also be introduced. 'Prosopography', in this context, simply refers to an investigation concerned with obscure and "forgotten" persons who were connected indirectly with the reports. Such forgotten persons would include government officials (especially junior government officials), clerical staff, or businessmen at that time. Most of them are obscure individuals, although they often played key roles in the policy-making process. They deserve greater attention—given the central role that they often played—but scholars have often neglected them.

The problem for historians is that such persons seldom leave evidence behind, and information about their past lives will not appear in an ordinary biographical dictionary. And very often, it is hard to assemble information about their personal histories and writings through online search systems. Under these circumstances, some old-fashioned tools such as card catalogue can still be useful because their writings are sometimes forgotten and not yet registered on the Internet. For this special type of research, the libraries of government offices (ministries) and financial institutions (such as banks, chamber of commerce, etc.) can provide a great source in helping with their unique collections concerning policy-making, for example the inspection reports of the authorities. Through a careful investigation of these obscure individuals, important (but forgotten) works can be discovered, and these 'excavated' texts, combined with various versions of the report, can be a great help in reconstructing the policy-making process, and provide new ideas and information on colonial history.

The process of building the *Taiwan Shihō* is much more important than its 'conclusion'. In the process of its construction, so many opinions

were divided on various important questions, and even in the final report, the *Taiwan Shihō*, the authors could only manage to draw the semblance of a 'conclusion'. Each opinion had a potential to open up new debate and argument. Through the accumulation of biases of these opinions and the study of the complex dynamic of the drafting process of the *Taiwan Shihō*, we can definitely extend our knowledge and broaden our views about colonial Taiwan.

II. Arguments on "Gyōshu-ken", or "*Ownership*" in the *Taiwan Shihō*

(1) On Daiso and Shōso

Everyone can agree that the explication of the land system is a major question in colonial studies. To understand a particular society, providing elucidation on the land system is crucially important. The authors of the *Taiwan Shihō* were also confronted with the same problem and wrestled with many complex issues and materials.

The second chapter of the *Taiwan Shihō*, which is titled "Rights relating to immovables [不動產權]", contains 515 pages of text, and over 50 % of the text (280 pages) is dedicated to a description of the "historical development of Gyōshu-ken [業主權ノ沿革]". This part is a central argument in the *Taiwan Shihō*, and is fully worth analyzing. In this part, the key subjects of inquiry are Daiso [大租] and Shōso [小租] which can be regarded as a prior condition of the 'right of ownership', so it is indispensable to conduct precise research on this topic.

The arguments on the Gyōshu-ken [業主權, giap tu right] were opened by an examination into the matter of Daiso-ko [大租戶, toa-tso holder] and Shōso-ko [小租戶, sho-tso holder]. Generally speaking, Daiso-ko is a person, who was given permission to develop untouched land from the authorities, invited a Shōso-ko, and reclaimed the land. In this relationship, Daiso-ko received a part of the harvest as a "Daiso" from Shōso-ko, and usually paid a land tax.

The core of the text is devoted to an explanation of the nature of "Daiso-ken [大租權, right of Daiso]". The text is made up mainly of sentences from the *First Report* (albeit partly revised), and after them, some sentences of the *Second Report* have been inserted. In this cut-and-paste process, a reference to OKAMATSU's paper on this issue was somehow deleted.

The authors of the *Taiwan Shihō* assumed that the Daiso-ko and Shōso-ko originally had their own "rights [權利]" at the beginning, and "as time went by [時勢ノ變遷ト共ニ]", the quality of the "rights" changed. Shōso-ko, who had only had a relatively weak right (like that of a poor tenant farmer), gradually established a direct relationship to the land, abridged the Daiso-ko's right, and finally had a full right analogous to a 'right of ownership' (dominium). On the contrary, a direct relationship between Daiso-ko and the land was slowly ended, and Daiso-ko acquired a role similar to that of an absentee landlord, who had only a right to collect a Daiso in the end. Incomprehensibly, this story was presented with no evidence from historical materials, nor chronological analysis of the materials.

In the *First Report*, OKAMATSU referred to his own paper, titled "On legal aspects of Daiso-ken [大租權の法律上の性質]".[8] (This sentence was somehow deleted in the *Taiwan Shihō*). In this paper, he described the right of Daiso as an obligation. He explained that the Daiso-ken (right of Daiso) was not an "effective right in land [Tochi ni kansuru Jikken, 土地ニ關スル實權]", but a right of earning, and it was not affected by the alternation of a rightful claimant. OKAMATSU emphasized again and again that the right of Daiso was an obligation [債權, jus in personam], not a real right [物權, jus in rem]. He also stressed that the right of Daiso had no relationship with land.

OKAMATSU also introduced some European topics such as Rentcharge or Reallast for comparison. But he did not elaborate on this theme, and as if it was a foregone conclusion, insisted that the right of Daiso was not a real right, but a unique form of obligation.

At that time, Reallast was mentioned in an argument about the distinction between a real right and obligation, or sometimes compared with a perpetual lease in Japan [eikosaku-ken, 永小作權]. This was popular among Japanese scholars. OKAMATSU also referred to Reallast quoting Stobbe-Lehmann's dictum.

Actually, opinion was divided on Reallast, and Stobbe's interpretations were also contested. In the second edition of Stobbe's work[9] published in 1883, Reallast was basically interpreted as a Forderungsrechte (obligation), but in his third edition published 1897, a different theory was accepted. He changed his construction and explained that the essence of Reallast was the combination of 'obligation in rem scripta' and Hypothek.

In Japan, Hirondo TOMIZU [戸水寬人], a famous scholar of Roman

law, mentioned these 'obligatio in rem scriptae' and Reallast, and discussed the justifiability of theories about the distinction between a real right and obligation in Europe.[10] TOMIZU preferred the English theory to the Continental one. At that time, Reallast was a hotly debated issue and controversy on this subject was on going.

OKAMATSU obviously followed these arguments, and referred to 'Actio in rem scripta' but reserved comment. His conclusion was that the right of Daiso was not a real right, nor a pure obligation, but an obligation which can be claimed against a third person. And somehow, a reference to this OKAMATSU's paper on this issue was deleted in the *Taiwan Shihō*.

(2) On a Chiki-shu and a So-shu

In addition to the problems regarding Daiso and Shōso, another serious issue was of the relationship between a Chiki-shu [te-ki-tu, 地基主, the owner of the lot] and a So-shu [tu-tu, 厝主, the owner of the building] in housing land. This relationship was, generally, between a Chiki-shu who held a piece of land and a So-shu who wanted to build a house and live there. After receiving permission, a So-shu built a house and paid some money called 'Chiki-so [te-ki-tso, 地基租]'. It was one of the very typical transactions involving land.

But this relationship was also the source of a great deal of social conflict. Taiwanese scholar, Pin-kung CHIANG described the situation at that time as follows:

> "The city of Jilong was a gateway city to mainland Japan, so from the beginning of colonization many Japanese people came to this port town. Some of the Japanese traders pushed ahead of others to purchase parcels of land for resale, and planned to make undue profit from this kind of business. ... But the Japanese merchants tried to buy the land with such haste, that they made an awful mistake. That is to say ... they failed to notice that the So-shu had the effective right to the land."[11]

Japanese merchants went around buying up the "right" from Chiki-shu. The problem was what kind of "right" the Japanese merchants were actually buying from the Taiwanese people. That is to say, the problem was that the "right" they bought was only a right of earning (the right of

collecting a Chiki-so), and not necessarily a full right to the land (the right to use, to make a profit from, and to dispose of, the land). In other words, the problem was which side (Chiki-shu or So-shu) had the "effective right" to the land.

In the beginning, the colonial government authorities understood that the relationship between Chiki-shu and So-shu bore a close parallel to the relationship between Daiso-ko and Shōso-ko. So they tried to apply the same logic of Daiso-ken (right of Daiso) to Chiki-ken (right of Chiki). On Chiki [地基] , the author of the *Provisional Report* had the same understanding as Daiso, and assumed that the Chiki-shu originally had had their own "right [權利]" at the beginning, and "as time went by [時勢ノ變遷ト共ニ]", the quality of the "right" changed. With the same logic as Daiso-ken, they might demonstrate that So-shu had a 'right of ownership'. There also was a Court of Review [覆審法院] precedent for supporting this view. So it was natural that the opinion of the *Provisional Report* followed that line.[12)]

But if the matter was managed with this view, the Soshu-ken (right of So-shu) would be considered as a 'right of ownership' and the "right" which the Japanese traders bought became only a right of earning, not a 'right of ownership', because they had bought the right of Chiki-shu in the full belief that it was a 'right of ownership'. So it is understandable that the merchants protested vigorously against the management by the authorities.

Many newspapers such as the *Taiwan Nichinichi Shinpō* [臺灣日日新報], *Taihoku Nippō* [臺北日報], and *Taiwan Minpō* [臺灣民報] carried articles about the problem. In particular, the *Taiwan Minpō* ran a series of feature articles[13)] and attacked the authorities fiercely. In the articles, the *Provisional Report* was quoted many times and attacked in detail. In the conclusion, the opinion of the authorities was completely abandoned as a hasty inference.

In the *First Report* published immediately after the dispute arose, the opinion of the *Provisional Report* completely altered. No explanation for the reason why the opinion had been changed was given, but by comparing the *First Report* with the articles, it became apparent that the point that the article attacked and the point where the *First Report* was altered correspond exactly. This seems unlikely to be just a coincidence, and it seems that the newspaper articles had a great influence on this amendment. The opinion of the *Provisional Report* was gradually abandoned under the pressure of Japanese traders. The opinion seems to have changed as a result of

popular pressure and not by scientific analysis of the underlying issues.

Instead, an unsatisfactory and complicated reply was given by the *First Report*. The authors tried to create a standard for distinguishing based on the traditional technical terms in Taiwan. About distinguishing, the *First Report* said: "If the contracting parties have a title deed, a close observation should be conducted. If the deed is a deed of sale [賣字], usually, the effective right was transferred to the So-shu [厝主]. On the contrary, if the deed is a deed of grant [給字] or a deed of lease [賸字], basically, the effective right was not transferred to the So-shu..." (p.308).

But these traditional technical terms were already very ambiguous. In the *Provisional Report*, the authors gave a clear definition: "Kip-tu [給出, Grant]. This is now a technical term in Formosa and means a grant of giap-tu right to another, creating at the same time a tso-right in favour of the grantor, hence, it differs from a transfer on the one hand and also from a lease on the other." (p.31); "Pak-tu [賸出, letting] means, in its proper sense, to give the right of tenancy to one's land. In the case of pak-tu there arises simply an obligatory relation of a lease between the owner of the land and the lessee." (p.32); "Su-tu or tu-su [稅出, 出稅, letting for a valuable consideration], in its proper sense means letting." (p.32).

The authors managed to establish a definition with a single meaning, but this problem was not so easy to resolve. Gradually they realized its ambiguity, and in the *First Report* the authors said: "...once considered Kip-tu as a grant of giap-tu right to another, creating a tso-right in favour of the grantor, and decided who has a Gyōshu-ken... But if we now reconsider the meaning of the word based on the traditional custom, it is not as easy to define as before". (p.79).

In the *Taiwan Shihō*, the text of the former reports was basically succeeded and reused, but several uncertain statements such as "the Kip-tu is originally no different from lease" were deleted. Many texts were omitted, and references to the land investigation project were also abbreviated. It is worth noticing that in many passages the word "Senyū [占有, possession]" was carefully deleted.[14)] It seems that the authors purposely avoided and passed by the arguments over the 'right of ownership'.

In the *Taiwan Shihō*, the authors also separated Chiki into two parts. They set up a new article named "Boku-ken [賸權]", and gave an explanation about the situation involving the Japanese traders (i.e. the case that "Chiki-shu" have the 'right of ownership'). After that, only a "Chiki" which could be understood in the same way as Daiso was discussed. Traditional "Chiki" was partly considered as mere lease under the pressure

of Japanese merchants, and partly reduced to the case which could be regarded in the same lights as Daiso. As such, the problems about Daiso and Chiki were obscured.

III. Creation of the "Right of Ownership" and its Interaction with the Taiwanese Society

The development of new and highly complicated relationships concerning both farmland and housing land in Taiwan was a continuing source of anxiety for the authorities. They tried to understand the land system, but it was not always so easily understandable. Their explanation of this relationship on the farmland and housing land also changed under the influence of the 'political' situation, not as a result of academic analysis of the underlying issues.

Regarding this complicated land system, the authorities had to identify immediate countermeasure.

(1) Requests for Reform and the Bureaucrat's Plan

Many requests to take efficient measures to solve the complicated problem about legal title to the land poured in to the authorities.

The tax bureau officer, Tomoe YOSHII [吉井友兄] proposed his view as follows:

> "The system of Daiso and Shōso in Taiwan must be abolished sooner or later. There is no good reason why this intricate and complicated arrangement should not be abolished. Under present conditions, it seems as if there are two owners of one piece of land, and the system is so complex that it frequently causes conflict.... And to abolish it, it is the best and most appropriate course of action to follow a precedent for Chitsuroku Shobun [秩祿處分, the Abolition of Hereditary Stipend], and to issue the public bond to Daiso-ko and abolish their right".[15)]

He also explained the tax-system problem in the Qing dynasty as follow:

> "After all, the authorities were only interested in collecting a fixed amount of money and cereals for tax, and they did not care

who should be a taxpayer and left it to the general agreement of the people concerned. It is really a surprise to discover its irregularity". (p.293).[16)]

Yoshikoto NAKAMURA [中村是公], a high-up bureaucrat and the responsible person for land investigation in Taiwan, looked back on the situation prevailing at that time and wrote:

"Because of the ambiguity about the land system and the indefiniteness as to the identity of the land owner, the people worry about the land and do not want to deal with it.... If one cannot deal in land for ever and ever like this, it is not good for the progress and improvement of Taiwan. An ordinance (Ritsurei [律令]) with regard to notification of right was promulgated when the capital of Kangyō Bank was introduced, because it was so dangerous to invest in land under the situation prevailing at the time...".[17)]

Nihon Kangyō Bank [日本勸業銀行] did some research to find the best way to grant a loan secured on landed property "without anxiety" under the complex land system in Taiwan. They drew a number of conclusions which suited their interests by saying that the custom of "Tai [胎]" had the same nature as a mortgage in modern Japan, and the affirmation that the "Tai" arranged by the Bank was the first mortgage was indispensable, and for that purpose, the bill drafted by OKAMATSU would be promulgated by the authorities.[18)]

So what was the answer of the authorities in formulating a new system of landholding and a new financial system, and on what basis was it introduced? Generally, the government officials seldom left evidence on this point, but a few clues to the issue can be found in the articles written by the bureaucrat, Seitarō NAKAYAMA [中山成太郎].[19)]

In a series of early newspaper articles[20)], NAKAYAMA detailed all the relevant circumstances of the Stein-Hardenberg Reform in Preussen, such as the abolition of feudal tenure and creation of private ownership of land, while he quoted the related regulations specifically. The article is suggestive of the land reform in Taiwan.

NAKAYAMA also perceived a similarity with traditional land tenure in Germany—'Obereigentum' and 'Untereigentum'. He gave an outline of the history of reform in Germany, sometimes making reference to Thibaut, in his transcript of a lecture at the Japanese-French Law School [Wa-

futsu Hōritsu Gakkō, 和佛法律學校, the predecessor of the present Hōsei University 法政大學].[21] In another book,[22] he explained the two kinds of land system, which were named the "coexistent system (the traditional German system)" and the "unified system (the Roman law system)", and expressed his approval of the latter approach.

In his book titled "*Fudōsan Shin'yōron* [不動產信用論]",[23] he conducted research into the creation of real estate finance system. He carried out an in-depth survey of the history of the real estate financial institutions in many countries, and discussed the advisability of the mortgage banks, the importance of the credit granting for land improvement, and techniques for finance such as pledge and mortgage. He also provided annotations to Carl Rodbertus's theory about 'dingliche Belastung', and furthermore, to the history of legislation for mortgage in Germany. NAKAYAMA explained the clear blueprint for reform based on a detailed survey of Germany.

Before that, NAKAYAMA carefully observed the course of events in German colonial Kiaochowwan [膠州灣, Qingtao as it is known today]. He wrote that "With regard to the problem of the land, it ought to be instructive in land reform, which now we are also confronted with. Because it sets a new precedent in which the very unique land system in China is interpreted according to European legal theory".[24] Through the cases in Kiaochowwan, he approached its suzerain (Germany), and tried to make use of the results of research about Germany for colonial policy in Taiwan.

(2) Two Different Views about Land System

As mentioned above, a proper arrangement of complicated rights to the land was requested mainly for the establishment of a modern tax system and a modern financial system. For that purpose, the government officials conducted careful investigations into land reform in Germany, and even considered a land system in Roman law.

So, under these conditions, what kind of guiding principle was provided by the *Taiwan Shihō*? The *Provisional Report* began to write that: "There are several kinds of rights relating to land in Formosa; but the most important of them is the tso right [租權]" (p.22). The authors started with a system of Tso [租], and afterwards, they brought up a system of Gyōshu-ken [業主權]. The *Provisional Report* says:

> "So it is evident that, according to recognized legal principles in Formosa, the ownership of land remained with the sovereign, and no private subjects could ever acquire full ownership. The most extensive and effective right which can be enjoyed by the people is called giap-tu [業主, landlord]. This word giap-tu has had a legal use both in China and Formosa, and means the occupier of land, or in other words the one in possession of actual power over the land... If we consider the actual nature of the giap-tu right from the standpoint of modern jurisprudence, apart from principles recognized in Formosa, there cannot be any danger in regarding this right as that of ownership..." (pp.29–30).

Now that "there cannot be any danger", could the authors of the report use the word of 'right of ownership' immediately? The matter would be simple if they could be as certain of that. In the *First Report*, a very unconvincing explanation appears as follows:

> "Indeed, Gyō [業] bears a close resemblance to a sense of estate in British law, and indicates not only the land itself which is a material object of right, but also the total of rights to the land. In Taiwan, perhaps, people have an idea that, Daiso-ko, Shōso-ko, and Tenshu [典主] has its own Gyō [業], and they are the owner [主] of their each Gyō, as if a redeemer or a leaseholder has its own estate in British law. To wrap things up, so-called Gyōshu [業主] means not only the person who has the most effective right to the land which could be compared with the right of ownership, but also all of the related persons who have a right to the land generally. Probably, the latter is the traditional idea of Gyō in China and Taiwan. So if the word Gyōshu is used to mean the proprietor who has an effective right to the land, it is not a conventional method at all." (p.76).

As stated above, the authors clearly admitted that the word Gyōshu meant the entire related persons who had their own rights to the land generally, though this view was completely different from that of the *Provisional Report*. But immediately, the authors tried to change the meaning of the word "Gyō" as follows:

> "For this reason, though one can replace the word by another proper word, natives used the word and cherished for a long time, so

this should not be changed forcibly, and it is enough to suppress the custom that the word Gyōshu is used to indicate the person except for the Gyōshu in today's meaning." (*First Report*, p.76).

The authors were well aware of the problem. They were favorably inclined toward the view that Gyōshu [業主] meant the person who had the most effective right to the land, but simultaneously, they admitted a different view.

Actually, the phase that each person had 'something' and took part in the management of the land was not unfamiliar in the *First Report*. For example, Shigetarō SAWAMURA [澤村繁太郎] understood the essence of Daiso and Shōso as "shareholding".[25] He described them not as persons in a superior-subordinate relationship, but as persons who have their own stocks to share in the profits. The aforementioned precedent also justified this view and expressed that "the right of So-shu is not an inferior right which simply divided from the right of Chiki-shu, but an independent right which empowered solely."

Ryōzaburō KINASHI [木梨良三郎], whose paper had a great influence on editing the report, indicated that "After the command by Liu Ming-chuan [劉銘傳], Shōso-ko was officially approved as an owner (Gyōshu) and made him pay a tax. So the sense of the word Gyōshu was attached only to the Shōso-ko routinely. But the traditional sense of the word seems not to have died out. I have often heard it said that "Daiso-ko is an owner and Shōso-ko is an owner as well" [大租戶也是業主, 小租戶也是業主]".[26]

It is confirmed that there were two different views about the land system in Taiwan. Under this condition, a scheme to compromise on these two divergent positions was adopted:

> "Even in the earlier times when the Daiso-ko enjoyed the most extensive and effective right, the Daiso-ko's effective right in the land and the earning right to collect a specified amount of Tso from tenants were clearly distinguished. The most extensive and effective right is originally a real right (jus in rem), and the right to collect Tso is an obligation (jus in personam) as the consequence of a contract." (*Taiwan Shihō*, p.311).

In spite of this comment, the authors did not consider these two rights as independent of one another. One of the reasons contributing to

this complicated situation was the unclear definition of Daiso-ken. It was much easier to divide the Daiso-ko's right into two rights, but finally, the word Daiso-ken was adopted to indicate these two rights. This collision between old (Tso system) and new (right of ownership) created a difficult situation. They were favorably inclined toward the view that Gyōshu [業主] meant the person who had the most effective right to the land, but at the same time, they were no longer able to ignore the traditional Tso system as a sign of the 'ownership'.

(3) A Secret "Contribution" by the *Taiwan Shihō*

In consideration of the above, one can easily grasp the situation that various problems about ownership were created all at once. Official countermeasures against the complex situation in the land were undoubtedly needed for the better management of colonial Taiwan from various perspectives, such as the tax system, real estate finance, transaction in real estate, and so on. What was the contribution by the *Taiwan Shihō* toward solving these problems?

The preference for the entire system from "dominium" (the Roman system) on down is in evidence in the former reports. The authors sometime imagined the right—which bears a striking resemblance to "dominium"—such as "the most extensive and effective right to the land, which could be compared with the right of ownership". On the other side, the understanding of the traditional system was typified in the expression: "each person has 'something' and takes part in the management of the land". This 'something' is expressed in the terms like "various kind of right to the land" or "Gyō".

So the question is how to reconcile these two different arguments. The "dominium" was a brand-new system for Taiwan, so an explanation of the connection with traditional system was absolutely indispensable. Otherwise, the old system would simply coexist with the new. Moreover, any theory would need to cover the whole traditional system. If not, the former relations would be re-established, and all efforts to construct a new system would have been in vain. An answer to this difficult question was demanded from the *Taiwan Shihō*.

It was much easier to divide the Daiso-ko's right into two rights: the right of earning (collecting tso [租]) and the most effective right to the land ([實權]). On this assumption, the former right still remained in the Daiso-ko's hands, and the latter fell into the Shōso-ko's hands. If so, the right that

originated in the traditional land system still survived and could well be revived as a kind of ownership. It would not have been convenient for the authorities, however. To deny the Daiso-ko's "right" completely, perhaps, the authors purposely blurred the definition and did not divide the Daiso-ko's right, and assured that the total of Daiso-ko's right had changed its character. By doing so, they removed all possibility of a revival of the old system and acted to protect the new system.

IV. Shattered Illusions about English Law and the Great Conversion to German Law

(1) Tai and English legal terms

In the reports, especially in the early reports, the references to English law (such as 'reversion', 'Rent-charge', and so on) are often found in the text. But these references are very superficial, and no further arguments are made. The authors of these reports, in the end, could not use the terminology from English law to explain the land system in Taiwan satisfactory, but the fact that they tried to do so is worthy of serious consideration.[27)]

There are several mentions of English law in the reports. And relatively, the arguments about Tai [胎] had left many clues, so it forms an appropriate subject of investigation. Generally speaking, Tai [胎] was a kind of finance. A person who owned the land could hand his title deed to a lender and receive money, and if he returned the money he could take his title deed. This was a kind of simplified financial system in Taiwan at that time.

This Tai [胎] custom was interpreted in different ways in the reports. The explanation in the *First Report* was that: " Tai [胎] and Pignus in old Roman law may appear similar, but in fact they are quite different. Tai has a great deal in common with the deposit of title deed in English law." (pp.375–376). But in the *Second Report*, this opinion was discarded as follows: "In the *First Report*, grounding on the generally accepted opinion at that time, Tai [胎] was characterized as a kind of real rights granted by way of security, or as pawning of title deed, and compared with Pignus in old Roman law or deposit of title deed in English law. But these opinions were an oversight caused by insufficient research and are not true." (p.590). What was the reason the authors changed the opinion at this stage?

The main difference between the *First Report* and the *Second Report* was

the question of whether Tai was interpreted as a security or not. The *First Report* basically (but a little hesitantly) insisted that the Tai was a security. The *Second Report* also admitted that the Tai had an element of security, but said that it did not reach that state in traditional custom. It seems that Tai was interpreted rather as an ordinary lending and borrowing (a pure loan) of money, not as a security.

Actually, two important ordinances were promulgated between the point of the publication of the *First Report* and that of the *Second Report*. These were the Ordinance on the Land Offered for the Nihon Kangyō Bank's Loan [日本勸業銀行ノ貸付ヲ爲ス土地ニ關スル件] and the Ordinance on Land Registration in Taiwan [臺灣土地登記規則]. Especially in the latter, Tai was equated to a mortgage.

This tendency to consider Tai as a mortgage already appeared at the time of the investigation by Nihon Kangyō Bank. In the report,[28] Tai was considered as follows: "Even if an obligor performs no obligation at the repayment due date, the Tai-shu (a lender) has nothing that can be done. He has no right to occupy the land, nor convert into money." (vol.2, p.29). But at the same time, this opinion was very much questioned by them.

Nihon Kangyō Bank took a view that served their own interests (sometime they insisted their opinion was the one which derived from old customs and deliberately twisted the original interpretation) and considered Tai as a mortgage. After that, they pressed the authorities to issue a new ordinance, and the request was accepted. The *Second Report* referred to this and said "under this ordinance, Tai-shu (a lender) has a kind of real right (jus in re). In substance, traditional Tai was transmuted into mortgage in modern Japanese law, and this character is not a traditional one, but is given by a brand new regulation." (p.586).

Installation of a mortgage system in Taiwan was urgently needed, and the Factory Hypothecation Law [工場抵當法] in Japan was kept in mind by the authorities. OKAMATSU also discussed the mortgage system in his paper.[29] Clearly, the authorities were longing for the installation of a mortgage system in Taiwan. Under these circumstances, why did the *Second Report* interpret Tai as an ordinary lending and borrowing (a pure loan) of money?

Under the Ordinance, the registered Tai was considered as a mortgage. After that, the focus of discussion moved to the Tai that was not yet registered. Once the convenient new system was established, the authors did it in the same way as before. They said that "induced by old custom", the Tai not yet registered was considered as a mere lending and borrow-

ing (a pure loan) of money.

If traditional Tai that was not yet registered had an aspect of security (real right), it was not convenient for the new system. It could ruin the system from the outside. To avoid this outcome, the authors tried to say that traditional title should never be revived as a real right that has the full legal force and effect. The need for a modern financial system therefore had a great influence on the interpretation of the old custom. So just like the traditional Daiso, the return of the old system was not welcomed by the authorities. It can be said that the reports gave indirect theoretical support to these 'containment' tactics.

(2) OKAMATSU's Conversion to German Law

Especially at an early stage, English law gave invaluable suggestions to the authors. At first, the authors made use of concepts of English law and tried to explain, but it was gradually abandoned in construction of a theory about the land system in Taiwan. One of the reasons was that the English law became less attractive to the authors, especially to OKAMATSU.

At that time, OKAMATSU published two theses concerning the difference between real right and obligation. He insisted that, "It is so regrettable that the Japanese Civil Law is still based on the French Civil Law promulgated a hundred years ago", and disputed the French theory of property transaction.[30] After that, he declared the firm intention to introduce the German theory of property transactions. He claimed that, "The transfer of a real right by a juristic act should be based on the registration and the French theory is unworthy of adoption. That is an established theory in the world".[31]

OKAMATSU once delivered a paper about the Torrens system[32] before, and the committee also published a book about that,[33] so details of the system were already given, but after the publication of the "*The First Draft of the Ordinance on the General Provisions of a Real Right in Taiwan*"[34], the Torrens system was finally abandoned. In the draft, a priority to the German system was given again, and almost the same provisions as German Civil Law were introduced. The draft was, nominally, a part of the legislations based on old customs in Taiwan [舊慣立法]. The authors, under the guise of "respect for traditional custom", introduced modern German law into Taiwan, and moreover, they even declared, "Taiwan had already adopted the German system for these ten years" and "this draft based on the

present system in Taiwan and is not based on the brand-new system".[35)]

OKAMATSU was a graduate of the Department of Common Law in the Faculty of Law, at the Imperial University of Tokyo. Originally, his background was the Common Law, and the Japanese Civil Law at that time was based on the French Civil Law, but he became wholly devoted to German theories of law. It appears that what he found so attractive in German law was its logical consistency. In addition, German law was, to his eyes, the latest model for a modern legal system.

Other staffs who took part in the commission for legislation based on old customs, such as Tokizō KIJIMOTO [雉本朗造] and Otoshirō ISHIZAKA [石坂音四郎] were also 'Germanophile' legal scholars.[36)] Coincidentally, OKAMATSU's ideological conversion meant the conversion of Japanese legal studies from English and French legal theory to German legal theory.[37)]

This is only speculation, but perhaps OKAMATSU's dream of introducing the brand-new German theory and amending the old-fashioned, French-based Japanese Civil law was impossible to realize immediately, so he tried to fulfill his wish, not in mainland Japan, but in colonial Taiwan first, and then asked Japanese scholars to reconsider the problems.

The legislation in colonial Taiwan began with a clean slate, so it is possible to say that OKAMATSU was acknowledged to have had a kind of discretionary power with respect to these operations. It is curious to imagine whether this was his "revenge" or not.

Anyway, it should be emphasized that the authors had once tried to explain the situation in Taiwan by means of concepts derived from English law. The traces of this attempt were secretly hidden, but are clearly found by textual analysis. The *Taiwan Shihō* unexpectedly took up its position at the vital point of a turnabout in Japanese legal history, and this conversion gives a hidden bias to the text of the *Taiwan Shihō*.

V. Concluding Remarks

The history of how the land system of Taiwan was described has been the focus for this essay. In conducting such a task, it is important that one should not engage in a sketchy history of legal studies at that time. The much more checkered history becomes clear if the focus is on: how they collected and chose historical materials; how they assembled them into a structure; how they drafted and edited the text; and how they finally wrote it down. Such detailed analysis is crucially important for historical

studies.

The *Taiwan Shihō*, which is the result of research conducted on the old laws and customs of colonial Taiwan, itself has a history. Before the *Taiwan Shihō*, the authors published interim reports, which we can think of as 'strata'—*the Provisional*, *First*, and *Second Report*s. They sometimes reused a text of former report, sometimes did 'cutting and pasting', and elaborated the reports.

To observe the process of making these reports (a history of historiography!), the most appropriate method is a 'stratigraphic textual-critique'. The *Taiwan Shihō* is both an academic text, and—at the same time—it is also historical materials by which we can reconstruct the way of thinking of that period. Through a collation of these texts from the reports 'in strata', the process of making the *Taiwan Shihō* can be vividly reconstructed. By stratigraphic textual-critique, the focus of the arguments and the point in question can be made clear, as can the authors' intentions and way of thinking.

Only after this exhaustive research, can a valid claim with solid foundations in the historical material be reliably established. Pure speculation and irresponsible statement can be brushed aside. By doing so, one can avoid bringing irrelevant material into the debate. At the same time, one can sort out the appropriate materials that need to be included in the discussion.

The main point at issue in the reports was the land system, especially the system of "ownership". At first, the authors conducted an analysis of Daiso and Shōso as a historical background of "ownership" in Taiwan. They insisted that the Daiso-ko and Shōso-ko originally had had their own "rights" at the beginning, and as time went by, the quality of the "rights" changed. They also emphasized that a right of Daiso was not a real right, but a mere obligation. But these explanations were given with no evidence from historical materials, or chronological analysis of the materials, and were presented as if it was a foregone conclusion. On Chiki, the authorities treated it in the same way as Daiso at first, but as a result of pressure from Japanese traders, they changed their position and policies.

In colonial Taiwan, as a result of the urgent necessity of the colonial administrations and financial services sector, measures for the proper arrangement of landownership were called for. In particular, the issue of how to design a policy for the establishment of a 'right of ownership' was crucially important.

They were conscious of two kinds of structure of landownership. To

put it simply, in Roman (and modern German) style, an owner, like a 'king' of the land, dominates the territories exclusively. It is a 'hierarchical' system, and only after the owner's permission, can one establish a right (such as real rights granted by way of security, and so on). On the contrary, in the English style, claimants to an estate 'coexist' with each other, and everyone has everyone's "right" and takes part in the landholding. There is no rank, so there is no relationship of higher and lower, nor superiors and inferiors.

The authors of the *Taiwan Shihō* were well aware of these models. At the early stages of their investigation, they often explained the land system in Taiwan by technical terms derived from England law. They knew that an explanation based on English law was of practical value, but simultaneously, were aware of its limits. At the request of the administration and the strong urging of the financial community, as well as a doctrinaire belief among the scholars, a new explanation based on Roman system (Eigentum) came to prominence.

The authors were painfully conscious that the word "Gyōshu" meant the entire related persons who have their own "rights" to the land generally. But immediately, they tried to change the meaning of the word Gyō, to mean the landowner who had 'the most effective "right" in the land', which was comparable with the 'right of ownership'. It was contrary to the traditional use of the word and really a case 'putting the cart before the horse', but this way of thinking provided a powerful tool to satisfy the colonial demand.

The process of this conversion was concealed probably because it would have been politically inconvenient if it had come out. The authors carefully deleted the sentences concerning English law and those directly related to arguments about possession. In particular, they exerted great efforts to decrease the effectiveness of old title, such as Daiso. To provide protection for the new land system which was convenient to colonial policy, it was necessary to engage in this kind of concealment. They might have believed that they had been successful in hiding their intention, but it can now finally be disclosed as a result of painstaking historical analysis.

The fact that they once tried to adopt English law to explain but finally abandoned it is highly significant. Through the investigations of this, one can explore another potential for new understanding of the land system in Taiwan. Furthermore, one can find that the predecessors had already obtained some of these ideas. Close examinations of our 'history

of historiography' is crucially indispensable, otherwise such work would be meaningless.

The *Taiwan Shihō* was the "final" report in form, but the discussion of the problems was to be carried over, and ended in no unanimous conclusion. But it should not be criticized as a half-finished work. It is not right to jump to such a conclusion. It may seem as if the details about their arguments have been consigned to oblivion with the lapse of time, but it can be reconstructed by exhaustive textual-critique. The process of making the *Taiwan Shihō* was highly complicated, but its complexity is a rich source of interest, and should not be left unnoticed.

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Notes

※ This paper is a brief summary of the chapter 2 and 3 of an earlier work of mine. For details, see *Taiwan Shihō no Seiritsu Katei [The Process of Making the "Taiwan Shihō"]*, Fukuoka: Kyushu University Press, 2009 (The year in which these texts appeared for the first time is 2005, at Hōgaku Kyōkai Zasshi, vol.122, no.7, 8, and 9.). And I am particularly grateful for the assistance given to me by my colleague, Professor Mark D. Fenwick.

1) For an outline of the legal history of colonial Taiwan, see Paul Heng-Chao CH'EN, Japanese colonial legal institution in Taiwan, in *Kokka to Shimin–Kokka Gakkai Hyakunen Kinen, vol. 2 Seiji* & *Kokusai Kankei*, Tokyo: Yūhikaku, 1987, and Tay-sheng WANG, *Legal Reform in Taiwan under Japanese Colonial Rule, 1895–1945*, Seattle and London: University of Washington Press, 1999. See also my book review of this book in *Kokka Gakkai Zasshi*, vol.115, no.1/2, 2002.
2) Santarō OKAMATSU (1871–1921). A scholar of civil law. He was the son of the famous scholar of Chinese classics, Yōkoku OKAMATSU [岡松甕谷]. In 1894, he graduated from the Faculty of Law, the Imperial University of Tokyo, studied abroad in Germany, France, and Italy from 1896 to 1899, and was appointed a professor at Kyoto Imperial University. Shinpei GOTŌ [後藤新平], the civil administrator (Minsei Chōkan [民政長官]) of colonial Taiwan, invited him as a head of the commission for the research of the old laws and customs in Taiwan. In 1907, he became a director at the South Manchuria Railway Company. For details about his personal history, see Akira WANI, OKAMATSU Santarō, in *Hōgaku Kyōshitsu*, no.183, 1995.
3) Shūzō SHIGA, Shinchō no Hōsei, in Masataka BANNO, Masatoshi TANAKA and Shinkichi ETŌ eds., *Kindai Chūgoku Kenkyū Nyūmon*, Tokyo: University of Tokyo Press, 1974, p.308.
4) Masao FUKUSHIMA, *Chūgoku Nōson Kankō Chōsa to Hōshakaigaku*, Tokyo:

Chūgoku Nōson Kankō Kenkyūkai, 1957, p.25.

5) For details, see Waseda University Library and Waseda Institute for East Asian Legal Studies eds., *OKAMATSU Santarō Monjo Mokuroku*, Tokyo: Yūshōdō Archives Co. Ltd., 2008.
6) OKAMATSU was definitely the main author of the reports, but was not the only one involved. Sometimes he made use of the works of his subordinates, and quoted papers by other staffs in the Government-General in Taiwan. So it is more appropriate to say that OKAMATSU was a director (or, main editor) of the reports. To express esteem for these thankless tasks, it is more suitable to use the expression 'authors' and not 'author'.
7) See L. D. Reynolds and N. G. Wilson, *Scribes and Scholars: a guide to the transmission of Greek and Latin literature*, 3rd ed., Oxford: Oxford University Press, 1991.
8) Santarō OKAMATSU, Daiso-ken no hōritsujō no seishitsu [On legal aspects of Daiso-ken], in *Taiwan Kanshū Kiji*, vol.1, no.1, 1901.
9) Otto Stobbe, *Handbuch des Deutchen Privatrechts*, Berlin: W. Hertz, 2. Aufl., Bd.2, 1883, 3. Aufl., Bd.2, Halbbd.2, 1897. Compare §138: Juristische Natur der Reallasten in 3. Aufl. (S.49-64) with §101 in 2. Aufl. (S.240-250).
10) Hirondo TOMIZU, *Bukken to Saiken [Jus in rem and Jus in personam]*, Tokyo: Yūhikaku Shobō, 1900.
11) Pin-kung CHIANG [江丙坤], *Taiwan Chiso-kaisei no Kenkyū*, Tokyo: Tokyo University Press, 1974., pp.208-209.
12) A decision of the Court of Review, Civil Affairs Department, 25th Jul., 1900, in *Taiwan Nichinichi Shinpō*, 5th Aug. 1900, and *Taiwan Kanshū Kiji*, vol.1, no.3, 1901.
13) Kiryū Gyōshu-ken no sōgi [Dispute about Gyōshu-ken at Chilung], in *Taiwan Minpō*, 26th Feb. to 13th Mar., 1902.
14) An explanation about the origins of Daiso and Shōso in the *First Report* was also modified and reused at the *Taiwan Shihō*. The original text of the *First Report* was: "At that time, the cropper's right which a developer gave was a right of tenancy, but as it was a kind of perpetual lease, the possession of the land seems to be transferred to a cropper. So actually the right definitely has a vital aspect of a real right such as a perpetual lease in modern Japan and Emphyteusis in Roman law." (p.136). At the *Taiwan Shihō*, the underlined passage was deleted and the phrase with a dotted-underline was replaced by the expression: "had an aspect of a real right" (p.271). It seems that the authors became concerned about the problem of Daiso-ken, because the relationship between the word 'possession' and the 'right of ownership' was a sensitive one. At the same point, they also carefully changed the expression from "Gyōshu-ken" to "the right which the Gyōshu have" or "position as a Gyōshu". It seems that they purposely avoided using the word "Gyōshu-ken" as a legal term to explain the origin of Daiso.
15) Tomoe YOSHII, *Yoshii Shuzeikan Taiwan Zaimu Shisatsu Fukumeisho [A Report of the Inspection of Financial Affairs in Taiwan, by Mr. Yoshii, the Tax Bureau Officer]*, Tokyo: Ōkurashō Insatsukyoku, 1896. YOSHII graduated from the Imperial University of Tokyo in 1890, soon became the Ministry of Finance

official, and he was an official in the Tax Bureau at that time. After that, he entered the Bank of Japan in 1899.

16) It is perhaps a little surprising that the scholars who lived hundreds of years ago already had a deep understanding of the tax system in the Qing Dynasty.
17) Rinji Taiwan Tochi Chōsakyoku, *Taiwan Tochi Chōsa Jigyō Gaiyō [An Outline of a Government Undertaking for Land Investigation in Taiwan]*, [n.p.]: Rinji Taiwan Tochi Chōsakyoku, 1905, pp.42–43. NAKAMURA graduated from the Imperial University of Tokyo in 1893, soon became a Ministry of Finance official. In 1896 he became an administrative official of the Government-general of Taiwan, shortly after, became a counselor and investigative staff member for land system. In 1906 he became a vice-president of the South Manchuria Railway Company, and soon was promoted to the president in 1908. In 1918, he took office as the president of the Department of Railways, and in 1924, he was inaugurated as the Mayor of Tokyo. For details about NAKAMURA's personal history, see Tatsuo AOYAGI, *Mantetsu Sōsai NAKAMURA Yoshikoto to Sōseki*, Tokyo: Benseisha, 1996.
18) Nihon Kangyō Bank, *Taiwan Shisatsu Yōroku [A Digest of Inspection in Taiwan]*, Tokyo: Nihon Kangyō Bank, 1903.
19) NAKAYAMA became a counselor and secretary at the Government-General of colonial Taiwan in 1898, and transferred to the Ministry of Education in 1901. After that, he moved out to the Government-General of Korea. The changes in personnel among the colonial governments and the spread of administrative knowledge by them are worth consideration.
20) Seitarō NAKAYAMA, Tochi seiri ippan [Some aspects of land readjustment], in *Taiwan Nichinichi Shinpō*, 27th Aug. to 10th Sep., 1899.
21) Seitarō NAKAYAMA, *Minpō Bukken [On Real Right]: chapter 1 to 6*, Tokyo: Wafutsu Hōritsu Gakkō, 1903.
22) Seitarō NAKAYAMA, *Kankoku ni okeru Tochini kansuru Kenri Ippan [A Report about the Rights to the Land in Korea]*, [n.p.]: Fudōsanhō Chōsakai, 1906.
23) Seitarō NAKAYAMA, *Fudōsan Shin'yōron [On Real Estate Finance]*, [n.p.]: Fudōsanhō Chōsakai, 1906.
24) Seitarō NAKAMAYA, Kōshūwan ni tsuite (Dai 5 shō: Kōshūwan ni okeru gyōsei [On Kiachowwan (chapter 5: Administration at Kiaochowwan)], in *Taiwan Nichinichi Shinpō*, 18th to 25th Aug., 1899.
25) Shigetarō SAWAMURA, *Taiwan Seidokō [On the Institution in Taiwan]*, Taipei: Taiwan Sōtokufu Minseikyoku, 1896, pp.22–26. SAWAMURA was born in the family of a samurai in the Hikone domain, and served as an interpreter at that time.
26) Ryōzaburō KINASHI, Chikino mukigen keiyaku ni okeru kyūshutsu zeishutsu no kannen [On concepts of kyūshutsu and zeishutu in contracts of perpetual chiki], in *Taiwan Kanshū Kiji,* vol.2, no.9–11, 1902. KINASHI first served as an official interpreter at Taiwan from 1896, and became a temporary staff at the Government-General of Taiwan in 1898. After that he became a temporary staff (later, assistant member) of the commission for the researches prosecuted on the old laws and customs in Taiwan.

27) In a sense, writing this paper in English could be seen as a difficult undertaking because the English wording is immediately reminiscent of the Common law. Naturally, the arguments in the *Taiwan Shihō* were developed in Japanese language, and many legal terms from various countries such as Germany, France, and England were employed.
28) See the footnote no.18.
29) Santarō OKAMATSU, Nihon minpō no ketten wo ronjite Taiwan rippō ni taisuru kibō ni oyobu [About the faults in Japanese Civil Law and some hopes to legislation in Taiwan], in *Taiwan Kanshū Kiji*, vol.5, no.3, 1905.
30) See the footnote no.29.
31) Santarō OKAMATSU, Bukken keiyakuron [On real contract], in *Hōgaku Kyōkai Zasshi*, vol.26, no.1 and 2, 1908.
32) Santarō OKAMATSU, Tōkihō Ippan [On registration law], in *Hōsei Shinshi*, vol.8, no.6 to 11, 1904.
33) Rinji Taiwan Kyūkan Chōsakai, *Tochi Tōki Torrens Shi Seido [Torrens System in a Land Register]*, Rinji Taiwan Kyūkan Chōsakai, 1910.
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35) Rinji Taiwan Kyūkan Chōsakai, *Rinji Taiwan Kyūkan Chōsakai Hōan Shinsakai Daiyonkai Kaigi Gijiroku [The Minute of the 4th Meeting of Legislative Council in the Commission for the Investigation of Traditional Customs in Formosa]*, (held from 26th Aug. to 4th Sep., 1913), [n.p.],[n.d.].
36) On their personal history, see Yoshiaki HORISAKI, *Hyōden KIJIMOTO Tokizō*, Nagoya: Fūbaisha, 2006 and Kikuo ISHIDA, ISHIZAKA Otoshirō, in *Hōgaku Kyōshitsu*, no.181, 1995.
37) After the World War II, these unvarying supporters of German legal theory were modified by the famous scholar, Eiichi HOSHINO. See Nihon minpōten ni ataeta France minpō no eikyō, in *Nichifutsu Hōgaku*, no.3, 1965.

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