

清代屏東平原鳳山八社 地權制度變遷之研究

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摘要

從財產權的制度變遷得知，自然資源權屬是從開放性共用資源、共有財產以迄私有財產制度之形成，人類經濟活動從狩獵採集轉變為定居農業時，正式形成私有財產的產權型態。荷治以前，分布於臺灣南部屏東平原的鳳山八社，以狩獵、漁撈及游耕為其主要之經濟活動，土地是共有的，頗為類似「封閉的共用資源」，已略具排他性質。在清治以後，由於漢移民不斷湧入，荒埔地逐漸減少，為提高番地之生產效能及維持社番基本生計，鳳山八社傳統之經濟活動，當須配合改變，然而，生產型態及技術之改變，不僅形成水田稻作農業，亦導致番社土地由共有型態轉變為地權私有化。

清治時期，分割地權或一田二主制為屏東平原傳統地權制度之一，分割地權是將所有權區分為業主權（大租權）與田主權（小租權），清廷為保護社番之地權，禁止漢人私墾荒埔地，鼓勵社番自行墾耕番地，如社番不自墾，准許番社或社番將番地租與（給墾或佃批）漢人，漢人以「代番輸餉」方式合法取得番地小租權，而番社仍保有大租權，爾後並形成在同一番地上存有大租權與小租權，而且可以各自分別處分其權利。另者，部分番地大小租權皆屬社番所有，社番因乏銀費用而典賣小租權，番業主僅剩收租權。因社番在經濟上屬於弱勢者，如以番租做擔保，向漢銀主典押或借貸，當期限期滿時，社番常無法清償，番租則繼續歸漢銀主收租，形成社番「地權虛有化」，本文將以自行繪製之「清治時期鳳山八社番租分布圖」及「清朝晚期鳳山八社社番人口分布圖」予以驗證番業主地權虛有化的事實。

關鍵詞：鳳山八社、社番、分割地權、業主權、田主權

The Development of the Land Rights System at Feng-shan Eight Tribes in Ping-tung in the Ching Dynasty

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Abstract

The property-rights configuration of natural resources had transited from open access common resources into closed access common property, and then from latter into private ownership from the view of institutional change of property rights. It had formed common property into private ownership, when people's livelihood changed from hunting and gathering into settled agriculture. Before Dutch occupying, Feng-Shan eight tribes' population spread in Ping-tung Plain of southern Taiwan. Hunting, fishing and farming were Siraya's livelihood mostly, land was used in common. As the land area was used only by village man, it was similar to "the closed-access common resources" which had the feature of exclusive communal property. After Ching Dynasty, owing to Han Chinese had moved into the southwestern Taiwan, wild plains decreased gradually. To improve the productivity efficiency of tribal land and sustain basic needs of living, Feng-shan eight tribes' people must change their traditional livelihood. As rapid growth of Han Chinese and Siraya people, and the diffusion of technology for paddy rice farming, the tribal land rights had transited from common property into private ownership.

Split ownership or two tiers of owners was one of the traditional system of land tenure in Ping-tung Plain in Ching era, it distinguished what were called large-rent and small-rent rights. In order to protect tribal land rights and encourage village aborigines to plant their land, Ching Government prohibited Han Chinese from developing wild plains illegally. However, if aborigines did not need to develop the tribal land, Ching Government permitted Han Chinese to rent tribal land. Han Chinese obtained small-rent rights of tribal land by paying the tribal tax, the tribe only kept residual large-rent rights. Therefore, the tribal

land rights were divided into split ownership which was called largerent and small-rent rights. Any owner of those rights could either manage them by themselves or sold them out. Otherwise, large-rent and small-rent rights of some tribal lands belong to village aborigines, some of them sale small-rent right for lack of money. Village aborigines had left nothing but right for collecting rent. Because village aborigines were very poor, they had to borrow some money from Han lender and mortgage their rent to lender. Village aborigines could not amortise the debt usually, if the appointed pay off date reached. As a result, the right of collecting rent belonged to Han lender continually. Formally village aborigines had the large-rent rights, but they were deprived gradually, the large-rent rights turned out empty. This research will prove that by the spread drawing of tribal rent in Ching era and spread drawing of tribes' population in late Ching period.

Keywords: Feng-shan Eight Tribes, Village Aborigines, Split Ownership, Large-rent Right, Small-rent Right