

台北盆地  
像置於匣內的大提琴  
鑲著綠玉...  
裸著的觀音山  
遙向大屯山強壯的臂彎  
施著媚眼  
向左再向南看過去  
便是有著沉沉森林的  
中央山脈的前襟了  
基隆河谷像把聲音的鎖  
陽光的金鑰匙不停地撥弄  
在雲飛的地方  
我也伸長我底冰斧  
為那七彩的虹弓綴一根弦  
而這歌著的大提琴  
却是世間最智慧的詞令者  
對著偶來的人，緘默——。

俯拾 / 鄭愁予



350

行市發單

份守本良防善織

352







Bopiliao Historic Block, Pan Chunlin



# The Qing Dynasty (1683~1895)

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This article was written by Meng Ling-Shi, Prosecutor; the painting: Yangmingshan, Liang Dan-Feng, National Library



I

Legal thought of the Qing Dynasty

II

Juridical System, Procedures and Operation of the Qing Dynasty

III

Judiciary of Taiwan under the Qing Dynasty

IV

Summary

## I. Legal thought of the Qing Dynasty

The decrees and regulations, and civil servants system of the Qing dynasty was the most comprehensive of the past society and dynasties. Qing had considerable achievement in both military and civil fields, with vast territory and many talent people. In late Qing period, the western learning was gradually approached and there was call for reformation and the beginning of modernization. The old laws basing on the Confucian philosophy as a tool to maintain authoritarian emperial rule and parental system, were often confused with moral and ethic teaching and lack of the concept of right and obligation, private law would not rise.

The beginning of the criminal code of Qing wrote: "Since the beginning of written covenants, China ruled the world by etiquette." The content of legal civilization is to introduce etiquette to law and to combining etiquette and law. In the later period of Ming and earlier period of Qing there was an enlightened legal thought. In late Qing, there was reformation to strengthen the country, Shen Jiaben completed the draft of criminal code in the 33rd year of Guangxu, which was succeeded by the criminal code of the nationalist government.

## II. Juridical System, Procedures and Operation of the Qing Dynasty

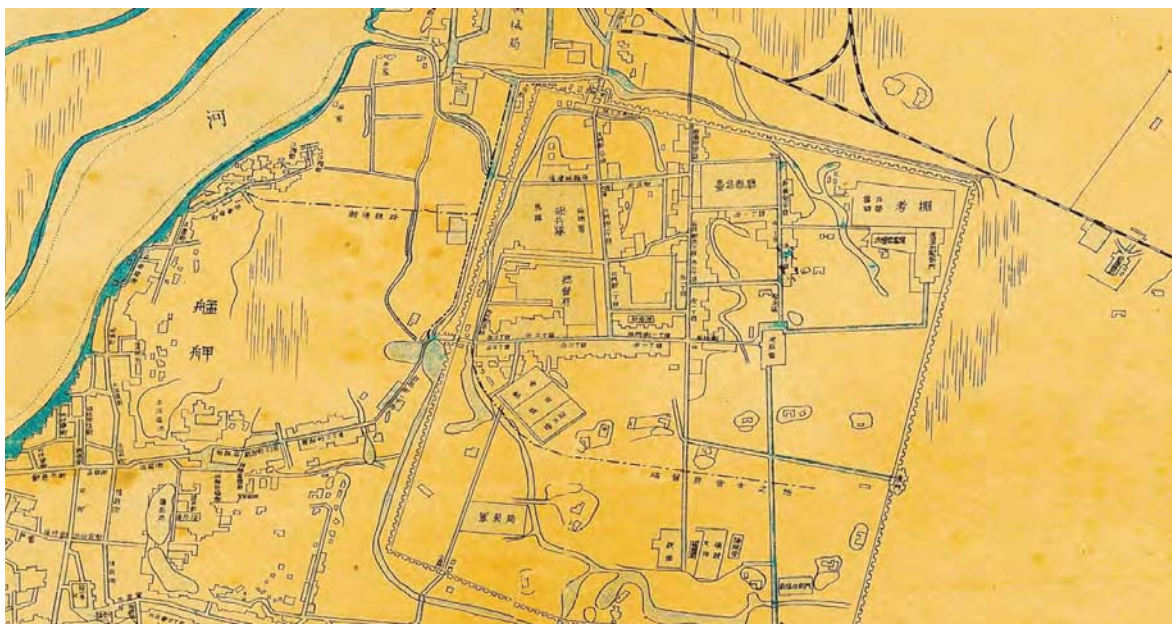
There were three stages of Qing juridical system: (1) AD1616 - the first year of Tianming (1616) ~ the first year of Shunzhi (1644), (2) the first year of Shunzhi (1644) ~ the 20th year of Daoguang (1840), (3) the 20th year of Daoguang (1840) ~ the third year of Xuantong (1911). The second and third stage were separated by the



appearance of extraterritorial rights and mixed court after the Opium War. Someone considered that the extraterritorial rights appeared in the appendix of the Nanjing Treaty between the Qing government and UK, and the mixed court appeared the agreements between the Qing government and UK and France in the fourth year of Xianfeng (1854). Although they caused damages to the sovereignty of the Qing dynasty, they did not change the overall nature and content of the Qing juridical trial and the civil servant reformation in

the 32nd year of Guangxu (1906), which introduced European continental legal system. Despite of its short lasting duration, it was an important page of juridical system reformation. As such, it should be viewed as the dividing line between the second and third stage.

The central juridical authorities, the so called "three juridical units", were the Ministry of Punishments, the Censorate (Doucha Yuan) and the Grand Court of Justice (Dali Yuan). There were no secret



Map of Taipei City in the Qing dynasty, Center for Geographic Information Science, Research Center for Humanities and Social Sciences, Academia Sinica.

police organizations like those existed in the Ming dynasty. The local juridical authority was attached to administration authority so the judicial power was subordinate to administrative power and the chief executive also controlled judiciary. There were judges in each province who supervised criminal and civil affairs. Each province was administered by a governor every two or three provinces were administered by a viceroy. Prefecture was the superior juridical authority of state and county, the duties were "trial of cases and investigate treacherous". County handled its own cases and sent sentenced prisoners with their files to higher level for review. In central juridical authorities there were the "Review Procedures for Provincial Cases", "Procedures for Capital Current Cases" and "Special Case Trial Procedures" for the chief executive to supervise judiciary. Scholar Tao Xisheng said the national power of the Qing dynasty was divided into "military", "civil and finance" and "monitoring and judiciary" so the judiciary system indeed formed its own system.

Taking into consideration disadvantages of secret police organizations and of Ming dynasty, Qing dynasty restricted eunuchs and imperial guards from interfering with judiciary. Beside the governor and viceroy offices, military commander office of each province, the eight banner army, general, the Court of Colonial Affairs (Lifan Yuan) for the minority races, and the Imperial Clan Court (Zongren Fu) all enjoyed certain degree of jurisdiction.

The operation of juridical system was through advisers to officials, clerks, and guards. A Clerk was responsible for the preparation before trial, including site inspection, draft indictment and handling documents. A guard was responsible for standing guard in court, escort and enforcement of punishments. The procedures of Qing such as prosecution, indictment, and trial system were inherited from the past generations while more completed.





### III. Judiciary of Taiwan under the Qing Dynasty

The Qing dynasty at first inherited the idea of the Ming dynasty that Taiwan was a barbarian land and was not incorporated into its territory. After the last emperor of Ming, Zheng Keshuang, surrendered to Qing, Emperor Kangxi inquired court officials about the issue of abandoning Taiwan and the officials disputed about whether to include Taiwan into the territory or not. In 1684, after thinking over the pros and cons, Emperor Kangxi adopted the suggestion of Shi Lang and decided to capture Taiwan.

After the Qing dynasty captured Taiwan into its territory, the initial planning was to include it as a part of the Fujian Province, and was not active in administrating Taiwan, which resulted in Taiwan became a lawless land with frequent unrest. In 1874 after the Mudan She Incident, the Qing realized the importance of Taiwan, and started to establish province and prefectures, and in 1885 Taiwan was incorporated as a province. Taiwan became a province of the Qing empire, but with no independent juridical trial system, major cases were all sent to central for review.

### IV. Summary

The Qing juridical system was divided into two levels of central and local which was inherited from the Ming dynasty, the central juridical authorities were the "three juridical units", the Ministry of Punishments, the Censorate (Doucha Yuan) and the Grand Court of Justice (Dali Yuan). The local judiciary was combined with administration in local affairs. The chief executive control judiciary, there were judges in provinces to oversee criminal and civil cases. Each province was administered by a governor and every two or three provinces were administered by a viceroy, as mentioned above. The above administrative officials all had the authority of criminal investigation and judicial trial. It meant that Taiwan, under the Qing reign, did not have prosecutors so the

relevant criminal investigation (prosecution) and trial power was possessed and executed by the central and local chief executives.

The introduction of the prosecutor title and western criminal litigation system was in 1895 (the 28th year of Meiji) when the Office of the Taiwan Governor-General proclaimed the "Court Organization of the Office of the Taiwan Governor-General", using "court" to call the judicial trial authority without establishing prosecutors or other professional prosecution staffs. After the court was in operation, in response to the statutory professional job of prosecution in criminal litigation procedures, it was stated that certain people could be selected to handle prosecution. Thus the position of prosecutor in Taiwan litigation system was born. This will further discuss later in the Taiwan judiciary under Japanese rule.

As to the large scale armed conflicts between clans, the Taiwan government

was unable to resolve it with judicial investigation and trial. Both the clans of Zhang and Quan were from Fujian province with similar languages but there existed conflicts of interest and religious belief for several hundred years. The conflict remained after they immigrated to Taiwan. It seemed not easy to understand why but the reasons were all about survival and interest distribution. In 1782 (the 47th year of Qianlong) there was a large scale armed conflict persistent for three months in Taiwan and the Taiwan Prefecture was unable to handle it. The Qing government sent navy from Fujian under an admiral to Taiwan to settle the unrest. Two hundred ninety persons were executed and relevant officials of Taiwan were dismissed from their positions. That is to say, when there was large scale crime or unrest, Taiwan had to rely on military power from China to resolve it.

Taipei became a political and economic center, based on the beginning of the rule of Taiwan by the Qing





government, and the construction of the city walls made Taipei city took shape. This is the historical reason why today the Taipei District Court Prosecutors Office has numerous political and economic crimes. However, the current prosecutor system of Taiwan is hard to be found any connection with the system adopting by the Qing government. Anyway the Little South Gate built by the Qing government become the name of a Metro Taipei station by which citizens often use to travel to Taipei District Court or Taipei District Prosecutors Office.

Since 1902, the Qing government, under the longing for reform, started to model on western legal system and the traditional Chinese legal system came to the end. In the 32nd year of Guangxu (1906), the Qing government proclaimed the Grand Court of Justice Trial Organization Act, in which, Article 12 prescribed that: "Trial court under the Grand Court of Justice shall have prosecutors and the prosecutors office shall

be attached to the Grand Court of Justice. The responsibility of a prosecutor was to initiate public prosecution. A prosecutor may request to apply the proper law and should monitor the execution of convictions." This was the earliest expressed description of prosecutor system in China. Later in the first year of Xuantong (1909), the Qing government proclaimed the Court Organization Act, it also prescribed the role of prosecutor as "In accordance with the provisions of criminal code and other laws to implement investigation, initiate public prosecution, implement prosecution and monitor the execution of sentencing." (Article 90 of said Act). In other words, the role and function of prosecutor is to implement investigation and public prosecution. Until the end of the World War II when the nationalist government rules over Taiwan, there was a chance of integration of the China prosecutor system with the Taiwan prosecutor system under Japanese rule.