

殖民現代性法學：
日本殖民統治下台灣現代法學知識的發展(1895-1945)

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台灣於 1895 年之後，方因新來的日本統治者已繼受現代法制及法學，而有可能發展現代法學知識。日治前期因日本帝國對台灣採取特殊統治主義，而在台灣發展出具有在地特色的「舊慣法學」，藉以支持殖民地行政、司法乃至立法上的需要，故當帝國的殖民統治政策轉向「內地延長」，舊慣法學即告沒落。緊接著盛行的是「內地延長法學」，在台灣的法學僅僅作為戰前日本法學的一個分支。1928 年所設的台灣第一所現代法學教育機構：臺北帝大政學科，即是以日本法律及現代法學理論的研究為主、台灣在地法律問題為輔，故少有生產與殖民地台灣或台灣人有關的法學知識。不過，當時在法學大眾化上，已獲某程度的進展。且自 1920 年代起已有某些台灣政治異議者，以現代法學知識來維護台灣人主體及其權益，展現出「台灣人法學」，但其幾乎被排除於台灣學術界之外；少數得以在學術界發聲的台灣法律人，似也只能在國家法尚尊重台灣人習慣的親屬繼承事項上有所發揮。至日治晚期，台灣的法學更是跟隨著進入戰爭的日本帝國，走向法西斯化。

關鍵詞：法學、舊慣、內地延長、臺北帝國大學、台灣人、法西斯化

Jurisprudence with Colonial Modernity: The Development of Modern Knowledge of Law in Taiwan under Japanese Colonial Rule (1895-1945)

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Taiwan could not developed modern knowledge of law until she was ruled by Japanese colonialists, who had received modern law and jurisprudence from the West before their acquiring Taiwan. During the former period of Japanese rule, “old customs jurisprudence,” with local characteristics, was shaped for the sake of the judicial, executive, and even legislative needs in colonial Taiwan, and therefore declined after the policy of the colonial governance turned to “the extension of mainland.” Next, “jurisprudence for the extension of mainland” became prevalent. The jurisprudence in Taiwan was thus nothing but a branch of prewar Japanese jurisprudence. The first institute for modern legal education in Taiwan was established in 1928 and named as: Legal Division, College of Liberal Arts and Political Science, Taihoku Imperial University. This division, however, paid more attention to Japanese laws and modern jurisprudence, rather than legal issues in Taiwan. Only a few knowledge concerning colonial Taiwan or Taiwanese was created by this institution. Nevertheless, some dissident Taiwanese advocated “Taiwanese jurisprudence” in order to protect the identity and interests of the Taiwanese. They unfortunately were excluded from the academic circle of colonial Taiwan. Few Taiwanese jurists had their voice on the family and succession law, which was allowed to follow Taiwanese customs in the positive law. In the late period of Japanese rule, the Fascist approach gradually dominated the legal community of Taiwan, who must follow the step of wartime Japan.

Keywords : Jurisprudence, old customs, the extension of mainland, Taihoku Imperial University, Taiwanese, Fascist