

Background: The Eighteenth Century

- Crossroads of shipping lanes crossing East and Southeast Asia
- Late seventeenth century (1683): Annexed by the Qing Empire (1644-1911)
- Juncture of Eurasian land-based expansion (Qing) and maritime trade-based expansion
- Eight-fold increase in population (1683-1777)

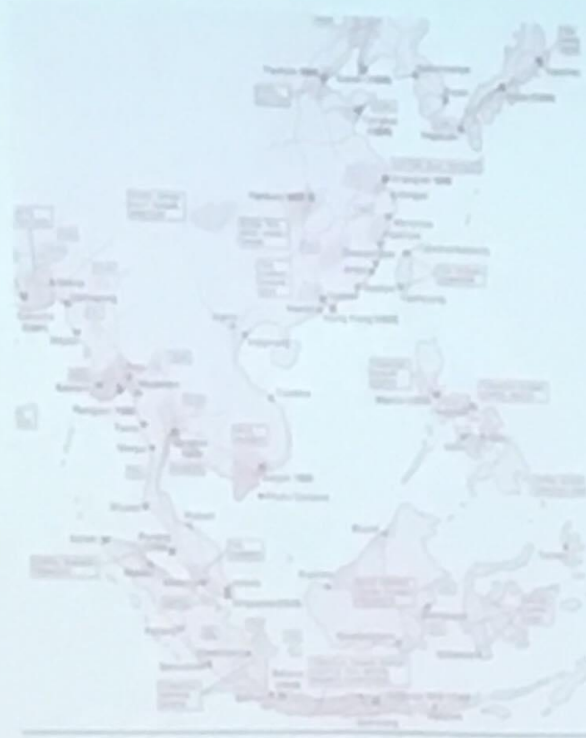


The (Early) Nineteenth Century

- A "frontier" society
- Relationship to the rest of the Qing Empire, i.e. "China proper"
- Societal structure: a settler-indigenous society shaped by local conditions
- "Entrustment of an Orphan Heir," 1832
- The Qing Empire *as an empire*

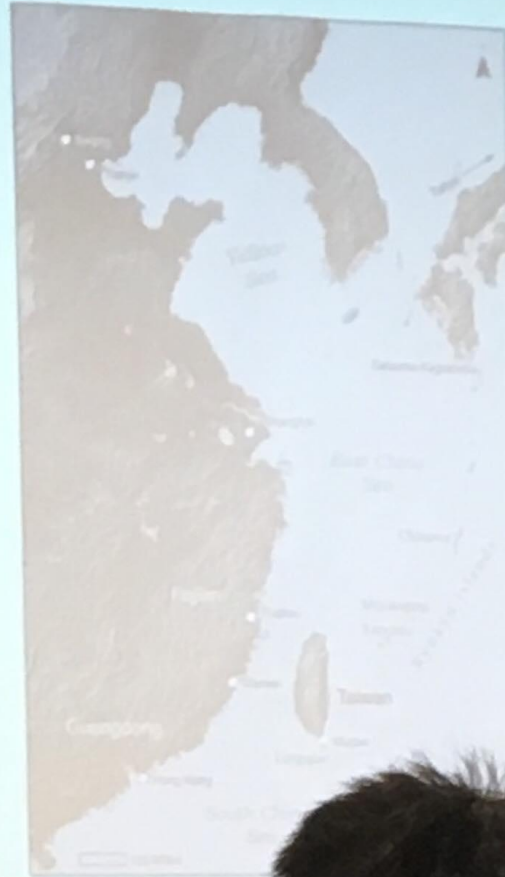
Mid Nineteenth Century Transformations

- Relationship between the various groups on the island (indigenous-settler relationship)
- Crossroads of inter-imperial interests
- Relationship between Taiwan and Chinese mainland
- Mid-nineteenth century context: Opium Wars (1839-42; 1856-60) and emergence of the treaty-port system



Taiwan Incident, 1874

- Inter-imperial relationships: European powers, Qing Empire, Japanese Empire
- Challenge to Sino-centric world order
- New system of foreign relations
- How various powers understood Taiwan and its inhabitants in the world



Sino-Japanese Negotiations over the Taiwan Incident

Japanese position

- Ryukyuan subjects are Japanese; they must be protected by Japan
- Paiwanese who attacked the Ryukyuans are Chinese; therefore Qing government is responsible

Chinese position

- Paiwanese live "outside of civilization" (*huawai/kegai*); therefore we are not responsible for their actions

Japanese response

- If the Paiwanese are "outside civilization," then they can be punished by Japan, and their territories are not part of the Qing Empire (and are open for colonization)

In the aboriginal territory the Chinese Government let the indigenes keep their customs. Those who are able to pay tax pay it. Those who are talented enter nearby schools. We enforce a generous and lenient policy to bring them up to a high level of edification. They are subject to the officials of the nearby districts. China stresses a gradual process of government, and has no intention to forcefully or too rapidly subjugate them...China has many regions of similar condition and every province has its own practices.

- (Qing) Zongli Yamen ("Foreign Ministry") to Japanese minister Ōkubo Toshimichi, 1874

Taiwan as a Japanese Colony

- Annexed by Japan in 1895; ensuing debate about its position in the empire
- Gotō Shinpei, head of civilian affairs in Japanese colonial government
"There are thousands of years of living history collected right on this one island, so the difficult of ruling [it] is even greater than imagined. Savages are mixed with civilized people, and though the island is small, there are a great number of languages spoken and there are cases where many [people] are not mutually intelligible with each other, so there are many cases in which the customary system is not unified. So in this case, it would be irresponsible and rash to simply promulgate the legal code of Japan... policies in new territories depend on time, place, the national essence of the home country, and must also depend on the conditions of the new territory."

- Gotō Shinpei, "An Opinion on the Necessity of Investigating the System of Old Customs for the Administration of Taiwan" *Accounts of Customs*, June 22, 1901

The turn to “custom”

- How to identify the “thousand years of living history”?
- Creation of a “Committee for the Investigation for Old Customs in Taiwan,” 1901-1922
- Headed by Okamatsu Santarō, b. 1874, father was a Confucian scholar
- Trained in British/common law in Japan, encounters new field of “ethnological jurisprudence” while studying in Germany

“Because sovereignty over land was weak [during the Qing period], one could not hope for the government to secure property. When one could not guarantee rights through the courts, it was a natural tendency to take measures to provide for all sorts of self defense, so in Taiwan it is/was a common custom to create documents to certify all manners of legal actions...these [documents] are the best sources for understanding Taiwan’s customs (*kanshū*), and as such this study relies exclusively on these types of documents.”

- Taiwan: part of the Qing Empire?

What happens when codified law contradicts custom?

"The Great Qing Code was the legal code of the Qing Empire and because Taiwan was a part of the Qing Empire, in theory, the Great Qing Code (Da Qing lǐlǐng) must have been enacted in Taiwan. However, in reality, it was the opposite. The degree to which the Great Qing Code was enacted in Taiwan is not easy to determine, but in essence, it was largely enacted when it came to criminal matters. As for civil matters, it was proper to follow [the Qing Code], and there are (not no) examples in the record of case decisions that follow the code. But there are also, at present, many customs which go against the code."

- *An Overview of the Investigation*, 1900

- Codified, statutory law is of limited use; ethnographic investigation is the only solution

Taiwan in East Asia

Taiwan's system of old customs is China's system of custom today; therefore to understand the old system of Taiwan, you must know the present Chinese system; to know the present Chinese system, you must know the past Chinese system. The system of Chinese civilization in ancient times was not only that of China alone. For thousands of years in Japan and Korea, it supported politics and teaching and nourished order and stability... If we compile the legal code of China by systematically dividing it into parts, and by making clear its beginning to end, it will be a model for a millennium.

- "On the Need to Compile a History of the Chinese Legal Code," 1902

- Spatial and temporal relationship between not only Taiwan and the Qing Empire, but Taiwan, China, Japan, and Korea
- Taiwan as a site of research to discover truths about East Asia as a whole

Concluding Thoughts

- Taiwan Expedition: How did elites understand the relationship between history, governance, and civilization in Taiwan? How were these relationships represented and described, and to what effect?
- Customary law investigation: Debate among Japanese bureaucrats over the *historical* relationship between Taiwan and the Qing Empire; and the *legal-political* relationship between Taiwan and the Japanese Empire—how were these relationships represented and described, and to what effect?