

Land Legal Culture in the Qing Period: A Review on Analytic Approach and Theoretical Development

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Abstract

This article reviews authoritative researches of civil legal culture (especially land legal culture) in the Qing period, including the works by Shiga Shuzo (滋賀秀三) and Philip C. C. Huang (黃宗智), and the studies by Kishimoto Mio (岸本美緒) and Terada Hiroaki (寺田浩明).

Both Shiga and Huang discuss the logic of legal decision in a magistrate's hearing. Shiga claims that a magistrate mediated the legal case in view of "qingli" (情理). However, Huang states that a magistrate judged it according to the principle of the Qing code (律例). Both Kishimoto and Terada extend the analysis of legal culture into the studies of social order in the Qing period. They analyze the legal consciousness within land contractual activities of ordinary people.

I find that the above analyses are mainly of a culturalist approach. They analyze mainly the texts of legal representation relating to legal activities. They ignore not only how the legal culture of land contract in the local society emerged from its economic development and population growth, but also how a magistrate resolved the land case in view of its economic and political impacts.

In the final part of this review, I refer to some significant

social history studies of Taiwan's plains aborigine land rights by Shi Tian-fu (施添福), John Shepherd (邵式柏) and Ke Zhi-ming (柯志明). Furthermore, I outline briefly my dissertation on land litigation in Dan-Xin Archives. In terms of them, I propose an analytical framework of "social history of land legal culture", combining institutionalist with culturalist perspectives.

Keyword: legal culture, yi-tian-er-zhu (一田二主), culturalism, institutionalism, social history