

Mountain Indigenous Peoples' Initial Encounter with Modern Law under the Japanese Rule in Taiwan: On the Criminal Sanctions

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Abstract

At the beginning of Japanese rule on Taiwan, the Japanese colonialist rejected to apply the principle of rule by law to the “mountain” indigenous peoples on the ground that they were not “persons” in the law and not subjects of the Japanese Empire. According to an order issued in 1900, criminal defendants who were “mountain” indigenous peoples would not be prosecuted without the consent of the Governor-General of Taiwan. The criminal sanctions upon them therefore were not decided by the prosecutor, whose duty was to implement the law, but the Governor-General, who would take political needs into account. The governing affairs relating to “mountain” indigenous peoples were gradually decided by the police. After 1915, almost of “mountain” indigenous peoples had been conquered by the Japanese Empire and thus had become Japanese subjects; nevertheless, they still were not governed by the law, with the exception that those who inhabited in the “ordinary administrative area.” After an anti-government incident occurred in 1930, the Japanese authorities declared to gradually apply the law to “mountain” indigenous peoples for the purpose of assimilating them. That, however, was never carried out because the Japanese authorities left Taiwan in 1945 due to their failure in the World War II.

There were three patterns on the criminal sanctions imposed upon “mountain” indigenous peoples during the Japanese colonial period. The first pattern was to be decided by the law in the court. The number of the first one is

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quite small. The second pattern was to be disposed at discretion by the executive branch, that is, the police authorities. There were almost no regulations giving criterions for the disposition of the police. The third was to be decided by old customs with the approval of the police. The latter two in fact occupied the super-majority of them. It should be noted, however, that the disposition or approval of the police mentioned above had to a certain extent incorporated some elements in the modern criminal law. In sum, “mountain” indigenous peoples had already contacted the modern law under the Japanese rule, although the scope and degree of this contact were very limited.

Keywords: indigenous peoples, rule of law, modern law, customs, the police, criminal sanctions