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Accessing indigenous land rights through claims in Taroko Area, Eastern Taiwan

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Summary

Taiwan is also facing a problematic moment on a lot of land claims from indigenous communities. Claims are various and express a lot on human-land relations. I expand the realm of claims into murmurings, complains, explanations, requests, discourses, actions of resistances, expressions and representations of feelings, guesses, pleas, petitions, suits, accusations, charges or assertions or even joking and indirect criticism from an ethnographical curiosity to see how indigenous peoples concept land rights or resource appropriations that happen in the situation of the encounters between two or more sets of “people”, “land”, “government” and “sovereignty” regimes.

I ask what are the characteristics of land rights that indigenous people feel misunderstood, ignored, distorted or intruded by others they have encountered in Taroko area for the passing century till now to see what evidences and proofs or discourses they offer to claim and legitimate over their rights of land in different historical, economic, political and legal situations. I will also investigate on how they initiate, mobilize, organize or just act to express their claims and dictate how the societies and the states at referencing scales respond to these claims and see what kind of rights and to what extents do indigenous people have accessed or distorted or created on land till now.

Through the five research questions raised above, and as a result of being acquainted with Taroko contexts, I began to investigate and answer the following:

- 1 How do indigenous peoples conceive or construct discourses as evidence and proof to support their land rights claims? As Appell suggests, ‘we should begin with a single productive resource and work back to the individual(s) who have interests of various kinds in that resource’. I will ‘discriminate among the types of interest held by an individual in any single piece of claim I encounter in the field, and among the kinds of social relationships obtaining between individual and any referencing scales of members’ (Appell 1976).
- 2 The next step is to ascertain whether or not such interests are recognized as *emic* categories by the wider social group, and only protected through mutual recognitions or codification in rules and laws (rights) that may intercommunicate with the *etic* ones (Appell1976, 1984; Wiber 1991: 471-472). I will examine dispassionately, yet critically, the claims made for land rights in the ideologies and practices of different agents at different times and in different political situations.
- 3 I am particularly concerned with the transfer of ideas between different groups and contexts that occurs when claims are made in the Taroko area.

Claims are useful for expressing ideas in particular contexts, but seek to go beyond such demonstrations and statements of the obvious in order to ask how they come into play in the accessing of land rights and ideological and political discourse more generally.

- 4 The examination of institutions – formal, tangible organizations, legislation and regulations, and the unwritten social and cultural norms – will enable a more thorough understanding of exactly where and why conflicts, claims and perverse outcomes occur; and, more positively, how programs and policies can be developed based on seeking out and creating compatibilities between sets of rules (Gerritsen and Straton 2006: 181).
- 5 This, in turn, may further enable all participants to restructure their sets of rules to better serve their shared purposes (Ostrom 2005). Taiwan is also ‘poised within a problematic moment in the charting of global and regional, legal and developmental policy pertaining to land environmental resource management, governance, and the rights of indigenous peoples’ (Roseman 2003: 138). Thus, the country is in need of such an area analysis in order to shed light on future policy implementation. Moreover, an ethnography of the human-land relationships in the Taroko area is needed in order to understand the reasons why conflicts are happening now and also for future policy suggestions supported by the Indigenous Basic Law (2005) and further law constructions that indicate the importance of ‘respecting and recognition of indigenous ways of conceptualizing and management of properties’ (Indigenous Basic Law 2005: Article 20; Yang, Chih-wei 2005).

During the time of doctoral research, I found the history part is the most difficult part to study that needs mature ability on Japanese to find material scattered in many different places that I still found troubles to deal with. But based on some basic study and oral histories, I had chance to reconstruct the formation of a special area as Taroko to find the legal and administrative structures there. Based on this foundation, I have clues to find the reasons of land claims last from the Japanese time till now. Besides interpretations on histories, I found land claims are developed in two dimensions: individualization and collectivization of land rights. I consider that reservation land right conflicts raise issues of individualization thus destroy collective monitor and bridge to capitalism that indigenous people are not so helped much. I found the governments and capitalists still appropriated indigenous land rights through individualization of indigenous land right in mining and industry projects. To get rid of bad effects of individualization, indigenous people think about collective rights. The practices of territory mapping and river protection and autonomy illustrated the way indigenous people hoped to find their sovereignty and land rights back in collective control. My thesis thus consists of the following chapters.

In chapter 2, I describe the formation of the area of Taroko and the state law frames introduced in the indigenous areas. The way in which the Japanese au-

thorities viewed the indigenous people's ways of lives, personalities or characters can be encompassed by what I call perspectives of 'state of nature'. The term 'state of nature' has been used by Western political philosophers to describe the conditions or characters of those 'others' that are situated in pre-state conditions. I have adopted this term to discuss how the Japanese authorities started from this premise in order to develop policies on the rule of indigenous peoples and natural resources with the aim of accomplishing a 'state of the nature' that translated into control of these people and resources.

As for land tenures, most of the lands in Taiwan were owned by Japanese authorities. In respect of the indigenous area, I have adopted the frame used by a Japanese officer, Iwaki Kamehiko, who was in charge of indigenous land management during the final years of Japanese rule. He separated indigenous lands into three categories: (1) In 1934, some 51% of the total indigenous population (84,000) lived in indigenous villages and were allowed to remain at this original location; (2) some 24% of the indigenous population would be 'mixed up' and recombined into new living groups; and (3) some 25% would be moved to new areas. In other words, generally speaking, at least half of the indigenous areas of Taiwan would experience some level of migration. In my field area in Taroko, almost all the indigenous people have experience of these policies. Based on historical analyses, I focus on how the Taroko people claim land rights through mapping activities in different contexts.

My explorations in chapters 3 and 4 echo Iwaki Kamehiko's categories and find that indigenous people in Taroko have diverse experiences of migration that can be differentiated into a further three categories: (1) *diaspora*: people almost entirely removed from their relations with their original lands almost because of forced or semi-forced migration; (2) *hybrid*: mixed communities formed from people of different origins, from different tribes or villages with different customs or *gaya* (customary rules); and (3) *in situ communities*: people still living on their original lands but subject to control by new political regimes.

Recent mapping activities related to the Taroko people reflect these three contexts of land and people relations. Above, I introduced some of the mapping projects and processes that I have participated in or observed both inside and around the Taroko area. These mapping projects take place at different levels and have various sponsors, initiators and practitioners. The largest mapping project I participated in was the Indigenous Traditional Territorial and Land Survey (IT-TLS) sponsored by the Council of Indigenous Peoples in central government. This project dealt with all the mapping initiatives and implementations in all of the 55 indigenous townships in Taiwan over a period of five years (2001-2006). The Taroko area hosts three townships: Shoulin (秀林鄉), Wanlong (萬榮鄉) and Choushi (卓溪鄉) and is also involved in this national mapping project. Over the decades, I have observed that indigenous people have always viewed (and therefore participate in) mappings as a tool for expressing their land claims.

In chapter 5, I discuss some of the legal or legislative processes undertaken by legislators and officers or indigenous activists in order to see how they conceptualize lands or territories, something that is necessary for the revitalization of

indigenous rights. I will illustrate some processes both before and after a breakthrough regarding the stipulation of the Indigenous Peoples Basic Law (IPBL 2005) with a view to understanding how activists use ideas about lands and territories as legal devices to help in their claims to indigenous land rights. I will present a case study from the Taroko area to show how the Truku people are advocating and acting to achieve autonomy and to illustrate trends in the legal sphere, in discourse and in indigenous movements. I specifically focus on how the Truku build on the matrix between lands, sovereignty, people and rights in order to bring an image of autonomy that they think would avoid many of the problems that they are suffering now (and have suffered in the past). I conclude that legislating is another way of mapping an ideal Utopia of lands and territories.

Aside from these mappings of the Utopia of indigenous territory, many land claims also occur in the legal and institutional spheres. Indeed, reservation lands are a common and frequent arena for claims. Reservation lands mean lands previously reserved for indigenous future use and titling.

Indigenous peoples in Taiwan have been titled or granted limited reservation land rights since Japanese colonial rule. However, this land tenure still conflicts with indigenous ideas and practices in a number of ways. In chapter 6, I explore some of the major types of conflicts and land claims that result from the encounters between *etic* state substantive laws and the customary laws or *gaya* (indigenous term for customary rules). Based on approximately 400 land claims cases, collected from different levels of legal and governmental institutions, from interviews and interaction with local indigenous claimants in the Taroko area, I reveal that state laws, such as the Indigenous Reservation Land Management Procedure (IRLMP) (原住民保留地管理辦法), which processes indigenous reservation land titling using four fundamental procedures, are the major battlefields for land conflicts. My research suggests that, as a result of these four procedures, which proceed from: (1) land measurement and survey; (2) registration of superficies (3) duration of actual usufructs; to (4) the granting of titles, ever stronger individualistic ideas are being suggested and built among indigenous individuals and communities. Gradually emerging from these procedures is the possibility of a person who is supported by individualistic ideas based on a Roman-Japan-Chinese civil law system. Emerging from these four procedures is a law-individualism that moves towards what McPherson (1962) defines as 'possessive individualism,' which equips people to be '[...] the sole proprietor of his or her skills and owes nothing to society for them.' From this perspective, this chapter uses case studies to show how reservation land is increasingly linked by this law-individualism to capitalism, which is not well embedded in indigenous communities in the Taroko area.

Many studies have detailed analyses of the political and economic processes involved in the setting up of cement and power plant industrial districts, but they lack an ethnographic perspective on the processes of indigenous movements and on the processes of being embedded in cement industrial districts and other special national projects such as hydropower plants and national parks. In chapter

7, I illustrate how indigenous people have played a role (from minor to major) in all these processes. This is necessary to understand all of these 'development' scenarios. Among these scenarios I have found a neo-liberalism hegemony in the Taroko area that constructed itself through what Davey Harvey described as 'accumulation by dispossession'. I will focus on the metaphor of 'money' in indigenous communities in order to discuss the encroaching of this hegemony on development scenarios.

In chapters 8 and 9, I will describe how the indigenous locals and some government institutions constructed new governances on 'ambiguous commons' through 'uncertain co-managements' of river protection in three communities inside the Tarako area: Skadang, Pratan and Meqreq in the period 2000-2010. I found indigenous locals were expecting to achieve co-management regimes that would support livelihoods, ecology and cultural identity. However, the governments concerned could only devote limited efforts because of the constraints of insufficient law infrastructure.

Contingency is a term I use to describe results coming from unknown or unpredictable causes and effects in the process of co-management implementations of river protection. I use the methodology advocated by Vyada et al. (1999) – 'evenemental or event ecology' – to express the visible line of causes and effects that threads through my observations. For those results that did not trace any clear evenemental lines, I try to contextualize the situation with other indirect information, such as rumours, gossip or my own experiences. Though it may seem that I use the term 'contingency' to express frustration about the failures of the three cases presented, possible lines of cause and effect are still illustrated in order to make some suggestions about further implementation of co-management of river protection. Ambiguity about properties, local management capacity, legal infrastructure and the interpretation and implementation of laws, along with ideas of self-determination are the main issues that are contextualized in order to reach the conclusion that indigenous locals are claiming land rights through these collective actions. Local ideas on 'sovereignty' will illustrate these land claims, which are initiating a new contextualization of the land, human units, institutions and rights.

