

**Reception and Creative Deviation:
A Global Legal-Historical Genealogical Study of Family Law
Exceptionalism in Colonial Taiwan**

Yun-Ru Chen *

Abstract

In the broader context of global legal history, this article explores the discourses surrounding Family Law Exceptionalism in 1920s Taiwan during the period of Japanese rule. The starting point of this genealogical inquiry began in early 19th century Europe, where Savigny's private law system distinguished family law from other legal domains, with the former being contingent upon "status" and intricately tied to national characteristics. In contrast, the latter was grounded in individual autonomy and universal "science". True to his conservative stance, Savigny rejected the contentious divorce systems debated across Europe during that time. The next stage was the controversy over the Japanese Civil Code in the latter half of the 19th century. Nobusugue Hozumi championed the German private law system, which emphasized the differentiation between family law and property law. He asserted that the French legal model, which attempted to diminish the distinctiveness of status law, was outdated. In his lecture to the Western audience, Hozumi proudly extolled the progressiveness of the new Japanese family law that granted divorce rights to wives. Meanwhile, he acknowledged that the Japanese family retained a greater degree of national characteristics within the spectrum of "legal evolution," in contrast with more "cosmopolitan" legal areas in civil and commercial law. The Japanese inheritance system, which encompassed primogeniture, was described as possessing inherent

* Associate Professor, College of Law, National Taiwan University.
E-mail: yunruchen02138@ntu.edu.tw; ychen@sjd.law.harvard.edu

qualities while simultaneously being progressive, making it well-suited for the current evolutionary stage of Japanese society. The last episode was set in 1920s Japan-colonized Taiwan. Lin Cheng-lu, a first-generation Taiwanese legal professional, took family law as the last bastion of defending Taiwan's uniqueness against legal assimilation. While advocating absorbing the "universally applicable" civil and commercial laws through Japanese law, he underscored the "local and national" characters in family customs. Amidst the fervent debates on inheritance systems, Lin "gazed back" at the colonizers and reversed the dichotomy of "advanced Japanese law – backward Taiwanese customs" asserted by the Japanese colonizers. He maneuvered the perspective of social evolution to criticize Japan's primogeniture system as similar to ancient China's ancestral inheritance and therefore destined to be eliminated by prevailing trends. Simultaneously, Lin emphasized the equality and progressiveness of Taiwan's inheritance customs, where each son has an equal share. In this genealogical exploration of the Family Law Exceptionalism, the specificity of family law is not an inherent existence but rather an artificial construction. Neither are legal professionals mere inheritors. Rather, grounded in specific contexts, strategies, and beliefs, they are autonomous actors engaging in the application, transformation, and even creative deviation from their predecessors.

Keywords: legal professionals, legal reception, legal globalization, legal genealogy, family law exceptionalism, global-universal vs local-unique, advanced vs backward, anti-colonial