Article

The History of Administrative Law in Taiwan under the Japanese Rule Era (1895-1945): A Neglected Yet Valuable Piece of Legal History for Research*

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ABSTRACT

The social and historical context should not be ignored in administrative legal studies because the gestation, generation, evolution, and transformation of the connotations of administrative laws are inevitably deeply influenced by the surrounding politics, economics, society, and culture. This is why research on the development and evolution of administration law plays a crucial role in administrative legal studies.

A review of Taiwanese administrative law textbooks shows that administrative legal history related articles are mainly focused on the development of administrative law in Continental European countries (especially Germany). Taiwanese administrative laws' development is rarely addressed. If it was addressed, the article usually starts with the establishment of the Republic of China, ignoring the administrative law developments under the Japanese Rule Era in Taiwan. However, since the connotations of administrative laws are deeply influenced by the surrounding politics, economics, society, and culture, exploring Taiwanese administrative law during the period of Japanese rule is crucial in understanding the development of Taiwanese administrative law.

Taking the legal history view of "focusing on the law of the land", this paper

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selects all the administrative laws that were previously implemented in Taiwan as research subjects. This paper will first provide an overview of the constitutional system under Japanese Rule Era in Taiwan. Next, it will explain and analyze the development and characteristics of administrative laws under Japanese Rule Era. Finally, this paper will provide a comprehensive observation of the development of modern Taiwanese administrative law while trying to draw historical lessons from the implementation situations of these laws, identifying the normative principles that are in line with the life experiences and legal emotions of Taiwanese people. This paper is expected to benefit the establishment of Taiwanese administrative legal history.

Keywords: *Taiwanese Administrative Law, Japanese Rule Era in Taiwan, Legal History, Sources of Administrative Law, Taiwanese Local Government System*

CONTENTS

I. INTRODUCTION

Due to the characteristics of administration, the study of the development and evolution of administration law forms an indispensable aspect of administrative law research. Since administration, a role of the state, serves to handle public affairs and shape social life to achieve national goals, it is a series of future-oriented, continuous social formation processes. As a result, the gestation, generation, evolution, and transformation of the connotations of administrative law that governs administration would inevitably be deeply influenced by politics, economics, society, and culture. Therefore, a better understanding of the social context in which the administrative law was developed would shed light on administrative legal studies. This is also why a suitable selection of the period of history to study is crucial in achieving the purpose of administrative law history research.

Existing research on the legal history of Taiwanese administrative law development mostly begin their discussion from the time of the founding of the Republic of China (ROC) in 1911, basing their context on the "Law of the Republic of China".[1] However, whether such a timeframe is well-suited for the purpose of historical legal research is questionable. The reason is that when the laws of ROC were enacted, Taiwan was not within the territory of ROC. Rather, Taiwan was under the rule of the Japanese Empire. As the development of administrative law is deeply influenced and shaped by the social context, the ROC administrative laws before 1945 are less relevant to the development of current administrative laws in Taiwan than those enacted under the Japanese Rule. Furthermore, although the development of the ROC administrative law in mainland China is not without reference value, differences in the political, economic, social and cultural conditions, and background of Chinese and Taiwanese societies are not to be neglected.

Therefore, exploring Taiwanese administrative law during the period of Japanese rule is essential for gaining a deeper understanding of the development of current administrative laws in Taiwan. Analysis of historical data from this period could facilitate the understanding of the following questions: First, which systems or norms were absent from the ROC administrative law, yet had a profound impact on the development and

1. *See, e.g.*, Hwang Giin-Tarng (黃錦堂), *Xingzheng Fa de Gainian, Xingzhi, Qiyuan yu Fazhan* (*行政法的概念、性質、起源與發展*) [*Concepts, Nature, Origin and Development of Administrative Law*], *in* 1 XINGZHENG FA (行政法) [ADMINISTRATIVE LAW] 34, 36-65 (Weng Yueh-Sheng (翁岳生) ed., 2000) (arguing in the third chapter that "the occurrence and development of administrative law in our nation" began its discussion from the founding of Republic of China in 1912). For discussions on individual administrative law, *see* LIN JI-DONG (林紀東), XINGZHENG FA (行政法) [ADMINISTRATIVE LAW] 457-521 (4th ed. 1982). For example, the Administrative Appeal Act was formulated in 1930, the Administrative Litigation System was initiated in 1914, the Administrative Litigation Act was enacted in 1932, and the Administrative Execution Act was formulated in 1913.

evolution of Taiwanese administrative law. Second, which systems or norms were replaced by the ROC administrative law, and thus their influence on current Taiwanese administrative law was cut off. Third, which systems or norms were interrelated, thus forming a "relay" relationship with the ROC administrative law. Although a few scholars have started to investigate the Taiwanese legal history rather than the ROC legal history, much more needs to be done to fill in the knowledge gaps in this long-neglected area.[2]

This paper aims to promote such research and increase interest among scholars in this long-neglected research area. It will do so by first laying out the backgrounds of the Japanese rule era, including the history division of the era, the constitutional system under the Japanese Rule, and the sources of administrative law and their normative hierarchy. Next, this paper will introduce the administrative laws under the Japanese Rule, including administrative organization laws, administrative action laws and the administrative remedy act. Finally, this paper will provide some preliminary observations to inspire subsequent research.

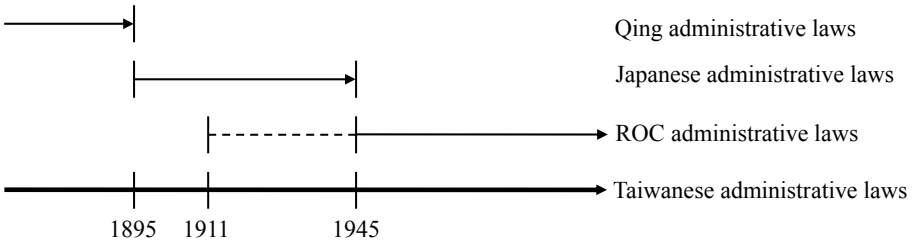

Figure 1: Development Process of Modern Taiwanese Administrative Law

2. Pioneering research was done by WANG TAY-SHENG (王泰升), who wrote TAIWAN FALU SHI DE JIANLI (台灣法律史的建立) [ESTABLISHMENT OF TAIWANESE LEGAL HISTORY] (1997), TAIWAN FALU SHI GAILUN (台灣法律史概論) [INTRODUCTION TO TAIWAN'S LEGAL HISTORY] (2001), and TAIWAN FA DE DUANLIE YU LIANXU (台灣法的斷裂與連續) [THE FRACTURE AND CONTINUATION OF TAIWANESE LAW] (2002). However, the administrative legal history under Japanese Rule was only briefly investigated.

II. BACKGROUND OF THE JAPANESE RULE ERA[3] IN TAIWAN

Before looking at the administrative law in Taiwan under Japanese rule, acquiring certain background knowledge is essential for the purpose of this study. This section will first introduce the history division of the Japanese rule era in Taiwan, then discuss the constitutional system under Japanese rule, and finally explain the sources of administrative law and its normative hierarchy during this era.

A. *History Division of the Japanese Rule Era in Taiwan*

The understanding of the history division of the Japanese rule era in Taiwan is important and helpful for research because administrative laws in that era, including the administrative organization, effects, and even remedy, differed in content and appearance between different historical stages. This section will first briefly explain how Taiwan came under the Japanese rule and how this era ended. Then, it will present how historians divide the Japanese rule era in Taiwan.

The era of "Japanese rule" in Taiwan refers to the period between May 8, 1895 and October 24, 1945. Sovereignty over Taiwan was transferred from the Qing Empire in China to the Japanese Empire on May 8, 1895, when the two empires exchanged the ratifications of the Treaty of Shimonoseki. However, due to the resistance of the residents in Taiwan, it was not until October 19, 1895 that the Japanese Empire defeated the local rebels and began its actual reign over Taiwan.[4] The Japanese rule in Taiwan

3. The 1895-1945 period is sometimes called the "Japanese Colonial Era", *see, e.g.*, Tay-Sheng Wang, *Translation, Codification, and Transplantation of Foreign Laws in Taiwan*, 25 WASH. INT'L L.J. 307, 315 (2016); UWE KISCHEL, COMPARATIVE LAW 733 (Andrew Hammel trans., 2019). However, it is argued that "Japanese Colonial Era" is more of a political term than a legal one. From a legal perspective, the Japanese Empire not only named Taiwan as its "foreign land", but also strived to build a "foreign land legal system", covering Taiwan, Korea and the Sakhalin Island, with the public law concepts it received from Germany. *See* SHIRŌ KIYOMIYA (清宮四郎), GAITI HOUZYOSETU (外地法序説) [INTRODUCTION TO THE LAW OF FOREIGN LAND] (1944); Takashi Koganemaru (小金丸貴志), Rizhi Taiwan "Fazhi" de Jiantaao: Cong Bijiaofa Chufa (日治台灣「法治」的檢討－從比較法史出發) [Discussion on the "Rule by Law" in Taiwan under Japanese Colonial Rule: A Perspective from the Comparative Legal History] 1 (June 2012) (unpublished Ph.D. dissertation, National Taiwan University). As such, during the 1895-1945 period, Taiwan was essentially a special "administrative region" of Japan, rather than a mere colony. On the basis of this understanding, this article adopts the more legally-inclined (and more neutral) term of "Japanese Rule Era".

4. On May 25 of the same year, the Qing governor (acting governor) Tang Ching-Sung proclaimed Taiwan as the "Republic of Formosa" in Taipei and was inaugurated as President, with Qiu Feng-Jia appointed as the Vice-President. On May 29, the Japanese army landed on Taiwan. On June 4, Tang Ching-Sung escaped to Fujian. On October 19, the local government forces led by General Liu Yung-Fu were attacked by the Japanese army and he fled the island. Tainan was conquered and the Republic of Formosa was declared as collapsed. Since then, the Empire of Japan began its actual reign over Taiwan. *See* PENG MING-MIN (彭明敏) & HUANG CHAU-TANG (黃昭堂), TAIWAN ZAI GUOJIFA

ended on October 25, 1945, when the Chief Executive of Taiwan Province, Chen Yi accepted the surrender of the Japanese representative, Commander of the Tenth Area Army, and Governor-General of Taiwan (GGT), Rikichi Ando.

There are two major ways to divide the Japanese Rule Era History in Taiwan. The most general way emphasizes the administrative organization and occupation attributes, dividing the rule of the Japanese Empire in Taiwan into two phases--"the Period of Military Administration" and "the Period of Civilian Administration", divided by the effective date of the "Regulations of the Governor-General Office of Taiwan". The former period was from June 17, 1895 (the start of governance)[5] until March 31, 1896, the issuing date of the "Regulations of the Governor-General Office of Taiwan".[6] The latter was from April 1, 1896, the entry into force of the same regulation until the end of the World War 2 and Japan's rule in 1945. The "Period of Civilian Administration" could be further divided into two phases by August 1919.[7] Before August 1919, the GGT system followed a "military governor system," which implied that the GGT had to be a General, Lieutenant General, or Admiral of the Army or Navy. The GGT tended to display features of a military government and could be regarded as the "unification of military and civilian power." From August 1919 on, the GGT system followed a "civilian governor system." The GGT was no longer restricted to Army and Navy Generals holding posts of military command. This enabled the separation of the GGT from the supreme command system, forming a separate "civil service" body, and hence could be regarded as the "separation of military and civilian power"[8] (see Figure 2).

SHANG DE DIWEI (台灣在國際法上的地位) [STATUS OF TAIWAN IN INTERNATIONAL LAW] 9-11 (Cai Qiu-Xiong (蔡秋雄) trans., 1995); Wu Mi-Cha (吳密察), *Yibajiuwu Nian "Taiwan Minzhu Guo" de Chengli Jingguo* (*一八九五年「台灣民主國」的成立經過*) [The Study on the Establishment of the Republic of Taiwan in 1895], 8 TAIDA LISHI XUEBAO (臺大歷史學報) [HISTORICAL INQUIRY] 83 (1981); KIRO MUKOYAMA (向山寬夫), RIBEN TONGZHI XIA DE TAIWAN MINZU YUNDONG SHI (SHANG) (日本統治下的台灣民族運動史（上）) [A HISTORY OF THE NATIONAL MOVEMENT IN TAIWAN UNDER JAPANESE RULE (PART ONE)], 73-140 (Yang Hong-Ru (楊鴻儒), Chen Cang-Jie (陳蒼杰) & Shen Yong-Jia (沈永嘉) trans., 1999).

5. On June 17, 1895, Kabayama Sukenori, a Japanese military general, was inaugurated as the first Governor-General of Taiwan. As such, the date is generally recognized as the beginning of Japan's formal rule of Taiwan.

6. *See* HUANG CHING-CHIA (黃靜嘉), RIJU SHIQI ZHI TAIWAN ZHIMIN FAZHI YU ZHIMIN TONGZHI (日據時期之台灣殖民法制與殖民統治) [TAIWAN COLONIAL RULE OF LAW AND COLONIAL RULE IN THE PERIOD OF JAPANESE OCCUPATION] 63 (1960); WANG TAY-SHENG (王泰升), TAIWAN FALU SHI GAILUN (台灣法律史概論) [INTRODUCTION TO TAIWAN'S LEGAL HISTORY] 148 (5th ed. 2017) (recording the dates as between August 6, 1895 and March 31, 1896).

7. *See* HUANG, *id*. at 151, 154.

8. However, since October 1936, when Taiwan entered the quasi-war system, a military official (Admiral Seizo Kobayashi) was appointed to the post of GGT. The system reverted to the military governor system, which lasted till the end of Japanese rule.

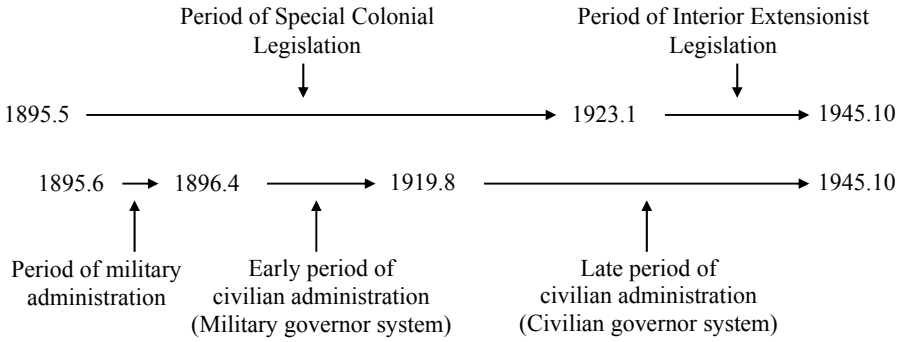

Figure 2: Historical Stages of Taiwan under Japanese Rule

The other way focuses more on the perspective of the "legislation," using January 1, 1923, the entry into force of "*Law No. 3*" in Taiwan, as the boundary for history division.[9] The period before this date is known as the "Period of Special Legislation", since legislations were principally in the form of "*ritsurei* (律令) legislation", which were legislative orders issued by the GGT. By contrast, the period thereafter is known as the "Period of Imperial Ordinance Legislation" or the "Period of Interior Extensionist Legislation". In this period, legislations were mainly in the form of "Imperial Ordinances", meaning that the Japanese Central Government (the Cabinet) enforces Japanese mainland laws in Taiwan through Imperial Ordinances.

B. *The Constitutional System under Japanese Rule*

Although administrative law usually does not alter much when the constitution changes, it does not mean that the understanding of the constitution is irrelevant to the mastering of the development and evolution of administrative laws.[10] Instead, the understanding of the constitution is

9. While Law No. 3 *per se* was effective from January 1, 1922, it was not applicable to Taiwan until January 1, 1923, via a *shikō chokurei* promulgated by the Japanese Central Government. Therefore, from a substantive point of view, it is "January 1, 1923" that should be taken as the dividing point of the two periods. *See* Wang, *supra* note 3, at 315.

10. For example, when Germany transitioned from a constitutional monarchy to a democratic republic (the Weimar Constitution period) around the start of the 20th century, the administrative laws underwent minimal changes. In respond to this observation, the German master of administrative law Otto Mayer wrote that "So I have to return to this work! No new or major things have been added between 1914 and 1917. 'Constitutional law dies, administrative law survives'; this has long been observed elsewhere. We have only to correct the connecting points . . ." (So mußte ich den doch noch einmal an diese Arbeit gehen! Groß Neues ist ja seit 1914 und 1917 nicht nachzutragen. "Verfassungsrecht vergeht, Verwaltungsrecht besteht"; dies hat man anderwärts schon längst beobachtet. Wir haben hier nur die Anknüpfungspunkte entsprechend zu berichtigen. . . .) *See* 1 OTTO MAYER, *Preface*, *in* DEUTSCHES VERWALTUNGSRECHT (3rd ed. 1924).

essential for the study of administrative law's development. The reason is that without referring to the constitutional norms and system, it would be difficult to comprehend the essence and context of the development of administrative laws. The study of administrative legal history would thus be reduced to to a collation and compilation of administrative laws. Thus, this section will briefly analyze the constitutional system of Taiwan under Japanese rule, which forms the basis for observing the history of Taiwanese administrative law under Japanese rule.

1. *The "Establishment" of the Constitution in Taiwan and the Japanese Meiji Constitutional System*

That whether the Meiji Constitution was implemented in the early period after Taiwan was ceded to the Japanese Empire at the end of the 19th century remains an undecided issue, subject to academic debate. Japan had always been reluctant to legally recognize Taiwan as a "colony", but preferred to call it "new territory" or "foreign land." As such, it would be inappropriate to explicitly exclude Taiwan from the Meiji Constitution's scope of application, as would the Western Countries do to their colonies. Instead, Japan proclaimed that the Meiji Constitution was to be "partially implemented" in Taiwan. It was not until 1899 that the official views of the Japanese government were declared: the Constitution of the Empire of Japan would be fully implemented *ab initio* in Taiwan.[11] Thus, in a sense, the Meiji Constitution was the "first" constitutional code implemented in Taiwan. However, whether this implied that the principles and spirit of constitutionalism could take hold in Taiwan remains to be verified.[12]

Before the Second World War, as the Japanese Meiji Constitution was under a constitutional monarchy,[13] the constitution enacted by the sovereign

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11. *See* Wang Tay-Sheng (王泰升), *Xifang Xianzheng Zhuyi Jinru Taiwan Shehui de Lishi Guocheng ji Xingsi* (*西方憲政主義進入臺灣社會的歷史過程及省思*) [*Reflections on the Introduction of Western Constitutionalism into Taiwan's Society*], *in* 8 XIANFA JIESHI ZHI LILUN YU SHIWU (憲法解釋之理論與實務) [THEORIES AND PRACTICE OF CONSTITUTIONAL INTERPRETATION] 49, 60 (Liao Fute (廖福特) ed., 2012).

12. *See* WANG TAY-SHENG (王泰升), *Taiwan Rizhi Shiqi Xianfa Shi Chutan* (*台灣日治時期憲法史初探*) [*Preliminary Study of the Constitutional History in Taiwan under Japanese Rule*], *in* TAIWAN FALU SHI DE JIANLI (台灣法律史的建立) [ESTABLISHMENT OF TAIWAN'S LEGAL HISTORY] 183, 221 (Wang Tay-Sheng (王泰升) ed, 2006).

13. On February 11, 1889, the Meiji Emperor promulgated the Constitution of the Empire of Japan (known as the "Meiji Constitution"), the first modern written constitution in East Asia. Its content and structure were mainly based on the German Prussian constitution, with Article 1 stipulating that the "Empire of Japan shall be reigned by a line of Emperors unbroken for ages eternal." The Emperor united sovereignty over the legislation, judiciary and administration. In the following year (1890), the Imperial Diet was convoked to establish the parliamentary politics of the constitutional monarchy.

Emperor was by nature an "imperial constitution".[14] According to Article 4 of the Meiji Constitution,[15] the head of the Empire shall exercise the rights of sovereignty in accordance with the provisions of the constitution. Therefore, at that time, the implementation of the constitution not only represented the basis for the exercise of national sovereignty, it also laid out the methods and limits on exercising these power. Essentially, the Meiji Constitution followed the Continental Europe's constitutional monarchy, with the Emperor as the sovereign of the nation and beneath him, a cabinet system with the separation of powers.

In brief, the Emperor exercised the legislative power with the "consent" (opinions) of the Imperial Diet (Article 5 of the Meiji Constitution).[16] The Emperor might open, close, and dissolve the Imperial Diet, and the laws decided by the Diet must be issued and promulgated by the Emperor so as to take effect. The Emperor exercised administrative power, including the enforcement of laws and issuing of ordinances. This required the countersignature of a "Minister of State" (a member of the Cabinet), unless there was an urgent necessity to issue ordinances in place of the law.

Further, according to Article 11 of the Meiji Constitution, the Emperor had the supreme command of the army and navy.[17] The Emperor would directly exercise this "supreme command" by issuing "military orders" through the "Ministry of War" (Imperial Japanese Army General Staff and Imperial Japanese Navy General Staff). This was not supervised by the Imperial Diet, nor would this require the countersignature of a Minister of State. Thus, it formed an independent power beyond administrative powers.[18] Judicial powers were exercised through the "Courts of Law", in accordance with the law, and in the name of the Emperor. Other government bodies were not permitted to interfere.

2. *The Legislative System*

The partial implementation of the Meiji Constitution in Taiwan is

14. This is similar to the constitutional system of Germany in the 19th century. It is only in the development of administrative law that this period is known as the "period of civil constitutional state in form."

15. DAI NIHON TEIKOKU KENPŌ [MEIJI KENPŌ] [MEIJI CONSTITUTION], art. 4 (Japan), "The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution." Translated from Asia for Educators, Columbia University.

16. DAI NIHON TEIKOKU KENPŌ [MEIJI KENPŌ] [MEIJI CONSTITUTION], art. 5 (Japan), "The Emperor exercises the legislative power with the consent of the Imperial Diet." Translated from Asia for Educators, Columbia University.

17. Translated from Asia for Educators, Columbia University.

18. This situation is somewhat similar to Taiwan's old system of national defense, which had separate systems for the powers of "military administration" and "military order."

somewhat dissimilar to the above regime. First, in 1896, the Imperial Diet enacted Law No. 63, i.e., "The law relating to the laws and ordinances to be enforced in Taiwan" (台湾ニ施行スヘキ法令ニ関スル法律, hereinafter referred to as "Law No. 63"). Article 1 stipulated that "[t]he Governor-General of Taiwan may issue ordinances with the same effect as statute within his jurisdiction." This type of ordinance was generally known as "*ritsurei*." In terms of procedure, the ordinances would first need the votes of the "GGT Consultative Council", before obtaining approval from the Emperor through the Minister of Colonial Affairs. Furthermore, Article 5 stated that "[a]ll or a portion of statutes enforced in the present or in the future that are to be applied to Taiwan shall be issued by ordinances." According to this provision, the Japanese Central Government had to use ordinances to enforce Japanese statutes in Taiwan; these were known as "ordinances for application" (*shikō chokurei*, 施行勅令).

It was a controversial issue whether the Japanese Imperial Diet may, constitutionally, delegate legislative power to the executive branch in such a collective manner. This further gave rise to another controversy as to whether the Meiji Constitution should be enforced in Taiwan, known as the "issue of Law No. 63".[19] According to Article 6 of Law No. 63, the law was originally intended to be provisional, and should expire three years after the effective date. In practice, it was repeatedly extended (three extensions, each for a three-year period). Hence, there were calls on the government to replace "Law No. 63" with new laws.

In 1906, the Japanese Imperial Diet issued Law No. 31, "The law relating to laws and ordinances to be enforced in Taiwan" (台湾ニ施行スヘキ法令ニ関スル法律) to replace Law No. 63. Article 1 stipulated that "[i]n Taiwan, matters to be regulated by statute shall be provided by ordinances issued by the Governor-General of Taiwan." Although the literal meaning of this provision was different from that of Law No. 63, its connotations remained unchanged, preserving the right of the GGT to issue *ritsurei*. Notable differences included the abolishment of the GGT Consultative Council procedure in enacting ordinances, and the stipulation that *ritsurei* may not violate the statutes or *shikō chokurei* that have taken effect in

19. *See* Li Hong-Si (李鴻禧), *Rizhi Shiqi Taiwan Fazhi Wenti de Zhengjie Shisuo-Shishi Xianzheng de "Yiguoliangzhi"* (*日治時期台灣法制問題的癥結試索－實施憲政的「一國兩制」*) [*Testing the Crux of the Issue in the Taiwanese Legal System under Japanese Rule-Enforcing "One Country, Two Systems" Constitutional Government*], *in* TAIWAN FAZHI YIBAINIAN LUNWENJI (台灣法制一百年論文集) [ESSAYS ON EVOLUTION OF TAIWANESE LAW] 25, 34-38 (Huang Zongle (黃宗樂) & Taiwan Faxuehui (台灣法學會) [Taiwan Law Society] eds., 1996); WU MI-CHA (吳密察), *Mingzhi Sanwu Nian Riben Zhingyang Zhengjie de "Taiwan Wenti"* (*明治三五年日本中央政界的「台灣問題」*) [*The "Taiwan Issue" in the Japanese Central Political Circle in Meiji 35*], *in* TAIWAN JINDAI SHI YANJIU (台灣近代史研究) [RESEARCH ON MODERN TAIWANESE HISTORY] 109, 109 (Wu Mi-Cha (吳密察) 3rd ed. 1994).

Taiwan. Similar to Law No. 63, Law No. 31 was also provisional and had a specified period of validity (five years). However, this was also extended three times.

In 1921, Law No. 3 was enacted by the Empire of Japan to cooperate with the policy of interior extensionism of Japanese law, and was effective from January 1, 1922. Aside from preserving the power of the GGT to issue *ritsurei*, the most prominent feature of this law was that "ordinances for application" were moved to Article 1, while "ordinances for exception" (*tokurei chokurei*, 特例勅令) was added, giving the Japanese Central Government (the Cabinet) the power to create special provisions on basis of the special needs of Taiwan. Furthermore, this law did not specify a validity period and was considered a permanent law. This was vastly different from the provisional nature of the previous two laws. At this point, the legislative power and the normative system of Taiwan under Japanese rule had largely been shaped.

In summary, Taiwanese statutes under the Japanese rule followed a type of "delegated legislation" model, which could be further divided into three systems (see Figure 3).

(a) "*Ritsurei,*" issued by the GGT, as delegated by the Imperial Diet;

(b) "Ordinances for application," or "*shikō chokurei*", enacted by the Japanese Central Government (the Cabinet) to enforce the whole or portions of Japanese statutes in Taiwan; and

(c) "Ordinances for exception," or "*tokurei chokurei*", enacted by the Japanese Central Government (the Cabinet) to meet the special needs of Taiwan, excluding the application of Japanese statutes.

Aside from the three types of "Taiwanese statutes",[20] the Japanese Imperial Diet may directly enact laws, including the enactment of special laws, or laws applicable to Japan and Taiwan.

20. For detailed content, please refer to WANG TAY-SHENG (王泰升), *Rizhi Shiqi Taiwan Tebie Fayu zhi Xingcheng yu Neihan-Tai, Ri de "Yiguoliangzhi"* (*日治時期台灣特別法域之形成與內涵－台、日的「一國兩制」*) [*Formation and Connotations of Special Provisions in Taiwan under Japanese Rule-"One Country, Two Systems" in Taiwan and Japan*], *in* TAIWAN FALU SHI DE JIANLI (台灣法律史的建立) [ESTABLISHMENT OF TAIWAN'S LEGAL HISTORY], *supra* note 12, at 101, 116-27.

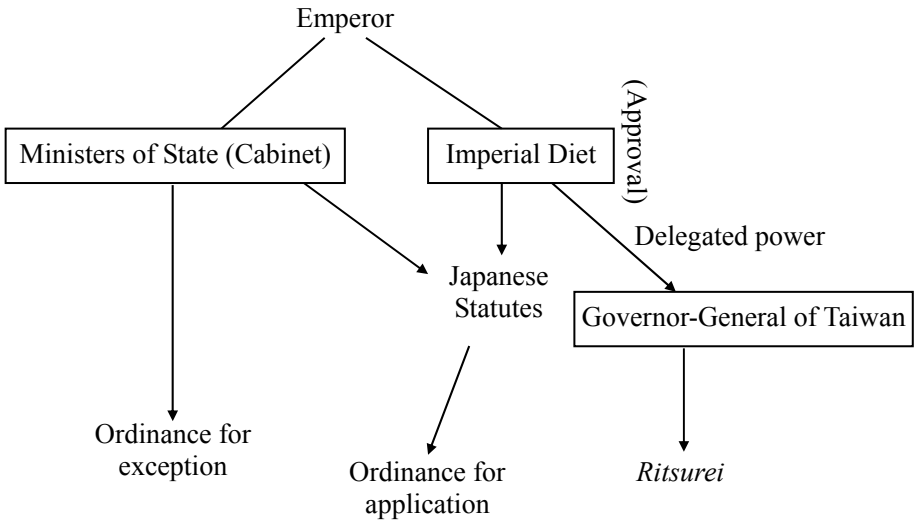


Figure 3: Legislative Structure in Taiwan under Japanese Rule

3. *The Administrative System*

Regarding the administrative power under the Meiji Constitution, in the Central Government, the Prime Minister had the power to issue "*kakurei"* (閣令, cabinet ordinance) that were within the scope of the law and ordinances. *Kakurei* might be issued *ex officio*, or upon special delegation, for purposes of enforcing statutes or ordinances, or maintaining social order. In local governments, the decrees issued by the ministers of each province in their domains were known as "*shōrei*" (省令, ministerial ordinance). In principle, these administrative ordinances do not affect Taiwan. However, due to the nature and effects of various statutes or ordinances, there were exceptions that involved Taiwan.

Within the Taiwan region, administrative power under the Japanese rule was mainly concentrated on the GGT. In addition to being delegated with the power to issue *ritsurei*, the GGT was also given all powers of government within its jurisdiction, including the administrative affairs managed by the Ministers of State in the mainland. The GGT's administrative powers were exercised through executive ordinances known as *"furei*" (府令).

4. *The Judicial System*

According to provisions of the Meiji Constitution, the organization of the judicature comes under matters of legal norms. In Taiwan, however, this was regulated by the GGT through the issuing of *ritsurei* (administrative

ordinances). In legal practice, the courts of Taiwan did not have an independent status; instead, for a long period, the GGT held the power to order the suspension of judges.

In 1896, after Taiwan entered the period of civilian administration, the power of adjudication was exercised by the "Court of the Governor-General Office of Taiwan," while the GGT replaced the Minister of Justice in exercising the right of judicial administrative supervision. In May 1896, the GGT enacted the "Regulations for the Court of the Governor-General Office of Taiwan" through *ritsurei*, which decreed that the court that was subordinate to the GGT would adjudicate criminal cases in Taiwan, and that a system of court levels would be adopted. In July of the same year, the "Provisional Regulations for the Court of the Governor-General Office of Taiwan" were formulated to deal with political crimes. There were criticisms that giving judicial powers to the GGT was unconstitutional. However, in general, it was believed that as this process did not involve the intervention of the Supreme Court of Judicature, the highest judicial body in Japan, it was considered a "special Court" specified in Article 60 of the Meiji Constitution.[21]

From 1904, under the policy of "referencing to old habits," the "Immediate Sentence for Criminals Ordinance" was enacted and remained in force till the end of the Japanese rule. This ordinance gave prefecture governors the power to adjudicate a certain range of minor crimes without going through the courts. In reality, this "right of immediate sentencing" was exercised by sub-prefecture governors and prefecture police by proxy. In the same year, the "Order for the Mediation of Civil Disputes by the Prefecture Governor" was issued, stipulating that the prefecture governor was required to intervene in the resolution of civil disputes. This partially restored the judicial power that local government offices held during the Qing dynasty.[22]

Regarding administrative adjudication, Taiwanese who received administrative dispositions could only file for appeal, and not for administrative litigation. In the 1920s, publications such as *The Taiwan Minpo* (*The Taiwanese People's News*), which were printed by Taiwanese

21. DAI NIHON TEIKOKU KENPŌ [MEIJI KENPŌ] [MEIJI CONSTITUTION], art. 60 (Japan), "All matters that fall within the competency of a special Court shall be specially provided for by law." Translated from Asia for Educators, Columbia University.

22. *See* WANG, *supra* note 6, at 244-49; WANG TAY-SHENG (王泰升), TAIWAN RIZHI SHIQI DE FALU GAIGE (台灣日治時期的法律改革) [LEGAL REFORM IN TAIWAN UNDER JAPANESE COLONIAL RULE] 129-54 (1998); Wang Tay-Sheng (王泰升), *Taiwan Rizhi Shiqi de Sifa Gaige (shang)* (*台灣日治時期的司法改革（上）*) [*Judicial Reform in Taiwan under Japanese Colonial Rule (Part 1)*], 24 TAIDA FAXUE LUNCONG (臺大法學論叢) [NATIONAL TAIWAN UNIVERSITY LAW JOURNAL] 1 (1995); Wang Tay-Sheng (王泰升), *Taiwan Rizhi Shiqi de Sifa Gaige (xia)* (*台灣日治時期的司法改革（下）*) [*Judicial Reform in Taiwan under Japanese Colonial Rule (Part 2)*], 26 TAIDA FAXUE LUNCONG (臺大法學論叢) [NATIONAL TAIWAN UNIVERSITY LAW JOURNAL] 1 (1996).

political dissidents, demanded the enforcement of administrative litigation in Taiwan by citing its presence in the Meiji Constitution. However, this demand was not granted.[23]

5. *Summary*

There are two main features of the constitutional system in Taiwan under the Japanese rule. First, the GGT held highly absolute authority in the rule over Taiwan. The GGT followed a delegated legislative system to issue ordinances that had legal effect. That is, legal matters that required parliamentary approval on the Japanese mainland had to be enacted by issuing ordinances within the jurisdiction of the GGT. As for the organization of the judicature, matters that would be determined under legal norms in the Japanese mainland would also fell within the scope of *ritsurei* in Taiwan. In legal practice, the courts of Taiwan did not have an independent status; instead the GGT held the power to order the suspension of judges for a long period of time. Thus, the GGT held all three powers of the administrative, the judiciary, and the legislative.

When exercising administrative powers, aside from the supervisory relationships with specific central government offices (Minister of Colonial Affairs, Minister of Civil Affairs, or the Prime Minister), the GGT was unlike other local government offices on the Japanese mainland, as he was not under the supervision of the provincial cabinet ministers. Instead, the GGT had the power to rule "all government affairs" (Article 3 of the Government System of the Government-General Office of Taiwan). Judging from the various administrative affairs within the jurisdiction of the GGT, the position was, in principle, on par with provincial ministers. Furthermore, the GGT also held military powers, which formed the highly absolute authority in the rule over Taiwan.

Second, during the Japanese rule, Taiwan could not be regarded as a democratic and constitutional system. The reason is that Taiwanese people did not have a representative in the Imperial Diet to participate in deliberations. In addition, there were no opportunities for Taiwanese people to participate in the legislation of the GGT. However, it should be noted that from 1921 on, a group of Taiwanese intellectuals initiated a "petition movement for the establishment of a Taiwanese parliament." Its aim was to break through the authoritarian rule of the GGT, and to demand the establishment of a parliament with specialized legislative and budgetary powers. This non-violent political movement continued till 1934, and was terminated due to immense pressure from the current situation (Japanese

23. *See* WANG, *supra* note 12, at 226; WANG, *supra* note 6, at 151

wartime) and the rulers. Not only was this movement a spontaneous attempt by the Taiwanese public to break through Japanese rule, it was also a pioneer in the transformation of resistance by force into the modern political movement. Moreover, it was a modern political movement centered on the enlightenment and fighting for political rights. Although it ultimately failed to achieve its goal, it laid the foundation for the development of political movements and democratic ideology for future generations.[24] Overall, although the Meiji Constitution was "implemented" in Taiwan, the reality was not consistent with the spirit of constitutional governance.

C. *Sources and Normative Hierarchy of Administrative Law*

Regarding the sources of administrative law, there are three legal sources on the statute level: Japanese statutes, *ritsurei,* and ordinances for exception. As explained above, the legislative system in Taiwan during Japanese rule was not only subject to the statutes enacted by the Imperial Diet, but was mainly achieved via the *ritsurei* issued by the GGT. Furthermore, "ordinances for exceptions" were enacted by the Japanese Central Government (the Cabinet) in response to the special circumstances in Taiwan. The Japanese statutes can be further divided into those that are "enforced via ordinance in Taiwan" and those "directly applicable to Taiwan."

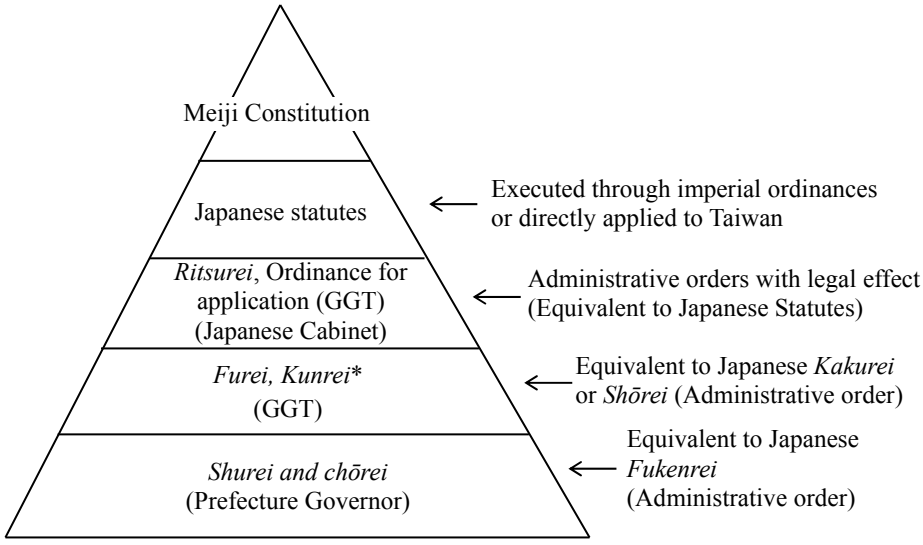
On the level of administrative ordinances, the military orders issued by the GGT were generally known as "*nichirei*" (日令). These include, for example, dispositions for Taiwanese military criminals, the Order of Criminal Procedure for Taiwanese Residents, and so on. Such orders were no longer issued once Taiwan entered the Period of Civilian administration. During the latter period, orders could be characterized, by whether they originated from the central or local government (their organizational

24. Zhou Wan-Yao (周婉窈), Riju Shiqi Taiwan Yihui Shezhi Qingyuan Yundong zhi Yanjiu (Yijiueryi～Yijiusansi) (日據時期台灣議會設置請願運動之研究(一九二一～一九三四)) [A Study on the Petition Movement for the Establishment of the Taiwanese Parliament during the Japanese Occupation Period (1921-1934)] 5 (1981) (unpublished master thesis, National Taiwan University) (on file with National Taiwan University Library); ZHOU WAN-YAO (周婉窈), RIJU SHIQI DE TAIWAN YIHUI SHEZHI QINGYUAN YUNDONG (日據時期的台灣議會設置請願運動) [THE PETITION MOVEMENT FOR THE ESTABLISHMENT OF THE TAIWANESE PARLIAMENT DURING THE JAPANESE OCCUPATION PERIOD] 9 (1989). For related literature, *see* Gao Ri-Wen (高日文), *Taiwan Yihui Shezhi Qingyuan Yundong de Shidai Beijing-Taiwan Yihui Shezhi Qingyuan Yundong Shi Gao* (*台灣議會設置請願運動的時代背景－台灣議會設置請願運動史稿*) [*Background of the Petition Movement for the Establishment of the Taiwanese Parliament-History of the Petition Movement for the Establishment of the Taiwanese Parliament*], 15 TAIWAN WENXIAN (臺灣文獻) [Taiwan Literature] 24 (1964); Gao Ri-Wen (高日文), *Taiwan Yihui Shezhi Qingyuan Yundong Shimo* (*台灣議會設置請願運動始末*) [*The Start and End of the Petition Movement for the Establishment of the Taiwanese Parliament*], 16 TAIWAN WENXIAN (臺灣文獻) [TAIWAN LITERATURE] 60 (1965).

structure and names will be described in detail later), into "*furei*", "*chōrei"* (廳令, prefectural ordinances), and *"shūrei"* (州令, prefectural ordinances). *Furei* are ordinances issued by the GGT based on authorization or mandate. They are equivalent to *kakurei* or *shōrei* on the Japanese mainland, and are centrally "mandated ordinances" or "authorized ordinances." *Shūrei* and *chōrei* refer to the ordinances issued by prefecture governor or offices based on authorization or mandate. They are equivalent to *fuken* (縣, prefecture) *rei* (令 ordinances) on the Japanese mainland, and are locally "mandated ordinances" or "authorized ordinances." Furthermore, based on the power to command and supervise, the GGT could still issue orders to subordinate government offices, generally known as *kunrei* (訓令, instructions), or "ultimatum," "notice," or "internal instruction." They were orders of duty with internal effect. The normative hierarchy during the civilian administration period is shown below for reference (see Figure 4).

Regarding the proportion of the sources of administrative law, the legislative system in the early period of civilian administration was mainly based on *ritsurei* legislation. There were few imperial ordinances that applied Japanese administrative law in Taiwan. Statutes that were specifically enacted and applied directly to Taiwan, such as the Special Accounting Act of the Governor-General Office of Taiwan and the Public Debt Law for Taiwan businesses, were also rare exceptions. However, upon entering the later period of civilian administration, the major source of administrative laws shifted toward the implementation of Japanese laws through imperial ordinances. For example, in 1922, Imperial Ordinance No. 521, "Order for the Enforcement of Administrative Laws in Taiwan" was executed, and subsequent imperial ordinances were issued to amend and increase the "enforcement" of statutes. Furthermore, in November 1931, Imperial Ordinance No. 273, "Order for the Enforcement of Naval Laws in Taiwan," was executed, and the total number of laws executed was no less than 60.[25]

25. *See* HUANG, *supra* note 6, at 196.



**Kunrei* are orders for command and supervision or the administration of personnel; they are internal "orders of duty".

Figure 4: Hierarchical System of Legislation in Taiwan under Japanese Rule (Civilian Administration)

III. THE ADMINISTRATIVE LAWS IN TAIWAN UNDER JAPANESE RULE

A. *Administrative Organization Law*

1. *Central Government*

On March 31, 1896, the GGT issued the "Regulations for the Office of the Governor-General of Taiwan" through Imperial Ordinance No. 88. This regulation was enforced on April 1 of the same year. According to the Government System of the Government-General Office of Taiwan issued through imperial ordinance, the GGT was the highest administrative power for the governance of Taiwanese matters, and was only subject to the command and supervision of the Japanese Central Government. The GGT held legislative powers for issuing *ritsurei*, while his administrative powers were exercised through the issuance of *furei* (to implement matters stipulated in imperial ordinances), *kakurei,* and *shōrei*. Furthermore, the GGT might impose penalties, the maximum of which is one year of imprisonment and 200 Taiwanese yen in fines.

The GGT had the power to command and supervise lower administrative bodies in Taiwan, which included issuing "*kunrei*" (orders of duty, also known as "ultimatum"), supervising their affairs, and terminating or canceling the orders or dispositions of lower authorities. The GGT also

had considerable powers over the promotion and demotion, reward, and discipline of subordinate officials.

During the period of military administration, all affairs within the Taiwan region were governed by the GGT. Other than the General Staff and Adjutant General's Office, the Office of the GGT handled the army, navy, and home affairs bureaus, while the General Staff assisted the GGT in supervising the affairs of each bureau. During this period, the GGT concurrently held the powers for both military administration and military orders.

During the period of civilian administration, all affairs in relation to the Taiwan region were governed by the GGT, and were supervised by the Japanese Central Government (the Cabinet). A Director of the Home Affairs Bureau was first appointed in the Office of the GGT in 1896, and the role was later adapted into the Chief of Home Affairs in 1919, until the end of the war. Both organizations functioned to assist the Governor-General in administrative work, and to supervise the Governor-General Secretariat and the affairs of each bureau. They were similar to the assistant units for the Chief of Staff. Although during 1896 to 1919, the GGT was restored as a civilian administrative body, in response to military suppression during the early Japanese rule, the GGT still held a number of powers in military administration and military orders. These powers were abolished in 1919 with the establishment of the Commander of the Military Affairs Bureau.

Till 1942, other than the military, foreign affairs, or exceptions in the affairs of provincial ministers specially provided for in the law, the GGT was generally able to directly reach an administrative ruling without the intervention of the Japanese Central Government.[26] Orders or dispositions given to subordinate offices that were viewed as unlawful, endangering public interest, or infringing upon their authority were to be terminated or cancelled.

Regarding the organization, in addition to the Director of the Home Affairs Bureau (or Chief of Home Affairs), the Office of the GGT also included departments of culture and education, finance, mining, agriculture and commerce, and law enforcement, as well as external affairs and judicial affairs. In addition to courts exercising judicial power, the "administrative offices" subordinate to the Office of the GGT also included the department of transportation, monopoly bureau, port authority, and legal affairs bureau. Administrative offices and "public buildings" (including prisons, hospitals, meteorological stations, libraries, universities, all levels of schools, cultivation centers, training centers, research institutions, laboratories, and so on) were all governed by the Director of the Home Affairs Bureau (or Chief

26. *See* HUANG, *supra* note 6, at 156.

of Home Affairs), and final decisions were made by the GGT.

In addition to the offices or public buildings for those undertaking administrative tasks, the Office of the GGT also had a "Consultative Council", composed of all high-ranking officials, for the enacting of *ritsurei*. This was later abolished by Law No. 31, and replaced by the "*Ritsurei* Advisory Council." In 1921, the Consultative Council was restored and notably, most of its members (Consultative Council members) were civilians (half Japanese and half Taiwanese). However, the members of the Consultative Council were not elected by the people. Rather, they were appointed by the GGT, and their opinions only served as a reference to the GGT and were not binding.[27] Hence, the establishment of the Consultative Council could not be regarded as fulfilling the function of elected representatives.

2. *Local Government*

In June 1895, the GGT issued the "Local Government System of the Governor-General Office of Taiwan" by imperial ordinance, which served as the legal basis for establishing local organizations in Taiwan. In the beginning, the GGT continued the old Qing's local government system, preserving the four prefectures (three *Ken* (縣, prefectures) and one *Chō* (廳, sub-prefectures)). In addition, the Qing bureaucratic system, where "administration and the judiciary were not separated" was continued. The Department of the Interior under the prefecture governor was concurrently responsible for hearing civil cases and resolving civil disputes, while the Department of Police was concurrently in charge of criminal adjudication.

However, several changes occurred after 1896. First, in April 1896, the three divisions of internal affairs, financial affairs and police affairs were added to the prefecture office. This implied that the prefecture office would no longer deal with civil and criminal trial cases, thereby separating the administrative and judiciary systems.[28] Second, from May 1897, the Taiwan local administrative regions were modified to nine prefectures (six *Ken* and three *Chō*). The prefecture office consisted of the "Administration Office" and the "Police Department." The former was responsible for administrative matters, assisted by the towns, villages, and communities under its jurisdiction. The latter was responsible for the maintenance of law and order. However, the director of one department could concurrently hold director

27. WANG, *supra* note 6, at 177.

28. *See* Wang Tay-Sheng (王泰升), *Rizhi Shiqi Zhou Xian Ting Zhidu Gaikuang* (*日治時期州縣廳制度概況*) [*Overview of the Prefecture and County Office Systems under Japanese Rule*], *in* TAIWAN FALU SHI YANJIU DE FANGFA (台灣法律史研究的方法) [RESEARCH METHODS OF TAIWANESE LEGAL HISTORY] 81, 83 (Wang Tay-Sheng (王泰升) ed., 2000).

post of the other.[29]

From June 1898, the local administrative regions in Taiwan was rearranged into three *Ken* and three (or four) *Chō*. These prefectures still retained the Administration Department, while a "Branch Office" was added to each *Chō* without an Administration Department. At that point, the governing power lied with the Administration Department, while the *Ken* and *Chō* only functioned as "vicarious authorities" between the Office of the GGT and Administration Departments. A further rearrangement occurred in November 1901 to strengthen the control of the GGT Office over local regions and to enhance the flexibility of administrative affairs. The administrative hierarchy and regional planning were modified into a two-level system, with "one *Ken* under the Office of the GGT," and 20 *Chō*. This was later reduced to 12 *Chō* in October 1909. As such, a "multi-*Chō* (多廳, multi-prefecture) system" was adopted, and the local government system in Taiwan was transformed from a "large prefecture system" to a "small prefecture system."

An important feature of the local government system at that time was that in neither the large prefecture system nor the small prefecture system, the *Ken* and *Chō* were self-governing bodies with (public) legal personality. Rather, they were all government organizations under a centralized system. The Office of the GGT could bypass the authority of the *Ken* and *Chō* to directly control the local administrative office. In particular, this was achieved through the newly-established "Police Department" of the Home Affairs Bureau, which directly commanded the prefecture governor. It was also achieved through appointing the police department's high-level police officer as the sub-prefecture governor. Consequently, an influx of police forces were added to handle general administrative matters, including taxation, land survey, railway construction, and so on. The number of police offices were far greater than that of the supplementary local units such as town, village, and community. The number of police officers were also higher than other civil servants. This formed a "police administration" system where the central government could directly exert its control over the local government.[30]

This centralized feature of the local government system began to change after 1920, under the influence of the policy of "interior extensionism". First, the Japanese Central Government amended the "Local Government System of the Governor-General Office of Taiwan" by imperial ordinance, and transferred part of the powers held by the GGT Office to the local

29. Li Chong-Xi (李崇禧), Riben Shidai Taiwan Jingcha Zhidu zhi Yanjiu (日本時代台灣警察制度之研究) [The Police System in Taiwan under Japanese Colonialism] 53-55 (1996) (unpublished master thesis, National Taiwan University) (on file with National Taiwan University Library).

30. *See* HUANG, *supra* note 6, at 161-62; WANG, *supra* note 20, at 141; Li, *id*., at 68.

authorities, thus achieving a certain level of devolution. This was achieved by dividing the local administrative organization into three levels: *Shū* (州, prefecture) and *Chō* at the first level; *Gun* (郡, county) and *Shi* (市) at the second level; and *Gai* (街) and *Jō* (庄) at the third level. Thus, three types of local administrative systems were formed (see Figure 5).[31]

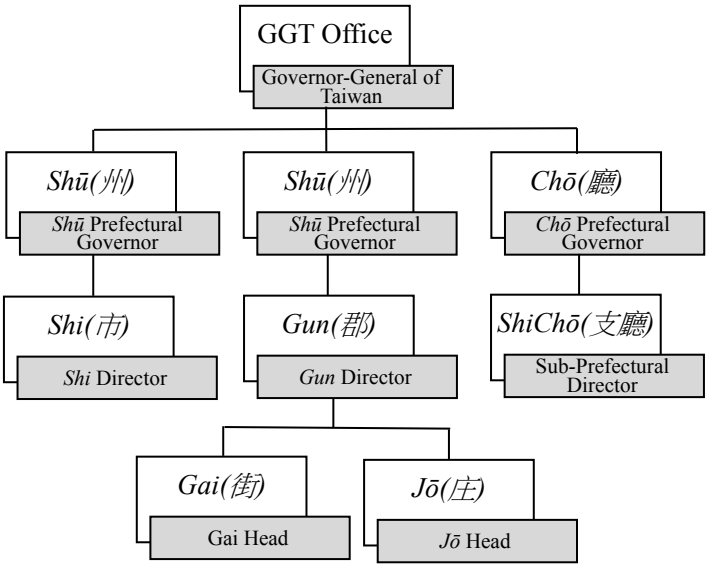


Figure 5: Local Administrative Systems in Taiwan during 1920-1935 of Japanese Rule

The powers were devolved to the local public authorities in the following manner. At the first level, with the exception of local affairs belonging exclusively to the GGT Office (transportation, monopoly, port affairs, etc.), the *Shū* Prefectural Governor or *Chō* Head could issue *shūrei* or *chōrei* regarding affairs within their jurisdiction (including penalties), while also holding part of the authority to appoint and dismiss civil servants. At the second level, the *Gun* Directors concurrently managed general administrative affairs and police affairs, while the *Shi* Directors were only given the authority to manage general administrative affairs. A separate Police Department was set up to handle police affairs in the *Shi*. At the third level, the *Gai* and *Jō* Heads managed general administrative affairs, and

31. It is worth pointing out that under Japanese rule, the Taiwanese aboriginals were subject to a different system, under which special administrative regions, known as *Fandi* (蕃地, aboriginal lands), may be established under Shū and Chō. For convenience, these *Fandi* are not shown in Figures 5 and 6. *See* WANG, *supra* note 6, at 180.

were not involved in police affairs.[32]

Second, the Japanese Central Government issued *Ritsurei* No. 3, 5, and 6 to announce the "Taiwan *Shū* System," Taiwan *Shi* System," and "Taiwan *Gai* and *Jō* System," which aimed to create a system of local public bodies. The *Shū*, *Shi*, *Gai,* and *Jō* were recognized as "local public bodies," and "Councils" were established to differentiate them from the State Local Administrative Offices (as explained above). However, the administrative heads of these bodies were all officials who concurrently held the role of the Council Chairman, while the Council Members were appointed by superior administrative offices. Hence, this at best was only an advisory body. Therefore, the local administration at that time was still substantially under the control of the central government, and could not be regarded as a "self-governing administration."

The point at which the local organization in Taiwan truly obtained the attributes of autonomous bodies and entered the stage of local self-government only occurred after 1935. (See Figure 6) In that year, the *ritsurei* for the *Shū, Shi, Gai,* and *Jō* systems clearly stipulated that *Shū, Shi, Gai,* and *Jō* were legal persons. They were authorized to manage public affairs within the scope of the laws and ordinances under the supervision of higher officials. In addition, self-governing affairs belonging to the *Shū, Shi, Gai,* and *Jō* were stipulated in statutes and imperial ordinances. Furthermore, the *Shū* and *Shi* established the *Shū-kai* (州会, prefectural assembly) and *Shi-kai* (市会, city assembly) as resolution authorities; while *Gai* and *Jō* only established the Councils, which were still advisory bodies.

Another remarkable advancement in this period is that local elections began to take place. Although the representative of these legal persons (the *Shū* Governor*, Shi* Director*,* and *Gai* and *Jō* Heads) were still officials appointed by the government, indirect and direct elections were established for the appointment of local council members. Half of the *Shū* assembly, *Shi* assembly, and *Gai* and *Jō* councils were democratically elected (with members of the *Shū* assembly indirectly elected; members of the *Shi* assembly and *Gai* and *Jō* councils directly elected), while the other half were selected from among residents by officials. However, only those who contributed a certain amount of tax were granted the right to vote and the right to be elected.

In 1937, the Japanese Central Government further announced the "Taiwan *Chō* System" by *ritsurei*, and recognized *Chō* as local public

32. *See* Ts'ai Hui-Yu (蔡慧玉), *Rizhi Taiwan Jie Zhuang Xingzheng (1920-1945) de Bianzhi yu Yunzuo-Jie Zhuang Xingzheng Xiangguan Mingci zhi Tantao* (*日治臺灣街庄行政（1920-1945）的編制與運作－街庄行政相關名詞之探討*) [*Township Administration in Wartime Taiwan under Japanese Rule (1920-1945)-The Terms in Question*], 3 TAIWAN SHI YANJIU (台灣史研究) [TAIWAN HISTORICAL RESEARCH] 93 (1996).

bodies. In imitation of the *Shū*, *Shi*, *Gai,* and *Jō* organizational systems, the *Chō* prefectural governor and *Chō* Councils were established. However, members of the *Chō* Councils were officials appointed by the government, and *Chō* were not given the status of legal persons. Hence, they only managed matters commissioned by higher administrative authorities As for *Gun*, it continued to retain the status of State Administrative Offices. Thus, three types of local administrative systems were formed in this period (see Figure 6). This system continued until the end of Japanese rule.[33]

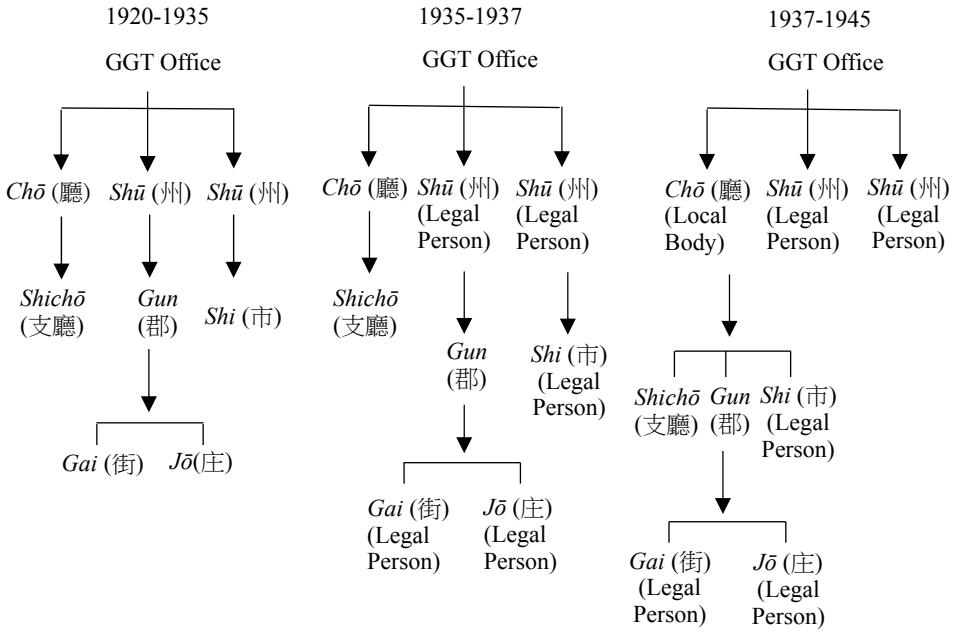


Figure 6: Evolution of the Local Administrative Organizational Structure under Japanese Rule

33. Figure 4 shows the gradual process of change in the local organizational structure during Japanese rule. For more detailed content, *see* WANG, *supra* note 6, at 159 (illustrating the Taiwan Difang Xingzheng Zuzhi Shiyitu (1937-1945) (台灣地方行政組織示意圖（1937-1945）) [Schematic Diagram of the Local Administrative Organization of Taiwan]. For another configuration diagram related to the local "councils" in Taiwan, *see* HUANG CHIAU-TONG (黃昭堂), TAIWAN ZONGDU FU (台灣總督府) [THE OFFICE OF THE GOVERNOR-GENERAL OF TAIWAN] 158 (Huang Ying-Zhe (黃英哲) trans., 2013).

B. *The Administrative Action Laws*

1. *Explanation of Methodology: From Specific to General Theories*

Administrative action law is the central part of traditional general theory of administrative law. Its scope could be either narrow or broad. In the narrow sense, administrative action law refers specifically to administrative orders, administrative dispositions, administrative contracts, factual behavior (administrative guidance), and other administrative actions. In the broad sense, administrative penalty law, administrative execution law, and administrative procedure law are also included. This paper adopts the broader scope to gain a better overview and understanding of the administrative law in Taiwan under Japanese rule.

Furthermore, this paper will adopt a method that is rather unusual for the reasons below. Research on administrative law generally adopts a "from general to specific" method, requiring a strong and profound "general theory" as its basis, so that the discussion and understanding of the "specific laws" can be more structured and clearer. However, since it is still unclear whether such a general administrative law theory actually existed for the Japanese rule period, this paper will adopt a method of "from specific to general theory". It will attempt to collate and organize the individual administrative regulations during this period for further observations that could help identify raw materials for research.

2. *Induction of the Administrative Action Laws*

(a) Martial Law

During the Russo-Japanese War of 1905, the passing of the Russian Baltic Fleet to the east of Taiwan through the sea led to the implementation of martial law in Taiwan from April 13 of that year until July 7 (approximately three months).[34] After the outbreak of the Second Sino-Japanese War in 1937, martial law was never declared in Taiwan, but the country entered a time of "Wartime Economic Control Legislation" in 1938, which was predominated by the National Mobilization Law. This strictly limited the freedom of pricing, capital, labor, business, and other economic activities, to build up national power for war.

34. *See* KIRO, *supra* note 4, at 455.

(b) Regulations Related to Suppressing Dissidents

For first twenty years after Taiwan was ceded to Japan, the Japanese rule was not yet stable. Hence, political ideas that were different from the government's position and collective actions of a protesting nature were all regarded as a threat to public safety, which were consequentially prohibited and suppressed. In 1914, the GGT enacted the "*Ritsurei* on Administrative Execution" and enacted the "Enforcement Principles of the *Ritsurei* on Administrative Execution" with *furei* to apply the Japanese "Administrative Execution Act" (1900) in Taiwan. This became an effective tool for suppressing the people since the act stipulated that, to prevent violence, conflict and other threats to public safety, if necessary, the suspects should be restrained, and the firearms, weapons and other dangerous objects they carry should be confiscated.

After the 1920s, as the Japanese rule in Taiwan became more mature, a more tolerant attitude was adopted towards political dissidents, assemblies and associations. Dissident groups and assemblies, under certain conditions, were permitted to exist. In addition, a "pre-reporting system" was adopted. These were based on the "Public Security Preservation Law" and "Public Order and Police Law." According to provisions of the "Public Order and Police Law," any political association should report to the police authorities within forty days before its formation and three days after its formation; any indoor assembly and procession should be reported, to the police authorities, six hours before its taking place; and any outdoor assembly and procession should be reported 12 hours before its commencement. The police authorities would perform "substantive examination" of the report and if it were found "necessary for the preservation of public order", the assembly and association would be given an administrative disposition of prohibition or dismissal. In addition, the Public Security Preservation Law prohibited participation in associations "with the aim of altering the *kokutai* (国体, sovereignty) or the system of private property."[35]

As for the control of publications under Japanese rule, newspapers and periodicals were regulated in accordance with the "Regulations for Taiwanese Newspapers" (1900) and "Ordinance on Taiwanese Newspapers" (1917); whereas the texts and images of non-periodical publications were regulated under the "Rules for Taiwanese Publications" (1900). However, both news and publications were subjected to a "licensing system". If it was found during inspection that they were "disrupting customs or disturbing

35. *See* Lai Jane-Nine (賴珍寧), Rizhi Shiqi Taiwan Sixiang Kongzhi Faling zhi Yanjiu (日治時期台灣思想控制法令之研究) [The Codes of Thought Control in Taiwan under Japanese Colonial Rule] 105-12, 120-31 (1995) (unpublished master thesis, Private Chinese Culture University).

social order" or violating other laws and ordinances, their sale would be prohibited and the publisher would be given a warning. For those who had been warned but did not correct their actions, their license would be cancelled. Towards the end of Japanese rule, the control over news and publications became even stricter. Not only more inspections on unlicensed publications were carried out, a number of special wartime regulations were also adopted to regulate news publications, including movies. Examples of such enhanced inspection included the banning the report of certain events, and the removal of certain parts of a film before its release (film clipping).[36]

(c) Regulations Related to Maintaining Public Security and Social Customs

Regarding the control of public security, there were the "Taiwan Security Regulations" and "Regulations for the Ban of Vagrancy" issued in the form of *ritsurei*. The former stipulates that Japanese mainlanders or foreigners who "disrupt public order or disturb customs" should be expelled from the island after warning. The latter stipulated that Taiwanese people without fixed residence and occupation who "disrupted public order or disturbed customs" shall, after ineffective warnings, be sent to shelters in Taitung, where forced labor was required for one to three years. As for the "Chinese mainlanders in Taiwan" (Qing people in Taiwan), based on the "Regulations for the Treatment of Foreigners", they were differentiated from general foreigners in Taiwan and were subjected to additional regulations. A licensing system was adopted for entering and traveling outside of the designated place of residence. The affairs of foreign Chinese workers coming to Taiwan were monopolized by those Japanese who had paid a deposit to the GGT Office and obtained a permit for contracting labors. The labor contractors were responsible for managing the Chinese workers and had the obligation to repatriate the persons who had threatened public order.[37]

Regarding the control over disruptions to social customs or social order (the so called "police violation behavior"), from 1896, this was dealt with in accordance with *shūrei and chōrei*. Since 1908, the basis for sanctions was modified to the *furei* "Police Violation Regulations in Taiwan". These regulations were in accordance with the ordinances issued with administrative power, wherein detention in the police branch office and small fines were permitted by the law of that time. Furthermore, during Japanese rule, public prostitution was permitted and regulated by local

36. *Id*. at 153-62.
37. *Id*. at 150-52; KIRO, *supra* note 4, at 180-82, 341-42.

chōrei, while private prostitution was banned.[38] The regulation of health was mainly achieved by issuing the *ritsurei* for the enactment of the "Regulation of Drug Ban Regulations in Taiwan", the "Taiwan Opium Ordinance", the "Regulations on Animal Epidemic Prevention in Taiwan", the "Regulation of Vaccination in Taiwan", and the "Ordinance for the Prevention of Infectious Diseases in Taiwan."

(d) Regulations Related to Economic Development

After the occupation of Taiwan, based on the example set by modern Continental-style countries and the goals of Japanese rule, the power of national law was actively used to construct the necessary infrastructure for a fundamentalist economy. Land and forestry surveys were conducted in 1898 and 1910 respectively, to ascertain the land rights relationship in Taiwan.[39] Then, protection of transaction security was implemented to promote capital investment in land development. In 1900, the "Regulations of Weights and Measures in Taiwan" were promulgated to unify the units used in the markets. Moreover, laws relating to the protection of intellectual property rights, such as the "Patent Law," "Design Law," "Trademark Law," and "Copyright Law," were implemented in 1899 in Taiwan. Taiwan's "Utility Model Law," enacted in 1905, was implemented at about the same time. Furthermore, after 1923, more Japanese legislation related to the establishment of capitalist economy were implemented in Taiwan through the "Ordinance for the Enforcement of Administrative Law in Taiwan".[40]

Second, numerous administrative laws and ordinances were enacted during Japanese rule to assist individual enterprises for the overall development of the industry. The GGT Office could use its discretion in assisting the development of forests and wilderness, salt fields, sugar industry, camphor, tobacco, and sericulture. The establishment and recognition of monopolistic and public entities in Taiwan only occurred in the later period of Japanese rule, when the Sino-Japanese War led to the shift from "assistance" to "control" for wartime economic control.[41] According to Japanese laws and ordinances, monopoly industries included: opium, salt, camphor, tobacco, weights and measures, wine, matches, oil, and so on. Manufacture in these industries was dominated by the GGT Office or private

38. WANG, *supra* note 6, at 201.

39. ZHOU XIAN-WEN (周憲文), TAIWAN JINGJI SHI (台灣經濟史) [ECONOMIC HISTORY OF TAIWAN] 404-05 (1980); Chen Yin-Chin (陳櫻琴), *Taiwan Bainian Jingji Fa de Guangming Mian yu Heian Mian* (*台灣百年經濟法的光明面與黑暗面*) [*Light and Dark Sides of One Century of Economic Laws in Taiwan*], *in* ESSAYS ON EVOLUTION OF TAIWANESE LAW, *supra* note 19, at 296, 303.

40. HUANG, *supra* note 6, at 189-90, 196-200, 209-11.

41. WANG, *supra* note 6, at 182-183.

enterprises that were based mainly on Japanese capital. Only the monopoly benefits from the sales in Taiwan were shared by pro-government Taiwanese.[42] In addition, special permissions were granted by statute or *ritsurei* for the establishment of "public enterprises," such as the Bank of Taiwan, Taiwan Power Company, and Taiwan Development Co., Ltd. Such had combined the national capital with private capital to pursue specific administrative goals.

Regarding the administration of finance and taxation under Japanese rule, in the early period, Taiwan was regarded as a financially independent unit, where the special accounting of the GGT Office was separated from the general accounting of the Japanese Empire. From 1905 on, Taiwan's finances were completely autonomous, and did not need to rely on the financial assistance of the Japanese mainland. The annual revenue of Taiwan came mainly from taxes and monopoly benefits. When necessary, the GGT Office could still rely on the "Taiwan Business Public Debt Act" to issue public debt to finance major construction projects, such as the case of the North-South railway, the port of Keelung, and the port of Kaohsiung.[43] Tax revenues were mainly from indirect taxation and land value tax (farm tax), although beginning in 1937, income tax became the main source of tax revenue.[44] The tax system itself, including that for estate tax, was modeled on the tax systems of Western countries. The financial institutions under Japanese rule mainly included "banks," "trust companies," "insurance companies," "mutual loan companies" (mutual organizations), "urban credit unions" (credit cooperatives), "rural and urban agricultural associations," "rural credit unions" (farmers' association), "industrial treasury," and other forms and types of institutions.[45] The Bank of Taiwan, the first bank in Taiwan, was established on September 26, 1899, in accordance with Japan's "Banking Act."[46] Not only did it initiate the development of modern Western financial system in Taiwan, but it also functioned as a "central bank." The "bank notes" (commonly known as "bank drafts") issued by the Bank of Taiwan had the same mandatory circulating power as currency in Taiwan.[47]

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42. HUANG, *supra* note 6, at 194-95.
43. *Id.* at 183-85.
44. *Id.* at 182-83, 203-04, 208.
45. Lai In-Jaw (賴英照), *Taiwan Bainian Lai Jinrong Bantu zhi Huigu yu Qianzhan* (*台灣百年來金融版圖之回顧與前瞻*) [*Retrospect and Prospect of Taiwan's Financial Landscape Over the Last Hundred Years*], *in* ESSAYS ON EVOLUTION OF TAIWANESE LAW, *supra* note 19, at 181, 181-90.
46. The organizational characteristic in that period was "Kabushiki Kaisha" (Limited Company).
47. WANG, *supra* note 6, at 207.

(e) Regulations Related to Education

The normative basis for Taiwan's education legislation under Japanese rule was through various imperial ordinances, not *ritsurei*. According to the provisions of the Meiji Constitution, education was one of the "royal prerogatives" (central issues). In general, the education system under the Japanese rule followed a "segregation system" based on ethnicity, which led to considerable differential treatment and discrimination of Taiwanese. The "Taiwan Common School Ordinance" issued in 1898 was a milestone for the development of a modern public education system in Taiwan. The common schools attended by Taiwanese were established by towns, villages, and communities that could afford the setup and maintenance costs after obtaining approval from the *Shū* Governor or *Chō* Head. As the expenses were borne by the local community, education was non-compulsory and school fees were charged. The duration of study in common schools was six years, or from four to eight years, depending on local conditions. By contrast, Japanese residents in Taiwan could enjoy free compulsory education under the "Elementary School Ordinance" issued in 1900.

The "Taiwan Education Ordinance" promulgated in 1919 led to the establishment of general education, industrial education, specialized education, teacher education, and other education systems. Thus, Taiwan's educational system began to take shape. However, this ordinance was only applicable to Taiwanese, and segregation was maintained. In 1922, the revised "Taiwan Education Ordinance" stipulated that the ordinance was applicable to all Taiwanese, including aborigines (known at that time as the "Fan people") and Japanese residents in Taiwan. This was a step towards the development of a "common educational system." In 1941, the "Taiwan Education Ordinance" was amended once again, such that elementary general education institutions were all named "National Schools." Compulsory education in Taiwan was established in 1943, and the six-year compulsory education system was formally implemented.[48]

(f) Regulations Related to Social Welfare

With regard to social welfare under Japanese rule, the perceptions of the responsibilities borne by the state did not seem to include a social security system to ensure personal and economic security and well-being. However,

48. Xue Hua-Yuan (薛化元) & Zhou Zhi-Hong (周志宏), *Bainian Lai Taiwan Jiaoyu Fazhi Shi de Kaocha-Yi Guojia Quanli yu Jiaoyu Neibu Shiziang Wei Zhongxin* (*百年來台灣教育法制史的考察－以國家權力與教育內部事項為中心*) [*An Examination of Taiwan's Educational Legislation over the Last Hundred Years-Focusing on State Power and Internal Matters of Education*], *in* ESSAYS ON EVOLUTION OF TAIWANESE LAW, *supra* note 19, at 462, 462-70.

such regulations could occasionally be found in the laws and ordinances under Japanese rule. Examples in this respect included the "Taiwan Poor Relief Regulations" enacted through *furei* in 1899, the "Regulations of Disaster Relief Funds in Taiwan" enacted through *ritsurei*, and the "Laws on the Treatment of Sickness and Death during Travel." Other examples included the 1918 "Military Assistance Act," the 1931 "Law on the Occupational Protection of Military Recruits," the 1934 "Youth Protection Act," the 1938 "Law on the Prohibition of Smoking in Minors," the 1938 "Law on the Prohibition of Drinking in Minors," the 1940 "Mariners' Insurance Act," the 1941 "Simple Life Insurance Act," and the 1941 "Post Office Annuities Law."[49] In addition, regulations aiming at promoting sanitation administration such as the "Taiwan Water Regulations" enacted in 1899 by *ritsurei* and the "Taiwan Waste Removal Regulations" enacted in 1900 could roughly be considered as environmental protection laws. Moreover, the "Preservation Law of Historic, Scenic and Natural Monuments" and the "National Parks Law," which involved ecological conservation, were implemented in Taiwan in 1930 and 1935, respectively.[50]

C. *The Administrative Remedy Act*

Under the pre-war Japanese legal system, when the rights or interests of the people are harmed due to violations of the law by administrative authorities or improper administrative dispositions, there were two main methods of legal remedy. The first involved avenues of remedy in the administrative system, such as petitions and appeals; the other involved the administrative litigation system under judicial power. The latter was established under the Meiji Constitution, modeled on Prussian Germany. The "Administrative Adjudication Act" was enacted in Meiji 23 (1890), which was changed to the "Special Law of Administrative Litigation" in Shōwa 23 (1948). In addition, according to the Constitution of the Empire of Japan, the people had the right to petition, and the Imperial Diet would accept petitions presented by the people.

However, in Taiwan, only petitions and appeals were available as avenues of administrative remedy. Regarding petitions, the people of Taiwan often used the provision in the Constitution of the Empire of Japan to initiate petition movements. As for the appeal system, it only came into existence in 1896 when the GGT wanted to seek the public's input to facilitate governance. On August 1, 1896, the GGT issued a *kunrei* to set up "appeal boxes." However, the appeal box system was prone to being used as a tool

49. WANG, *supra* note 6, at 214.
50. *Id.* at 215.

for false accusations. Hence, it was repealed on January 9, 1898 during the preparations for the administrative organization and judicial system.[51] On March 27, 1922, the "Document for the Implementation of the Appeal Act in Taiwan" was issued with Imperial Edict No. 51. It was based on the Appeal Act in Japan, amending the following content for its application in Taiwan: 1. It excluded the appeal of the provisions regarding district, city, and prefecture councils; 2. It amended "provincial governors" to the "Governor-General of Taiwan," and the "province or all provinces" to "the Office of the Governor-General of Taiwan"; 3. It required that the appeals should be written in the national language, which was Japanese.[52] From then on, the people of Taiwan were able to submit an appeal written in Japanese to the GGT or the GGT Office when they encountered issues related to the levy of taxes or administrative fees, penalties for tax delinquency, rejection or cancellation of business licenses, water resources and civil incidents, review of whether land was owned by officials or the people, local police incidents, and other incidents related to the above.[53]

The Japanese "Administrative Litigation Act" was never implemented in Taiwan. Even when imperial ordinances to implement Japanese statutes in Taiwan were issued, all parts related to administrative litigation were specifically indicated as not applicable to Taiwan.[54] In other words, there was no judicial remedy procedures for administrative actions (at least for administrative dispositions) under Japanese rule. Hence, when the people were dissatisfied with the government, petitions were the only non-violent measure for resistance that was available.

IV. COMPREHENSIVE OBSERVATIONS AND INSPIRATIONS

This section will first extract the essence and characteristics of the legal

51. KIRO, *supra* note 4, at 243.

52. *Id.* at 147.

53. According to the "Appeal Act," other than the special provisions in the law and ordinances, appeals might be made for the following matters: 1. levying of taxes and fees; 2. penalties for tax delinquency; 3. rejection or cancellation of business license; 4. water resources and civil incidents (i.e. related to construction and removal); 5. review of division between land owned by officials and the people; and 6. local police incidents (i.e. dispositions based on "police administration" by local government). For improper or unlawful administrative dispositions, appeals needed to be filed in writing within 60 days of the administrative disposition, and a ruling must be reached by a higher administrative authority. Appellants not satisfied with the ruling might demand a second review within 30 days, and a ruling would be reached by the highest administrative authority. Only appeals might be filed against administrative dispositions by the GGT Office. Rulings on appeals should, in principle, be made through the examination of written documents. The response may be dismissal due to incomplete documents for appeal (kyakka), dismissal due to lack of grounds for appeal, ruling made by the present authority where the appeal has merits, or case remanded to lower authorities for appropriate disposition. For detailed discussions, *see* WANG, *supra* note 6, at 193.

54. HUANG, *supra* note 6, at 201.

system and practice of administrative law in Taiwan under Japanese rule, so as to provide a comprehensive summary of its phenomena. Then, it will demonstrate the potential and importance of future research with an example.

A. *Comprehensive Observations of Administrative Law in Taiwan under Japanese Rule*

1. *Development of Administrative Laws: Still a Police State*

In the study of administrative law, scholars often divide the process of change in the national goals of modern countries into three stages, each corresponding to a major type of states. That is, from a traditional "Police State," which aims to preserve domestic peace, to a "State of Law," which centers on the protection of the freedom and property of the people, and eventually to a modern "Social State" or "Providing State," which aims to achieve social justice.[55] The differences among these types of states represent the historical backgrounds and needs of the people in different eras.

Among them, the "Police State" (Polizeistaat) emerged around the end of the 17th century and start of the 18th century. This development resulted from the formation of modern Territorial States (Territorialstaat). The rise of cities gradually blurred the boundaries of clan groups within which the original feudal states existed, thereby resulting in a Territorial State where people from different clans were governed by one ruler.[56] Due to the gradual improvement of personal status, the State not only had to provide security and protection, but social services as well, including roads for transportation, city walls, water supply, medical facilities, and so on. Thus, in addition to the sole task of protection, the state also had to provide services for the interests of the communities. At this stage, the characteristics of the country are the provision of services, establishment of administrative bureaucracy, and group consciousness shaped by the concept of public interests.[57]

Accompanying the increase in the people's reliance on public affairs is the concentration and expansion of the leader's powers. Its internal politics are governed by a unified and uncertain coercive power (Zwangsgewalt) or

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55. *See* Cheng Chung-Mo (城仲模), *Sishi Nianlai zhi Xingzheng Fa* (*四十年來之行政法*) [*Forty Years of Administrative Law*], 41 FALING YUEKAN (法令月刊) [LAW MONTHLY] 64, 65-67 (1990); CHEN SHIN-MIN (陳新民), XINGZHENG FAXUE ZONGLUN (行政法學總論) [GENERAL INTRODUCTION TO ADMINISTRATIVE LAW] 7 (9th ed. 2015).

56. THOMAS FLEINER-GERSTER, ALLGEMEINE STAATSLEHRE 22 (1980).

57. *Id*. at 23. Some scholars have also referred to the states of this period as "Welfare States" (Wohlfahrtsstaat). However, this type of state is dissimilar to the "Welfare State" of the 20th century. *See* HARTMUT MAURER, ALLGEMEINES VERWALTUNGSRECHT § 2 Rn. 4 (10th ed. 1995).

police power (Policeygewalt). Thus, social order, purpose, and the formation of social goals all involve the intervention and governance of state power, whereas the scope of the people's self-government is extremely limited. This type of authoritarian state, which "has state powers but no civil powers, has laws to govern the people but none to govern the state," is often referred to by scholars as a "police state."[58]

In the early 19th century, due to the Industrial Revolution and social industrialization, individuals became more dependent on groups and capitalists. This strong dependence on the state and capitalists for survival led to the great need for freedom and democracy, thus a "Constitutional State of Law" (Rechtsstaat). This type of political system, which is centered on limiting an authoritarian monarchy, has the following key elements: constitutionalism, legality of administration, separation of powers, and the protection of personal freedoms and rights.[59]

Based on the perspective of the above state types and administrative tasks, the development of administrative law in Taiwan under Japanese rule (end of the 19th century and start of the 20th) remained in the era of a "Police State." The GGT still held highly absolute authority in the rule over Taiwan, with strong and extensive powers exercised by the administrative authorities. There were also traces of police and military rule, while constitutionalism was not implemented in a strict sense, and the principle of administration according to law was not emphasized. In addition, state administration was held tightly by the central government, which enjoyed unchecked coercive powers and exerted control over all public affairs, including social order, livelihood, economic growth etc. By contrast, the officials and ordinary civilians were required to give unlimited loyalty and service to the state, while also bearing unlimited obligations. Modern democratic and nomocratic concepts were subjected to misrepresentation and suppression by the Japanese Empire in Taiwan. There was a universal lack of concepts on national sovereignty, parliamentary supremacy, separation of powers, balance of powers, and others. It was only through the struggles and diligence of a few intellectuals, especially the petition movement for the establishment of a Taiwanese parliament and the distribution of *The Taiwan Minpo* newspaper, that the seeds of democratic constitutionalism were sown in Taiwan and began to sprout.

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58. H. P. BULL, ALLGEMEINES VERWALTUNGSRECHT § 2 Rn. 88 (4th ed. 1993).

59. *See* HANS J. WOLFF/O. BACHOF, VERWALTUNGSRECHT I, S. 42 (9th ed. 1974). Regarding the origin of the ideas for "States of Law," *see* Chen Xin-Min (陳新民), *Deguo Shijiu Shiji "Fazhi" Gainian de Qiyuan* (*德國十九世紀「法治國」概念的起源*) [*The Origins of the "Rechtsstaat" Concept in 19th Century Germany*], 55 ZHENGDA FAXUE PINGLUN (政大法學評論) [CHENGCHI LAW REVIEW] 47, 47-71 (1996).

2. *Features of Administrative Laws: Order Administration as the Center of Regulations with Traces of Economic and Welfare Administration*

During the early period of Japanese rule, although Japan recognized Taiwan as a "territory", the differential treatment of Taiwan from the Japanese mainland was irrefutable. Various exploitative and repressive measures were prevalent in Japan's rule of Taiwan at that time. Taiwan's administrative law of that period was characterized by order administration, with (Japan's) national security, protection of (Japan's) state power, and maintenance of (Taiwan's) social order as the core of the regulations.

Second, under the domination and governance of Japanese Imperialism, Taiwan gradually shifted from a feudal society and economy to a capitalist society and economy. Hence, its economy and administration were relatively advanced. However, under Japan's differential treatment of Taiwan, the regulations were mostly related to the establishment of various monopolistic enterprises. The aim was to facilitate Japan's monopoly over capital, thereby enabling the exploitation of Taiwan's labor force.

Furthermore, although Taiwan under Japanese rule could be categorized as a "police state", in terms of chronology, it was already the early 20th century, when the functions of the government were gradually expanding in response to the increasingly complicated social activities in an industrial capitalist society. Therefore, the laws found in Providing States could also be seen. Examples in this respect included the "Taiwan Poor Relief Regulations," the "Regulations of Disaster Relief Funds in Taiwan," etc. This was particularly true of the "Period of Imperial Ordinance Legislation" (policy of interior extensionism), during which numerous Japanese statutes were implemented in Taiwan through imperial ordinances that were somewhat similar to the modern providing, cultural, welfare administrative system. The "Preservation Law of Historic, Scenic and Natural Monuments," the "National Parks Law," the "Youth Protection Act," the "Compensation Act," the "National Parks Law," the "National Medical Act," etc. were all cases in point.

Overall, since the Meiji Reform, Japan adopted the system of modern Continental European countries, and used its executive powers for extensive involvement in various domains of people's lives. This was passed on to Taiwan with the rule of Japan. In general, during the Japanese rule, the tasks of the State not only included the passive protection of social peace, but also the active improvement of people's well-being. Therefore, on the one hand, the administrative power maintained public order, prevented hazards, and limited the people's freedom; on the other hand, it actively improved the people's well-being, and provided services or assistance. Aside from "order

administration" and "assistance administration," there were also "external affairs administration," "financial administration," "legal affairs (judicial) administration," "military affairs administration," and so on. In sum, Taiwan's administrative laws were numerous and diverse, covering an extensive range with complex issues.

3. *Central System: From Military-Administration Unification (Military Rule) to Separation (Civilian Rule), yet Still Centered on Military Rule*

Although after 1919, the military organizational system was separated from the GGT Office, this organizational reform did not imply a fundamental change in the absolute authoritarian position of the GGT. For example, the GGT system still maintained the regulation stating that "[t]he GGT may, in necessary areas, order a garrison captain or military attaché to concurrently manage civil affairs." Furthermore, in September 1936, the military GGT was restored. Thus, at the end of the Japanese rule, the central system was still a military ruling system with "military administration."

4. *Local System: Gradual Progress toward Local Self-Government, yet Still Centered on Police Rule*

Overall, there are three main observations of the local government system under Japanese rule. First, in principle, the local organization structure was designed to guarantee that the GGT could exercise full control over the region. This is even clearer, when compared with the local government system in Japanese mainland of the same period. In Japanese mainland, local self-government was enshrined in law. The law clearly stipulated the boundaries of the power between the local and the central governments, prohibiting interference by the higher authorities with the affairs that are assigned to local authorities. By contrast, in Taiwan, the local government system was completely ruled by the central government, presenting a picture of top-down authoritarianism. This was especially true from 1895 to 1921, when the GGT and the local governments had a hierarchical relationship. Local governments were limited to managing general administrative affairs that were not retained by the higher authorities. In addition, the GGT was empowered to cancel or terminate any disposition by lower levels at any time.

Second, although after 1920, the local governments have gradually been given more authority, in terms of the actual level of command, police power still occupied a dominant position in local governance. This was clear by looking at the power structure between the police department and the local

administrative bodies. Before the implementation of the Shū system in 1920, the ShiChō (支廳, sub-prefecture) Head under the Ken and Chō system, and ShiChō Head subordinate to Chō, were held by police officials. In particular, after the implementation of the multi-*chō* system, the Police Department were given the power to command the heads of local administration. Even after the implementation of the Shū system, the Gun Director also had police power. Furthermore, the Baojia system, a grassroots organization below the Gai and Jō, was essentially an auxiliary body of the police, subject to police command. Under the Baojia system, residents were obligated to supervise each other and report the wrong doings of others to the police. It was a community-based law enforcement mechanism. It is also notable that under Japanese Rule, *Fandi* (aboriginal land) was always subject to police regulation.

Third, although a certain degree of local self-government had been gradually achieved in Taiwan through the 1920, 1935, 1937 reform, the "right to local self-government" had no constitutional basis, but was recognized and authorized through national statutes. This had implications on the rights of the people. Without a constitutional basis, there were no "institutional safeguards". In addition, the concept of self-government at that time could certainly not have been based on the people's sovereignty to bestow "inherent rights" on the local region. Nevertheless, the practical experience of some degree of local self-government during this period planted the seeds for the future development of local self-government in Taiwan.

5. *Formal Rule of Law: No "Principle of Legal Reservation" and No "Legalism of Punishment"*

In the system of governance in Taiwan under Japanese rule, the "principle of legal reservation" was not applied. The GGT exercised the administrative, legislative and judicial powers, without parliamentary politics or separation of powers (only the exercise of judicial powers gradually became independent). Hence, the GGT could regulate matters related to people's rights and obligations through the administrative-legislative power. For example, the GGT may freely enact administrative legislation to restrict the freedom of people in Taiwan (e.g. pre-emptive orders), to deprive the people of their property, or to impose obligations, such as levying taxes.

This was true even during the "Period of Imperial Ordinance Legislation" (policy of interior extensionism), when the statutes of the Japanese mainland were implemented in Taiwan through imperial ordinance. As these laws were enacted without the participation of the Taiwanese

people, in the strict sense, this was still a distance away from the principle of legal reservation. Furthermore, the governmental bodies of Taiwan, especially its court organization, still had to be provided for under the *ritsurei* issued by the GGT. Hence, the "principle of legal reservation in authority organization" was still absent.

In addition, the concept of "legalism of punishments" was also not applicable. Apart from the *ritsurei* enacted by the GGT (equivalent to laws), the central and local government offices could also issue *furei* or *shūrei* (administrative orders) to impose obligations on the people. Violators would be sentenced to penal labor, imprisonment, or detention, while also be fined. The prefectural governor could also exercise judicial power, in accordance with the "Order for Civil Dispute Mediation" and the "Immediate Sentence for Criminals". The scope of "immediate sentences" included crimes for which the main sentence was heavy imprisonment for a period of three months.

6. *Substantive Rule of Law: Considerable Administrative Discretion, Differences in Internal and External Regulations*

Not only was the legal system in Taiwan under Japanese rule unconstrained by formal rule of law, its operation also lacked the concept of substantive rule of law. Administrative authorities were often endowed with extremely broad discretion. For example, the formation of intervening dispositions (e.g., land expropriation), refusals of application (e.g., permits for newspaper publication), or formulations of beneficial disposition (e.g., providing industrial assistance funds) were all subject to administrative discretion. Furthermore, the exercise of discretion was generally not strictly restrained. Thus, it is evident that the much-emphasized concepts in modern states of law, such as "arbitrary discretion" or the "principle of proportionality," were not present at that time.

Second, the principle of equality, one of the key elements in substantive rule of law, was not obeyed during the period of Japanese rule. Differential treatment and legal discriminations were prevalent. Other than the differences between the administrative legal system in Taiwan and the Japanese legal system, there was also differential treatment in regulations within the same territory. For example, the obligations under the Baojia system was limited to the islanders (Taiwanese), but not the mainlanders (Japanese) living in Taiwan. The educational regulations also stipulated that the children of mainlanders (Japanese) may attend free "elementary schools," while those of islanders (Taiwanese) may only attend paid "common schools". Moreover, the curriculum standards and content were also different.

7. *Administrative Remedy System: Simple Appeal System, Lack of Administrative Litigation*

The establishment of modern constitutional states aims to achieve three basic objectives: "basic rights," "legal reservations," and the "right to remedy." These three aspects are intrinsically linked and indispensable. During the Japanese rule, the Taiwanese did not enjoy the basic rights protected by the (Japanese) Constitution, and the legal system in Taiwan was not constrained by the principle of legal reservation. Consequentially, the inadequacies of administrative remedy were inevitable. There was only a simple appeal system that allowed appeals for enumerated affairs from 1922. This avenue of remedy in the administrative system had limited effects in protecting the rights and interest of the people under such authoritarian politics. Furthermore, to avoid disputes, remedies in the form of administrative litigation were never provided.

In summary, the legal system (in particular, the operation of administrative laws) in Taiwan under Japanese rule was one with "special power relations," using the "whole of the Taiwanese people" to form a legal relation of governance between the Empire of Japan and the Taiwanese people.

B. *Inspirations for Future Research*

Taiwan's local administrative system is a prime example to show how knowledge of the administrative law in the Japanese era may play a crucial role in understanding the development of modern Taiwanese administrative law. The present local administration organizational system in Taiwan contains some rules that are neither stipulated in the ROC Constitution nor originated from the ROC administration law implemented in China (before the ROC's rule in Taiwan). However, these rules seem to trace back to Japanese Rule Era in Taiwan. Therefore, comparing the evolution, differences, and similarities among these three legal systems is crucial. However, this would be a massive project that is beyond the scope of the present paper. To inspire future research, this paper has identified five points of comparison (see Table), for which preliminary analysis are made.

The first is constitutional politics: After the founding of the ROC in 1911, several versions of constitutions were enacted, including the Provisional Constitution of the ROC (1912), Yuan Shikai's Constitutional Compact (1914), and the Cao Kun's Constitution (1923). In 1931, a constitutive document, namely the Provisional Constitution of the Political Tutelage Period, was formulated. However, these had barely functioned as the fundamental law of the country. During the Japanese rule, the Meiji

Constitution was nominally implemented in Taiwan, with its substantive provisions partially applied. When the Japanese rule ended, the Constitution of the ROC, promulgated and implemented in 1947, was effectively implemented in Taiwan.

The second is parliamentary politics: After the founding of the ROC, Senates had never properly functioned, despite the enactment of Organic Law for the Congress and Election Law for the Senate, and the election of senators in 1913. Throughout the Japanese rule, no Taiwanese parliament was not established. After the Constitution of the ROC took effect, the First National Assembly of representatives and legislators, including the elected representatives of Taiwan, was formed through ordinary, direct election. This marked the beginning of parliamentary politics. However, given the holding of Interpretation No. 31 by the Constitutional Court, which held that the first-term Members of the Legislative Yuan may continue to exercise their powers before the before the second-term Members were elected, parliamentary politics was only partially implemented at the beginning of the ROC.

The third is legal reservation: Early ROC constitutional instruments contained provisions that forbade the deprival of basic civil rights without specific authorization by law, thereby establishing the principle of legal reservation. However, due to the fact that numerous administrative orders were issued to restrict the rights of the people, the principle was not fully complied with. During the Japanese rule, the principle of legal reservation was not established under either the "Ritsurei Legislation Period" or the "Imperial Ordinance Legislation Period." After the ROC Constitution went into effect in 1947, Article 23 enshrined the principle of legal reservation. However, in reality, there have been several cases where administrative orders were used to limit the rights of the people, so it can only be said that part of this principle was implemented.

The fourth is local self-government: The ROC government in China adopted a bureaucratic method of local administrative organization, rather than a self-governing local administration organization. Not only were the Chinese provinces purely national administrative regions, County and city governors within each province were also appointed by the central ROC government. Nor were there formal governmental bodies that could represent public opinion.[60] By contrast, during the Japanese rule, there was gradual progress toward a system of local self-government, such that by 1937, Taiwan already had a rudimentary scale of local self-government. In particular, the local self-governing bodies of *Shū, Shi, Gai,* and *Jō* were already "(public) legal persons." When the ROC started its rule in Taiwan,

60. *See* LIN, *supra* note 1, at 178.

local self-government, though provided for in the Constitution provided, was not implemented. However, due to the enthusiasm of the Taiwanese people to exercise local self-government, the central government permitted the counties and cities (including rural and urban townships) to implement local self-government. From 1950 on, the Outline for the Local Self-government of Counties and Cities and its subsidiary legislation were promulgated, specifying that counties, cities, and both rural and urban townships were "legal persons.". Moreover, it is notable that since the implementation of self-government in Taiwan to the present day, self-government at the township level has always been present, despite the fact such units are not expressly stipulated in the Constitution. Such was the legacies from the experiences of local self-government obtained during Japanese rule.[61]

The final point is remedy system: Since the founding of the ROC, all the Constitutions above have provided for petitions, while the appeal system began in 1930. As for administrative litigation, the Court of Administrative Justice (Pingzheng Yuan) was established in 1914, while the formal administrative court system was roughly established with the enactment of the Administrative Litigation Act in 1932. Thus, regardless of its actual functioning, at the very least, the administrative remedy system was fairly complete. Under Japanese rule, there was no administrative litigation system. The appeal system was implemented in 1923 in Taiwan, but its function was limited given the late stage of Japan's rule. Petition was the only non-violent measure for resistance available to the Taiwanese people. When the Japanese rule ended, the Taiwanese administrative remedy system inherited the ROC system, and the Taiwanese began enjoying a more complete right to administrative remedy, compared to that under the Japanese rule.

61. In the 1961 review of "China's Administrative Laws" by Professor Lin Ji-Dong (林紀東), he stated that "[t]he above local self-government regulations (according to the Outline for the Local Self-government of Counties and Cities) are more complete compared to the autonomous regions in China, which have had decades of self-government, and form a feasible set of laws and regulations. After the counter-offensive against mainland China, the formulation of local self-governing regulations for all levels will be profoundly influenced." *See* Lin Ji-Dong (林紀東), *Wushi Nianlai zhi Xingzheng Fa (xia)* (*五十年來之行政法（下）*) [*Fifty Years of Administrative Law (Part 3)*], 27 FALU PINGLUN (法律評論) [LAW REVIEW] 3, 5 (1961).

Table: Comparison of Legal Systems Among Modern Administrative Laws in Taiwan

Period / Legal system	Chinese administrative law (1912-1945)	Japanese administrative law (1895-1945)	Taiwanese administrative law in early national rule (1945-1950)
Constitutional politics	△	△	○
Parliamentary politics	△	×	△
Legal reservation	△	×	△
Local self-government	×	△	△
Petition	○	○	○
Appeal	○	△	○
Administrative litigation	○	×	○

×= Not implemented; △= Partially implemented; ○ = Completely implemented

V. CONCLUSION

The present administrative law may be influenced, to some extent, by the old legal system, be the influence direct (continued use) or indirect (absorbed by current laws), tangible (forming part of the existing legal norms) or intangible (becoming customary). Since the development of administrative law is highly influenced by the social and political context, research on this subject should consider all the historical and social context that may have played a role in shaping the law. Ignoring any relevant historical period would inevitably undermine the ability and opportunity for long-term observation over historical development and the reflection on an administrative system.[62]

62. The Taiwanese historian, Professor Chang Yen-Hsien (張炎憲) once wrote that "[f]or a long time, we have neglected the existence of this historical period [note: Japanese rule], and have passed our judgements based on different value systems. We have lost the impartiality needed to face historical facts, and the ability for the long-term observation and reflection needed for historical development." He then lamented, "The disparities in the views of the older generation of Taiwanese, Mainlanders and officials have blinded the calm observation needed toward Japan. Under the official Chinese education policy, the Japanese rule of Taiwan has become a historical gap. Thus, the younger generation do [sic] not know this period of history, while the older generation can only recount it in memory." *See* Chang Yen-Hsien (張炎憲), *Rizhi Shidai Taiwan Shi de Yanjiu Dingwei* (*日治時代台灣史的研究定位*) [*Research Orientation of Taiwanese History under Japanese Rule*], 26 TAIWAN SHI TIANYE YANJIU TONGXUN (臺灣史田野研究通訊) [NEWSLETTER OF TAIWAN HISTORY FIELD RESEARCH] 10, 10 (1993). These words are still ringing in our ears, even though ten years have passed. Research on the history of Taiwan under Japanese rule has accumulated considerable results, and has become a trend. By contrast, research on the history of administrative law in Taiwan under

This paper has argued that previous research on the development of modern Taiwanese administrative laws wrongly focused only on the ROC administrative legal history. As the modern Taiwanese administrative law is the sum total of Qing (before 1895), Japanese (1895-1945), and ROC administrative laws (after 1945), comparing the evolution, differences, and similarities among the latter three legal systems is crucial for the understanding of the former.[63] In particular, the administrative law under Japanese rule in Taiwan has been largely ignored by scholars and thus under-researched in legal fields. Since the period of Japanese rule had shaped the Taiwanese society in a unique way, and laid down the pattern for the development of Taiwanese administrative law after the Second World War, research on the administrative law in this era is especially important for gaining a deeper understanding of the current administrative law in Taiwan.

To inspire more research on this subject, this paper has collated historical data and literature of this era in an attempt to "discover" legal material for comparison and reflection for future research. It has also provided some comprehensive observations of the administrative law in Taiwan under Japanese rule. Further, this paper has demonstrated the value of studying the administrative law during the Japanese Rule period by providing an example on how such studies could broaden our understanding of modern Taiwanese administrative law.

Japanese rule seems to still be in infancy and exploratory stages, with no reviews of this period produced. The reminder above is still thought-provoking.

63. Before 1895, the administrative legal system of the Qing dynasty was in force (Qing administrative law); from 1895 to 1945, it was the administrative legal system under Japanese rule (administrative law of a Japanese foreign land). Although the Republic of China (ROC) was founded in 1912, its administrative laws were only implemented in Taiwan after 1945. Hence, the laws prior to this time could be known as "Chinese administrative laws" (there was only one China at that time).

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臺灣行政法史初考：日治時期篇（1895年～1945年）

李 建 良

摘 要

行政法內涵的醞釀、生成、演化與蛻變，莫不受到各該政經社文的深刻影響；行政法的研究，不能忽略行政作用所處的社會實況與歷史情境，故行政法的發展與遞嬗過程，構成行政法學研究領域不可或缺的一環。審視臺灣當前行政法教科書的內容，可以發現其所述行政法的發展，大抵以歐陸（特別是德國）國家的發展歷程為論述重心，較少論及臺灣行政法的歷史沿革，或多從中華民國肇建時談起，忽略日治時期的法制發展。若謂行政法的內涵深受各該政經社文的影響，有其歷史的延續性與縱深性，則日治時期臺灣行政法史的探索，自是臺灣行政法史不可斷裂的一環。本乎「斯土斯法」的法律史觀，本文以歷來實際施行於臺灣的行政法為研究對象，先就日治時期臺灣憲法體制述其要旨，再進一步剖析日治時期臺灣行政法制的演進與特徵，最後綜整近代臺灣行政法的法制變遷，嘗試從實踐情況中汲取歷史啓示，找出貼近臺灣人民生活經驗與法律感情的規範原則，期對臺灣行政法史的建立有所助益。

關鍵詞： 臺灣行政法、日治時期、法律史、行政法法源、臺灣地方制度