

# 「番地」、契約與法律：清代北臺灣新港社的田產訟案

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## 摘要

本文試圖通過對臺北苗栗地區新港社人的漢「番」土地交易契約和「番地」田產糾紛檔案的研究，結合臺灣土地開墾的歷史，以社會史的視角闡釋清代國家的法律秩序在臺灣原住民社會建立以及運作的過程。臺灣原住民早期對契約及土地財產權並沒有清晰的觀念，那麼他們在與漢人進行地權交易過程中如何接受漢人在土地買賣中的民間習慣呢？作為國家利益的代理人 and 民間公共利益的維護者，地方官員如何在法律實踐中處理國家利益與公共利益的矛盾？為回答這些問題，本文運用兩類材料，一類是土地契約文書，另一類是《淡新檔案》中的各種訴狀、證詞、諭示等。這些漢「番」之間的開墾契、杜賣契、典契、胎借字、找洗字和訴狀，能夠反映雙方從經濟活動、社會習慣等衍生出來的「合理」要求、期望、利益與責任。而地方官員對各方權利訴求的態度並非一成不變，隨著國家「理番」政策重心的轉移，他們會順從、質疑、無視甚至推翻某些權利主張。因此民間習慣和國家法律之間存在著和諧而又緊張的關係，漢人與「熟番」正是在這樣的關係中協商並試圖解決糾紛。

**關鍵字：**清代、臺灣、原住民、契約、法律

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# Land of Aborigines, Contract and Law: Qing Dynasty Taiwan Aboriginal Land Rights Litigation

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## Abstract

This paper attempts to process through the study of their land disputes the Taiwan Han "barbarian" land transaction contract and banchi ", combined with the history of land reclamation in Taiwan interpretation of the national legal order of the Qing Dynasty to the perspective of the social history of the establishment as well as the operation of ethnic minorities in Taiwan society. Minorities of Taiwan in the beginning of the contract and land property rights and do not have a clear concept, then how to accept them in the process of land ownership transactions and Han Chinese folk customs of the Han Chinese in the sale of land ? As the agent of the national interests and the defenders of private and public interests, local officials how to deal with the contradictions of the national interest and the public interest? To answer these questions, the use of two types of materials, land Contract Documents, the other is a "short file" in the various pleadings, depositions, oracle. Reclamation lease between the of these Han "Fan" Du sell deed Code deed tire by word, to find washing word and pleadings to reflect the "reasonable" demands of both sides derived from economic activities, social habits, expectations, interests and responsibility. Attitude of local officials on the demands of the rights of the parties are not fixed, with the policy shift in the focus countries "Aboriginal", they will be obedient, questioned, ignoring even overturn certain claims. Folk customs and national laws there is harmony and strained relations between the Han Chinese and mature savages "It is in this relationship negotiate and attempt to resolve the dispute.

**Keywords: Taiwan in the Qing Dynasty, Aborigines, Contract, Law**

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