



Review: [Untitled]

Reviewed Work(s):

Legal Reform in Taiwan under Japanese Colonial Rule, 1895-1945: The Reception of Western Law by Tay-Sheng Wang

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The Journal of Asian Studies, Vol. 60, No. 1. (Feb., 2001), pp. 157-159.

Stable URL:

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Legal Reform in Taiwan under Japanese Colonial Rule, 1895–1945: The Reception of Western Law. By TAY-SHENG WANG. Seattle: University of Washington Press, 2000. viii, 288pp. \$65.00 (cloth).

To explain why this narrowly focused monograph will be of interest to a wide audience of East Asianists and legal historians, author Tay-sheng Wang emphasizes Japan's anomalous position as a non-Western agent of "Westernization." Wang argues that "Taiwan's experience (and that of Korea) is . . . unique among countries receiving modern Western law in that Western law was imposed to replace traditional Chinese law by an Asian colonialist power (p. 5)." Wang concludes that the reception of Western law in Taiwan was a complex and uneven process, but that "legal modernization was more smoothly implemented in Taiwan than in other colonies (p. 183)." In some areas, like real estate and business law, changes were thoroughgoing and had lasting effects. But in other realms, the transition Wang alternately calls "modernization" and "Westernization" was incomplete or absent. Even after 1923, when most of the Japanese Civil Code was extended to Taiwan due to a broad shift in colonial policy towards assimilation and integration, Taiwan was ruled more as a colony than as a Japanese prefecture. As a result, the Japanese regime put the brakes on the transformation it had initiated, crushing an indigenous movement to create a Taiwanese parliament and secure political rights for colonial subjects.

Of what significance was it that Japan, an Asian power, initiated Western-style legal reform in Taiwan? The answer appears to be twofold. First, though Japan had the organizational and technological capacities of a modern state, it lacked a Western tradition of individual rights. Therefore, Japanese legal reform stressed order over law. Second, Japan's long historical experience under the cultural influence of the Middle Kingdom enabled its officials to systematize and apply Ch'ing law and Taiwanese customary law while they gradually and flexibly introduced Western-style legal reforms to Taiwan. These two lines of argument are fleshed out in chapters four ("Criminal Justice") and five ("Civil Justice"), which contain the book's major contributions.

Wang argues that the Japanese modernized criminal justice on Taiwan by extending state-sponsored surveillance, mediation, arrest, judgment, and punishment down to the village level, removing the multiple centers of authority present under Ch'ing rule. But when it came to the more liberal aspects of Western criminal law, like due process, equality of punishment, individual responsibility, and a non-partisan judiciary, modernization was not forthcoming, reflecting both the illiberal elements of Japan's domestic criminal law and the coercive nature of colonial rule:

Taiwanese reception of Western criminal law was thus restricted to the pro-government character of the legal reform in the colony. The protection of human rights in the Western criminal process was often overlooked in reality by the colonial authorities. The illegal massacre of 'bandits,' arbitrary disposition of so-called vagrants, prevalent police torture, and so on. . . . Therefore, what Taiwanese people learned about from experience with the colonial legal reform was not individual-rights-oriented Western criminal justice. (p. 137)

In his chapter on civil justice, Wang argues that civil law reform, compared to criminal law reform, was less tightly bound to the exigencies of colonial domination. To illustrate, Wang provides a lengthy and detailed explanation of how Ch'ing period forms of land tenure were supplanted by real-estate law based on the concept of "one

land, one owner." By buying out a group of rentiers known as large-rent holders and transferring rights of ownership to owner-cultivators, the Japanese government began to directly tax almost all agricultural land around 1905, both increasing state revenue and securing cultivators' land tenure rights against claims by third parties. Those without the inclination or wherewithal to register their land were left vulnerable to claims by Taiwanese with more legal savvy, or to confiscation by the state.

Wang's acknowledgment that land-law reform may have cost some Taiwanese their property might have been pursued further. No mention is made of the inability or unwillingness of the colonial government to register and protect Aborigine land tenure, or the subsequent Western-style policies of dispossession and forced relocation in Taiwan's central mountain areas.

Wang's treatment of the transition from traditional to modern commercial and real estate law in Taiwan is nuanced, paying close attention to the interaction between local conditions and changes in metropolitan directives. All three sections of chapter five, "Real Estate Law," "Business Law," and "Family Law," abound with detailed explanations of Taiwanese, Ch'ing, and Japanese legal terms and principles. Besides legal scholars, social historians should find much of interest in this thoroughly researched study.

This book is unabashedly nationalistic in structure and tone. Wang argues that during Japanese colonial rule, Taiwanese society became acclimated to a Westernized court system and many, though not all, of the legal institutions we might call modern. Though Chiang Kai-shek was also familiar with aspects of Japanese Westernized law, the mainland's desperate political situation prevented the development of a comparable set of legal institutions in China proper during the same period of time. By 1945, argues Wang, Taiwan had assumed its essential character, and what followed was the imposition of yet another alien regime (p. 6).

Whatever the merits of this particular argument, Wang's nationalistic framework obscures the fact that some Taiwanese benefited much more than others from legal reform under Japanese rule, and that many Japanese, particularly rice growers, did not benefit from Japan's policies. On the one hand, Wang finds fault with the conquerors because they ruled not for the benefit of the Taiwanese, but for Japan. On the other hand he finds that Japan was no worse, and possibly much better, than other contemporary colonial regimes. By conceptualizing Taiwanese and Japanese interests as primary units of analysis, Wang glosses over the genuine contempt many Japanese leaders felt for immigrants to Taiwan from Okinawa and Kyushu, and the cooperative atmosphere that obtained between Japanese rulers and some of Taiwan's leading families. Once these internal divisions are taken into account, it is not too difficult to see how Japanese rule could have been both beneficial and detrimental to the Taiwanese: the question is, which Taiwanese?

Though Wang makes many obligatory denunciations of the Japanese aggressors, he argues that their regime was no more despotic than ones imposed by democratic colonial powers. Wang notes that "in 1916 [the United States] promised colonized Filipinos their own independent state but in 1921 retreated from this promise" (p. 172). In fact, the U.S. colonial government began holding elections in the Philippine Islands in 1907, and was roundly criticized as impracticably democratic and fiscally irresponsible by Japanese observers at the time. Fifteen years later, an American vice governor general of the Philippines reported that Japanese restrictions upon Taiwanese political freedoms and Taiwan's robust economy were two sides of the same coin, a Japanese policy which put commercial development ahead of political liberalization. In a word, contemporary observers were aware that modernization and democratization

are different processes, and often at loggerheads when modernization is defined as capitalist development. Had Wang made distinctions between democratization, liberalization, and modernization, the confusing term Westernization might have been avoided, and fruitful comparisons with other colonial situations more forcefully executed.

This well researched volume will open up many avenues for comparative colonial studies; it deserves a wide readership. Despite this reviewer's reservations about its nationalistic framework and frequent use of the undefined and confusing term Westernization, this book is a valuable contribution to our knowledge about the technologies and consequences of modern colonial rule in East Asia. Tay-sheng Wang is especially to be commended for analyzing and synthesizing a wide variety of Chinese- and Japanese-language legal documents. The appendices of English translations of foundational colonial laws and the ample glossary of Chinese and Japanese terms make this book all the more valuable.

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CHINA

De l'un au multiple: Traductions du chinois vers les langues européennes. Edited by VIVIANE ALLETON and MICHAEL LACKNER. Paris: Éditions de la Maison des Sciences de l'Homme, 1999. viii, 341 pp.

These essays comprise a marvelous collection on the manifold problems that translators from Chinese into European languages confront. Several of the authors are among the finest living translators in the world. After a bilingual French-English introduction, eight of the essays that follow are in French and seven in English—each with a brief introductory summary in the other language. As Alleton and Lackner note in their introduction, the volume aims not at articulating a new theory of translation—let us all thank them for that—but at looking at a number of specific issues that translators face in surmounting the gulf that separates Chinese and the cultural-linguistic universe of Chinese-language texts from Western languages and the West. As they put it, “perhaps. . . one of the conclusions of our work: there are no untranslatable texts but only lazy translators” (p. 15). How refreshing to find such simple honesty and willingness to engage in hard work.

Wolfgang Bauer examines the phenomenon of an “intermediate language” in producing German-language translations of Chinese originals; that is, works rendered into French or English first and then retranslated into German. The reverse process is familiar to us from the extremely prolific work of Lin Shu. Bauer demonstrates that, while direct translators often had great difficulty making their texts sing in French or German, the retranslators were not tied to the specifics of the original and thus often produced works of enduring beauty in German. We have here precisely what the French mean when they refer to such a translation as *la belle infidèle*. Federico Masini's survey essay looks at Italian translations from Chinese literature. Again, a number of the more important Chinese texts entered Italian first through intermediate languages, but that trend is now, as in German, a thing of the past.