

## **Empire and the Making of Personal Status**

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### **‘The Making of Market/Family Legal Distinction in the Oriental Empire: The Germany-Japan-Taiwan Trilogy**

This paper offers a Foucauldian genealogy of the dichotomous construction of family law and market law. It analyzes ideas of unique family law/personal law flowing from early-19<sup>th</sup> century Germany, tracing these ideas to late 19<sup>th</sup>-century Japan and, following through to their transformation all the way to 1920s-Taiwan. The codification debate in each locale was my vantage point. The agents were comparative lawyers, who operated in multiple legal regimes

The study begins with Friedrich Carl von Savigny (1779-1861), a great German jurist who rejected French-model codification, insisted that law should be rooted in the spirit of the people (*volksgeist*), and situated family law separately in his system of private law. The next phase of my story was set in Japan, where Hozumi Yatsuka (1860-1912), a German trained Japanese jurist and neo-traditionalist, also objected French-model codification and adopted Savigny’s idea of *volksgeist*. My third protagonist was Lin Cheng-Lu (1886-1968), a Taiwanese anti-colonial nationalist elite in 1920s Tokyo who accepted the Savignian market-family distinction, but upheld French egalitarianism when contesting the primogenitary “house” (*ie*) system adopted in the Japanese Civil Code (1898). These comparative lawyers drew existing legal concepts from their training at homeland and/or abroad, transformed these ideas for their specific agendas, and shaped the form and substance of family law in the modern world.