Accessing Indigenous Land Rights Through Claims in Taroko Area, Eastern Taiwan

太魯閣區域原住民土地權的宣稱與實踐

羅永清 **Yung-Ching Lo**

Accessing Indigenous Land Rights through Claims in Taroko Area, Eastern Taiwan

To my Dad Shin-chieh Lo and my Mom Lan-ying Chen

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List of Acronyms

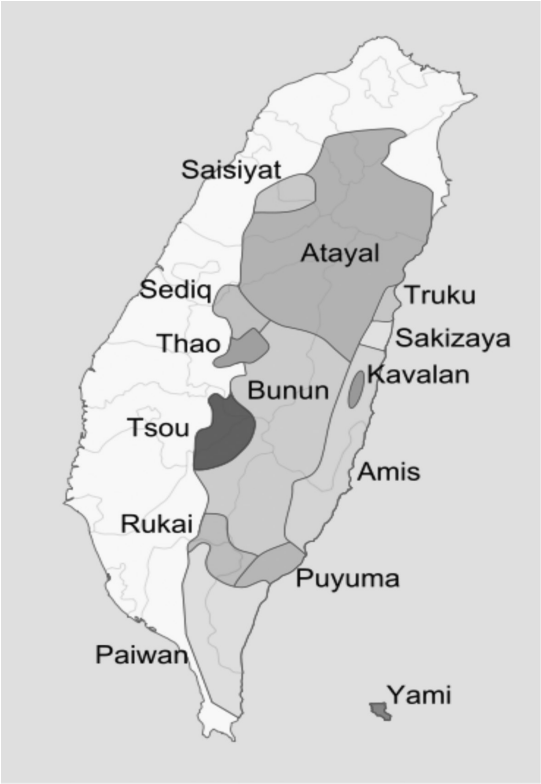
PITTLM	Project of Indigenous Traditional Territory Land Mapping
CIP	Council of Indigenous Peoples
IRLMP	Indigenous Reservation Land Management Procedure
TIRLC	Township Indigenous Reservation Land Committee

1

Introduction

1.1 Background to the indigenous peoples of Taiwan

Taiwan is an area that hosted many colonial regimes for many centuries. The most significant political authorities in Taiwan can be divided into six distinct periods: the Dutch East India Company Period (1624-1661); the Koxinga Period (1661-1683); the Qing Dynasty or Manchu Period (1683-1895); the Japanese Colonial Period (1895-1945); the Chinese Nationalist Period (1949-1996); and the current Independent or Democratic period (1996-present). Indigenous people have experienced many cultural, social, legal and economic encounters. 'Indigeniety' has been contexted and contested under a range of different regimes of governance.



Map 1.1
Government-recognized Indigenous Peoples in Taiwan (2010)

In the early 17th century, Taiwan's indigenous communities were divided into the *pingpu* of the plains and the mountain aborigines. Gradually, most pingpu peoples encountered Han Chinese customs and religious beliefs and, consequently, their native languages died out (Yang, Yanjie 2000). As a result of this cultural assimilation, it is now hard to determine how many pingpu tribes actually settled on the plains of the island. In the Japanese period, the indigenous peoples in the mountains were generally divided into nine major tribes, although many of these people lived on the coastal plains and other islands (Miyamoto 1985; Mori 1900,

1985 2000; Ogawa et al. 1935). The Amis populated the two sides of the Coastal Mountain Range in eastern Taiwan; the Puyuma lived on the Taitung plain and the Yami settled on Orchid Island. The Atayal, Saisiyat, Bunun, Tsou, Rukai and Paiwan made a living in the mountains.

The traditional nine tribe classification system, which was used throughout most of the 20th century, is now considered inadequate for the classification of the rich variety of Taiwan's indigenous cultures (Chiu 1994; Rudolph 2003a, 2003b, 2004a, 2004b, 2004c). Today, fourteen tribes are recognized as distinct subgroups. In 2001, the Thao Tribe was classified as a dependent of the Tsou; in 2002 the Kavalan was classifed as a dependent of the Amis; in 2005 both the Truku and the Sediq were officially declared as dependents of the Atayal people; and in 2008 the Sakiraya were classified as dependents of the Amis. The Pingpu are also pursuing official recognition of their status as indigenous peoples. Ethnic movements on ethnic labels indicate the need for recognition of both identity and methods of survival. In addition to ethnic labels, Taiwan's indigenous peoples have initiated many social movements of diverse persuasion. What they all have in common, however, is an emphasis on the land rights issue. Certainly, throughout the 1980s and 90s, many indigenous people brought many waves of 'Returning my Land' social movements to national attention.

In fact, indigenous ways of subsistence have demonstrated the peoples' relationships with the land, no matter whether the lands in question are the places where they live now, or whether they are the lands where they lived in the past. These relationships are the basis for their feelings of injustice regarding their social status. Slash-and-burn mountain cultivation, hunting, fishing and gathering were the main occupations of indigenous peoples, and millet, corn and dry rice were the staple crops (Wallis-Nokan 2002). Plains-dwelling aborigines, including the Pingpu, Puyuma and Amis, primarily engage in farming, fishing and hunting. Fishing on the sea is a key occupation for coastal people such as the Yami (Tao Tribe) on Orchid Island. These ways of life were challenged or abolished by outsiders starting from the Qing Dynasty. Indeed, the Qing Dynasty's strategies for mountain indigenous peoples oscillated between two 'adversative policies': defensive segregation and development by pacification. Under the defensive segregation policy, there appeared to be a line of demarcation between Taiwan's plains and mountains that prevented the Han people from encroaching on the indigenous peoples' territory. However, this policy of segregation was gradually defeated by the Han's pursuit of lands. Indigenous ways of subsistence have been forced to change in a very short space of time. The taking over of Taiwan by the Japanese in 1895 accelerated the changes and, in fact, the Japanese state went on to remove almost all indigenous land rights. Though some reservation land rights were preserved for indigenous survival, their subsistence methods proved to be no match for so many changes.

The Chinese Nationalist (Kuomintang) government adopted almost identical land policies to those designed by the colonial Japanese government. In 1999, a *White Paper on Indigenous Policy* was introduced by the then Presidential candidate Chen Shui-Bian, of the Democratic Progressive Party (DPP). This paper

announced that as of the 10th of September 1999 the legal term 'natural rights' would be used to recognize that the indigenous peoples were the original owners of Taiwan (see appendix 3) (Simon 2005, 2007, 2011; Rudolph 2006). The document suggested that indigenous land rights and sovereignty should be acknowledged and upheld. Subsequently, many policies concerning indigenous rights have been reviewed and redesigned. Certainly, this White Paper was the positive result of many decades of effort by indigenous social movements. During President Chen's second term in 2005, the Indigenous Basic Law, which comprises much of the spirit of the United Nations Declaration on the Rights of Indigenous Peoples (2007) was promulgated.

In the Indigenous Basic Law, land rights are largely respected and redesigned to support the indigenous people in such a way that they can revitalize their livelihoods – whether it be through co-management or autonomy – and their relationship with the natural resources. However, what the law does not seem to be able to deliver is tangible land rights for indigenous people. There are still many problems at the legal and governmental levels and numerous land claims are still being filed by indigenous communities. A case in point is the Smangus tribe, which advocated a not guilty plea in response to the Windfall Beech Taking Event on the 2nd of September 2005, just a few months after the passing of the Indigenous Basic Law (IBL):

> *「Rhiyal myan, hmwsa qeriq son sami！」Kmayal qu mrhuw Icyeh,「Iyayt nbah mstkung、msqara qu sinnusan inlungan！Nyux qu mshiyu mtasaw na Gaga Tayal, khanay ta nya Utux Kayal, prraw、slokah、phngyang qu Smangus！Mhway simu kwara！」(Atayal version)*
>
> "It is OUR land! Why call us thieves?" said Icyeh the chief, "And to the end will we fight with perseverance and with no fear. We firmly believe that all of our efforts will bring forth the realization of justice and truth. We pray that God will bless for this time, and I hope that the friends of Smangus will help us with your great strength. Thanks you very much!"[1]

To return to the issues that will be the focus of my research, I would say that this event illustrates the dialectic of accessing indigenous land rights through claims. Issues relating to what exactly indigenous land rights are and, moreover, how any kind of meaningful 'rights' for indigenous peoples can be achieved are repeatedly raised in Taiwan. There is also the need to balance the needs of this group, which makes up only about two per cent of the small Taiwan Island, with those of the wider population of about 25 million, who occupy a crowded area of 36,000 square kilometres. It is not enough to simply address this issue from a legal point of view; there also needs to be a reconceptualization of the land-human relationships inside and outside of indigenous cultures and societies. Among the

1 http://smangus.blogspot.com/search/label/The%20Petition%20Statement%20of%20Smangus (last accessed 2008/2/28).

crucial issues to be discussed and resolved are: What is a 'right'? What are the characteristics of land and resources that need new consideration? Who has the right to 'own', and to what extent and under what conditions?

The Smangus Windfall Beech Taking Event is only one case among the 400-600 tribes (amounting to a population of circa 500,000 in 2010) of Taiwan. These groups are suffering, and debating with society about who has rights over what and under what conditions. These land issues actually relate to a reconceptualization of politics in terms of who can legitimate a base for governance between so many different human units on issues of justice and the appropriation of land and natural resources.

Figure 1.1
Encounters of emic and etic concepts in human-land relationships

Nowadays, land claims have to relate to a reconceptualization and practice between 'human units', 'land', 'institutions' and 'rights'. These four vague, and not necessarily exclusive, categories now form indigenous peoples' *emic*[2] challenges. Here, the term 'institution' is broadly construed as pertaining to 'the rules of the game in a society or, more formally, the humanly devised constraints that shape human interaction', as defined by North (1990). The notion is not used in a narrower sense referring to institutional arrangements embodied in promulgated policies, formal laws and customary rules, and the state administration (Ho 2005). Rights include not only legal rights, but also illegal or customary accesses that are practiced in daily lives. Thus, 'human unit' denotes not only legal 'personhood', but also subjectivities that local people can play roles in any possible arrangements between institutions and power concerning the management of any land and natural resources. In this thesis, I present the Taroko area of Eastern Taiwan in order to discuss the process of encounters that have taken place over the course of more than a century, from 1895 to 2010. Taroko is an

2 An *emic* view is the view from within, the *etic* view is the view from outside. Emic is what a person in the culture studied would have, and an anthropologist would take an outsider's view.

example that provides us with an opportunity to explain and interpret the changing scenarios of land related issues. I will begin with the historical roots of land problems and examine the process, quality and characteristics of rights, and the conceptualization and practice of the politics between 'human units', 'land', 'institutions' and 'rights' in an attempt to shed light on the future of indigenous rights in Taiwan. Thus, my research questions are as follows:

1 What are the characteristics of land rights that indigenous people feel are misunderstood, ignored, distorted or intruded on by the others they have encountered in the Taroko area during the past century and until now?
2 What evidence, proofs or discourses have indigenous people offered to legitimate their claims over land rights in different historical, economic, political and legal situations?
3 How do indigenous people in the Taroko area initiate, mobilize, organize and act to express their claims?
4 How does society and the state respond to such claims in the Taroko area?
5 What kind of rights – and to what extent – have indigenous people in the Taroko area accessed, or extinguished, distorted or created in relation to various claims made during the different historical, ideological and institutional contexts and given the ethnographical framework.

Thus, the research process began with collecting as many kinds of claims as possible. For my purposes – and in terms of ethnographic curiosity – these claims could take the form of: murmurings, complaints, explanations, requests discourses, acts of resistance, expressions and representations of feelings, guesses, pleas, petitions, law suits, accusations, charges or assertions, or even joking about and indirect criticism of land rights or resource appropriations. Land claims occur at the point where encounters take place between two or more regimes, i.e. encounters between 'human units', 'land', 'institutions' and 'rights'. As figure 1.1 illustrates, I have set an operational definition for the claims that are the focus of my investigation. Land claims are expressions that occur between *etic* (from outside) and *emic* (indigenous) concepts and the practice of human-land relationships.

1.2 Scientific background: property paradigm

1.2.1 Anthropology and other disciplines' exploration of human-land relationships

Land claims tell us a great deal about human-land relationships. Claims interpret evidence or discourses about who is right and who is wrong in relation to land resources. Firstly, however, claims need to be analyzed by both sides of the encounter. Anthropologists are keen to be involved in such encounters in order to see both the *etic* and *emic* dialectics of claims. As Hann says, 'at any one time

within each culture concepts of ownership and possession, control and disposal, are likely to vary greatly for different categories of object' (Hann 1998:3). Many studies have adopted the approach of 'property' theory in order to shed light on how people conceive the relationship between land and people, especially in encounter scenarios. In an article on the land claims of the Canadian First Nation people, Nadasdy argues that 'the land claim process—because it forces aboriginal people to think and speak in the language of property—tends to undermine the very beliefs and practices that a land claim agreement is meant to preserve (Nadasdy 2003: 1).' He warns that 'Western concepts of property on land and many natural and human resources […] are incompatible with many indigenous people's views about proper human-animal/land relations (Ibid).'

Issues of incompatibility are of particular concern to anthropological methodology. A brief history of anthropological investigations on human-land or property issues, by scholars such as Lowie (1928) and Harrison (1992), illustrates the problem of compatible or incompatible issues:

> […] for example, each exploded the term "thing" by showing how aboriginal and other non-European societies had well-defined ideas about the ownership of incorporeal 'things" such as songs, magic, and ritual. Other anthropologists, such as Anderson (1998), de Coppet (1985) and Scott (1988, 1998), to name but a few, have examined non-European ways of relating to the land which Western jurists would not recognize as constituting relations of "ownership" at all and have argued that we must recognize that these relationships, like "private property," grant those engaged in them certain rights to the land on which they live (Nadasdy 2003).

Strathern (1984, 1985 and 1998) argued that European notions about property are contingent on a Western distinction between 'subject' (the owner) and 'object' (the owned). It is, therefore, inappropriate to apply this concept to cultural contexts where such a distinction does not apply. She suggests taking into account the radically different ways in which humans construct notions of personhood in an attempt to theorize about property. She argues that we need to expand our notion of 'person' before we can understand how 'property' works cross-culturally. Anthropology will always bring us back to the basic question, what is property?

Many disciplines have explored this question: legal and economic theories tend to focus on property as a well-defined 'bundle' of rights. Political philosophers legitimate property through labour (like John Locke; see Tully (1993); Anghie (1999); Cronon (1983)), or time (like Kant; see Huang 2005), even through competition between the two. Economists focus on efficiency (like Demsetz; see Ryan 1991) and anthropologists on kinship (N. Peluso) or artefacts (Zerner 2003: 5). Anthropologists are also keen to highlight 'the cultural production of nature as idea and ideal and the politics of representing relationships to nature, resources and territory (Zerner 2003: 1-5; Weiner 2002; Small 2006: 276)', and so their focus turns to religion, songs, verses, trances, memories of performances,

poetics and the like. Common property theory differentiates between continuums from private to communal, to state owned and open access property regimes (Ostrom, Agrawal, Persoon, Roy and Peluso). I have reviewed these disciplinary explorations and I have found that they are more convergent than divergent in terms of the focus of the relationships of humans-land with distribution and appropriation in different contingencies. As Hann (1998) thinks:

> [...] to approach property as a key category in cross-cultural analysis with a view to restoring it to its 19th century role as a fundamental concept in anthropology and suggest that property can serve to integrate the separate disciplinary traditions in Western scholarship, and also to expose the deepest problems posed by forms of social organization rooted in misleading ideas about separability (Ibid: 9).

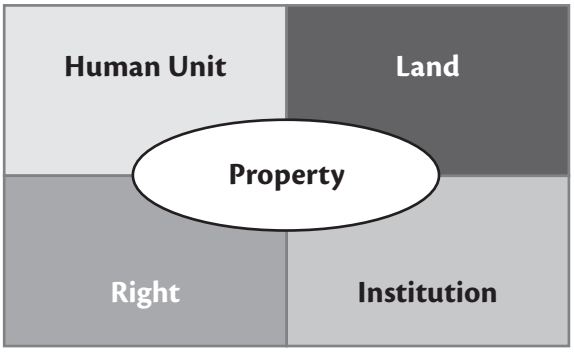


Figure 1.2
Property is contexted in a variety of regimes: land, human unit, rights and institutions

These discussions have so far provided a number of perspectives with which to analyze how different systems of properties encounter each other and result in incompatibilities between the clear or vague 'bundle' of rights; between labour or time , private or communal, ownership or usufruct, and so on, to name but a few. As Hann defines, 'Property, in other words, is not a thing, but a network of social relations that governs the conduct of people with respect to the use and disposition of things' (1998: 4).

However, I would caution that with all these points of view, and with my fieldwork and on-going analysis, I am aware of 'the casual use of that term "property" in ethnographic investigations that creates a severe risk of superimposing on other cultures the shadowy fragments of a contemporary Western *weltanschauung* (cosmology)'(Bell 1995:609). I would, 'rather than gloss over a wide range of phenomena under the mantle of property and property rights', as Bell mentions, ' […] effectively deconstruct property into the essential elements that distinguish specific forms of rights in relation to resources' (ibid). In this thesis, I consider 'property' to be a constitution of the relationship between human units, land, natural resources, rights and governance institutions. It is the governance by human subjects over land resource objects. Indigenous people have much to say regarding the adjustments of the relationship between human subjects and land resource objects that constitute the notion of property. Indeed, the claims they make reflect their ideas regarding such adjustments.

A study of the relationships between 'human units', 'land', 'institutions' and 'rights' regimes is quite a political science and, like politics, it focuses on power or the interchangeability of interests and appropriations (Thelen 1999; von Benda-Beckmann 2003). How power and interest structures relate to the concepts of institutions of governance at the indigenous local level with its referencing scales is central to my study. The ideas and forms of state institutions or customary institutions and administrations at different times are primarily a process of legal system constructions taking place between different agents of colonialism and bodies of power and indigenous encounters. Consequently, my initial investigations range from customary property laws or private laws to public laws and some regimes of international laws that model the constructions.

With regard to indigenous ideas about the relationship between human units, land, institutions and rights, a comparative perspective between the formal laws and customary laws promises to penetrate the anthropological and ethnographical explorations of the encounters of different systems. But, even in anthropological explorations, we still need to be aware that human-land relations cannot be simply categorized as economic or political or kinship, but rather they require scrutiny of each culture's context and contingencies. As Hann stresses:

> the concern with cultural differences and the rigorous questioning of Western models as complementing, and not invalidating, the efforts of other anthropologists to prioritize issues of distribution and political economy, and thereby to sustain traditional concerns with sharing and exclusion, equality and hierarchy, power and social justice. Whatever the languages used to express them, these are the universal concerns of property and they are shared by the people we study (Hann 1998: 44).

Tim Ingold (1986) tried to take a holistic point of view on the investigation of tenure. He said:

> Now tenure, as I have shown, is an aspect of social (that is, intersubjective) relations. Such relationships, like the persons that they constitute, are processes in time. To find out about tenure, an anthropologist has to ask of his informants: 'who owns, or has what rights over, this land or what'? The answer comes: a certain person, or maybe several persons with multiple, nesting or overlapping claims. To pursue his inquiry, Luckmann had to discover who the people involved are, and for this he can be satisfied with nothing less than a complete biography of each individual and their mutual relations (Luckmann 1979: 67). Every person is his past, a continuous, experiential trajectory described by the temporal unfolding of a total system of social relations of which he is but a particular point of emergence. In short, to understand people, social relations and, hence, tenure, we must adopt a perspective that is holistic and processual rather than atomistic and static, as adopted in the analysis of territorial interaction. Tenures are about the ways in which a resource locale is worked or bound into the biography of the subject or into the developmental trajec-

> tory of those groups, domestic and otherwise, of which he is a member. For it is only by virtue of his belonging to the community that a person acquires a relation to a determinate portion of natural space, furnishing those material conditions of his social being 'which constitute, as it were, a prolongation of his body(Marx 1964: 87-89)'. Through tenure, the locale stands to its holder in a relation of metonymy. Every claim is part of a continuous process, expressing an intention or promise for the future through the fulfilment of past obligation' (Ingold 1986: 137).

1.2.2 Encounters are dialectic rather than separations between different property paradigms

In my opinion, encounters are not primarily about clear definitions of the boundaries of different legal regimes, but rather they are concerned with what happens during these encounters. Thus, an *emic* approach to property relations,

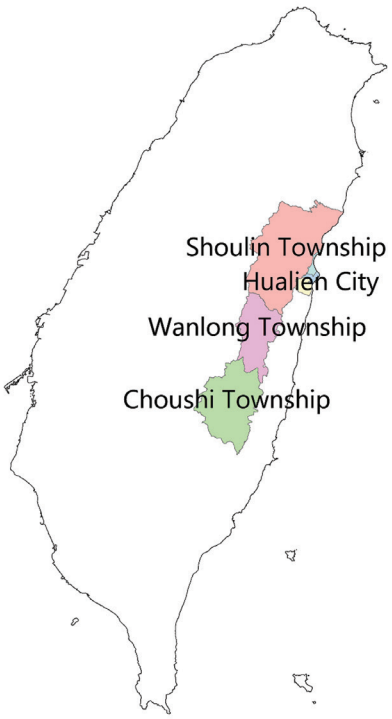
> 'requires investigations into the total distribution of rights and entitlements within society, of material things and of knowledge and symbols. It requires examination of practical outcomes as well as ideals and moral discourses, and an appreciation of historical process, both short-term and long-term' (Hann 1998: 35).

Recent studies in Taiwan on the issues surrounding indigenous people and land have followed the above mentioned debate on what defines (or not) property in the Western legal sense. In a study of the Bunun people from central Taiwan, Huang (2004) expresses how the Bunun use the concept *Hanitu* (spirit) to differentiate between natural and artificial things, and he then explores the relations natural and artificial things have with human agents. He agrees with Strathern (1988) that the interactions between things and humans are like a bundle of inputs and outputs in different moments and situations. This results in fluid and complicated, but hardly absolute and exclusive, relations. In order to escape the Western perspective of a fixed property regime, the Taiwanese law scholar, C-T Huang (2005) departs from Y-G Huang's (2004) and Cronon's 'ecology property' and invites us to think of an 'ecological (checks and balances)' scenario when considering the agents and characteristics of resources and how the relations between them synchronically and diachronically interact with one another. There is a need for greater attention to the above reflections on indigenous people-land relationships from legal and anthropological perspectives in Taiwan if there is be a reconceptualization of the encounters between laws, governance and rights. In terms of the ethnographical aspect of the Taroko area, I will provide more evidence that such interactive systems in a modern Taiwanese Indigenous scenario 'cannot be understood except in the wider context of cultural beliefs and practices that give them meanings' (Malinowski 1935: 320). Indigenous peoples are not only immersed in, but also imposed upon by a barbarianism that, over centuries, has taken its ideas from social Darwinism, orientalism, post-coloni-

alism, environmentalism, multiculturalism, regimes of 'international societies' (especially 19th century international law, see Anghie 1999), globalization, Common Property theory, and so on, all of which have an impact on how people claim, conceive of and practice the relationships between 'human units', 'land', 'institutions' and 'rights'. It is certainly hard to deal with so many perspectives and ideologies, but I suggest that starting with the claims from a particular area can provide an ethnographical understanding of some perspectives and ideologies, from the local to much wider levels, to see what precisely the dialectics are, and what the possible faces of 'human units', 'land', 'institutions' and 'rights' have been in the past and will be in future.

1.3 Choice of field area: the Taroko now and then

The place name Taroko originated in the Qing Dynasty to indicate the location where the tattooed people lived in the Karenko area (what today forms Hualien County). Later, from 1895, Qing rule of Taroko was gradually replaced by Japanese colonial control and administration.



Map 1.2
Shoulin Township in Hualien County

Subsequent Japanese colonial governments came to understand that the Taroko area was inhabited by the Tekdaya, the Toda and the Truku people who spoke different dialects of the Sedeq language and had their own internal conflicts (figure 1.3). They were lumped together as the Sedeq people, a sub-ethnic group belonging to the Atayal tribe, by Japanese anthropologists at that time, and they were singled out as a special area for occupation. Consequently, these three indigenous groups share similar experiences of being ruled by Japanese governments. Indeed, since the Japanese colonial period they began to show up in history more vividly.

Following the colonial invasion, these three peoples in the Taroko area (hereafter I will use 'Taroko people' to indicate the people from here, no matter which of the three tribes they belong to) found themselves embroiled in continuous claims and conflicts over land with the Japanese during the period 1896 to 1945 (Yang, Sheng-tu 2004). Even after Japanese rule from 1945 until today, they have been involved in many clashes with the Forestry or National Park administrations of the Nationalist government. During the 1980s and 90s, for example, they held many demonstrations about the unfairness of cement industry investments on their lands (Simon 2007; Chen, Zhu-shang 2000). Since 2000, they have run campaigns to promote the correct use of ethnic names (Yu, Guang-hong 1980, 1982; Ma 1998) and advocating autonomy at the village or ethnic level. In the last decade, they have been providing a combination of environmental protection and eco-tourism and development projects that are similar to the common property co-management of natural resources. Community mapping activities are also taking place at different geographical levels in this area.

Since 2003, I have had the opportunity to be involved in some of the aforementioned activities. I believe that, gradually, these actions, discourses and practices could encourage a reconceptualization of the relationships between 'human units', 'land', 'institutions' and 'rights'. Thus, I began to search for materials from the past century to use in my study, examining how indigenous people are accessing land rights through claims.

1.4 Specific objectives of the thesis

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).

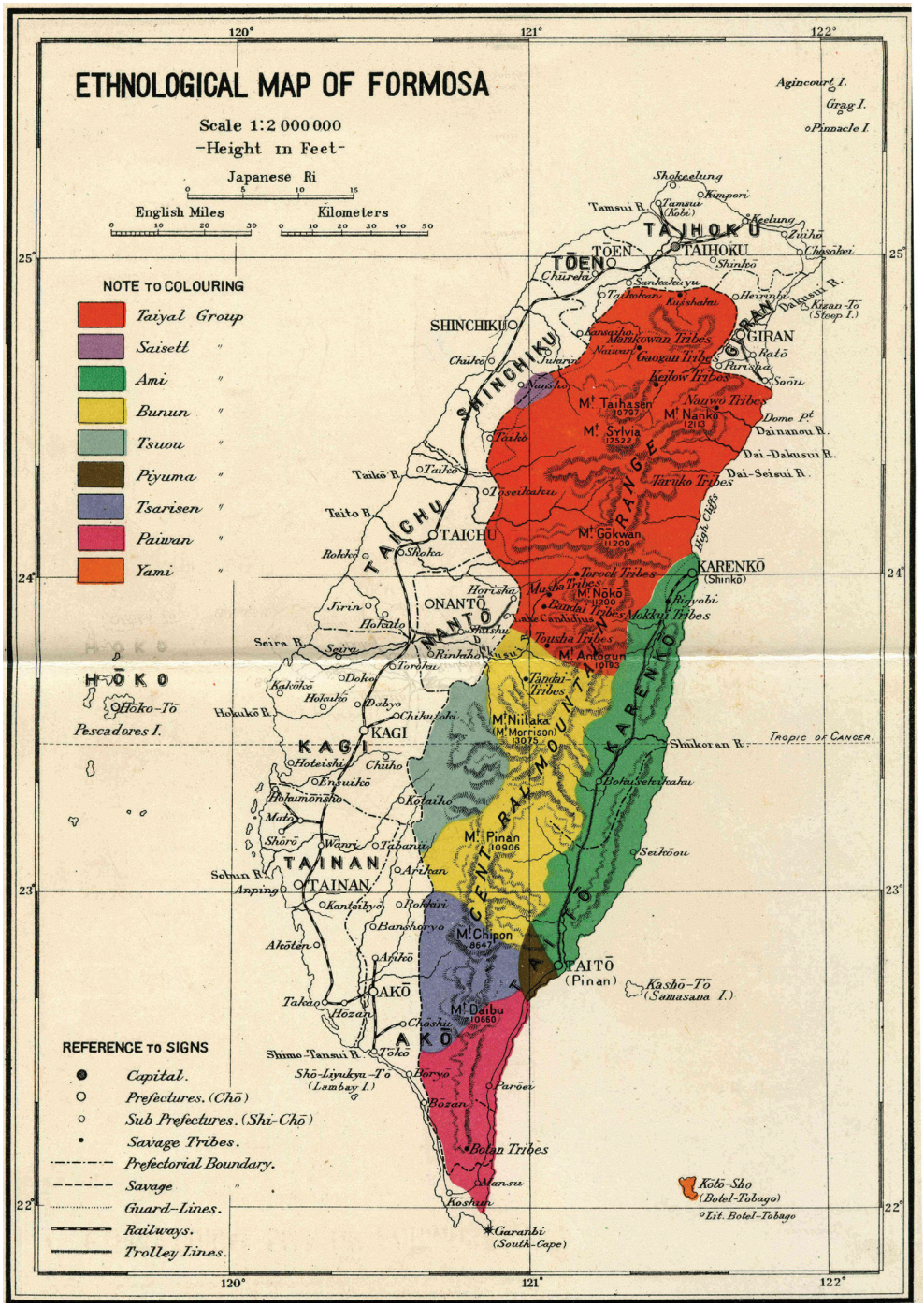


Figure 1.3
Major ethnic groups and subgroups in Formosa (Taiwan Govenor Bureau of Aboriginal 1911: 1)

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 (Appell 1976, 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).

1.5 Notes and queries on field methodology and ethical issues

Land issues and claims happen not only between outside regimes, but also within indigenous communities. Clearly, there are some issues that are too sensitive for a researcher from outside to gain access to. Land issues are sensitive because people involved always have contradictory ideas and propositions. Consequently, entering a field and trying to find a suitable approach to claimants was the hardest part of conducting the field research in the beginning.

I found that what subjects would reveal about land issues to me depended on how they perceived me. Over the years, I have participated in many research projects sponsored by the government, National Park headquarters, local NGOs and universities or local indigenous associations and played a number of different characters in the field. Thus, I have spent a lot of time (almost 28 months[3]) and effort taking part in all kinds of activities, both local and outer, in order to make contacts and to get a sense of, and a feel for, issues concerning land claims in recent years in the Taroko area. During the first few years of my research, I continued participating in the *Indigenous Traditional Territorial and Land Survey (ITTLS)* sponsored by the Council of Indigenous Peoples in central government. Through my role as a project manager, I was able to observe and participate in the mapping practices in the Taroko area. Later, I was also invited by the local indigenous people to participate in four projects: (1) Oral Life Histories of Truku Elders Documentation Project; (2) Traditional Territories Mapping With Methodology of Public Participatory Geographical Systems (PPGIS) (Lo, Y-C 2006, 2007; Tsai, B-W et al. 2005); (3) Skadang Tribe Mapping Project (Liu, D-K 2008); and (4) Petition for Compensation from the Asia Cement Company Action Project. I believe that as a result of being invited by local claimants to work with them, and being given the opportunity to get to know these people in a 'natural' way, I was able to proceed to the second stage of fieldwork, a stage I would describe as observation by participation. This is what Geertz (1973) called an opening of 'thick' description. It is only at this stage that I believe I am more or less capable of managing the ethical issues of research. There is an important lesson here on how to be a 'person' in an 'other' culture. Now, after 28 months of preliminary field life, I would say I have made important contacts, friends even, with whom I will be able to work on future investigations. Furthermore, I have also come to better understand the boundaries between people and to recognize sensitive issues. Once I felt more accepted by the people in the area, and more engaged and involved in the many claims scenarios I was interested in (following a process outlined below), I was more confident about reacting to different situations and able to make decisions about how to interact with the informants.

During the initial fieldwork phase, I tried to access different sources of archives and administrative documents with a view to discovering – and really getting to know – as many claimants as possible. Among these resources were the Archives of Shoulin Township Council of Mediation, Documents of Shoulin Township Representatives Council, Hualien County Representatives Councils, Taiwan Province Representatives Council of Senates and many Japanese documents. I have collected, traced and carried out interviews in relation to about 400 cases of land claims in the Taroko area spanning more than one hundred years. These cases were fought at diverse levels of government and at different stages of the court system. Analysis of these archives of land claims, followed by in-depth

3 My first two stages of fieldwork lasted a total of 28 months ranging from Jul-Dec 2003 (6 months), Apr-Jul 2004 (4 months), Apr-Aug 2005 (5 months), May-Jul 2006 (3 months), and Mar-Dec 2007 (10 months).

interviews with concerned informants is my major methodology. It is a special methodology that makes use of conversations between histories and informants in the ethnographical moment I am presenting here. In other words, the documents or 'histories' are able to interact with the ethnographical 'now' in my investigations.

1.6 Brief summary of the chapters of the thesis

The thesis consists of ten chapters, including an introduction to the theories and methodologies (chapter 1) and a conclusion (chapter 10). The main body of the thesis consists of five parts, comprising chapters 2 through 9:

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 authorities 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 (see Chart 1). 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. In 1934, he separated indigenous lands into three categories,: (1) 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 (ITTLS) 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. These mapping activities are mainly conducted in collective actions that express a high plea for collective purposes like autonomy or common property management. Based on these mapping actions as land claims, I differentiate collectivilization by collective actions on collective purposes from individualization that focuses on claims to legal titles of reservation lands among indigenous individuals.

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. Through this chapter, I express the conflict between the property regimes of individualization and collective appeal of land rights from the indigenous communities.

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.

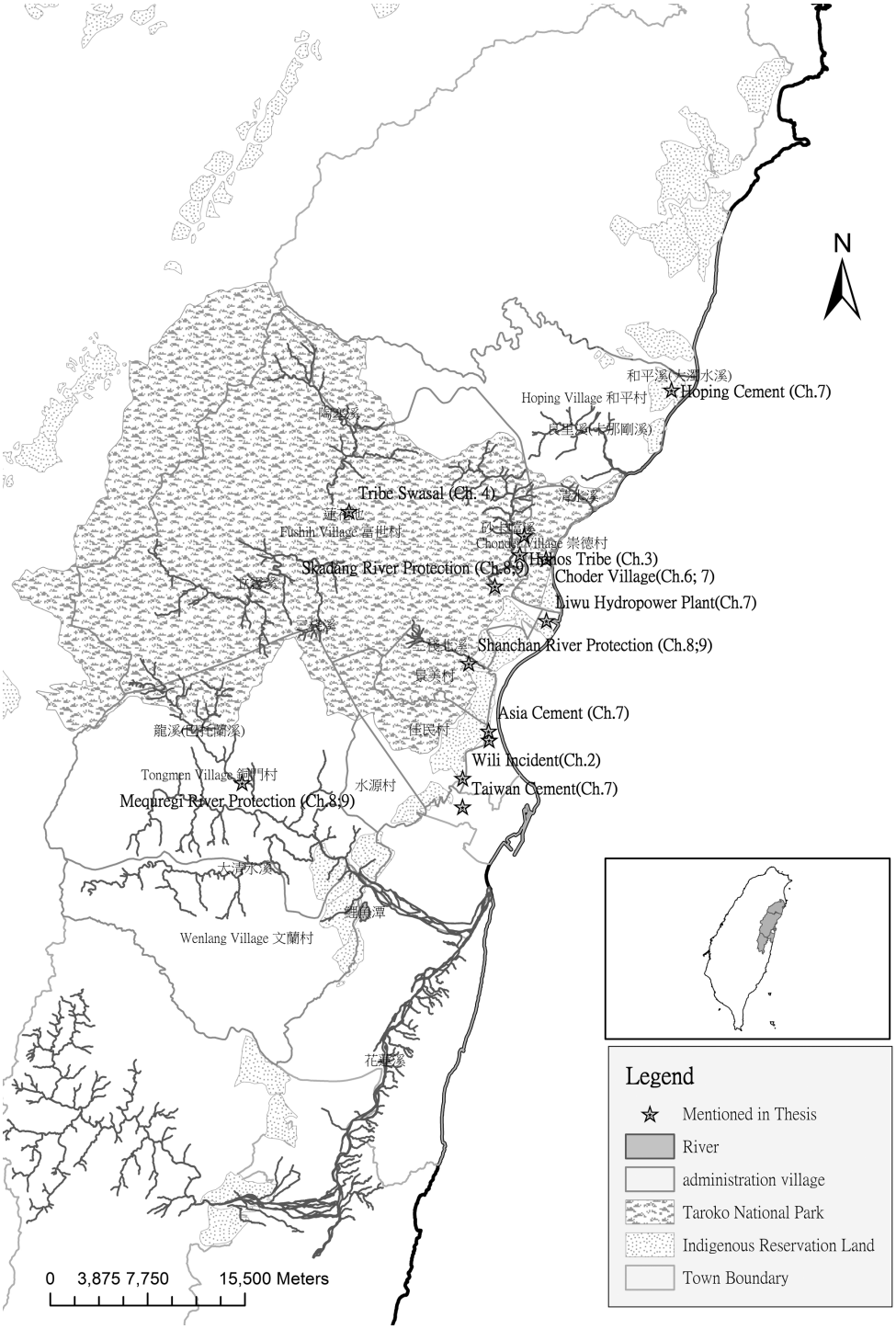
Contingency is a term I use to describe results coming from unknown or unpredictable causes and effects in the process of co-management implementations of river protection. I use the methodology advocated by Vyada et al. (1999) – 'evenemental or event ecology' – to express the visible line of causes 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. These collectivilization of the use or rights of nationalized natural resources are efforts that indigenous people bring to make collective good for indigenous communities. Local ideas on 'sovereignty' will illustrate these land claims, which are initiating a new contextualization of the land, human units, institutions and rights.

Chart 1.1
General land categories in different regimes and claim types from indigenous people in Taroko area.

<table>
<tr><th>Land types</th><th>Japanese administration land types</th><th colspan="3">Indigenous tribe relocations or not</th><th>National land types*</th><th>Indigenous conceptualization of land property</th><th>Indigenous expressions of land claims</th><th>Cases</th><th>Chapters in thesis</th></tr>
<tr><td rowspan="2">Lands for Gathering and hunting</td><td rowspan="2">preservation forest land
(要存置林野)</td><td rowspan="5">Live in situ</td><td rowspan="5">Combined with other tribes</td><td rowspan="5">Relocation</td><td>National forest and park</td><td rowspan="5">Collectivilization (natural sovereignty)</td><td>Autonomy</td><td>Taroko autonomy</td><td>5</td></tr>
<tr><td>National forest for experiment</td><td>Co-management</td><td>River protections</td><td>8,9</td></tr>
<tr><td rowspan="2">non-preservation forest land
(不要存置林野)</td><td>National waste lands</td><td rowspan="2">mapping</td><td>In situ</td><td>3</td></tr>
<tr><td>Lands for Slash and burn</td><td>National properties and national bank lands and public lands</td><td>Diaspora and hybrid</td><td>4,5</td></tr>
<tr><td>Lands for House</td><td>Indigenous reservation land
(準要存置林野**)</td><td>Indigenous reservation lands</td><td>Individualization</td><td>Legal rights based claims</td><td>lawsuits</td><td>6,7</td></tr>
<tr><td>Pre-Japanese ruling before 1895</td><td colspan="3">Japanese ruling since 1896 to 1945</td><td>Nationalist ruling since 1945 till now</td><td colspan="4">Indigenous land claims</td></tr>
</table>

* For actual areas of lands, please see page 37 in Figure 1: Land Tenure in Taiwan from the Japanese regime to the Nationalist government (Bureau of Agriculture and Forestry Taiwan Province 1965:5).
** Quasi-preservation Forest lands (準要存置林野) included indigenous reservation lands.



Map 1.3
Places indicated in the thesis

PART I

History

Map 2.1

LeGendre's idea of international law included that the territories out of the Qing Dynasty administration were terra nullius. The above map, from his book, 'Is aboriginal Formosa a part of the Chinese empire', shows terra nullius under the dotted line.

2

From ‘State of Nature’ to ‘State of the Nature’: The Taroko Area in Japanese Colonial Times

2.1 Debates on whether the indigenous people were citizens or barbarians

When the Japanese colonists came to rule the mountain areas, there were many conflicting ideas about how to deal with the indigenous peoples using national rules and laws. The mountain people were recognized as special and different to others; they lived in areas where they were hard to access or control compared to the Han or other civilized barbarians on the plains. The term ‘barbarian’ (蕃人), first used in the Qing Dynasty and later adopted by the Japanese, was used to indicate these indigenous groups. The question regarding how differently should they be treated was debated in different contexts. In 1906, the Governor of Taiwan, who already appeared to have his own ideas about how to deal with the barbarians, raised a theoretical debate on this issue. Four authors put forward their ideas during this debate, (Li, Wen-lian 2001). Among these ideas was a suggestion by Okano Saitaro that barbarians should be seen as Japanese citizens, with the same (and equal) rights and duties as ‘regular’ Japanese citizens (Okano 1992). Okano Saitaro states that, according to article 5 of the Treaty of Shimonoseki[4] signed with the Qing Dynasty in 1895, ‘people in the territories to be ceded to Japan may, at will, sell their real estate and move out of the area within two years. After two years, people remaining in Taiwan and other ceded areas are seen as Japanese citizens’ (Ibid.). This idea was challenged by Fujii Kensuke (Kensuke 1992), who thought that barbarians were not Japanese citizens, but simply human beings. He thought the issue of whether barbarians were Japanese citizens or not depended on location, i.e. the barbarians were not living in the

4 The Treaty of Shimonoseki (Japanese:下関条約, ‘Shimonoseki Jōyaku’), known as the Treaty of Maguan (simplified Chinese: 马关条约; traditional Chinese: 馬關條約; pinyin: M guān tiáoyuē) in China, was signed at the Shunpanrō Hall on 17 April 1895 between the Empire of Japan and the Qing Empire of China, ending the First Sino-Japanese War. The peace conference took place from 20 March to 17 April 1895. In this treaty, China cedes to Japan in perpetuity and full sovereignty of the Penghu group, Taiwan and the eastern portion of the bay of Liaodong Peninsula together with all fortifications, arsenals and public property.

Qing sovereign area, so they were not Qing citizens. Later, when these areas were ceded to Japan, but were not yet governed by Japanese rules, these people were not considered Japanese citizens either. As article 5 of the Treaty of Shimonoseki states, only those who obey Japanese rules can be seen as citizens. Thus, at this time, the mountain people of Taiwan were viewed as people without nationality or citizen status, but their existence could not be denied (Fujii 1992). Responding to this idea of an individual without nationality, Yasui Katsuji, president of a local court, took the view that, legally, barbarians had the equivalent status of animals (Katsuji 1993). That is to say, barbarians had no status under Japanese law. Katsuji emphasized that though the Qing Dynasty had paid compensation to Japan for the Mutan Village Incident (牡丹社事件)[5] he did not believe that this compensation could be seen as proof that barbarian areas came under the sovereignty of the Qing Dynasty. He also pointed to articles 2 and 3 of the Treaty of Shimonoseki, which say that 'territories including Taiwan ceded to Japan and the inhabitants included referred only to Han and cooked barbarians but not raw barbarians'. Whether raw barbarians were to be seen as citizens or not depended on the ideas of the Japanese government regarding barbarians obeying Japanese rules. The extent to which Japanese rules were obeyed would determine whether barbarians were treated as human beings or like animals.

Through the ideas expressed in this policy debate, we can see that the Japanese authorities were searching for legal reasons to support their treatment of raw barbarians. These ideas also concerned how they conceptualized individuals who were different from Japanese citizens, people they saw as being grounded in a civilization based on state laws and rules. This can be seen as a sort of social Darwinism that supports the idea of the evolution of humans. The fourth idea raised during the debate on the status of barbarians was firmly rooted in social Darwinism and suggested that 'barbarians had a simple society, they couldn't understand the idea of 'state', so they were not suitable for 'legal' lives because the barbarians were still practicing head-hunting that the Japanese government thought as priority to be abolished'. Barbarians were thought of as animals because they did not know the meaning of Japanese laws, therefore it was futile to establish any laws in the indigenous areas. The idea of seeing barbarians as animals was reflected in the treatment meted out to indigenous people in response to their actions, which were considered crimes. In particular, the state hoped to take control and put a stop to head-hunting, a practice that it saw as criminal, but which the barbarians viewed as traditional and customary. The debate about establishing a criminal law to control indigenous peoples was a hot issue during the initial encounters between the Japanese state and the barbarians.

5 In 1874, 66 seamen from Miyako Island (宮谷島) in the Ryukyu Archipelago, or Okinawa, were shipwrecked at Payao Bay (八瑤灣) near the southern tip of Taiwan. Fifty-four of them were subsequently killed by local aborigines after stumbling into Mutan Village (牡丹社).

2.2 Debates on criminal law for raw barbarians: 'state of nature'

Barbarians were notorious for acts such as head-hunting and robbery and in 1906 the Japanese government planned to implement criminal laws to bring them under control. The course of action chosen was to consider the barbarians as citizens who should be disciplined under national laws. The idea was soon challenged and, in fact, halted by, among others, Nagano Yoshitora (長野義虎) who seemed to have great influence over the decision to enact (or not) the Criminal Act on Raw Barbarians (生蕃刑罰令). He believed that 'the raw barbarians were strongly united in units, such as a tribe composed of only one family'. 'They were so low in the evolutionary scale that they were proud of cruelty and they grew stronger and closer, uniting to protect themselves in small units' (Yoshitora 2004[1897]). If one of their members did something 'outlawed', the group would rally round and hide him from the Japanese policemen. There was no hope of the criminals being handed over by the chief of the small tribe. Nagano Yoshitora illustrated this theory with evidence from cases in the Taroko area where, in December 1896, the tribes of Mukua (木瓜蕃) and Chijaochun (七角川蕃) battled with each other following a misfiring incident during hunting. The government wanted to punish one of the initiators of the conflict, but failed to do so because the tribes closed ranks and refused to obey the government. Nagano Yoshitora (長野義虎) had a long list of examples to illustrate how the barbarians were only interested in feuding amongst themselves and would not let either the Qing government, or later the Japanese government, negotiate peace with the help of state laws. On occasions where there was feuding between barbarians and Han or Japanese people, the only way to calm the situation was to bring in the army. The Shin-Chen Incident (新城事件) in the Taroko area in 1896 was also discussed by Nagano Yoshitora (長野義虎) and put forward as evidence that the barbarians were too cruel to know the meaning of criminal law, which was intended to make people act rationally. Nagano Yoshitora suggested that the deeds of barbarians were best expressed through the 'animal theory', i.e. that these people were indeed barbarians and civilized ways could not help them. Since wars were always the way barbarians resolved their conflicts, there was no need to establish a criminal law to encourage them to find a rational and civilized way to stop their feuding and cruelty. In other words, barbarians were not capable of taking legal responsibility for their deeds. Some argued, however, that barbarians differed in their levels of cruelty or evolution. Another consultant, Takekoshi Yosaburo, who suggested a policy based on the theory of evolution, had a great influence on later policymaking and practices. He divided the barbarians into three categories in order to assess their level of assimilation into Han or Japanese civilization (Takekoshi 1996). As Tavares concluded:

> The indigenous people consisted of three groups, based roughly on their acculturation to the settlers' culture and their relationship to the state. The 'cooked savages'(*shoufan/jukuban*) or plains aborigines (*pingpuzu/beibozoku*), who practice settled agriculture, pay taxes in kind, and perform military duties

> for the state. The 'transformed savages' (*huafan/kaban*) were an ephemeral, transitional category applied to indigenes people who were in the process of being 'cooked.' The 'raw savages' (*shengfan/seiban*), or mountain aborigines (*gaoshanzu/kauzanzoku*), lived on or beyond the savage border and had minimal contact with the settler society or the imperial state. While the two categories of cooked and raw savages came to form the larger subdivisions of an ossified ethnological classification during the Japanese colonial period, such categories during Qing rule were cultural-political and quite permeable (Tavares 2005:364).

The raw barbarian did not obey the authorities or assimilate at any level. In 1902, Takekoshi Yosaburo stated that since the raw barbarians were not obeying the government, then the authorities had the right to fight against them; furthermore, they had the right to kill them at will because they had no legal status at all. Laws were of no use when dealing with barbarians. Consequently, when all the 'rational' and 'civilized' options had failed, the Japanese felt they had to resort to treating barbarians the way the barbarians had treated them. The formation of special areas such as Taroko can be viewed as the dialectic between negotiations and battles or wars between barbarians and colonial governments – cruelty for cruelty and rationality for rationality and sometimes a mix of the two. Here we can see that the way to treat raw barbarians was differentiated by the responses from the raw barbarians. Takekoshi Yosaburo believed that there were three dimensions or levels to dealing with the problems of raw barbarians. He thought 'the problem of barbarians at that time was not related to human rights issues because they were actually animals' (Taiwan Zongdufu 1998 [1932]).

> It was not land problems either, because there was no legal status for indigenous people so there were no rights to claim lands. So there were no legal questions. But it is easy to treat them as a social problem in which we could see that bad humans would be replaced by good humans in an evolutionary scale. All we have to do is to get rid of murders and explore the mountains to find resources. Then we could solve the mountain problems (ibid; Fu 1997).

According to Takekoshi Yosaburo's theory, barbarians would, over time, evolve to different levels of civilization; so there was a possibility for raw barbarians to become cooked. In the interim, however, those who were cruel could only be treated as non-humans. This special theory for the acts of raw barbarians is described as 'state of nature'. If we adopt the term 'state of nature' to describe the hypothetical condition of humanity before the state's foundation, then we can see that the Japanese government was using a 'state of nature' theory not only to describe, but also to respond to and deal with Taiwan's indigenous people before Japanese law was established in the indigenous areas. In this context, 'state of nature' becomes synonymous with anarchy.

This 'state of nature' theory was not implemented by the authorities ruling different colonial contexts or areas. In practice, the differentiation between citi-

zen and barbarian was the result of a fuzzy process in which barbarians and authorities were applying policy on a trial and error basis, especially in relation to land rights. Later, I will illustrate these processes of trial and error undertaken by both the barbarians and the Japanese authorities in order to see how the 'state of nature' of the barbarians was conceptualized and implemented by the Japanese authorities who used methods of both 'cruelty' and 'civilization' in their dealings with the area of Taroko.

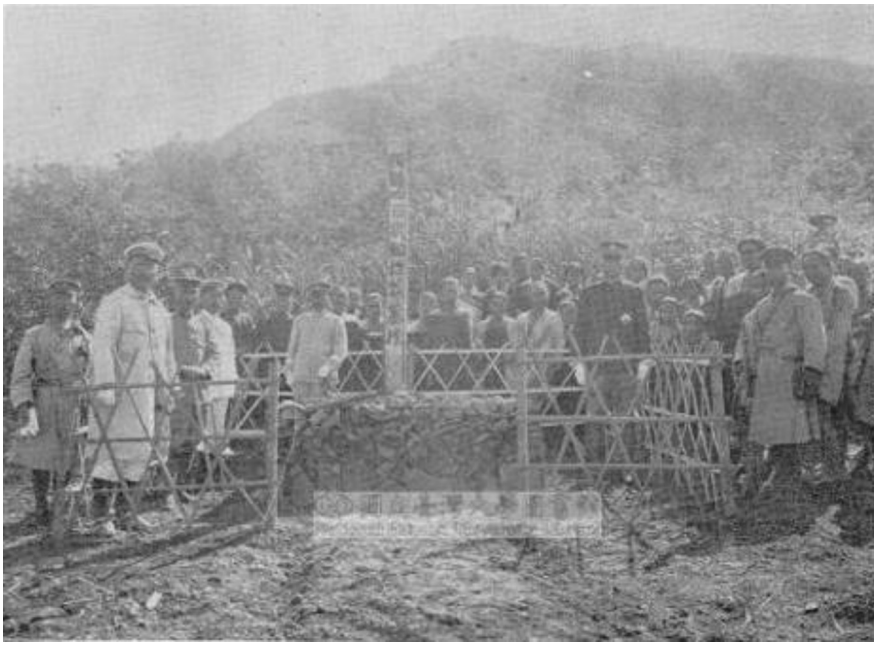


Photo 2.1
The abolition of head-hunting
The abolition of the practice of head-hunting was a priority for the Japanese authorities. This photo shows a ceremony to bury all the skulls in a village in the Taroko area following its conquer in the 1914 war by the Japanese authorities. (National Taiwan University Library)

2.3 The Formation of the Taroko Area: From a criminal to a civil law area?

2.3.1 Dialectics between sincerity and cruelty: the Shin-Cheng Incident 1896

The formation of the area of Taroko was contingent with the historic events that occurred from the late Qing Dynasty to the rule by the Japanese authorities based on the aforementioned different theories of 'state of nature' (Pan 1999; 2008; Mona 1984, 1997; Qiu 2004: 23-24). Taroko was a place name that indicated an area of raw barbarians who were hard to access. Lo Da-Chu, a military

general sent by the Qing Dynasty to control the east of Taiwan, used the term Taroko to indicate the area of 'special treatment' between the Da-Chou-Suei River and the village of Pratan (Lo, Da-chun 1997: 47). The Taroko area was perceived as a bad area of 'savage pests' (番害), a term that suggested the need for 'pesticides'. The indigenous people living in the Taroko area, who had previously been under Qing rule, were categorized as raw barbarians by the Japanese. They were infamous for their head-hunting and disobedience. When the Japanese arrived to the east of their territory, they worried that they would face many difficulties and they hoped to find convenient ways to access the area and negotiate with the indigenous people.

The Japanese authorities believed that the best method was to call for submission from the indigenous tribes (Ino 1918: 648). This was a customary strategy that the Japanese used to adopt as a first step, inviting the people in the Taroko area to have a peaceful relationship with them and to submit to rule by the Japanese authorities. Indeed, the Japanese found it could be useful to negotiate with the barbarians, mostly through mediation with a renowned leader in the Taroko area, Li A-Long (李阿隆). In fact, Li A-Long was a Han migrant who had moved to the Taroko area. He was a trader and a broker between multi-ethnic groups in the Taroko area and, as a *tongshih* (通事), he was a semi officer, an agent of the Qing State brought in to negotiate between the state and the indigenous people. Li A-Long married a Taroko woman and had many relationships with this group of indigenous people. He spoke their language and, in many respects, was trusted by the Taroko. In the late Qing period, around 1880, ten years before the Japanese arrived, Li A-Long was chosen (as a Han) to act as a representative, along with some twelve other Taroko, people to welcome the Qing governor and General Lo Da-Chun (羅大春), who came to build roads and maintain the peaceful relationship between Qing authorities and indigenous peoples. The Japanese realized that Li A-Long could perhaps be the key to accessing the Taroko area. Top Japanese officers in the eastern colonial districts came to see Li many times to ask him to negotiate on their behalf. At first, Li seemed to be playing games, agreeing to provide safe passage into Taroko for the Japanese authorities. Li even carried out a population census and provided a list of tribes and village names in the Taroko area to the Japanese. But later, Li refused to help the Japanese authorities any further. He disappeared, and rumors suggested that he had been murdered or that he had escaped. In fact, the Japanese had become frustrated when they learned that Li was Han and not a real representative of the Taroko people, a barbarian group that was still head-hunting, robbing and carrying out many cruel deeds towards other people, including the Japanese and the plains people on the east coast.

One incident in particular upset the Japanese authorities very much. It happened in 1896, the second year following their arrival in the east of Taiwan. What has become known as the Shin-Chen incident (新城事件) centered around a group of soldiers who were killed by the Taroko people. The group of soldiers was trading weapons and daily necessities with the indigenous people in order to encourage good relationships with the tribes, just as Li had done. The incident

was triggered when a number of Taroko people believed that some Japanese soldiers had humiliated a Taroko woman by using sexual language; there were even rumors that she had been raped. The Japanese authorities were shocked that the top officer in this district appeared to have shifted from a policy of insisting on peaceful negotiation (Wang, Xue-xin 1998). To control the incident, the Japanese authorities sent in troops made up of other indigenous people and the Japanese army in order to attack the tribes and villages involved. They even summoned battle ships to bombard the area from the sea. Even this show of force did not result in the surrender of any Truku tribes. In fact, the Japanese troops suffered a heavy defeat and the Taroko indigenous people lost all respect for them. The weapons the indigenous people were using were better than the ones the Japanese had (Ibid.).

The Japanese authorities were frustrated by the fact that they had thought it possible to employ a broker like Li to deal with the administration of the barbarian area and to implement a peaceful transfer of sovereignty through submission. The Japanese authorities trusted the policy of submission, and Li, too much and they forgot the fact that the indigenous communities in the Taroko area were a homogeneous group that did not obey a single authority, despite appearing to be from one ethnic group. The Japanese thought they could enter the Taroko area by following Li's example and that they could develop peaceful relations with the Taroko people through trading and by making friends. A report by Takekoshi at the time stated that 'the Japanese had established somewhat precarious trade relations with most of the Formosan tribes, whose 'mental condition' has undergone a remarkable transformation' (Takekoshi 1907: 221).

This idea of fostering peaceful relations through civilized deeds was actually an important principle among Japanese governors. It was seen as part of their colonial skills. A good example is the first governor to Taiwan, Kabayama Sukenori (樺山資紀), who gained insight and experience through his relations with a tribe in Nanou (南澳), a neighboring area north of the Taroko settlement. In early 1872 (so prior to the Japanese taking over Taiwan in 1895), Kabayama Sukenori had been on an expedition to observe the situation in the indigenous areas. This fact-finding mission had the aim of assessing which indigenous areas were suitable for Japanese occupation. He entered the area and gained access to the indigenous people in a sincere way, in order to earn their trust. Furthermore, he believed that if you treat indigenous people with sincerity (for example, shaking hands or exchanging gifts, as discussed by Barclay 2005), then they will treat you with the same respect and will not kill you without good reason (Fujisaki 1926: 676). 'Sincerity is for sincerity' was an important premise embedded in many Japanese administrative rules[6] later on. Sincerity meant treating the indigenous people as human beings. Later, however, the practice of this principle did

6 In 1931, the Bureau of Barbarian Management stipulated a Handbook for the Standard of Business for Policemen in Barbarian Areas, which stressed (in article 3) the need for a 'soft' approach to the indigenous people. In article 6, the need to be sincere and honest with the barbarians was emphasised, and in fact, 'sincere' indigenous people were encouraged to work as policemen in the barbarian areas.

not always result in this much sought after sincerity in the relations with indigenous people and the Japanese authorities were often confronted with cruelty by the barbarians. As a number of later documents reveal, the decision to trade or to cooperate with the Japanese varied between indigenous tribes or communities. Different tribes or communities had different strategies used to strengthen some groups and weaken others. There were intense struggles and competition amongst indigenous people, even though they belonged to the same ethnic group (Toyota 1896). A decision to access (or not) Japanese resources depended largely on whether the indigenous people thought the Japanese were strong enough to rely on in relation to their own internal struggles. This was at a time when the Taroko were powerful because of their weapons, which they exchanged with and imported from foreign areas through brokers such as the infamous Li. The Shin-Cheng incident occurred following the humiliation on Taroko women by Japanese soldiers. The traditional way of avenging an insulted woman was to hunt human heads, and many Japanese soldiers' heads were hunted by Taroko people and subsequently taken to various tribal villages. These acts were humiliating for the Japanese who, until then, had felt that they were treating the indigenous people sincerely.

From these histories, it is clear that the Japanese were seeking convenient methods to access the Taroko area and the indigenous people who lived there. In the eyes of the Japanese authorities, their logic of treating people sincerely and in 'civilized' ways was soon challenged by the 'uncivilized' ways of the indigenous peoples. As a report from the Japanese government said:

> During the year 1899, a punitive expedition was undertaken against this Taroko tribe, but it ended in failure. Since then several efforts have been made to subjugate them by peaceful methods, but such attempts also turned out to be futile. By degrees their rapacity and barbarity reached extreme limits, creating increased fear in the border districts (Formosa Bureau of Aboriginal Affairs 1910).

Consequently, another theory began to gain ground. It was based on evolution theory and the idea that the indigenous people were too 'raw' to communicate. A method of 'cruelty for cruelty' was implemented and involved the use of technology such as electric guard lines and setting up boundaries to mark out the area of special treatment for Taiwan's barbarians.

2.3.2 Administration behind the electric guard lines: the Wili Incident of 1906

The reasons why problems like head-hunting and robbery occurred frequently were, on the one hand, because indigenous people in the Taroko area were eager to conquer the plains area and to fight with neighboring ethnic groups. On the other hand, the Japanese hoped to develop the neighboring areas where many valuable natural resources, like gold, camphor trees and many minerals, were to

be found. Inevitably, this resulted in conflicts between the Japanese government and the Taroko people or neighboring ethnic groups. In the first few years of occupation, the Japanese were not familiar with this *terra incognita* (Mori 1900), and they hoped that the eastern part of the country, where there were no serious influences from the Han people, would be easier in terms of establishing a colonial area for future Japanese immigration. After a number of defeats at the hands of the Taroko people, the Japanese considered the situation to be a national problem. They needed a solid plan to suppress the conflict. The then Taiwan Governor wrote a 'Report on the Control of the Aborigines in Formosa (Bureau of Aboriginal Affairs 1911)' in which he expressed a serious need to deal with the problems of the Taroko barbarians. The report stated that:

> The savages in Formosa may roughly be divided into two tribes whose districts may be shown by drawing a line across the central mountain ranges from Horisha in the west to Karenko (Hualien) in the east. Those in the northern part are termed the 'northern tribe' and those in the southern part of the island the 'southern tribe'. Now the term 'northern tribe' is adopted as another name of the Atayal group (Bureau of Aboriginal Affairs 1910:3).

From this section of the report, we see that the Japanese authorities were defining the Atayal groups as 'more uncivilized than any of the others' (Takekoshi 1907: 219; Bureau of Aboriginal Affairs 1911; Ino et al. 1918: 648). As the south of the country calmed down and the north had almost been cleared, the Atayal, and in particular the Taroko people, remained fierce and still 'outside of the law' (Bureau of Aboriginal Affairs 1910: 3).

Consequently, the new technology of electric guard lines and landmines were used to define a control area. 'In the year of 1907, a new guard line was established in the district of Karenko on the east coast, against the strongest and most powerful tribe of Taroko. This line was subsequently extended. The Taroko tribes, the most powerful savages among the Atayals, occupy an extensive territory in the mountain districts of the Karenko Prefecture on the East Coast' (ibid: 15).

We can see that in order to deal with the Taroko, the Japanese were using national resources to prepare for the 'taming of the raw barbarians'. This project was initiated by Governor Sakuma, a man with military experience, and went under the name of the Five Year Taming Project. The operation involved bribing local indigenous people or sending officers or merchants to investigate the manpower and weapons in the area. It was a common tactic to bribe indigenous people within the communities to work as spies and to incite disharmony. On the surface it appeared that Sakuma and his men were sending exploration teams to record the natural resources, landscapes and physical environments in order to make maps for future use. In fact, the Japanese were doing their best to build electric guard lines, not only in the east but also on the north and west sides of the Taroko area, in order to prevent other ethnic groups from joining or helping the Taroko. Clearly, the aim was to isolate the Taroko and to cut them off from

the supplies of daily life and information. A map drawn by the Japanese government in 1906 already shows the Taroko area blocked off and awaiting occupation. Certainly, the Japanese used every opportunity to surround the inaccessible area where the Truku people lived (The Geographical Society of China located in Taipei 2003).

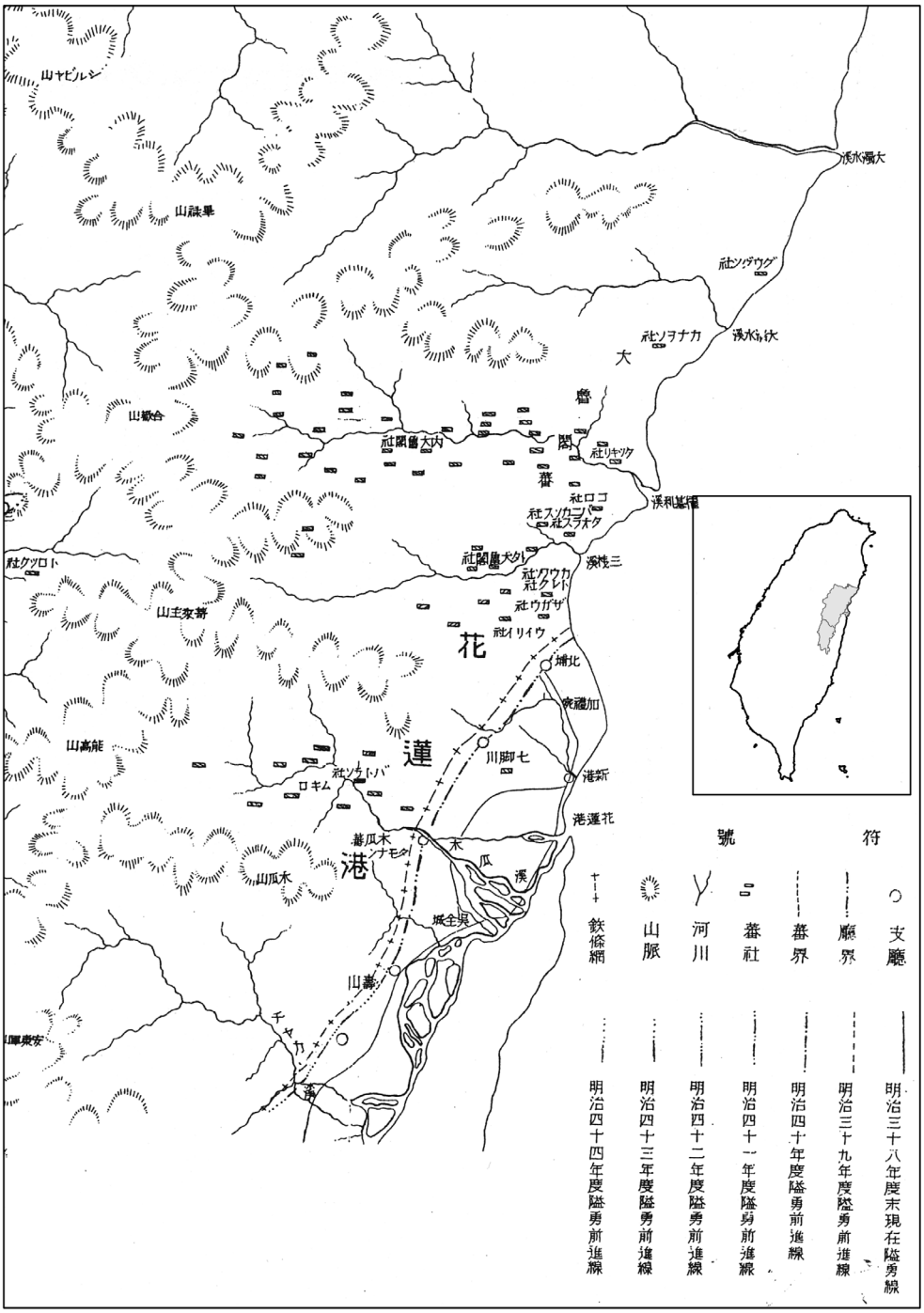
As the 1906 map shows, those areas outside the guard lines were beyond Japanese rule. As a report by Yosaburo Takekoshi, a member of the Japanese Diet, illustrates, this was a big issue for Japan and one they felt needed to be progressed: 'the Chinese policy toward Formosan indigenous peoples had been to "govern them by leaving them strictly alone"' (Takekoshi 1907: 212; Michio 1998; Yoshimichi et al. 1996). Takekoshi suggests,

> The entire area of Formosa is estimated at about 14,000 square miles, of which nearly half is still in the hands of the savages, outside the reach of our Government. [Land] above 1,500 and below 3,500 feet is swathed in dense forests teeming with large and valuable trees, and in particular camphor trees. This timber belt covers about 5,230,000 acres. It is also supposed to be rich in deposits of gold, iron and kerosene oil. But, at present, it is occupied only by the savages, and only the agricultural resources of the coast plans are exploited. In my opinion, the golden key to the infinite wealth of the island will only be obtained by opening up the savage districts (Takekoshi 1907: 212).

The policy of opening up the savage districts seemed to be practiced by the application of the electric guard line system. The Japanese developed this policy from a method adopted by the Qing dynasty, which had intended to separate the Chinese settlers of the plains from the savages of the mountains. The Japanese used other indigenous ethnic people to act as guards in order to maintain the line and keep the area inside safe for the exploration of natural resources and land. They also tried to push ever deeper inside the barbarian territories.

As the Japanese subsequently pushed their way into indigenous territories, the native peoples fought back. By 1903, Japan had already seen 1,900 Japanese killed in 1,132 incidents initiated by the indigenous people of the island (Takekoshi 1907: 229). One typical incident resulting from this policy was the incident at Wili in 1906 in which the Taroko people felt that they were not receiving fair returns or the promised benefits from leasing Wili tribal lands to a Japanese company engaged in producing camphor (Ruan 2001; Jin, Qing-shan 2010; Inosuke 1935).

The Taroko people made a sudden attack in July 1906 and killed the police chief of the Karenko District along with thirty camphor workers. Subsequently, plans for a punitive campaign were carefully mapped out. However, the territory in question was so steep and precipitous that it was impossible to conduct a campaign from the plains. Accordingly, it was decided to blockade the indigenous territory by installing yet another guard line, which extended 7.5 miles (see map



Map 2.2
Taroko Area surrounded by electrical guard lines and dynamite until 1911 (Mochiji 1912)

2-1). This boundary fence was constructed in May 1907. At the same time, a bombardment of the villages from the sea was executed.

Until this period, the affairs between the Taroko people and the Japanese authorities had centered not only on establishing an area of criminal control, but also on the competition for natural resources and territory. Some indigenous scholars believe that following this incident in 1906, the Japanese did admit, to some extent, the rights of indigenous people to claim rent or lease fees for the territories that they had occupied and that had been leased to the Japanese camphor company. This policy, to admit that the Taroko people had certain land rights, was an exception to the general rule that the entire island of Taiwan, including the barbarian area, was *terra nullius* and therefore no land rights could be granted to raw indigenous people. So far I have not found any documents to prove that the Taroko in the Wili area were granted any degree of land rights. But one opinion expressed in a document written by Luo, stated that the incident happened because the indigenous people were not paid a reasonable wage in their jobs making camphor products (Luo 1953). There was also a suggestion that the Japanese company had paid an indigenous tribe that actually had no right to claim what they did not deserve. Clearly, if the dispute had centered on salary rather than rent, then there would have been no reason to believe that the incident resulted from a land rights conflict. However, the fact that the village of Wili was outside the guard line meant that the Japanese were encroaching inside the indigenous area, step by step, in a drive to incorporate more land and natural resources.

Constructing borders or guard lines was not the ultimate plan for the Japanese in terms of dealing with the barbarian problems. What attracted the Japanese most were the natural resources inside the barbarian areas, especially in the Taroko area. General Sakuma, who was later nominated to be the fourth Governor of Taiwan, attempted to settle the barbarian problems using martial methods. In considering the Taroko problems he said, 'the east coast is full of gold and minerals, so it's said, around the area of the Tatsukire River in the Taroko area, which is inside the Taroko territory. The gold in the Taroko area should be valuable enough to be able to balance all of our national debts'. Governor Sakuma later drew up a national plan to seek support from the Japanese Parliament for a five-year long savage management policy. He hoped to invest a great deal of national resources to, firstly, support the pacifying of all the barbarian territory; secondly, to make the barbarian territory a free area, where anyone could enter; and thirdly, and perhaps most importantly, to bring safety and economic development to the entire island (Komori 1933: 526-531).

Before we discuss how the Japanese authorities implemented land and property law, I will describe some of the claims and complaints made by indigenous people from the Taroko area. This will demonstrate how, in the first decade of Japanese rule, indigenous people felt about the administration that was shifting between different ideas about the nature and characteristics of barbarian societies.

One precious historical document expresses the barbarian's views of life inside the North Barbarians Area. The author, Iijima Motoi (飯島幹), appears to have been a Japanese clerk working as a surveyor or reporter, liaising between the Japanese authorities and indigenous villages. In the next section, I will discuss the issues he reported in order to analyze the gaps between policy and practice in relation to the authorities and the indigenous people.

2.4 Iijima Motoi's reports of complaints

Iijima Motoi quoted, almost in full, what an anonymous Atayal man had told him:

> We don't know why we are surrounded by the electric fences of guard lines and we are bombarded with big bombs and small guns? Are the fences protecting us or the Han people? The fences were extended every year and the lands behind the fences were granted to the Han to cultivate. Is this the way that the Japanese meant to protect us from the start? The Japanese said that they wanted to protect us. But, why did they invade our territory? The bamboos and the trees on our land actually belong to us. However the Japanese didn't think so. They sold or leased our lands to the Chinese at will. This is quite a despotic ruling. It is tyranny to sell what we had to others without our consent! For example, we use camphor as fire wood, but the Han think camphor is a treasure that is hard to find any more in indigenous villages; so the Han people beg us to exchange our camphor. This way of exchange is a common practice that we have known for a long time. But the Japanese broke our custom of selling or making contracts with the Han and only make large profits for themselves. We consider these deeds as unreasonable, what we call '*yumigato*' or '*mayuule*' (ユミガト or マユーレ), which means highly dishonourable. If you take other people's property without their consent, that is a criminal deed, something that we indigenous societies do not allow. Are the Japanese doing this intentionally; or, are they just ignorant? Or, is this just the way the Japanese do things? If this is the way the Japanese behave, then, I will tell the Japanese that if they do this intentionally, it is unreasonable and we will find chances to teach them a lesson. The so-called 'protection' should be offering help to us. Orders that are unreasonable render our life unprotected (Motoi 1906:1-17).

This section of a petition was recorded in an academic journal, 'Reports on Taiwan Customs' (台灣慣習記事), with the support of the Japanese authorities, in order to depict indigenous customs and aid the management of savages. Later, some scholars described the majority of the reports in this journal as being too academic for policy application (Chiang 2002: 205). It is interesting that in this petition, we see a mirroring of complaints; this time it is the indigenous people accusing the Japanese of being irrational or 'uncivilized' (ユミガト). Furthermore, the indigenous people claim that there are actually rules and customs

for property relations inside their indigenous territories. The indigenous people thought the Japanese authorities were being cruel to them. The idea of 'cruelty for cruelty' appears to be emerging as a result of feeling repeatedly cheated by the Japanese. As Iijima Motoi later quoted, 'Concerning the ordinances from the Japanese authorities, are the Japanese authorities qualified to order us indigenous peoples? Ordinances are intended to make us obey what the Japanese ordered, but should we do this? We couldn't find any reasons to do so.' In this paragraph, it is clear that indigenous people believe that they should be independent and free of interference from outside. Indeed, this kind of independence is often mentioned as a particular social characteristic of the Atayal society, where people were independent and united in very small groups of families or extended families who occupied a particular area (Wang, S. H 1986; Wang S. S 2001; Wei, 1963; Li, et al. 1964). Iijima Motoi (飯島幹) emphasizes this: 'In our indigenous societies, orders or ordinances only happened between fathers and sons or husbands and wives; we don't accept any orders from other ethnic groups, and there are no reasons to obey other's orders'. This idea of family or tribal sovereignty supports the indigenous peoples' belief that they should be outside of Japanese rules. It is also a reason why the Japanese encountered so much resistance from the Taroko.

As far as the Japanese were concerned, indigenous people should be incorporated in, and therefore could be 'protected' by, the state and be subject to state laws based on civilization, not barbarian cruelty. The only way the indigenous people would submit to the protection of the Japanese state, was if the rights to their lands and territories remained intact. However, the Japanese authorities appear to have broken the implicit and explicit contracts of their protective role. Thus, the indigenous people felt that it was reasonable to 'find chances to teach a lesson to the Japanese'.

The ideas expressed in this petition are critical of the policy practiced in the indigenous areas, such as illegitimate orders, intrusive guard lines, the failure of protection, and the irrational taking of property. In fact, these were the major factors behind incidents and the resistance to Japanese rules. Property taking was perhaps the most critical issue, the one indigenous people cared about most, and an issue that meant they could challenge the legitimacy and rule of the Japanese authorities. The Japanese legitimacy of rule came from their promise to 'protect' indigenous property from the encroaching Han people. This legitimacy came from an idea similar to the theory of a 'social contract' between citizens and the state. That is to say, that the state gains its legitimacy from the trust of citizens who need their property protected. The indigenous people appear to have understood that there could be a channel between the Japanese state and the indigenous people, a way to find consent and establish mutual relations that meet the needs of both sides.

However, the petition is a rebuttal from the indigenous people and accuses the Japanese authorities of practicing cruelty at the same time as the Japanese were complaining that the indigenous people were too cruel to know the meaning of law or civilization. The indigenous people could also adopt a theory of

'state of nature' in relation to the Japanese authorities, whom they saw as barbarians who disobeyed their *gaya* or rules. It is certainly possible that the Japanese intended to ignore the customs or rules that were practiced inside indigenous areas. Indeed, later policies and developments appear to support such a hypothesis.

2.5 Debates and policies on indigenous land and property: 'State of the Nature'

The debates about whether indigenous people were civilians or animals would influence the policy concerning their rights as people (human rights), as well as their rights over things (property). In order to find a suitable policy concerning land and property, many consultants working for the Japanese government carried out research on possible theories for the management of land and natural resources. One pressing issue relating to the land and natural resources in indigenous areas, which had not arisen under Qing rule, was whether the Japanese could have ownership rights in indigenous areas even though the Treaty of Shimonoseki had ceded the whole island to Japan. In his paper 'Is aboriginal Formosa a Part of the Chinese Empire?' (LeGendre 1874a), the former American ambassador to China, LeGendre suggested that aboriginal Formosa was not actually part of the Chinese Empire or, in fact, part of any other country. He referred to a Memorandum of Understanding (MOU) that he, as an American representative, had signed with the tribes of the south of Taiwan. This MOU agreed that boat crews and fishermen who drifted into indigenous territory from nearby oceans would not be attacked (LeGendre 1874b). LeGendre suggested that this was a question of international customs and laws at a time when the indigenous areas of Taiwan were deemed *terra nullius* and not belonging to any country, not even the Qing Empire. In fact, this idea provided impetus for the Japanese to invade the southeast coast of Taiwan in 1874, in the hope that they would be the first to occupy the *terra nullius*. The Japanese appeared to have viewed the areas occupied by indigenous people not as territories owned by individuals, but rather as *terra nullius* that belonged to no one. As a new colonizing country, it is no surprise that the Japanese government chose a theory that was compatible and convenient for ruling the area (Uemura 2003).

Keal (2003), refers to what Lindley wrote in 1926 in a book called 'The Acquisition and Government of Backward Territory in International Law', which states that in the realm of international law during colonial time, colonial countries expressed three different attitudes to the rights of people in non-European areas: acknowledgement, limited acknowledgement and denial (Keal 2003: 86-107).

Different from the Qing Dynasty, which actually, 'fully acknowledged customary practices that gave indigenous people a large degree of autonomy over the forests that they inhabited (Ibid: 370)', the Japanese adopted the principle of denying the land rights of the indigenous peoples in Taiwan. Based on the logic that considered indigenous people as barbarian or as animals, rules were

derived to treat indigenous property in a way that was consistent with the theory of social Darwinism. The Japanese laws issued by the Foreign Affairs office of the Japanese Imperial Government stated that indigenous peoples were outside of regular Japanese laws and, as a result of their different conditions, required special treatment:

> Those barbarians living in barbarian areas are leading uncivilized lives that know nothing of the meaning of social lives. They lack the idea of state, thus they are not aware of legal institutions. Now general laws are not setting these barbarian areas as exceptions that are not applicable with these laws; therefore, it seems we still have to consider these areas as permeable applicable by these laws. In other words, these barbarian areas should be ruled according to our laws. But under this premise, we will encounter many problems when implementing these laws in barbarian areas. As is mentioned, the barbarians are not civilized to know what is society, what is state and they are not capable of taking actions and taking responsibilities. Thus, whether the barbarians are capable of taking actions (in legal terms) will still be problematic. Concerning this, we should deal with every case on its context. In other words, whether they are capable of taking legal responsibilities or whether they are subjects in civil laws and then whether their legal actions should be deemed as effective in law consequences should be considered case by case (Laws and Procedures of the Bureau of Treaties in Ministry of Foreign Affairs 1964: 53-55) (Nokan 2004).

Indigenous people were basically considered to be people of incompetence, disability and incapacity. How to deal with indigenous behavior depended on each individual or specific context. As for issues of land and natural resources, the Japanese authorities actually made a decision soon after they took over Taiwan. On 31 October 1895, the colonial state issued the Regulations for the Management of Government Forests and the Camphor Industry '*Kan'yu rin'ya oyobi shono seizogyo torishimari kisoku* (官有林野及樟腦製造業取締規則)'. 'The first clause of the regulations deemed all mountain forests and wastelands as state property if those occupying the lands could not provide a certificate or other documents issued by the Qing Dynasty verifying ownership rights (*shoyuken*)'(Tavares 2005: 72). In reality, this regulation resulted in the Japanese taking control of almost all forest land as indigenous people could not offer any certificates proving ownership from the Qing Dynasty era. In February 1900, the Japanese government issued Law No. Seven: Provisions of Occupying Aboriginal Lands (蕃地占有ニ關スル律令), which also officially declared and affirmed that aboriginal lands were state-owned. Both of these laws denied aboriginal rights to tribal lands; furthermore, they also prevented non-indigenous people, i.e. the Han, from obtaining indigenous lands.

For the Japanese government in Taiwan, in search of support for its colonial investments, how to make good use of the indigenous lands became quite a priority. The Japanese government thought indigenous people did not make use of the land in an efficient and economic way, largely because they were ignorant

of land management and did not possess a land 'law' like the Han or Japanese people did. This is also the reason why, shortly after the Japanese arrived on Formosa, the administration was quick to adopt a suggestion by the American consultant J.W. Davidson, who had formulated the reservation land policy in US-Indian relations (Fu 1997: 151). As previously mentioned, initially the Japanese government borrowed the idea of *terra nullius*, that the land was unoccupied if not used productively, and that the 'civilized' colonizers had the right to pacify 'savages' and develop such land (Fu 1997 : 281). The principal idea was that the lands in indigenous areas were ownerless and therefore the state could own the lands. In December 1902, the Counselor Mochiji Rokusaburou (持地六三郎) proposed his 'Comment on the Savages Policy' to the Governor-General Kodama Kentarou, 'We only talk about savage lands here. The Empire sees savage lands, but no savage peoples. Savage lands must be regarded from an economic point of view and managed with financial strategies' (Mochiji 1902).

The theories of rendering indigenous people as people with no rights and taking mountain lands for the colonial state seemed to be a most convenient device for achieving colonial success.

These ideas were actually legal and authoritative constructions for colonial authorities to rule the area and to support their colonial investments. If land was not inhabited it was not owned. If lands were not used for economic benefit, they would not result in any land tenure, because indigenous people were ignorant of property management.

In fact, as Iijima Motoi (飯島幹) noted, and as many Japanese scholars and officials also found, the indigenous people did have methods for managing land tenure and property. For example, Saitou Takehiko (齋藤武彦), an official in charge of a survey in the district of the Atayal area on indigenous land use in 1916, reported that:

> Generally speaking, we think indigenous people do not have clear concepts about land tenures. Land is cultivated at will and this results in many conflicts. But actually, in our view, we found they have well organized land tenures. They make lines and borders to differentiate land pieces for cultivation. Land rights are held according to two customs inherited from their ancestors. One is by way of natural occupation and usually relates to those who first occupied and cultivate lands around the village. The second way is by claiming a share of the communal land. You may claim a share of land by offering the leader something in return. The first way was the most common way to obtain land rights' (Taiwan Zongdufu 1998: 144-147).

Later research conducted by Japanese scholars also demonstrated that the indigenous people did have their own system of tenure (Matsuo 1941; Yan, Jun-xiong 1997: 13-15; Narasaki 1914; Academica Sinica 1996; Awano and Ino 1900). Such studies proved that lands were actually inhabited and used by indigenous people. They highlighted a gap in the theory of *terra nullius* and provided an explanation for why we see so many conflicts over the practice of taking the mountain lands.

The following incidents and claims from the indigenous people will illustrate this gap between theory and reality.

2.6 The Nan-zhuang Incident

The policy of taking all indigenous land as state-owned land created problems all over Taiwan where there were different indigenous situations and conditions. In 1896, the second year of Japanese rule in Taiwan, a district governor wrote to the chief of the Civil Administration stating that, 'the savages in Nan-zhuang (南庄) had capitulated to the Qing Dynasty and assimilated into Han customs. They had been offered deeds to cultivation to support their land rights. So these Nan-Zhuang barbarians could be seen as cooked barbarians and deserved private ownerships of lands' (Lin, Xiu-che 2004; Iban 2004). This request for land ownership was not approved in full by the Civil Administration Chief, but it was acknowledged that the savages in question owned the trees (民木) but not the lands. Thus, even the cooked indigenous people were not granted land rights during the first few years of rule. This ruling is different from the Qing Dynasty's operation in which the Nan-zhuang cooked indigenous leaders also thought that:

> Through the operation of customary forest rights, indigenous tribes who "capitulated" to the Qing State held enormous control over the forests, and they were able to profit from Han settlements and engage directly in the system of camphor production. In return for gaining access to the camphor forests, camphor producers paid the tribes 1.5 to 3 yen (Japanese dollars) per stove, per month (Lin, Xiu-che 2004).

It is recognition of the land rights of the cooked indigenous people that they could make profits through leases or rents of the rights to non-indigenous people for the cultivation or use of natural resources like trees. These were rights based on land rights already recognized during the Qing period. So the leaders of the Nan-zhuang tribe also believed that the lease contracts they had signed with the Japanese capitalists to produce camphor were simply that – only the rights to make camphor – and not the rights to cultivate the land. In 1902, the indigenous headman Ri A-guai was adamant that his land should not be invaded, and he was very concerned that the marking of land borders by the Japanese camphor companies would result in the confiscation of his lands. He was so angry that he planned to attack the Japanese authorities (Ibid). This incident became known as the Nan-zhuang incident, and it showed that the Japanese authorities' intention to gain yet more control over the indigenous lands that were full of natural resources. Tavares' observation has showed a similar tendency in the late Qing imperial state, which was also interested in regulating and controlling the camphor trade, to the extent that it imposed taxes to pay for frontier defense and maintaining security of the savage territory. In addition to these concerns, the

Photo 2.2
The surrender of the Kalabau tribe in the Taroko area in 1914 (National Taiwan University Library)

Japanese colonial state was also interested in protecting its monopoly of profits by managing the output of camphor by individual producers, and by controlling the total output of the island in order to maintain steady high prices on the world market (Tavares 2004: 373). The Nan-zhuang incident taught the Japanese authorities that the theory of *terra nullius* would be challenged by the people who were actually living inside the area and who would claim their rights to the land. The recognition of indigenous status was a way to prevent further confrontation and avoid further conflicts. Mochiji Rokusaburou, a policy consultant to the Japanese authorities on Taiwan governance, was put in charge of investigating the incident. He suggested that, 'these indigenous people were so sinicized that they could speak the Han language. They owned lands and leased lands to Han people as land lords. They are cooked indigenous people who deserve land rights to the standard of ownership' (Lin, Xiu-Che 2004: 157-166; Sun et al. 1997). The theory of *terra nullius* was challenged by the existence of the cooked indigenous people who demonstrated that they were qualified enough to own land and forest (Taiwan Zongdufu 1997). In order to quell the resistance, the Japanese authority was looking for convenient ways to meet the needs of both sides. The theory of the evolution of indigenous people from 'raw' to 'cooked' helped the authority to acknowledge the citizen status of cooked indigenous people, on the condition that the area the cooked indigenous people owned would be treated as a normal administrative area where citizens were expected to obey laws and pay taxes. Later, the Japanese authority decided to have a clear policy on the separa-

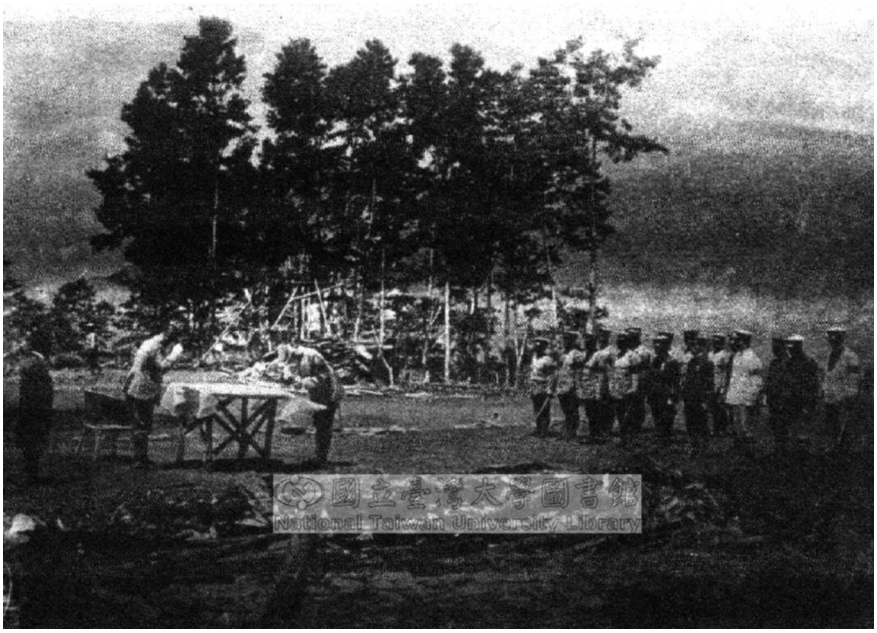


Photo 2.3
The ceremony of taking the order from the Japanese Emperor to progress the war against the indigenous people in the Taroko area (National Taiwan University Library)

tion of indigenous areas and 'normal' areas, in order to distinguish the status of the people in these areas and their rights to property. If the raw barbarians were not willing to move to a higher level of evolution, and to submit to Japanese rule, then their rights as human beings, and their rights to things, would be outside of the eyes of the administration and the law.

Taroko area was outside the electric guard lines, the *terra incognita* inhabited by raw barbarians who were not willing to submit to Japanese rule. The raw barbarians did not qualify as citizens so they did not have any human rights, no matter which theory of evolution administration was at play. As a result of the cruelty the barbarians had displayed towards the Japanese, the Japanese were convinced that the raw barbarians would never submit to their rule. In addition, and based on their previous experience of defeat at the hands of the raw barbarians, the Japanese prepared to conquer the indigenous lands in the Taroko area in a national war during 1914.

2.7 The land and people after conquest

Those people who did not submit to Japanese rule or who refused to obey administrative orders were considered to be rebels by the Japanese authority. In the eyes of the Japanese, it was their right to conquer these rebels (Taiwan Zongdufu 1997: 153; Fu 2001). The people in the Taroko area were finally conquered by

the Japanese army in 1914. The act of conquest strengthened the theory of *terra nullius* because the Japanese authorities were the conquerors who demonstrated total sovereignty over the land and territory. No private rights existed in Taroko after conquest. The view was that people in the Taroko area deserved no land rights in an occupied area. The Japanese authorities appeared to feel that they could appropriate the lands for any purpose. Any property rights that existed were those granted by the state.

The Japanese authorities were busy managing 'state-owned' lands. In 1910, the Rules on the Survey of Taiwan Forest (台灣林野調查事業規則) were promulgated and a survey of land owned by the state and land owned by citizens was conducted from 1910 to 1914. Generally, these rules were used all over Taiwan. However, in the Taroko area, there were no lands belonging to the Truku people because they were not citizens. Although surveys took place in indigenous areas outside of Taroko, they actually served to declare that the lands or forest inside the Taroko area still belonged to the Japanese state. When the Taroko area was conquered by the Japanese, the authorities prolonged the survey and extended it into the Taroko area. Through these rules and surveys, indigenous lands with no *prior* registrations were taken as state-owned lands and forest. From 1915-1925, the 'Act of the Management of State-Owned Forest' (官有林野整理事業) differentiated state-owned forest into two categories: preservation forest land (要存置林野) and non-preservation forest land (不要存置林野). The former was considered as land for natural preservation and the latter as land for development (Fu, Qi-yi 2001). Non-preservation forest lands began to be opened up for capitalistic developments aimed at exploiting the natural resources in the mountains. This policy prescribed that lands that were considered as useful and profitable in terms of natural resources could be appropriated at will by Japanese authorities. The people who inhabited the forest areas were not considered a priority, and certainly not in terms of granting any land rights. Until this time, the Japanese authorities had designated the entire island of Taiwan, including the Taroko area, as belonging to a 'state of the nature' and, moreover, any barbarians found to be living in a 'state of nature' were deprived of any rights. The Japanese authorities used two theories to accomplish this: One is the theory of 'state of nature', which considered barbarians to be animals who were not rational, civilized people. The second is the theory of 'state of the nature'; the notion that a transformation by the state or government could make the nature useful.

The Japanese authorities hoped to control the land and change the living practices of the indigenous people, who had been practicing slash and burn since time immemorial. This habit was considered to be bad and the cause of environmental damage and economic inefficiencies. In simple terms, under these rules, the indigenous people would not have any legal land to live on, but the fact that there were indigenous people living in these areas of *terra nullius* could not be ignored. In response to these rules, indigenous people resisted the rulings by the Japanese authorities. Indeed, a lot of resistance occurred during this period, despite the fact that the Japanese military forces were strong. Their legal provisions,

however, were not so strong and so, in 1928, the Japanese government began to consider the idea of lands reserved for indigenous people.

The numerous confrontations with indigenous people suggested that indigenous people were aware of land tenure and rules that were beyond the scope of the theory of *terra nullius*, and also beyond the theory of 'state of nature', which does not recognize land tenure at all. My research shows that the Japanese policy of land appropriation in mountain areas was designed not to look at indigenous land tenure, but rather to see the natural resources. The implementation of colonial policies aimed at economic growth and the integration of Taiwan's economy into the Japanese Empire was another priority of the Japanese rulers. Thus, later it was decided to limit the areas of land registrations for the indigenous people in the design of the reservation land tenure system. Consequently, a reservation land system was designed to grant three hectares of land to each individual indigenous person, to help indigenous people live in permanent areas with residential cultivation systems. These cultivation systems were quite different from indigenous people's ways of practicing subsistence agriculture. Generally, each individual indigenous person was promised 0.2 hectares of land for housing, 1.8 hectares of cultivation lands, 0.5 hectares as common land for gathering wood and another 0.5 hectares for husbandry or land to accommodate refugees from disasters (Taiwan Zongdufu 1944: 35). On the face of it, this system of reservation tenure seemed to consider the needs of the indigenous people, but it still encountered much resistance.

What the indigenous people complained about most was that the lands indigenous people had left fallow for some time were considered by the Japanese government to be waste lands that belonged to no one but the Japanese state. Thus, we can see many land claims by indigenous people during this time when indigenous people still fought to use the land they left fallow or where they used the method of shifting cultivation but which the Japanese had taken as state owned. Some top officers in the indigenous management department were highly aware of this issue, as is clear from an essay written by Iwaki Kamehiko (Kamehiko 1936:23; Taiwan Zongdufu 1944) entitled 'The conflicts between indigenous reservation lands and cultivation lands':

> The reservation land system was designed and appropriated by the population of an indigenous area. For example, a place with a population of 1000 people will be appropriated with 3000 hectares of land as reservation land. This appropriation should satisfy what the indigenous people actually need; there should be no complaints from the indigenous people. But actually if we look into the way the lands were appropriated, we could find most of the lands appropriated were bad for cultivation. Indigenous people would rather cultivate outside indigenous reservation land, because the appropriations the Japanese surveyors had done just disregarded the land indigenous people had been using, or they just made a crude line to differentiate lands for the indigenous people or lands for the state, when there were still lands actually used by indigenous

> people who had sweet potatoes fields, dry rice or millet fields or even house constructions (Kamehiko 1936).

Iwaki Kamehiko worried that resistance would come from the indigenous people if the appropriations of reservation lands were too crude. This officer suggested a number of ways to prevent possible conflicts, including the idea to introduce settled cultivation methods, such as paddy fields with irrigation systems and fertilizer to bring more production than dry field cultivation. His suggestions were adopted and implemented alongside a policy of migrating the indigenous people to the plains, which were more suitable for settled cultivation and control. This officer thought that the government could help conserve the forest, store water and safeguard the indigenous lives, 'but what helps more is to prevent the cruelty of the barbarians' (Iwaki 1936b: 326). In the Taroko area, reservation land systems were not implemented in the mountains, but rather only on the plains where all the Taroko indigenous people were moved to, with the exception of two mountain villages, Skadang and Hohos, where farms for high altitude vegetables were planned. But the implementation of the policy to bring people down from the mountains did not go smoothly. Many indigenous people in the Taroko area refused to move down. The first major reason they did not want to leave the mountains was that they believed their home area was still full of virgin forest, which was enough for them to cultivate food. The second reason was that there were still plenty of animals for them to hunt for food. The third reason was that they found people who had been moved down to the plains were struggling to make a living. And the fourth reason was that the new concentrated communities would be managed by a policy that would result in them losing their own, free way of life (Iwaki 1936b). What they worried about most was that they would lose the lands their ancestors had explored for hunting and shifting cultivation (Yamakuchi 1999).

The collective migrations of the Truku people between 1919 to 1937 can be characterized in two phases: In phase one, from 1918-1930, the Japanese authorities implemented migration using softer methods such as suggestion or advocating to help indigenous people to move voluntarily. However, in cases where people would not move, the Japanese authorities would concentrate or combine the indigenous villages in the area for easier control. The second phase began in 1930, when the Wushe Incident happened, and continued until 1937, when the war between Japan and China started. During this period, all the villages in the mountain areas, like the inner Taroko area and the Tausai area, where the Toda people lived, were moved to the plains (Liao 1977).

Subsequent to the Sino-Japanese war in 1937, the Japanese adopted different policies to educate indigenous people, especially the young, as subjects of the Japanese Emperor, who would fight for Japan's holy war against China. With regards to land tenures at this time, we can see from the table below that most of the lands in Taiwan were owned by Japanese authorities. In relation to the indigenous area, I would adopt the framework used by the Japanese officer Iwaki Kamehiko, who was in charge of indigenous land management, and who described

indigenous lands in terms of three categories: (1) in 1934, some 51% of the total indigenous population of 84,000 lived in indigenous villages, which could remain on the original spot; (2) some 24% would be combined in larger settlements; and (3) some 25% would be moved to new areas (Kamehiko 1936). In other words, at least half of the indigenous area would experience migrations to some extent. In my field area in Taroko, almost all of the inhabitants experienced this kind of mobility. Their different experiences of migration can be described in three categories: (1) diaspora, in which people were unplugged from their relations with their original lands almost entirely, because of forced or semi-forced migrations; (2) hybrid, in which communities were mixed up with people of different origins, tribes or villages, which all had different customs or *gaya;* (3) *in situ* communities, where people still lived on the original spot, but where they were controlled by new political regimes.

Through these policies, Japanese authorities finally achieved a 'state of the nature' that brought every piece of land under colonial control and governed by new tenure systems. The table below indicates that indigenous reservation lands occupied 6.7% of the total area of Taiwan Island. Most of the other categories of lands belong to the state, including the forest land where the indigenous people inhabited and which had been *terra nullius*.

(hectare, %)

Item	area	% of Mountain area	% in total Taiwan area
National forest	1,615,000	64.2	44.9
National forest for experiment	108,000	4.3	3.0
Indigenous reservation lands	240,300	9.6	6.7
National waste lands	174,000	6.9	4.8
National properties and national bank lands	42,000	1.7	1.2
Public lands	26,700	1.1	0.7
Company lands	80,000	3.2	2.2
Private lands	230,000	9.1	6.4
Area of mountains	2,516,000	100	70.0
Area of plains	1,080,000		30.0
Total area of the island	3,596,000		100.0

Figure 2.1
Land tenure in Taiwan from the Japanese regime to the Nationalist government (Bureau of Agriculture and Forestry Taiwan Province 1965: 5)

2.8 Indigenous concepts of peace and war

The war started by the Japanese army in 1914 meant defeat for the people in the Taroko area, and the subsequent introduction of a full Japanese legal regime in the territory. However, many indigenous people in Taroko did not agree with the result of the war. Many argued that the way the Japanese authorities dealt with the war (and the peace) were quite different to the indigenous ways. Even today, the view is expressed that Taroko people have their own customs or rules for conquering other people(s) or to obtain lands and territories, and that this had been the case for a few hundred years, ever since they began to migrate to the east.

Some indigenous informants told me that they have specific strategies for conquering other territories. Many indigenous people think the Japanese army was at odds with the rules that their 'gaya' permits. One reason why they do not view the battles waged in 1914 by the Japanese as regular wars is because indigenous cultures assume that declarations of war should be made through public announcements and preparations. They believe that the battles started by the Japanese were like the indigenous acts of head-hunting that usually happen secretly. Furthermore, they did not accept that they had lost all the rights to their territories in the Taroko War of 1914, because during fighting against the Japanese army, the Taroko warriors shot the head man of the Japanese army, the then Governor of Taiwan, General Sakuma, who died later of his wounds.[7] For some of the Truku indigenous people, Sakuma's death, and the temple built in his honor in the Taroko area, is a sign that the indigenous people did not lose the war. Indeed, some Truku people explain it in terms of their gaya or customs, and say that it is like going head-hunting; if you succeed in getting heads but any person in your team is wounded or killed, then the heads you have cannot be a positive sign. Indeed, it means you have failed. The head man of the Japanese army or the government, General Sakuma, died in the war. Thus, in the eyes of the Truku, the Japanese did not win the war and deserved no winners' status. Furthermore, according to indigenous gaya, they will suffer from bad luck as a result of the death of General Sakuma. My research suggests that such ideas still exist even now. There are rules specific to head-hunting or wars that necessitate a different treatment of the rights of both sides, no matter who are the conquerors and who are the conquered (in the war scenario), and no matter who are the head-hunters and who are the hunted. Though the scale of the 1914 battles was large, the indigenous people consider them to be non-public acts, like head-hunting, and unlike a war, which requires public processes.

One Japanese law scholar, in charge of the project of the 'Reports on Barbarian Customs and Habits', found that there should be a differentiation between the actions of 'head-hunting', 'war' and 'crimes of killing people' (Okamatsu 339-354). He thought that head-hunting in indigenous culture was not a crime of killing

7 It was reported that General Sakuma died in Japan a few months after the war. But even today, many Truku people believe that he actually died on the battle field.

someone, even though you have to kill to obtain the head (Ibid). According to my informants, head-hunting was an exchange of substance, of spirits or energies, or forces and powers. I agree with Okamatsu that it is important to differentiate this deed from a criminal act, because in indigenous customs, especially in Truku cultures, if one of your group loses a head, it is not necessary to take revenge on the head-hunter responsible. That is to say, indigenous people do not believe it is a crime, unlike the Japanese whose criminal laws would require punishment or revenge. Okamatsu also thought that 'wars' happened in indigenous cultures and the specific targets were enemies with whom they had bad relations as a result of spoiled gaya or customs. So wars happened inter groups or with other ethnic groups. In Okamatsu's interpretation, 'wars' had their reasons and their purpose was to return the balance of justice. Okamatsu believed that the indigenous people always prepared wars in public and fought with public methods. At the same time, he found that indigenous people always practiced head-hunting in secret, and that head-hunting could not be seen as a crime because the indigenous people believed it to be a custom (Okamatsu 1919).

I do not see that that there is a clear cut difference between the three categories of crimes, head-hunting and wars, especially when these deeds were practiced in different contexts. The Japanese authorities lumped all these deeds into the category of barbarian cruelties conditioned by a 'state of nature'. They certainly seemed to ignore what Prof. Okamatsu had found (McGovern 1922; Masuda 1994). As a matter of fact, based on Okamatsu's findings, I think the Truku have their own ways of dealing with neighboring friends or enemies. Despite having migrated from the western mountains to the eastern mountain areas, they practiced the same gaya and believed that such customs would provide them with reasons and purposes to act as they always had but in a different situation.

A Japanese scholar, Mabuchi (1941), discovered the principle of respecting the first cultivators of land in other Austronesian tribes in Taiwan. Likewise, I found that the Taroko people also keep their gaya in order to show respect for the first occupiers or initiators and to gain legitimacy in terms of controlling land use and jurisdiction of territory, if we take a 'minimal definition of the territory 'as any defended area' (Ingold 1986). A territory dominated by initiators was a typical and satisfactory situation. Where there was a situation of adverse occupation, the rights of the initiators were not neglected. In reality, it would never be the case that anybody within the indigenous community would occupy lands belonging to initiators without negotiation or gaining consent. As one of my informants told me, 'Even now we are not living in the homelands in the mountain; we don't go to other's places to hunt'. If that happened in the past, there would be punishment. This doctrine of first occupiers as legal owners facilitated the peaceful migration of the Truku, the Tgdaya and the Toda people into the vacant areas in the eastern mountains, what is now called the Taroko area.

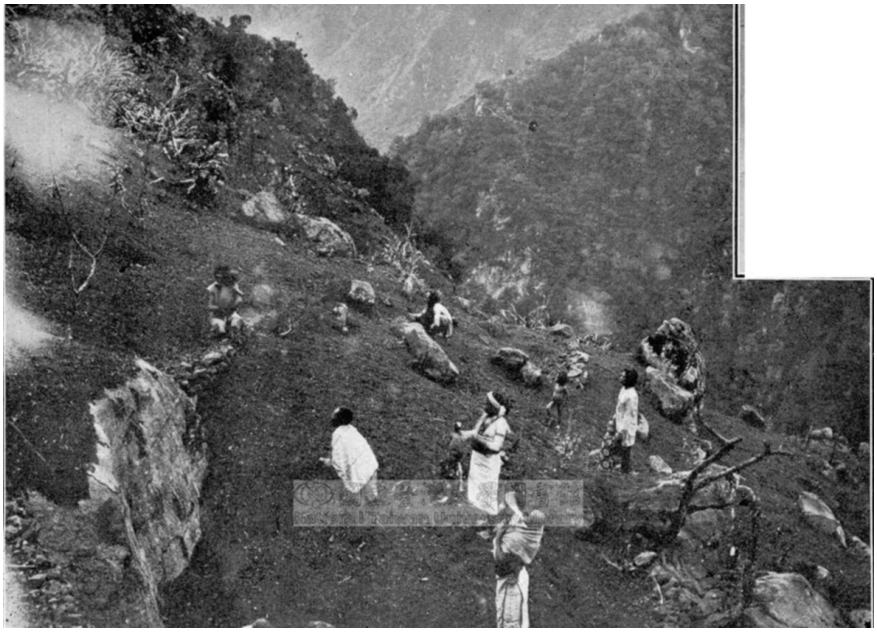


Photo 2.4
Land cultivation in Taroko area (photo courtesy of National Taiwan University)

Photo 2.5
Similar land cultivation in Skadang Tribe, Taroko

However, it was not entirely peaceful. Indeed, things changed when tribes came closer to the edge of the vacant lands in the very east of the island. Competition and conflict occurred often. For this reason, the first settlements in the east were mainly those established by descendants of the first cultivators or pioneers (Sayama 1923; Huang, Zhang-Xing 2000; 2001:13-14; Xiu-lin Township 2006). And on the very eastern edges of this territory, there are more hybrid communities. In Pei's study, he found that every second generation migrated in order to find new territories for hunting and cultivation. In other words, the first generation would leave the place where they were living and move jointly to new territories. And when the third generation achieved prosperity in the new land, the first generation would return to the original lands to cultivate them again (Yu 1980; Pei 2002: 7). This is seen as an ideal type of settlement that was originally maintained by the same initiators and their descendants. The land that was cultivated by the first settlers was usually owned by them, even when it had been left fallow. As the study of the history of settlement movements by Truku scholars has shown, the initial founding families were the main occupiers who used the land for cultivation and hunting. It was an ideal to have one family on a territory, as Kaji said, 'In traditional times, a family is with a territory' (Kaji 2003).

This acknowledgement of the lasting impacts of the original or first explorers is an important gaya (customary) practice. For example, even today, people will always take a sip of wine for the ancestors or first explorers. Gaya such as this is particularly important in relation to cultivation when exploring a new territory. As many Taroko people have described, in the ceremony that takes place before crops are sown, a tree branch or a straw cross is planted in the soil and then the people return home to wait for dreams in which utux (ancestors spirits) will tell them whether the land is suitable for cultivation (Wang, M.H. 2006:95). These dreams are interpreted by family elders (Chien 2011). If the dream is interpreted as 'clean', then you can cultivate the land. The straw cross or the tree branch in the soil is interpreted as a sign of first occupation. However, indigenous people also believe that there are limitations to using *gaya* to explore new lands. So they also choose their lands by asking elders or neighbors, who know more about the history of an area, which are the 'clean' lands. This is a more 'empirical' way to make sure that you are not occupying land belonging to others. There is a supplementary way to indicate whether a new land is free for exploration. That is to set fire to the vegetation and to let the smoke rise into the sky to show and inform other people that you are demanding the land. In addition to these empirical ways, there are important *gaya* rules that have a religious function and remind people not to invade a place where there are ghosts (utux). It is *gaya* that allows new cultivation or first occupation. You may occupy a land that is empirically and religiously 'clean', or you may renew a first occupation by informing the ghosts there that you plan to occupy the land. As previously mentioned, first occupiers are respected by the people who come after them. In Truku, the doctrine of first occupation is called 'oetelinay' and it indicates one of the most important *gaya*. It has magico-religious-economic connotations as well as a political meaning in terms of the relationships between humans and lands (Liao 1998:189).

When there are no vacant lands to migrate to, then what I will term the 'scarcity scenario' comes into play. Faced with such a scenario, rather than extending their territory through war, the Truku people would join other's territories in order to survive. This was practiced in different ways and can be differentiated using different terms. For example, the term 'tumumun' means to join another settlement, but it can be differentiated further as 'tbalah', which means to be immersed or assimilated into the host community, or 'buliuh', which means to exchange one part of your land with the host in order to make space for your own survival. In addition, you may practice 'temai', which means to curse a land during a conflict. This would mean that people had to leave the land or subsequent generations would face living on cursed lands and suff from bad luck. Clearly, the people in Taroko adopted more peaceful ways to solve the problem of the scarcity of lands.

The rules of first occupation and the sharing of community lands were the ideal practices used by the indigenous peoples in order to migrate within the Taroko area peacefully. Of course, the key word here is 'ideal'. In reality, there is evidence of considerable internal fighting or competition among the Truku, the Tgdaya and the Toda. When the ideal methods failed, then wars would be fought to conquer enemies, whether they belonged to the same ethnic groups or not. Here we find that the Truku people have their ideal ways of being conquerors, conquered, and also ways of keeping peace. However, the Japanese authorities deemed such processes 'state of nature' and viewed them purely as barbarian irrationalities. The Japanese believed that such problems and barbarian irrationalities and cruelties could only be responded to with cruelty and aggression. But those indigenous people I spoke to who had experienced the war with the Japanese said that there should have been a more nuanced and differentiated approach to the conditions that resulted in the involvement of different communities in the war of 1914. Those who considered the conflicts with the Japanese as war in the indigenous sense believe that the rules of war and peace meant that land and property could be confiscated. Those who considered these battles to be the equivalent of head-hunting saw the conflict as an exchange of spiritual powers and so land and property should be preserved. Those who considered indigenous involvement in the wars as purely pessimistic should be treated as victims who need compensation. Thus, we see that indigenous people have very different perspectives on the 1914 war and the results of war and peace.

2.9 Conclusion

In this chapter I have described the formation of the area of Taroko and the framework of state laws introduced into the indigenous territories. We have seen that the Japanese authorities believed that the indigenous people's ways of living, their personalities and characteristics could be lumped together into what I call a 'state of nature' perspective. I use this term to describe the methods and ideologies that the Japanese authorities adopted to view and deal with the indigenous

people. The term 'state of nature' had previously been used by Western political philosophers to describe the conditions or characters of those 'others' that were situated in pre-state conditions (Wolff 2002). Different philosophers had different premises to conceptualize these characters. Indigenous people were barbarians, uncivilized, wild or noble savages with different levels of rational ability. Here, I have demonstrated how the Japanese colonialists introduced a theory of 'state of nature' to accomplish their ideas and ambitions in terms of incorporating indigenous areas and peoples into a state (of the nature).

To sum up, the 'state of nature' of the indigenous people can be characterized in terms of human beings that belong to a spectrum of different rational capabilities. The spectrum starts from animals that have no rational capabilities, moves to semi-rational human beings with their own limited rational capabilities, i.e. people with personality but without civilization, and then at the other end of the spectrum we find fully rational and civilized Japanese citizens who are afforded the full rights that a state can grant. Thus, we see that the Japanese authorities adopted evolutionary concepts and differentiated the indigenous people into three categories: the raw (uncooked), the semi-cooked, and the cooked. The raw people like those in the Taroko area were considered to be animals that knew nothing of rationality and, thus, were only worthy of aggression and being conquered. The semi-cooked or the cooked were treated as Japanese citizens and afforded land rights.

My research on the encounters between the 'raw' indigenous peoples in the Taroko area (in particular the Atayal) and the Japanese, shows that the cruelties were enormous on both sides. What is clear, however, is that the raw Taroko people were given no chance to be promoted to semi-cooked or cooked before the war was started by the Japanese authorities in 1914. We see that the Japanese operated from the premise that the lands in these 'raw' areas were *terra nullius*. This made the Japanese authorities blind to the indigenous people and their own methods of land tenure and management. Consequently, many of the Japanese consultants, like Takekoshi Yosaburo (持地六三郎), focused policy priorities on lands that could be used by the state and they deemed indigenous people to be a problem. At a time when many colonial states were competing for the land, the Japanese adopted the theory of *terra nullius* as a strategy for obtaining the lands and people of the indigenous areas of Taiwan. My research has uncovered evidence that Japanese colonialism involved cruel methods and was blind and unwilling towards the indigenous people, their lands and way of life. 'State of nature' was a fictive version adopted by the Japanese colonial authorities to neglect all the rights that human beings deserve.

In this period, we see many other 'colonial powers have treated these mininations in different ways. When the English went to Canada and New Zealand, they recognized that the indigenous peoples in those territories were nations. They thus signed international treaties with them. Those treaties became the basis for later legal claims' (Yen and Yang 2004: 241). The 'raw' indigenous people of Taiwan were not treated like those in other colonial situations. As Yen and Yang found, 'the Japanese, however, did not recognize that Taiwan's indigenous

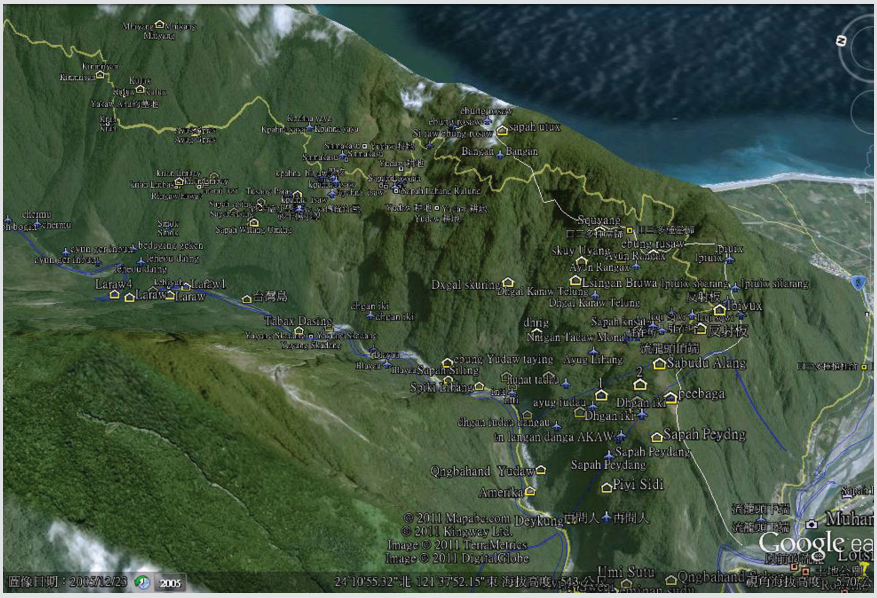
peoples were nations. They did not sign treaties with them. They treated them as if they were animals' (Yen and Yang 2004: 241; Vickers 2008). The view taken was that if the animals were cruel to the Japanese authorities then only cruelty could be considered an appropriate answer. The indigenous people in Taroko, then, were animals that needed to be conquered.

There were many different indigenous perspectives on the ideals of peace and war, and on the subsequent taking of land and property by the Japanese army and authorities. The indigenous logic of conquering, to be conquered or to exchange under certain conditions, allows for the 'legal' processing of land rights based on indigenous customs. These should be differentiated from the encounters among the indigenous people and the Japanese authorities. In terms of the process of war, indigenous people could be conquered if the war was started for convincing reasons (as outlined above). If this was the case, then the war could result in submission without conditions. However, if the war was started without just cause, the indigenous people would consider it as an invasion and they would only submit to the army under specific conditions. These ideas for the foundations for indigenous people to bring claims for their rights, and in particular rights, which I will discuss in later chapters.

PART II

Mapping as Land Claims

Map 3.1
Administration in the Taroko Area under the Japanese rule



Map 3.2
Mapping results on Google Earth of Skadang and Xoxos communities

3

From Terra Nullius to Terra Cognita: Mappings as Land Rights Claims

3.1 Mapping discourses in representational politics

So far we have learned about the relationships between indigenous peoples and lands or territories in Taiwan's historical and geographical contexts. I have concluded that there are basically three ideal types of relationships, which I would describe as: in situ, hybrid and diaspora. As is the case in the Taroko area, very few people still live on the territories in the mountains that they claim as their traditional territories. Rather, most now live on lands on the plains designated by the Japanese or the Nationalist government as areas of collective or forced migration. The majority of the Taroko[8] people who used to live in the mountains were moved to the plains to live with people from other tribes forming hybrid communities. Thus, from about 1920 onwards, most Taroko people have experiences of diaspora or hybridity, which more or less disconnected them from their original homes and lands. Among the one hundred other tribal communities in the Taroko mountain area, almost all of them were moved down to the plains during the Japanese time (Iwaki 1936a; Yamamoto 1929; Yamakuchi 1999). Two communities were exempted from the initial plans to move indigenous people down to the plains – the Skadang and the Hohos. Both these tribes maintained direct connections with their homelands until the setting up of the Taroko National Park in 1986 when they too were moved down to the plains. However, both the Skadang and the Hohos still have reservation lands in the mountain area, (about a three hour hike from where they now live on the plains), which they are legally entitled to live on.

Relatively speaking, the Skadang and Hohos people have more *in situ* relations with their lands than other Taroko people, who have very few legalized lands in the mountain areas. But the Alang (settlement or tribe) Skadang and Hohos villages are also special because they are the only indigenous areas that are included inside Taroko National Park, which is subject to restrictions and different laws and rules than regular indigenous areas.

8 The term 'Taroko people' means peoples living in the Taroko area and includes the Truku, Toda and Tgdaya people.

Since the establishment of the Taroko National Park in 1986, the Taroko area has been famous for the conflicts that have occurred between the National Park headquarters and the indigenous people (not only those living inside the park, but also those in the neighboring areas). These disputes concern a series of land and natural resources issues. Indeed, land rights and land use conflicts have been the major dramas played out in the Taroko area in the past two decades (Zhang, Zhi-sheng 1998; Yang, Lin-hue 1996; Zheng 1996; Chen, Zhu-shang 2000; Chang, Dai-pin 2000; Song 1999; 2001). The responses from the National Park headquarters and other concerned authorities reflect the efforts they have made to dissolve the tensions and to foster more mutual understanding and cooperation. Mapping is a typical device used by the park headquarters to bring third parties on board to help build forums on the land-resources-human-resources issue. There have been at least three waves of mapping activities in these two small communities. However, I have found that these mapping efforts can be contentious. Mapping raises a number of issues, such as who in these two communities has what authority to report to a third party (which, in turn, would report to the National Park headquarters) about the human-land relations in the area? And what results of the mapping exercise should be revealed, and to whom? Why mapping exercises should be sponsored by any party and what are their purposes? I call these issues the 'representational politics' of mapping. These issues relate to the subjectivity of information providers and the objectification of the information that many studies on indigenous mapping have shown in Taiwan and all over the world (Guo 2003; Kuan 2008; Fox 1998; 2002; Escoba 1997; Chapin and Threlkeld et al. 2001).

3.1.1 Public Participatory Geographic Information System Mapping (PPGIS)

Generally speaking, the mapping projects in the Skadang and Hohos communities revealed, and were entangled with, a wide range of power relations in a historical and political context. Both critics and proponents of the mapping processes and their results formed discourses and plans to work with different purposes or interests among different stakeholders inside and outside the communities. We can see that the five-year-long national *Indigenous Traditional Territorial and Land Survey (ITTLS)*, which I worked on as project manager, also adjusted its methodologies and focus in the light of these discourses (Chang et al. 2004). In the scoping and implementation of the national mapping project, it was suggested that territorial information be recorded using GIS technology. This national cadastre paradigm is rather unsuitable or incommensurable to the indigenous ways of looking at land use and territories, in particular in situations where indigenous people are making claims on the land and there are disputes about boundaries and ownership. In addition, given what I have differentiated broadly as *in situ*, diaspora and hybrid contexts, past tenure could be interrupted without taking the *emic* perspective into consideration; indeed, it may be partly forgotten or mixed with different regimes.

The initiation and implementation of a more bottom up approach, which takes into account local visions, was encouraged in local communities (Chang, C.Y. et al. 2004). Thus, it was suggested that a Public Participatory GIS mapping approach (hereafter PPGIS) should be adopted, i.e. a series of methodologies that included ethnography and focus group discussions in order to evaluate the extent of any mirroring between social structure, land and environment. This approach insisted on paying more attention to the process, rather than an inscriptive model that could be accused of seeing indigenous 'landscape as a pictorial way of representing or symbolizing surroundings as the materialization of memory' (Guo 2003). A quick appeal to use the cadastre method or land registration system would possibly distort the indigenous contexts. The reason why this system is seen as 'pictorial or inscriptive' is because the initial mapping project results only showed places names and did not detail the many stories or local processes that could provide rationale or evidence to support land claims. Worse still, we do not have clear ideas to help us determine the extent to which some rationales or evidence are strong enough to support land claims, especially in terms of legal process. In spite of this, the implementation of a national mapping project was still encouraged among indigenous participants as a way of evidencing and proving their land rights (Chang, C.Y. et al. 2004). The desire for a stronger *emic* perspective to the project, however, appears to have been overshadowed by the *etic* focus of the cadastre system employed. This means that local participation in the project was very limited or even manipulated by local elites. Therefore, it appears that such mapping efforts do not encourage the empowerment of indigenous people (Wang 2003).

PPGIS methodology is advocated in order to deliver a more bottom-up strategy, which would encourage locals to undertake mapping based on their social, epistemological and political processes, and which would tell the stories or the processes of land and human relations. Such stories would provide an opportunity to reconsider the human-land relations and the documenting of human-land relations would be based more on local knowledge. This local knowledge would provide evidence for indigenous land claims. PPGIS also encourages the establishment of an equal forum for local people to discuss human-land relationships and to bring more consensus in terms of ideas about tenures. As Pasuya Poiconu, the former deputy minister of the Indigenous Council said:

> Indigenous Traditional Territorial and Land Survey (ITTLS) is the first step to establishing self-government. Maybe people will ask me why the government does not set up laws directly to make it happen as soon as possible. It is because, first, we (indigenous people) have to persuade mainstream society and to produce consensus in each indigenous group (Poiconu 2004).

The ITTLS has been conducting a survey to try to establish what land there is and who owns it, and also to empower indigenous people to coordinate their actions on land rights claims, and to pursue the possibility of future autonomy or co-management of indigenous land and natural resources. The ITTLS is more

than an ambition to encourage indigenous movements initiated and sponsored by the central government; it is also a survey that can provide a legal foundation for the resolution of all kinds of land or natural resource conflicts. The ITTLS is trying to encourage indigenous people to achieve an internal consensus on land claims and to persuade the mainstream society of their legal status.

3.1.2 Logistic problems and more

As mentioned above, progress is being blocked by political obstacles. These government initiated mapping projects are often filtered by local politicians who invite certain participants and silence certain opinions. In order to know more about local processes in terms of the mapping actions and beyond, the ITTLS academic team focused on land claims and tried to form close relations and long term cooperation with certain local teams. We lobbied the Indigenous Council for support for these local teams in order to deliver more promising results that would generate some good models and examples for the mapping projects. This is a clear effort to cooperate with the locals and to get them more involved in mapping at the local level. The then Minister of the Indigenous Council promised to support this action and adopt the idea of empowering local teams, providing them with funds and skills. Each scholar in the team committed to long term cooperation with the local team he had been working with. Eventually, with some help, each team produced a proposal for the implementation and funding of PPGIS mappings in a local context. Despite the promises from the minister and the commitment from the teams to make progress, there were problems with the administration staff at the Indigenous Council who could not provide expenses for traveling and meals for the workshops. This funding failure resulted in less local teams than expected being established (Wang, Ming-hui 2004). There appeared to be a lack of trust between the mappers and the sponsors.

During my research over the past few decades, I discovered that major indigenous movements have been focusing on land issues. Indeed, to date there have been at least three big waves on a national scale of 'return my lands movements' initiated by indigenous people. If central government support for mapping was welcomed by indigenous peoples, and much of the existing energy on land claims diverted into a national mapping project, it could bring a fourth wave of 'return my lands' movements. However, so far, this has never been realized.

Despite the funding problems at the Indigenous Council, we still tried to cooperate with local indigenous teams to bring more bottom-up, participatory mapping. Time and budget constraints meant that from 2005 onwards, the maximum support available was for ten candidate 'communities' every year for the national mapping project. Announcements about which communities had been recruited to join the PPGIS project were published by the central government through local indigenous institutions and NGOs. Communities who hoped to map their traditional territories, based on their own interests and scopes and with the help of academic skills and methodologies, were invited to apply. Suc-

cessful candidates were provided with training and support and the promise of at least one year of partnership with a group of scholars.

Alang Skadang and Hohos were among the candidates that applied to join the national PPGIS mapping project. Some criticized the way indigenous tribes were invited to join the project, the method for announcing successful candidates and the involvement of geography or anthropology scholars as being top-down. But the ethnographical methodology was also an attempt to encourage and implement an approach with more local vision and subjectivity. Two anthropology PhD students (including me) and a geography master's student joined the project to undertake ethnographical fieldwork and to observe the local context, paying more attention to the 'politics or contexts' behind mapping activities. These activities followed PPGIS procedure in order to integrate more local concepts and ideas on the relationships between people and land. In addition, a group of four professors and students joined local people on the mapping activities every couple of months to observe and aid the processes of mapping in an *in situ* scenario where indigenous people have increased relationships and interactions with the land (Tsai et al. 2006). From 2005-2006, the PPGIS projects among the Skadang and the Hohos were implemented as experiments to see how mapping could empower indigenous people to meet their needs through mapping based on their own endeavors and visions. The needs that motivate local indigenous people to struggle against repressive politics and to provide evidence or discourses to bring to the forum devised by PPGIS will be discussed later in relation to the mapping processes in Skadang and Hohos.

3.2 *In situ*: examples from Skadang and Hohos

3.2.1 Sensitive local topographies

After eighteen months of implementing the PPGIS project in *Alang* Skadang and Hohos, indigenous participants from these two tribes had described and marked 286 place names on Google Earth. The academic team has promised to keep this information for these two communities and not to reveal the results and some sensitive information to outsiders. Consequently, I cannot reveal all the information here in this academic report. Instead, I can present a less detailed map that indicates the diversity of information and adopt Liu's (the master's student appointed in the field) preliminary analysis to show some basic categories of the mapping results related to these 286 place names (Liu, D-K 2008). The categories include:

Topologies: 9 gorge names, 10 valley names, and 19 other topologies
Natural resources areas: like tree or bamboo or animal habitats (12)
Water: 16 river names, 3 lakes
Public properties: 21
Place names with related stories, histories or events: 12

Tribe names: 6
Path and border names: 8
Hunting areas: 11
Private Properties: 40 private land names, 13 hunting lodges, 106 house land plots

These mappings took place in the context of a number of sensitive issues, such as the construction of cable cars, border lines and reservation land appropriations. This analysis helped us to understand the 286 place names, and stories behind them, and also to assess what it is that helps people to either remember or forget information that contributes to the mapping processes and results. The past is reconstructed on the basis of the present.

A plan to decommission cable cars will be problematic for local people as this is currently the only method of transportation for moving large quantities of goods from the mountains to the plains. Thus, as part of the project, land that could be used as a base for cable cars, and a number of alternative cable car routes were marked on the map, in a bid to suggest to the National Park headquarters that they rebuild a transport system for indigenous people. Conflicts over the rights to the land occupied by the owner of the cable car system were also monitored in the mapping process.

Traditionally, border lines differentiating Skadang and Hohos *alang* were implicit and there is mutual recognition by the two communities regarding future access to lands that have not yet been appropriated as reservation lands. In future, lands between border lands will be granted to the locals by the township government. Thus, maintaining clear borders helps to maintain rights and space for future access within each tribe.

The results of the PPGIS mapping have raised reservation land issues concerning approximately 109 place names. Some of the conflicts regarding reservation lands were due to the National Park headquarters' attempt to buy or take indigenous reservation lands located inside the National Park. There was a tendency by the National Park administration to define boundaries in a way that secured land and property in their favour. In fact, the lands in these two *alang* are primarily areas of indigenous reservation land that have already been demarcated by the national reservation land registration system. During the PPGIS mapping process, we found that local people often showed us cadastre maps to support their claims. Participants often referred to specific land numbers to indicate where they live. This is the first and second generation to be ruled by this cadastre system, which was introduced by the Japanese authorities and later strictly implemented by the nationalist authorities. Most of the participants were familiar with this system and used it as evidence to identify land ownership and land use. Indeed, every family seems to have a map of the total area of the two *alang* and not just the area they own.

Many local participants gave the example of a famous and successful land claim case, specifically, a request for the National Park headquarters to return pieces of land #109 and #216 to indigenous owners. The claimants asked for land

use rights to be granted on these two pieces of land that had been bought by the National Park from Shoulin Township without the consent of tribal people. The lands in question had not been registered or appropriated by any individuals; however they had been registered as being owned by the township office, which had acknowledged the fact that some local indigenous people were using the lands without full registration. When the indigenous people discovered that the lands in question had been transferred to the National Park they protested and said that they had a stronger prior claim to the land rights than the National Park. During the protests, local indigenous people used the cadastre to provide documentary evidence that they had been 'recognized' as 'illegal cultivators' (濫墾戶). This is a customary rule that indicates candidates for the next wave of appropriations of reservation land. As is well known among indigenous citizens, having your name on the cadastre is crucial to claiming rights. Even so, the township government was determined to deny the fact that the lands in question had already been in use by local indigenous people. 'The township just hoped to sell lands to the National Parks for money as a way of making up the shortfall in township finance', participants in the project told us. 'Thus the cadastre is no guarantee, and this is why we want to map in our language, to show the National Park and the township and tourists, to let them know the lands in our territory belong to indigenous communities', as a community leader told me when he invited me to join their mapping projects.

In terms of the 106 plot names, *Sapah Someone* indicates a house that is currently inhabited. *Nniqan Someone* indicates a house where someone used to live but which is currently empty. *Pnspahan Someone* indicates a plot of land where activities used to take place, like housing, working or planting. Using these markings, local participants were able to add more local meanings to the land that previously had just been numbered in the cadastre system. These labels differentiate whether places are currently in use or not. They respect places that were used by someone else, even if they do not know exactly who had used the lands previously. There are even cases where someone's name is used as place name in order to indicate ownership of a piece of land. As Liu (2008) has highlighted, there is a plot of land in *alang* Snlingan that is named *Pnspahan AKaw*, which indicates that a Mr. Akaw was the individual who used to live in that place. In *alang* Hohos, there are neighboring plots of land with the place names marked as *Tnlangan Danga Akaw, Tnlangan Tumun Akaw, and Pnspahan Telung Akaw*. This indicates that the Akaw family had migrated from *Snlingan* to *alang Hohos*. Through these place names, we found that Truku people are able to trace migration histories that affirm the human relations among *alang*.

Among the places indicated were thirteen hunting lodges or hubs that indigenous mappers indicated to be *biyi*, a term that is used to mark the places and houses which were used to farm mushrooms or to rest during hunting activities. *Biyi* are controversial in terms of law because most of the mushroom houses or hunting areas were located inside National Forest lands that indigenous people still accessed for gathering and hunting 'illegally'. The Forest Administration considers *biyi* illegal. Today, *biyi* are not used as mushroom farms because the

price for the crop is no longer good. However, local participants marked these places to indicate that they still cared about the places where they had spent a lot of time and effort, even though they were located at quite a distance from their houses. Thus, the locations of these *biyi* became one of the sensitive categories that the participants hoped not to reveal to officials.

Among the 40 private properties named in the mapping project, we found that the term *Dxgal* denotes a Truku idea indicating lands awaiting further use by someone who has a claim to the user rights or ownership of the plot. For example, the place name *dxgal Udaw* indicates that the person *Udaw* has a priority right to the land in question. The Truku term *Qmpahan* is used to indicate land that is currently being planted or that had been planted in the past. Thus, the place named *Qmpahan Watan* indicates that a Mr. *Watan* is using the land now and everybody living in the *alang* knows this. If Mr. *Watan* died, the place name would probably change to *Pnspahan Watan* if nobody took over the land. However, such a transfer of land is unlikely to happen quickly since recent generations of local people still remember Mr. Watan and his ownership of the plot. However, if the land is inherited by his descendants or sold to other people, then the place name would change to the name of the new rights holder. Our research showed that place name markers used to indicate land-human relationships in Truku cultural topographies can and did change. Place names carry meanings explicit among local people and are used as points of reference.

3.3 Places of daily life: Private or public place names *in situ*

3.3.1 Narrations on topogeny and genealogy

One of the outcomes of these PPGIS processes was the accusation that mapping is responsible for the reification of place names that could, in fact, change at some point in the future. I certainly found some evidence of this in my research. When maps are just records of the status quo, it is also possible to mark some places that are not yet named by the public but are implicitly used by a few local private individuals. A number of local participants in the project indicated some places that had names only known by a few private users; places names that denoted the close relations of the individual with the land (Basso 1996; Roy et al. 2000). Aunt Ikong's mapping below illustrates some of these private places.

***Sapah* Yuyung (Yuyung's home)**

Sapah Yuyung is my sister-in-law's home. We lived with my mother and my brother. My father was from Snlingan. I have not lived there for over 40 years. When I was 20, I left to come down to the place where I live now in the plains. I remember that we used to shout to the place called *ayug*, to call my brother and my mother to come back home to have lunch. I also had to work at *ayug* until 10am, and then come back to make lunch for my brother and his wife who were still working up there. It took about 15 minutes to walk back home from *ayug*.

We lunched until 1 pm and then went back to work again. In summer we used to work until 6 pm. My brother was very hard-working and treated me strictly. My father died when I was 2, and my mother died when I was 17. I learned how to work from my mother. I remember that my mother and I walked to the plains carrying oranges and vegetables on our back to sell to the Han people. This made money for tuition fees. We used to start at 3 or 4 am with a torch and arrive at 6 am so we could avoid the burning sun.

Map 3.3
Aunt Ikong's mapping of her home base

***Honat* (cliff)**
Honat is the place where our cultivation land is located. The land is much lower than our home, so sometimes we would sleep at a *biyi* (temporary house) there. We used to sing all the way when going there. We sang the songs from church. I liked to sing alone and I could hear the echoes from the opposite mountain. The louder you sang, the louder the echoes.

***Dkiya* (mountain)**
The mountain is the place where my brother would take me to see the traps for mountain rats and birds. We had to start very early, especially when the winter was very cold and the dawn came very late. But when we saw many qowlit (mountain rats) in our traps, we were happy and did not feel tired. We still had to come back home before 7 am, because we still had to work in other places.

***Ayug* (gully)**
In Ayug we had cultivation plots where my brother would drive our cow and plough the ground to plant dry rice (emhuna pyai), wet rice (oryza sativa Linn) and peanuts (emhuna trabus). That was also where we herded our cow.

***Ayug Truma* (the bottom of the gully)**
Ayug Truma is the place where I worked with my mother. After she died, I used to work there alone. One day, white balls dropped from the sky there. I did not understand what it was. Actually it was hail. I was thinking that it was the end of the world, because the church always said that the time will come for the end of the world. At that moment I didn't know what to do, so I just prayed and prayed to God to ask, 'What is this, is this end of the world?' Later, when I went back home, everybody felt astonished and strange. We planted peanuts and sweet potatoes and we used to grow cucumbers that were so sweet that my mother and brother liked to eat them fresh with salt. That was so delicious!

The terms or place names Aunt Ikong used, such as onat (cliff), dkiya (mountain), ayug (gully), and ayug truma (the bottom of the gully), are actually Truku terms to indicate physical topographies. Thus, while these terms can be used generally, we find here that they are used by Aunt Ikong as private place names, indicating her very personal experiences with the lands. Even people in the same alang, unless perhaps they were close neighbors, would possibly not know which places she was referring to. The four places she indicated as personal place names surround the house where she used to live. She centered the relations of these four places in the sapah (house) belonging to her sister-in-law, called sapah Yuyung. Aunt Ikong specified the house as Yuyung's sapah to further indicate that the house carried the lineage of her brother's father-in-law, who had built the house. Though it is mainly Ikong's family that lives in Yuyung's sapah (house), they still respect that the original owner of the house was someone else. A sapah could usually carry a genealogy of a few generations. Ikong recited the genealogy of her brother's wife's family. She said that when her brother married into Yuyung's family she got the right to use the land from her brother's father-in-law. She was expressing that they had use rights but not ownership rights; that the land was on loan from the family they married in to when their family left another tribe that did not have enough land to live on. Ikong's cousin Ici articulated his family's lineage by indicating that the land actually belongs to him. Among the lands Ici owned, most of the lands were obtained through purchase, only one third of his lands were inherited from his father, Ikong's brother. Ici explained that he bought lands in Alang Hohos because their ancestors moved from another alang named Snlingan to Hohos where previous owners that had left some land for Ici's ancestors to occupy and use. Ici and Ikong both recited their lineage from alang Snlingan as follows: (in Box 3.1 below): Ici Dadaw → Dadaw Yadu → Yadu in a sequence from the current generation to previous generations. Our research showed that informants usually remember three generations before them. Yadu's father was not remembered by Ikong and Ici, but they knew their ances-

tor Yadu was born in their original alang Snlingan. Their Uncle Loking Yadu and father Dadaw Yadu moved to alang Hohos where they live now. They came with the approval of prior cultivators.

Migration is also a common issue mentioned in the mapping process. Most of the people in the Taroko area have experiences of migration, irrespective of the processes of nation building. In Ikong's narrative, she mentioned that her father moved from Snlingan to Skadang, and that she moved from Sdadang to the plains. A narration of the sequence of place comes via the genealogy and produces a topogeny, as Fox described for other Austronesian peoples (Fox et al. 1997). When they recite the genealogy, they also indicate the relationships with the land.

	← Tumu (Hohos)	← Ibai
Yadu (Snlingan)	← Lokin (Hohos)	← Yalu
	← Dadaw (Hohos)	← Ici
	← Ikong (ego from Hohos now lives in plain)	

Chart 3.1
Topogeny of Ikong's family
(← : means the direction they recite the genealogy)

3.3.2 Topogeny is/with genealogy

Topogeny with genealogy was a common model of narration among many participants. Migrations indicated in topogeny and genealogies are recalled in many people's memory to mark the land in sequence and at the same time to bring the memory of landscape as a background for personal or family histories. Each family sent just one delegate to implement the narration model of genealogy and topogeny to indicate information on where, when and who should be inscribed on Google Earth in order to create a territory map.

Participants were eager to represent their vivid lives on the land they are familiar with. Ikong, for example, said that she wanted to describe her memories of the place before she was twenty years old, to create a reflection of her life. By contrast, she did not have much to say about Snlingan, the previous *alang* where her father lived, because she had very few ideas about the place. This certainly explains why she expressed her genealogy using a backward model, in sequence, from herself to her father and to her grandfather. As a result of the way she described their daily lives in the place where she used to live and that were so familiar to her, she provided us with a basis for further interpretations on human-land relationships. She told us about the happiness of hunting mountain rats or birds with her brother, and the sadness connected to the land where she worked with her mother. One participant interpreted Aunt Ikong's narration: 'From the perspective of land claiming, we could see that Aunt Ikong was describing the

land where they could do hunting, cultivating and gathering, which made up the typical daily lives in mountain communities.' Aunt Ikong was telling us about more than just land rights and property, she was describing place with which she had connections and held great affection for. A community leader concluded that a place for daily lives is also a place that provides foundations for different narrations. This interpretation seems to be recognized among the participants. Following on from Aunt Ikong's narrations, another family said that, 'we also hunted in the area that Ikong calls Dkiya, which was first explored by our ancestors. We gave permission for Ikong's family to hunt there.' Pastor Xue also recited generations of genealogy and topogeny, telling us that his family had originated in Snlingan before moving to Hohos.

Aunt Ikong's descriptions of daily life were more powerful than any alienated discourses for claiming land rights. Indeed, nobody's story about this plot of land was more legitimate than hers. Through her narrations we obtain a much clearer idea of the landscape and the place called *Ayug*, which was within shouting distance of her home on the plains. It was a place for cultivation that needed daily care and hard work. We learned too that *Honat* (cliff) and *dkiya* (mountain), where the family did their hunting and gathering, is also at a convenient distance from their home on the plains.

3.3.3 From micro world to contextual world: scaling up of the PPGIS

So far we have found that the mode of narration used by participants – articulating both genealogy and topogeny – provided a structure and order for space, based on the rule of priority status for families of first cultivators and permission for newcomers, granted by families of prior cultivators and explorers. With these simple rules, local participants were able to differentiate other land relations that resulted from inheritance, buying, selling, granting or lending and borrowing. Thus, later we see that what Aunt Ikong describes within five place names that make up a micro world, were actually embedded in more complex contexts. These contexts were mentioned by other participants who also narrated their own personal micro worlds. The church location mentioned by Ikong was also mentioned by another family, who had donated the land to the church. These church donors were in a position to reveal the meaning of the place names. The only neighbor Ikong mentioned was sapah Lihan. This house is later mentioned and marked as a result of the narrations of the Lihan family genealogy, which demonstrated the family's long residence and occupation of land in alang Hohos. When a place name is indicated as a result of PPGIS processes, we also find that a genealogy is recognized by the participants who were able to check and verify these labels on the map. There is also an implicit recognition among locals for the need for a suitable representative who can describe their places not only with names, but also using genealogies. Not surprisingly, participants tended to represent places where they had legitimate or direct connections. Thus, they did not tend to express meanings over places when there was someone else with more legitimate relations to that land. It is a process that starts with the private and

then extends to the public, and is subsequently checked and verified using genealogies and topographies, all of which combine to provide the best and most legitimate position for articulating land-human relationships. This process starts with 'hearing the other side when it comes what touches all should be agreed to by all thus to make up an awareness that anyone couldn't replace the other person and speak for him or her (Tully 1995:35)'. (Author's italics).

Through the representatives of the families that were able to articulate their places, a map indicating family land property in situ is processed. Those families that did not have representatives were also respected and invited to put a mark on the map to indicate the existence of a family who had rights to the land.

3.3.4 Village borderlines

The place names of land properties, and in particular reservation lands, indicated on the cadastre, actually had very clear cut borders. However, borderlines in alang Hohos and Skadang were not shown on the cadastre. One participant explained that this was because the Japanese policemen in each alang had divided up the territory to make space for reservation lands to be appropriated by individuals. Thus, the borderline was a way of marking the future appropriation of reservation land inside each alang. The township, however, did not recognize these borderlines and would often grant reservation land to other people belong-

Photo 3.1
Pubic Participatory Geographical Information System (PPGIS) workshop on Traditonal Territory in Skadang and Hohos Tribe

ing to different alangs. Consequently, clear and undisputed borderlines were a sign of an original oral contract on land appropriation inside an alang. Certainly, to claim a borderline in an alang was to claim sovereignty.

An alang is not only made up of houses and cultivation lands that are allowed under the reservation land registration system, but also includes hunting and gathering areas that had largely been taken by the state as national lands, state forest lands or national parks (Yan, Jun-xiong 1997). Participants in the project were also eager to mark and indicate where they hunted and gathered, to provide a complete picture of their alang where they lived their lives.

They expressed many places names for hunting paths and areas, and temporary houses that the National Park or Forest Bureau would consider as illegal and priority targets for elimination. Though some participants were worried that these markings on maps would leave them vulnerable, some were still eager to mark them in order to document a personal story, one that detailed the topologies they had experienced, including mountain names, gorge and valley names, lakes and hunting paths or old trails or shortcuts. These places were indicated sometimes using private place names and sometimes using public place names; the result was a coordinated system that structured the relations inside each alang. In this mapping process, these participants are coordinated to make new mental maps that combine personal experiences with the experiences of others, thereby giving personal place names like Ikong a new public status. For example, the tiny island in the middle of the Skadang River was named by Mrs. Yaya as Taiwan Island, because of its shape like the Taiwan Island. Participants adopted this name, thus giving public recognition to private naming.

3.3.5 The co-management of river landscape among different communities

Besides hunting and gathering places (biyi) which the participants claimed access to through their traditional customary rights, river landscapes were also demonstrated during the PPGIS process. Some participants told me that the Skadang and Hohos alangs were proposing a co-management project with the Taroko National Park headquarters for the protection and conservation of the Skadang river basin. Through the project, we discovered that the administration authority maps of the Skadang River were actually very different from the map made by the locals, which had different names for different sections of the main river from the upper stream to the downstream, as indicated on the map from A to H:

A-B *Yayung* (river) *Snlingan* includes the place beginning from *Gglag* (waterfall) to *Tapaq Tasil* (big rock) managed by the family of *Snlingan*, which comprises the lineage from a *dama* (father) belonging Ikong's ancestors .

C *Yayung Kruh*: begins from *Tapaq Tasil* to *Gbiyuk* (big gorge), which was managed by the family of *Kruh*, who were dominated by the family of Mr. *Maji's* lineage that is recited as follows: Abu (Kruh) → Yakaw (moved to Skadang) → Asin → Maji (ego)

D *Yayung Wilang Lawkay* that belongs to alang *Skadang* and *Hohos*: begins from *Gbiyuk* to *Tasil Qsiya* where *Wilang Lawkay's* family had the right to access the river resources.

E *Yayung Wumin Sudu* owned from *Tasil Qsiya* to *Kiyuh*.

F *Yayung Wilang Taymu* owned the section from *Kiyuh* to the river mouth where his grandson still lives now.

Map 3.4
Traditional River section management of Skadang River (Xu and Huang 2001)

Through the mapping of the river landscape we find that the principle of first occupation was still adopted to manage access to river resources. River sections were organized by clear boundaries and borders. However, these sections also combined to form a system of co-management among the stakeholders in different areas, especially in areas where fishing with the roots of a poisonous plant called tuba (Derris trifoliata, Jewelvine) was employed. This method makes the fish faint and flow from the upstream sections to the downstream where various stakeholders could harvest them at different points. The fact that co-management systems exist for different river sections was clearly a rebuttal of ideas that the river also belongs to those alangs located on the opposite side of the river, such as Sdgan and Rocing. As one participant said, the opposite side of the river is actually highly vertical, with steep gorges, making it difficult for the people to get access to the river bank. The narrations and disputes on the ownership of the river came to a climax when the National Park decided to accept the proposal for co-management from the Skadang and Hohos group.

3.3.6 Historicity and place

There are some place names carrying or indicating historical events or personal names. Take the place name Dxgal Skuring for example; it is the place that Hohos participants identified as the spot where the Dutch left their gold mining equipment. It is still debated whether the Skuring originate from the Dutch or another Austronesian tribe who used to live on the mountain slopes and on the plains area around the river mouth (Kang. P 1999). Hohos participants consider the place as evidence of outsiders who occupied the land prior to the Hohos people. They still leave the mining equipment intact, as an ethno-archaeological site, so that Hohos and Skadang people are reminded that there were previous explorers in this place. In this case, I would say that historicity is demonstrated and confirmed by the rule to respect the first and prior occupation of this land. The place name of alang Skadang means the jaw of a human being in Truku terms (s = old, used to be; kadang = jaw). A historical event to dump equipment, no matter whether it was by the Dutch or people from the coast, is inscribed on the landscape and remembered by the current occupants, even though they have not lived through the event personally.

Historicity is also demonstrated by many place names that indicate vivid historical or past events that people have encountered personally. Bangah indicates the place where they used to make charcoal. Amerika indicates a spot where an American was drowned. Sapah Knsat indicates where the Japanese police station was located. Lhngaw Qbulit indicates a place where some skulls that were hunted by tribal heroes were hidden. These place names carry stories that local participants recall to remember certain events.

3.3.7 Natural Sovereignty

Through the mapping processes we find participants using place names and stories to coordinate the alang communities, using the principle of respecting first occupation. From local private micro narrations, participants can coordinate with different families over a territory and make rules about access to the land and natural resources. These rules were set up by their ancestors who came to explore the lands that they have inherited. This is the reason why local people insist that they should obey the gaya of ancestors. To refer to ancestors is to refer to the principle of first or earlier prior occupation. Newcomers could join, providing they had approval from families of the first comers. One elder concluded that, 'on the processes of migration, what is of most importance is that each family on the river bank of the Skadang river has a clear boundary.' Each family, with the help of gaya, has to cooperate and negotiate on borders and rules to survive. Those who did not obey the gaya were killed (Yu, Guang-hong 1980; 1982; Yamaji 1987). Gaya contains genealogies and topogenies to demonstrate the rule of first occupation and, later, to structure a system to coordinate daily lives and activities like planting, housing, gathering, hunting and so on. These gaya actually form borderlines, zoning, access and rights to natural resources and even

determine punishment when necessary. As Pastor Xue and Elder Huang said, 'these gaya still worked until at least 1960s when the state forced us to stop practicing our gaya by bringing in outsiders and state agents to fish with electricity and logging'. 'We could do nothing now because the state is stronger and more powerful than us; otherwise, we would be able to kill or defend any one intruding inside our land without our permission in the past. The right to defense was our natural sovereignty'.

3.4 Conclusion

In an in situ scenario, place names are basic devices for producing a coordination and reference system for locals to indicate publicly recognized meanings of place and, thus, to be able to zoom into micro scale landscapes based on gaya rules. The gaya respects the place where prior occupations and historicity are articulated through vivid personal experiences. Thus, the gaya structured the land tenures and social relations in terms of genealogy and topogeny, which, in turn, ordered human-land relationships. These genealogies and topogenies created borders between alangs that keeps rights intact and prevent conflict over 'sovereignty'. This subjectivity is demonstrated through all the PPGIS processes and results.

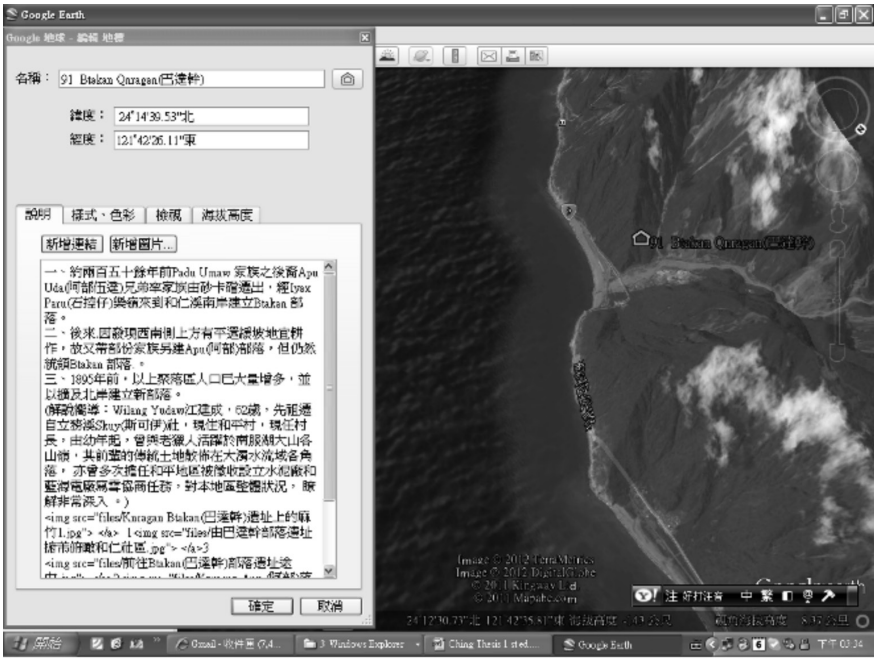
The PPGIS mapping project lasted about one and a half years. It experienced some obstacles in terms of funding and prioritization, but this is not surprising as the local people involved were busy with their livelihoods and various organizations (including an indigenous NGO), in the hope of finding work and improving their lives. The PPGIS results can certainly play a role in providing complementary information to existing maps. As was anticipated, the mapping coordinated and initiated by the Geography Association of Taiwan (our team), which was commissioned by the Indigenous Council, provided evidence for land claims. Participants understood, however, that there was a limit to how much these results could facilitate their aims. They know that it also takes further legislation and legal action to protect or bring back the rights they have lost. They realized, too, that the cable car or road building issues would not be solved by mapping alone. They also acknowledge that micro conflicts about reservation lands cannot be solved or analyzed by Google Earth's low resolution images.

We hope the multimedia mapping results will provide fruitful information. Most of the local leaders felt it would be difficult to continue the mapping efforts since they did not bring any solutions to urgent issues. They did believe, however, that mapping had a role to play in ecotourism or as material for their children to learn about their 'roots' in the mountains. Indeed, we invited children to attend the meeting where we disseminated the information about the project, even though we knew that the mapping had resulted in some controversial assessments and had the potential to cause tension between the two alang that had been moved down from the mountains together to form a hybrid community, and that hoped to co-manage the lands above them where their homelands were

located. PPGIS mapping has the ability to scale up and down, to provide visualized topologies of the place in situ and, it has the real possibility to reveal micro issues or conflicts among locals living in situ. PPGIS is also controversial because it has the potential to raise conflicts but not provide resolutions. In conclusion, it is hard to determine whether PPGIS mapping processes or results are functioning in terms of meeting the purposes and aims of locals in the short- or long term. However, what it does provide is a new forum for participants to detail real and visualized topologies and to show their own relations with the lands in question. It should be noted, however, that even though Google Earth is becoming more accessible and the techniques and skills required to handle monitors are becoming easier, locals are not used to using this equipment.

We found locals living in situ with their lands have a need for such a forum when dealing with their many conflicts over land with the National Park. The PPGIS mapping methodology makes the public articulation of experiences of topologies and land-human relationships a priority, and is an example of a 'deliberate democracy', even though is still the cause of some controversy in this society. If one of the principles of democracy is based on Audi alteram partem (a Latin phrase that means, literally, hear the other side) (Tully 1995:35), Quod omnes tangit ab omnibus comprobetetur (q.o.t) (what touches all should be agreed to by all). It is also true that the diversity awareness one comes to acquire in dialogues does not consist of being able to replace the other person and speak for him or her (ibid: 133). We found the participants in alang Skadang and Hohos had more opportunity to follow these principles because they are still living in situ on their traditional territories. These territories have authentic places names and lively spatial reference systems. Through PPGIS, these geo references have been inscribed and processed, whether it is by land owners or tribal sovereignty protectors, while most of the other Truku people are not living in situ on their original home lands and are caught up in complex local hybrid or diaspora situations. People in hybrid or diaspora situation thus have different scenarios on the claiming and mapping of the relationships between land and humans.

Photo 4.1
Free-sketch Mapping Workshop on Traditonal Territory in Skadang and Hohos Tribe



Map 4.1
Mapping through Google Earth on Alang Btakan by the Shoulin Township Team on Traditional Territory Mapping

4

Mapping Taroko Traditional Territories in Diaspora and Hybridity Scenarios

4.1 Zero-or-Sum places: Mapping diaspora and hybridity scenarios

An *in situ* scenario, lends itself to a more empirically based methodology of mapping human-land relationships, since people are living where they are still practicing and structuring land uses and tenures (Basso 1996). An empirical method allows for the checking of the ideas on human-land relationships that emerge among stakeholders. However, in cases where land is not inhabited, but there are still many stakeholders dispersed in many different places, each with different discourses and claims to land rights, it is hard to find suitable mapping methodologies. It is hard to define, quantitatively and qualitatively, or even to find enough representatives or stakeholders for mapping purposes when there are only descendants without strong connections to the traditional territories. There is no doubt that mapping empirically and ethnographically takes time and money and, on the whole, requires governmental efforts and initiative. Thus, we see in the national *Indigenous Traditional Territorial and Land Survey (ITTLS)* project, different townships implement the project either by adopting a way of cooperating with local people or indigenous NGOs who have been undertaking similar mappings, or by carrying out literature reviews and general interviews as a way of searching for surviving elders or representatives with a view to achieving a township scale mapping and finding clues to places and fading memories (Chang et al. 2004). Collaboration with local people has always involved a process of mapping on a micro local scale, rather on a larger, township level. In my role as general secretary to the ITTLS project, I have observed that the implementation of local mapping processes adopted methods that meet the needs of different local contexts or politics. This observation requires further analysis, but at this point, I will examine the Taroko area in order to illustrate how the social movements of mapping traditional territories initiated by central government were interpreted and implemented in local contexts.

4.1.1 A doctrine for traditional territory mapping: witnessing

As part of a national indigenous mapping plan sponsored by the Indigenous Council, the Shoulin Township adopted a method that, despite a limited budget in terms of time and money, aimed for the mapping of territory on a township scale. Even though Shoulin is the largest township in Taiwan, it was only granted the same budget for mapping as other smaller townships. Inevitably, it was difficult to conduct a detailed investigation with so few resources. The person hired to take charge of the mapping was a Truku intellectual, who had devoted a lot of time to exploring ancestral territories with other Truku people, and who had hunted and traveled a great deal within the ancestral areas.

In fact, the leaders of the Shoulin project took the definition and boundary of the Taroko territory to be those defined by the Japanese, who had already mapped and demarcated the Taroko territory prior to their invasion of the area in 1914 (Yang 1996; Zhang, zhi-sheng 1998; Chen 1999; Chang, Dai-Pin 2000). They believed they knew the territory belonging to Taroko people, but that was now under the control of the Forestry Bureau and Taroko National Park headquarters, well. Following recent social movements to promote their ethnic identity as an independent tribe, rather than as a sub-tribe of the Atayal, they invited a group of people who had fought for the independence of the Truku tribe from the Atayal ethnic identity to discuss and participate in the mapping project. It is clear, then, that mapping was scoped at an ethnic level. The project leaders collected Japanese maps that supported the legitimacy of a mapping of Truku territory. However, most of the lands they called traditional territories are no longer inhabited by Taroko people. Indeed, the people were actually disconnected from those areas to a great extent. The investigators on this project had no direct experience with the land they were mapping. In the first few years, the primary methodology used was to find hunters who still accessed the hunting area to provide information and to use tribal place names indicated by elders or marked on Japanese maps. The investigators used these hunters to gain access to the land. This method of 'witnessing the traditional territories', resulted in a data bank, indicating traditional territories in units of small tribes with some basic information provided by limited sources of informants. Box 4.1 illustrates an item from the project's 2008 report regarding tribe No. 176, the Alang Btakan. It gives an example of the information provided for analyses used in their mapping processes.

4.2 Frames of historicity and legitimacy between men and land

4.2.1 Time-embedded landscape in diaspora scenarios

The box relating to the Btakan is a typical illustration of the mapping reports on each tribe visited by the project. It shows a typical style of narration. The reports are always structured in four sections: (1) names of the first comers and the time period they stayed after first arrival; (2) later migrations by the founding families

Box 4.1 ▪ Alang Btakan

1 About 250 years ago, Padu Umaw's decendants, Apu Uda's brothers, moved their families out of Skadang, by way of Iyax Paru, to the south bank of the Heran River where they established a settlement in Btakan.
2 Later, they found vacant slope lands in the south east, which were good for cultivation, so some family members set up another tribe, the Apu, who were still ruled by the Btakan.
3 Before 1895, the villages on the south bank of Heran River were overpopulated and the threat of invasion by the Smiyawan from the south was getting fierce. In order to prevent the invasion, they built a satellite settlement on higher ground called Bngaran, which means a settlement for protection. When the Japanese came, around 1895, there were more than 30 families. After the war in 1914, the settlements were forced to move down to the plains, but they were still allowed to cultivate the original tribal lands, until 1946, when the Nationalists came, and we were all forced to leave our forest and land.
4 The guide, Wilang Yudaw, aged 62, whose ancestors came from the Skuy tribe on the Liwu River, now lives in Hoping village as a village head. From his youth, he went with elders to hunt all over the Nan-hu Mountain. His ancestors lived along the Da-Chou-Suei River. He participated in many construction projects in this area, including the building of cement factories and power plants. He knows these areas quite well.

in different time periods; (3) the conditions around the time before 1895 when the Japanese came and later migrations and conditions of these families after the Japanese had implemented their polices relating to indigenous people; (4) the final section introduces some details relating to the correspondents who provided the information and led the visit to the tribe.

In the report relating to the Alang Btakan, I sense that the map makers were structuring the time frame with a specific model that indicates major events in the history of the Taroko people. The Japanese army actually came to the Taroko area around 1914, whereas the year of 1895 (when the Japanese took over Taiwan) is a temporal land mark used to define the dramatic differences in the relationships between certain families and the territory. The mappers described their territories before the Japanese came as places where *gaya* was used to manage internal negotiations in terms of which land and natural resources they could occupy and have access to. However, after the Japanese and the Nationalists came, they were forced to leave their homelands, which now belong to the 'state of the nature'.

In my opinion, the mapping results and processes were stressed in terms of counter mapping, which views colonialism as a major factor of change (Chapin 2001; 2005; Kuan 2008; Lu 2009; Tsai, et al. 2006; Wang 2004). A further device used by the mappers to illustrate the contrast between colonial and pre-colonial rule is the construction of the time period after the first families of each tribe

arrived on the land in question. I have found three specific time periods used regularly by these mappers to indicate the histories of certain families: as long as 250 years; 200 years; and 150 years. This can be seen in the sentence in Box 1: 'About 250 years ago, Padu Umaw's descendants, Apu Uda brothers, moved their families out of Skadang by way of Iyax Paru'. I asked the question, how did the investigators know that the timeframe was 250, 200 or 150 years ago? One informant answered that there are Japanese documents that mention genealogies that list at least ten generations (Utsurikawa 1935). 'If one can calculate one generation as 25 years, then the ten generations [recorded] suggest that this specific tribe endures at least 250 years'. 'At least the Japanese did something good for us by recording the genealogies in the book 'Studies of the Systems of Taiwanese Mountain Peoples (Utsurikawa 1935)'. However, Japanese scholars had not recorded all the genealogies, so 'we could still have a basis to count the time period in terms of the memories of migrations and external marriages'. One indigenous participant told me that, 'we don't need an accurate time, but we need a relatively reasonable timeframe to structure the first comers and later comers, which would be enough to keep the *gaya* of human-land relationships in histories'. I asked why he could only remember three to five generations back and, more importantly, given this, how it was then possible to connect to the first comers. Could there be a missing link? 'Of course, there are missing links, but we always remember our first ancestors who came to the place', he replied. Another informant answered that the reason why it is not important to have an accurate time period is because it is the time before the Japanese came; a time when ancestors lived their lives in a similar way to the founding families, who lived naturally and happily on the land. 'The past was a much easier and a happier time than now, when we are not able to live on our homelands'. Here, again, is a sense of counter mapping as a device to help explain the timeframe. 'Thus we don't care about the missing links between the first comers and the last families who ever lived here before the Japanese came'. I notice that this narration of a time period is a missing link that, though it escapes the actual connections in terms of genealogy, it is actually legitimating the connections between the first comers and the then residents in the Japanese era with certain lands and territories.

Here, I have differentiated various narrations on the use of genealogies in Truku scenarios: one is a reverse genealogy that is used in scenarios such as the PPGIS mapping of the Skadang and Hohos tribes, where they live *in situ* and are able to recall three to five generations back. This reverse method always begins from the person involved and recounts just enough previous generations to legitimate and demonstrate land tenure structures in combination with the narration of apical genealogy: from the original ancestors and a few later generations (Fox 1998, 2002). I have found that apical genealogy always offers only a few generations, starting from the first generation ancestors and later few generations but missing the generations between the top and the present ones, which result in a third type of genealogy that I call a missing genealogy. This missing genealogy is a vague frame that defines time in periods of 150, 200 or 250 years, as illustrated in the previous example relating to the Btakan people (see Box 1).

Time is a metaphor that replaces the missing links of genealogies between the apical first comers and those generations ruled by the Japanese. People would say things like 'we just knew our first ancestors who moved here'. 'We knew because our parents told us.' 'We knew the ancestors' names that are often used in our families'. However, what I have found is that these families only have about fifty commonly used names, and that these names are used for both patrilineal and matrilineal lines. Consequently, it is hard to tell which names belonged to which families. This is the reason why there are social groups or units that could be described as families, which are only traced back a few generations. It is highly possible that in the past, before genealogies were written down, families had only limited knowledge about a limited number of generations. Thus, it is argued that there are no clan systems or lineage systems that can be accurately traced, as accurate lineages are traced from a common ancestor, or from clans whose descendants can put an ancestor's name into naming systems using surnames or lineage names. The Truku or the Pan-Atayal people do not have systems of surnames or lineage names. Instead, they simply employ the term '*txhal tama*' (same father) when considering social units and categories. Some informants said that they have different ways of determining their familial connections, for example, by using the myths and stories circulated within families, or by looking to marriage connections. Both of these examples assist in determining accurate genealogical relations. Some Truku people admitted to me that it was possible that someone could claim a connection with an apical ancestor, even though there were no genuine consanguinity connections. This could be because he or his ancestors just joined a group or lived with the local first comers forming a temporary cooperative group that is sustained with gifts and sharing relationships. Genealogies are not absolute evidence for proving legitimate rights to a piece of land. In the mapping scenario, a period of time such as '250 years' is used as a metaphor to demonstrate the way that *gaya* is conceptualized as ideal, and was a 'normal' and 'ordinary' part of people's lives before the Japanese came. Thus, a time period became a space for imagination or a platform where ancestors' ways of life continued, resulting in the image of time as a 'time-embedded landscape'. This landscape animates the mappers' imagination and the notion that within this time and space there were ancestors living a life free of interference from the Japanese and the Nationalist Kuomintang regimes, who did not allow them to hunt or cultivate the land using the slash and burn methods of their ancestors and guided by their traditional morals and *gaya*. I would define this perspective of time as a 'time-embedded landscape' and use it to describe a mapping scenario found usually in a diaspora scenario. Time-embedded landscape becomes a metaphor to connect people and landscape. Time is an embedded concept that is loaded with imaginations of ancestor's ways of ideal lives and rules of *gaya*.

4.3 Does the present come from histories of continuity or contingency?

As an example of an *in situ* scenario, it is useful to interpret the mapping results from the surveys of Skadang and Hohos. This allows us to construct a landscape using a mode of narration of everyday life or the history of continuity, where people recall vivid experiences about the events and conditions that lead to the present. The status quo is basically a confirmation of the impact of an event or conditions from the past. This is not to say that people living *in situ* on their land possess all the answers or clues to explain the situation now and then. As demonstrated by the mapping results of Skadang and Hohos – the only two villages with strong connections and continuities with their 'homelands' – the origins and circumstances surrounding a number of place names are still unknown. However, compared to a diaspora scenario, people *in situ* are more likely to construct their genealogies based on existing family connections with the land.

In an *in situ* scenario, Truku people tend to think of the past as a history of continuity that traces a path from their ancestors. The Japanese colonial impact on their lives cannot be denied. There are direct and empirical experiences that demonstrate a continuity of history and from which they construct the narratives of change, especially those changes brought by the Japanese and the Chinese.

In a diaspora scenario, histories are made up of contingency insofar as the Truku map makers imagined the time after the first comers and ancestors, defined by their *gaya* ways of living, as being (relatively) better than the situation of change brought about by the Japanese. Certainly, 'old' ways are not always ideal, but previous bad periods in the time of the ancestors are not revealed as much. People also constructed a more ideal and idyllic past in the hope of regaining a mode of life according to ancestral *gaya*. A mode of life that mappers, intellectuals and activists considered to be the rules for the much anticipated autonomy and that was even encouraged by the then President Chen. Here we see people are constructing the past according to the will of the future (Persoon 2009: 12). Thus, the past is made up of contingency in which events and conditions are not acknowledged or explained by local people. However, people still try to come up with empirical clues in order to bring a continuity of history that can be traced by well-known events or conditions, in particular those that occurred under Japanese rule.

Thus, the mapping reports reveal that people grab evidence or any clues to prove a connection to the places where one of their ancestors or a member of their ethnic group had lived. Using this methodology, they tried to access almost 168 ancestral sites or tribes that had been named by ancestors. Key to the investigation the team visited the location in question in person. In their reports to the township and the Indigenous Council, they described in great detail their journey and the processes involved in reaching an ancestral site, where they commonly found remnants of stoves or evidence of house construction that nobody could identify or had relations with. The journey also led them to the time-em-

bedded landscape where their ancestors were living. The reports provide many narrations and videos illustrating the dangers and difficulties they faced during the journey. The reports also emphasized the conditions involved, the remoteness of a place and the wilderness their ancestral tribes had inhabited, which they were now encountering once more after many decades of absence. Some of the participants of the mapping team insisted on blaming the Japanese for the major changes to their territories and for the miserable conditions their ancestors endured. They took pictures and video recordings of their ancestral tribe and together with the investigators they were able to provide evidence to show that they had discovered their ancestral people. This doctrine of 'seeing is believing' precedes the project of traditional territories mapping. Apparently, since the areas the team visited were Taroko territories, there was less of a priority to provide evidence of direct relations to stakeholders. Years later, when these reports were revealed, there were accusations that the information about land tenure and ownership received too little attention and that the facts about boundaries, owners, and inhabitants' of the land appeared to have been biased in favor of the Truku point of view.

In the initial years of the mapping project, the township clerk hired academics who had knowledge of historical documents and the skills to type and record interviews with these ancestral tribes. The journey guides who led the investigators to the ancestral lands were not necessarily the people who had 'legitimate' relationships with the land. The results of the mapping show indigenous territories with some 'points on maps' to indicate the tribes the team visited. No tribal boundaries were indicated. The leader of the project explained that there are two reasons for this. One is because they did not have the resources to find people with direct and legitimate relations to a specific tribe to describe the territory of each tribe with a degree of consensus. The second reason is that those people who do have legitimate relations, as either the descendants or the last inhabitants of the land, were dispersed among many different plains tribes or communities, who had few clear memories about what the boundaries were. In order to overcome this missing element, the mapping project was designed to map at the Truku tribe level, i.e. mapping the territory belonging to the entire Truku ethnic group, rather than mapping at the more detailed, community level. This methodology was criticized by some local participants and Truku people, especially those claiming land rights in the national property area, who said that the mapping results did not express the detailed land tenure or ownership structures of each tribe.

In fact, I found that in a diaspora scenario, people did not care that much about the 'spatial accuracy' of mapping their homelands. Indeed, space is not talked about in an accurate context, but rather in terms of a relative relationship between descendants of different families from different communities. The leader of the mapping project was aware of this problem but he believed that adopting a schema to remember the space through the family group '*txhal tama*' (same father) system was the most efficient. He noted that people do not have many memories of spatial arrangements because of their absence from the lo-

Photo 4.2
Finding the Roots to the Ancestral Traditional Territory and Claiming land Sovereignty. Photos courtesy of Huang, C.H. (黃長興先生提供)

cation and the fact that they were very young when they left. As the leader of the mapping project pointed out, given the constraints of the project, the family group '*txhal tama*' system is good enough:

> Now we are presenting a mapping of the entire Truku territory, rather than at a smaller scale, with details of every tribe. We only have a limited budget and human resources. We need to carry out ethnic tribal scale mapping primarily with a view to our future autonomy. When we achieve autonomy, we may have internal discussions within each tribe to determine authentic stakeholders and to draw maps with a cadastre that will define our homelands and solve the problems of legitimacy that the maps we are currently working with raise (personal contact with elder C.H. Huang July, 24 2006).

4.3.1 Appeals for mapping with legitimacy

Maps compromised by so many limitations inevitably invite criticism from inside the Truku communities. The mapping that was carried out at the Truku ethnicity level is mainly criticized for its top-down approach and there is an accusation that the process was open to manipulation by some intellectuals who did not pay much attention to the local details of each traditional community. Thus,

there was a concerted effort in the follow-up mapping project to employ guides who had closer relations to the land and to take investigators to visit the spots in order to document and trace the land tenure in as much detail as possible.

In addition, a number of local indigenous people who identify themselves as Toda or Tkdaya were critical of the results of the mapping of traditional territories. They complained that the exercise was biased towards a Truku point of view and only based on the views of elites and intellectuals. There was an issue regarding the extent of participation and also the legitimacy of information. In dealing with these issues, I found that, in fact, many alternative mappings – some sponsored by the Township Office, some not – started to emerge during the process. Below, I will focus on those mapping activities practiced by people who have, what I term, hybrid relationships with their traditional territories.

4.4 Hybridity

I define a hybrid scenario as a relationship between human (in this case, mappers) and land where the humans do not have as direct relations with their lands as, say, those involved in an i*n situ* scenario. At the same time, in a hybrid scenario, the human has more direct memories of the land than someone in a diaspora scenario, where almost all direct memories are lost. A hybrid scenario occurs when, for example, the elders of a tribe spent very little time during their childhood or youth in the land where they were born. These elders were moved down to the plains far away from their original lands and, after the migration, which happened at least six or seven decades ago, they had very few opportunities to return. They kept some memories of the land but experienced diaspora traumas that blurred their memories. Where they are able to recall memories of the land, it often comes in the form of dreams or nightmares that are revealed during conversations or chatting in daily life. The majority of them had suffered the process of migration and experienced the difficulties of adjusting to life in a new land where they were mixed with other tribes. Recollections of homeland are fuelled by recent movements for land claims and demands for the return of indigenous lands, and the efforts to map and narrate homelands.

Here, I use hybridity to indicate a mixture of personal and also 'collective memories', as well blurred and vivid memories of the land, to describe how this category of indigenous people bring representations (including maps) of their ancestral lands.

During the time the national projects on indigenous mapping were being implemented by the township, I found that many activities centred on ideas such as 'finding my roots' or 'revisiting my homelands' were still taking place. The case study below illuminates how people in a hybrid scenario create representations of their homelands.

4.4.1 A journey to the homeland: Swasal village

Swasal used to be a community made up of many little settlements. The Japanese authorities moved Swasal's residents down from the mountains and dispersed them among new mixed settlements in the plains around 1930. On the whole, Swasal people were moved far from their original lands, to a county dominated by another ethnic indigenous group, the Bunun. In fact, the Bunun have traditionally been enemies of the Taroko people, in competition for land and territories. The Swasal people tell many sad stories of suffering in an alien township comprising other ethnic groups. In 2007, Swasal descendants living in this alien area began a project, sponsored by the Bunun Township, to support a journey to their homelands far away in the mountains, in Shoulin Township inside the Taroko National Park. The project staff informed the headquarters of the Taroko National Park about the project and asked for permission to enter the park and for help to visit their homelands.

It took a five hour bus trip, plus another five hours of hiking, to be able to access the area the Swasal people believed to be their homeland. During the journey, an elder told me that the migration down to the plains had taken three days of walking. About ten per cent of the people on the journey were aged 70 or over and many found the hike up to the homeland difficult. The young people in the group, who were making the trip 'home' for the first time, were watching over and taking care of these elders who insisted on climbing the path, even with sticks in both hands. The march was slow and it took longer than expected. Along the way, the elders found animal tracks and hoped that this would lead them to paths where traps could be set. Indeed, one elder found a trap that had been set by someone else, but said that it was not a good job. He criticised the structure of the trap and said that 'this area should only be hunted by Cilu's family'. In fact, the only representative of the Cilu family on this journey was a young boy. He told this young boy, 'you know, this area belongs to your ancestor, but someone else, maybe people from other tribes or the Han, are hunting illegally here within the National Park'. 'Things have changed a lot, but you see, I don't think he will have a nice catch with this bad trap structure'.

On the journey, the younger hikers were told (and asked to hear) stories from the elders. The stories told were mostly of the journeys that took place when they were moved down to the plains some 60 years ago; the suffering involved in carrying heavy loads or dropping the only possessions they had. They told of the pain of seeing families and friends separated from each other, or they recalled the joy of seeing a father coming back with animals he had hunted.

Some elders were so tired and had pains in their legs that there were real concerns that they might not finish the journey. The party split up into different groups of elders accompanied by young men, different groups of hikers of different speeds and groups of relations and neighbours. In fact, the groups automatically formed along the lines of their original settlement. I joined some of the groups to chat and listen. At one point, an elder fell down the slope giving fellow hikers a scare. They wanted to send him back to the bus, but he refused to go

back, saying, 'I will finish my journey because this is my last journey. I was forced to move out here.' 'This is my longing and my dream and ambition to come back, just don't bother me.' Some young men felt so sad that they wept and told the elder, 'Dama, may I carry you on my back and we could go together.' It was a hard job to carry him on the rough trail. Many young men, including me, took a turn to carry him. This was made harder by the fact that he regularly wanted to stop at certain spots to tell a story, or just to gaze at places. After more than six hours, some pioneers arrived and began to hunt. The elders had asked for a big hunt so that everybody could have a share of the meat from the homeland. In fact, the young leaders and clerks of the team had worried that there would not be enough meat to feed the 80 participants, so they had hired and sent out hunters prior to the journey in preparation. Consequently, the harvest was so huge that it took them quite a few hours to deal with all the prey like wild boars, deer, flying squirrels and wild goats. They set up a fire and cooked the dinner as the night fog fell and engulfed the big leaves of the tree ferns and we heard the crying of wild deer (Formosan Reeve's muntjac: *Muntiacus reevesi*). The respected elders and pastors prayed and everybody began to eat. They cut some meat and poured some wine on the ground stating, 'our great ancestors of this tribe Swalsal, please forgive for visiting you so late'. Then, each elder in turn said their prayers and invited everybody to eat as much as possible, because 'there would be no more chance to eat meat from our ancestors' land' as one elder said. 'After the dinner', one elder said, 'I will tell you stories I remember, and I will reveal every detail of every piece of land I know here.' The wild deer were crying so loudly that they seemed to echo the stories being told. Most of the stories began by criticising the policy of the Japanese who had moved them down to a place they did not feel was home. An old and respected pastor, who was among the oldest in the group, recalled how initially the Japanese had sent interpreters to invite the tribal leaders and ancestors to move willingly down the mountain, but that in the end they were forced to leave:

> No matter that we were forced to move to the plains in the past, now we think that we can maintain our relationship with the land here. Actually, even if we were not willing to move down by our own free will, we still have the right to claim the land here as our own territory. Or, even if we were willing to go down, we still have right to access the land here, since we were so unused to the land where we are living now. Actually, one of my relatives had come back in secret and died here during the Japanese time. We have rights here, but the National Park is a trouble that stops us from coming here. As you can see, deer and pigs are plenty, don't you think it is to our ancestors' happiness at seeing us back that they welcome us back with such a good harvest? (Elder B.C. Yeh Aug, 24 2006).

One young man asked why the Indigenous Council had not invited them to join the traditional territorial mapping:

Is it just because we are living in another alien county, not in the same county in Shoulin? Can you believe the maps they made? And what about us? What about our land here though we were moved to another county? This time we come back with elders to find our lands, and we should tell our descendants to remember this area.

'My dear elders please tell us more about here', asked a young man, 'and please tell us details of where my grandfather lived and where his land is located.' One elder answered, 'Young man, I am sorry, I am not familiar with your place that is two or three hours away from here, and I don't have many memories about it'. 'But I know the place here and I have drawn a little map to indicate every little house where some of your grandparents and parents or relatives lived.' 'The map [see photo 4] is drawn according to my memory, but it is limited only to the area of the proper Swalsal tribe'. 'And tomorrow in the very early morning, I will guide you to see each piece of their land.'

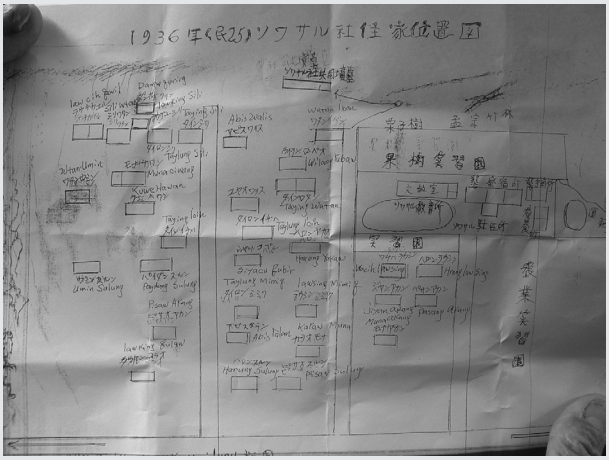


Photo 4.3
Mapping of Sawal Tribe by elder Yeh.

Everybody was very excited and eager to see the land, now covered by the heavy night fog and echoing with the sound of crying deer. The next morning, most of the visitors followed elder Yeh to the places that his map indicated as belonging to someone's family. Some happened to find that, here, their families had been neighbours, though they now live in different communities without knowing each other. Some old men wept or stood silently on the spot. Some young participants were laughing to express their astonishment at seeing their ancestors' houses. Many photos were taken of the whole group – of the descendants and neighbours. New connections were made. After an easy and quick lunch, everybody started on the walk back to the bus. On the journey back, I was thanked for helping them and asked to report to the Indigenous Council that 'finding roots' activities such as this were so important.

I felt a responsibility and was determined to take their advice, not least because I was curious about how to discuss such a journey in report for a mapping project that only allows for clinical drawings and images. I had the sketch map drawn by elder Yeh, but the GIS system could do nothing with it since the map contained no coordinates with accurate indicators. Hence, the description of this

journey in this thesis; to show that it is a form of mapping that carries people's emotions and ideas.

4.4.2 Journey as mapping

The hike provided participants with opportunities to see how the elders gazed on the landscape. Histories and stories were told to connect the hikers with the colonial histories that were vividly expressed on the difficult journey. These elders seemed to suffer again as they recalled their memories, visualized on the spot and on the trail to the homeland. Young people were also invited to join in the experience, to empathize with the sufferings and memories that these elders showed. It was like a ritual. The young people imitated and learned the sufferings of the journey of the forced migration process, which allowed them to understand the time or histories and vivid events that happened so many years ago. Some memories were vividly recalled by those who had direct experiences; other memories were imagined by those who were invited by the elders to go back to the past. Some encountered feelings of deja vu, which confused. I would describe this journey to the homeland as a pilgrimage, to bring a '*communitas*' that brought every visitor to a *time-embedded landscape* where their ancestors were living.

In terms of the standard geo grid maps demanded by the Indigenous Council or the scholars of geography, I am sorry to report that the sketch map the elder Yeh had drawn was not acceptable to any township office. Eventually, however, a 'spot' named 'Tribe Swasal' was recorded in the GIS databank of indigenous mappings in the report to the Indigenous Council. The sketch map drawn by the elder was not a cadastre that demarcated clear boundaries agreed among stakeholders. Thus it was not incorporated into the land registration system.

But the journey was centred on visiting the area where the sketch map had indicated the home bases of the participants. The visit seemed to reconstruct neighbours' relations and create a new starting point in terms of the area being a home and a temporary *communitas*. This sort of *communitas* does not actually promise anything in terms of grants or recognition of land rights, or ownership, or even rights to access the 'originally affluent' natural resources now under the rule of the National Park. Mapping is a strategy used to claim actual rights, but the journey led by a sketch map only serves as a device for building communities or togetherness (Seiber 2000). The experience of eating and sharing the meat 'provided' by the homeland ancestors started and reconstructed a new connection between the participants and the land and their common ancestors. In short, mapping as a process among people in a hybrid scenario can only reconstruct a limited part of the past. This partial past cannot indicate actual land tenures and ownerships or rights to access, because these groups of pilgrimages were only a small portion of all the possible stakeholders. The sketch map was only part of the memories of one elder, and some of the other elders wondered whether it could be biased.

The journey was devised to bring memory back to the relationships with the land, but did not result in an 'unproblematic map of the homeland, in which each group is associated with a physically demarcated area' (Barendregt 2005:15), as the Indigenous Council required. It is a community not so much demarcated by physical borders, but rather defined in terms of what Gupta and Ferguson (1992:10) would call 'imagined homelands' (see Barendregt 2005:15). These homelands would actually be what Auge (1995) notes as an emergence of non-places; spaces without history or vivid personal experiences. In fact, for the hikers on the journey, these spaces were not without history like 'modern highways, airports or malls that are areas of transience and anonymity' (Auge 1995); rather they are places being recognized with histories that would actually be forgotten or erased forever if the elders had not been there. That is the reason why these elders ran the risk of climbing and hiking in the mountains to inscribe and restore the histories and incidents that resulted in such great changes to their lives. These areas were on the edge of being either zero or sum embodiments of histories or memories, or local senses. Thus, I call the areas we visited zero-sum places. Through such journeys people reconstruct spaces as places full of meaningful landscapes. We must accept these journeys as participations, penetrating human-land relations and mapping histories and places. Thus, the reconstructed zero-sum-places stand on the edge of either fading away forever or being reconstructed as renaissances.

Ironically, modern devices such as cadastres, and legal doctrines such as *terra nullius bring* about an erasure of the places where land and humans are imbedded with each other. After so many years, the only mapping option open to indigenous people was a journey to evoke a zero-sum-place, to bridge or compensate the loss of sense of place, to stop living in a world of non-places. The vivid and direct memories of a hybrid scenario facilitate this in a way that a diaspora scenario, with its imagined or constructed memories, cannot.

Swasal is still a space in the regime of the Taroko National Park (Song 1999) and it is used as an environmental education center. But it is also a space for poachers to hunt or for foreign hikers to find leisure and recreation, a space that modernity and hyper-modernity demands for 'natural conservation', 'environmental preservation' or World Heritage Promotion projects that are far removed from the journey made by the indigenous participants in search of their original relations with the lands.

More and more Zero-sum-places are emerging as a result of the journeys, camping or hunting trips made by local people and the increasing 'finding our roots' activities being undertaken. Indeed, the rescue and recovery of places is booming in the area where I am doing my field work.

Photo 4.4
Finding roots in Ancestral Traditional Territory in Swasal.

4.5 Conclusion

This chapter illustrates three topographies between present day indigenous settlements and traditional territories: *in situ*, hybrid, diaspora. This typology suggests a decline in the closeness with and knowledge of territories being claimed. Claimants seem to divert into objective empiricism and subjective reconstructionism in terms of the ideas and methodologies for mapping traditional territories. In an *in situ* scenario, landscapes are demonstrated face to face through the checks and balances of locals. In a diaspora scenario, when stakeholders and information are lacking and there are few checks and balances on the relationships between people and traditional territories, the politics of representation are more controversial. We found that locals adopted a method of large scale mapping in order to ensure the inclusion of territory that they hope will be ruled again by ancestral *gaya*, once autonomy passes to the Taroko people. Future perspectives are concerned with mapping. In a hybrid scenario, where some direct connections remain, in the form of elders who are able to make a journey to their homelands, a space of zero-or-sum place emerges and awaits rescue. Alternatively, this zero-or-sum space would become an imagined homeland or a lost land, a non-place to the indigenous descendants.

Photo 5.1
A meeting of indigenous scholars and activitists after the passing of the Indigenous Basic Law.

5

Making Laws for Indigenous Traditional Territory and Land Rights: Controversy in a Taiwanese Context

5.1 The Indigenous Peoples Basic Law (Basic Law 2005): A breakthrough?

The passing and enactment of the Basic Law (2005) was good news that came as a surprise to many lawmakers, scholars, and indigenous activists. Its articles contained many international standards of indigenous human rights and, unexpectedly, it passed with relative ease through the Legislative Yuan, in which indigenous members occupy less than two per cent of the seats. (Simon 2011: 731-732; Ku 2008: 401). There has been very little study of the law-making processes. Thus, I will begin this chapter by presenting some theories and statements from indigenous people in order to trace a line of logic that demonstrates the major reasoning and considerations that culminated in the Basic Law incorporating a number of human rights and, in particular, much needed land rights. Out of a total of 35 articles contained in the Basic Law, eleven articles[9] explicitly and implicitly concern the definitions and boundaries of land territories, as well as rights and substantial benefits for indigenous people. Furthermore, the law implies that lands are a basis for self-determination and autonomy. The ambitious Basic Law puts indigenous developments at the base of a system to manage lands that have been out of indigenous control for a long time. I will illustrate this by interpreting some of the articles in the law that relate to indigenous land rights and their future implementation. First, however, I will examine some of the discourses and actions of indigenous people and activists before the Basic Law was passed.

9 In articles: 2, 11, 18, 19, 20, 21, 22, 23, 25, 31, 32 (11/35) see translations by Council Of Indigenous Peoples, Executive Yuan, R.O.C at: www.apc.gov.tw/main/docDetail/detail_official.jsp?isSearch=&docid=PA000000001795&linkSelf=231&linkRoot=231&linkParent=231&url= (last accessed 3 November 2010).

5.2 Natural sovereignty and various claims for self-determination

Over many decades, beginning in the 1980s, Taiwan's indigenous peoples have been asserting their rights and reclaiming their territories. One of the implicit theories that is practiced by indigenous land rights movements is the idea of 'natural sovereignty' (Poiconu 2005). The indigenous law scholar, Pu (2005), argues that natural sovereignty is the direct result of the following process:

First occupation or long term residence → natural sovereignty → current rights

He acknowledges that it is hard to explain why first occupation and long term residence could support a natural sovereignty that would prevent any encroachment by the state. What is the status of natural sovereignty in a modern state? Who is able to claim natural sovereignty? Could natural sovereignty possibly be governed by state laws? All these questions are hard to answer. That said, Western or Roman laws, and indeed many civil laws, respect the notion of first occupation and long term residence as legal facts to support the rights of the people on the land. Why does natural sovereignty only concern land issues, and how does natural sovereignty stand in relation to the state? Poiconu believes that it should be explained using the histories and processes relating to the situation before and after the indigenous people encountered outsiders and the state (Pu 2005).

He believes that 'natural sovereignty', based on natural rights, refers to a highly autonomous history in which indigenous people have used and protected their home areas and the natural resources over a long period. Consequently, indigenous people have a political structure based on an unofficial semi-state and sovereignty over their living areas. As a semi-state is not equal to a state under standards of international law, indigenous people refer to the notion of owning the 'natural sovereignty'. Certainly, the fact that indigenous people have lived in an area for a long time according to natural laws that existed before the emergence of nation state would suggest that they deserve 'natural sovereignty'. 'Natural sovereignty' is a human right that does not need approval from the state. Under this concept, we must adjust the idea of state sovereignty taking precedence over all other rights. Based on the idea that different sovereignties are equal and independent, the state cannot take any indigenous traditional territory into the realm of state territory. Thus, rights connected to indigenous traditional territory, such as the right to autonomy, rights of access to natural resources and the management of natural resources, cannot be disrupted by the state and should be kept intact. The state cannot insist on the 'theory that state has the absolute sovereignty' to rule over indigenous traditional territories. The state has no right to ask indigenous people to give up their natural rights to their traditional territories.

This concept of 'natural sovereignty' is an important idea among indigenous peoples (see Shi-lin 2002). By this, I do not mean necessarily that the theory is consciously used by indigenous people as a call to action; rather, I would say that this theory is the convergence of a number of ideas by different indigenous

people about first occupations and long term residence. For example, the people in the Taroko area use the spirit of gaya (a general term for Taroko people's traditional laws) to respect the first comers or cultivators, at least in political and religious terms. Many indigenous peoples have similar ideas and experiences of being colonized, which bring about a theory of natural sovereignty and lead to actions and movements. These histories have led to the fight for indigenous land rights. Based on this local theory, indigenous people have created movements at many different levels in order to appeal for their rights. Thus, we see a wide spectrum of claims concerning collective or individual rights, based on varying degrees of collectivity or individuality. There have been some responses and feedback from the authorities providing some solutions to claims from indigenous people, such as the granting of some reservation lands to individuals. But this did not satisfy many indigenous people who insist on various claims of self-determination. While the majority of indigenous activists are eager for autonomy and outright sovereignty, other ideas on 'independence' have been mooted, including shared or co-ownership with the Republic of China (R.O.C) in Taiwan (Wu, Rwei-ren 2009). The Basic Law reflects this continuum of independence. However, if any kind of sovereignty for indigenous people is to be achieved, more procedures and further legislation relating to implementation and resolving conflicts between different laws are needed.

Another study is required in order to explore the continuum that ranges between the different poles of individuality/collectivity, sovereignty/property and self/collective determination. For now, I will focus on the processes involved in indigenous people incorporating and implementing these issues in the legislation relating to the Basic Law.

5.3 Legalizing 'traditional territories and lands'

Legislation alone is rarely enough to resolve land issues. Besides problems of definition, the implementation of rights is complicated, as is evident in many other countries. That said, law-making is a necessary first step. There are many critical considerations to be taken into account when legislating for land rights in Taiwan, not least the diversity among indigenous peoples. Despite many decades of effort, the Basic Law remains problematic and needs additional legislation. Before discussing some of the pitfalls implied in the Basic Law, I would like to describe a formal meeting that took place in the Legislative Yuan in 2006, in order to illustrate the process involved in indigenous activists brainstorming on the definitions and implementation of indigenous rights.

5.3.1 Debates on the definitions of 'lands' or 'traditional territories'

On the 7th December 2006, a meeting was held in the Legislative Yuan. This meeting had the grand title of 'The 6th Term of the Legislative Yuan, the 4th Congress Conference, the 8th meeting of the Commission on Interior Affairs and Ethnic Relations'. I did not attend this meeting personally, but having read many legislative records, and following a series of interviews and exchange of ideas with indigenous activists over a number of years; I have chosen it as a typical example of a meeting convened to debate indigenous rights.

This meeting was held to discuss the draft of a new law initiated primarily by the Legislator Yan, Zen-fu (2006), who belongs to the Amis tribe. The draft law draft was titled the Indigenous Traditional Land Restitution Act (draft). Legislator Yan had already served four terms in the Yuan, so he was experienced in terms of introducing draft laws to promote indigenous claims. At the same time, he was cautious about introducing a draft concerning the restitution of indigenous lands, in particular relating to his electoral area. The Amis tribe had been deprived of land rights and their territories were designated as free market lands, which are quite different from reservation lands. Because the Amis live mainly on the east coast and plains, their early encounters were with the Han or non-indigenous peoples, rather than with mountain indigenous peoples like those in the Taroko area. Consequently, the Amis people were considered to be more civilized than other savages deep in the mountains. Indeed, since the Japanese times, the Amis have been considered as rational or sinicized enough to be treated as citizens deserving of full land rights, i.e. private land ownership. This meant that they could sell lands to non-indigenous people at will. As a result of this, and a series of Japanese laws that legislated for the state ownership of terra nullius, the Amis sold out and lost most of their lands. As a matter of fact, many of the Amis believe that they have suffered more than other indigenous peoples who at least had reservation lands. Legislator Yang emphasized the notion of 'traditional lands' when asking for the restitution of lands lost by his people. In his draft of the Indigenous Traditional Land Restitution Act, he included a definition of traditional lands as:

> Those taken, confiscated, registered or taken over by forceful means to occupy or deprive lands originally owned by indigenous peoples. The lands not yet returned to indigenous people include the following:
>
> 1 Lands in indigenous villages or tribes and the adjunct areas where indigenous people used to cultivate, herd or hunt.
> 2 Lands where indigenous ancestors cultivated, settled their houses, rituals, ancestors sacred places, herding or hunting.
> 3 Lands like lakes, rivers, or islands in rivers.
> 4 Lands confiscated or taken or registered by the authorities or institutions like the Ministry of Defense, Council of Veterans, Bureau of Forestry, Bu-

reau of National Property, Bureau of New Lands Development, Bureau of Tourism, Ministry of Education.

5 Lands confiscated or taken over by national corporations like the Taiwan Sugar Company and other national corporations.

From his definition, we can see that Yang was mainly focused on lands lost in the past, in particular those lands taken by state agencies. At first sight, the definition is clear; but look closer and the definition is vague because it indicates that the lands that should be part of the restitution process are, in fact, lands owned mainly by the state. This definition ignores those conflicts over land between indigenous peoples and the Han or other non-indigenous peoples. It is aimed only at state lands. However, this definition was supported by other indigenous legislators, such as Mr. Tseng, Hua-der, who responded in the meeting saying, 'the draft is very important because it concerns a source of long term pain among indigenous peoples. This could be the most important law ever for indigenous peoples because for so many years, we have been trying for the return of those lands that were cultivated by our ancestors' hoes'. Legislator Tseng was from a mountain tribe where, in his experience, the major losses of the land came as a result of Japanese colonial rule and the state taking territory. His people were granted limited reservation lands; however, they still lost a lot of traditional lands tenured by their ancestors. Consequently, Tseng agreed to the use of the term 'traditional lands'. This term was also echoed by another indigenous legislator Mr Lin, Tsun-der, who extends the definition by saying, 'even the area on which the Presidential Hall was built in our capital in Taipei is indigenous traditional land'. This is an exaggeration, but he apparently believes it to be the truth. Tseng said that when he uses the term 'traditional lands' he does not mean that the entire island of Taiwan should belong to indigenous peoples and that they should be granted independence. He stated that he would rather the term 'indigenous traditional territory' was used in place of 'traditional lands', for two reasons: firstly, indigenous 'traditional territory' could be defined by law with a narrower scope than the term 'indigenous territory', which indicates a historical process or reality. It means that traditional territory could be defined in law through a process of investigations. He seemed to say that it is irrational to expect that the whole island should be included in the process of restitution. Instead, he believed that legal processes should be the rationale for defining traditional territory. Tseng emphasized that, according to the General Land Act, lands redistributed and appropriated by due processes are not included in the process of restitution. Instead, he focused on forest lands as the objects of restitution. The second reason for Tseng insisting on the use of the term 'indigenous traditional territory' is that the term has already been adopted in a number of articles in the Basic Law (2005). Tseng's ideas raised significant questions regarding the title and definition of the law, and specifically, whether to adopt the term 'traditional territory' or 'traditional lands'. The chair of the meeting and the Commission of Interior affairs and Ethnicity, Legislator Wu, Tung-shen (a Han), suggested that it was better to adopt the terms in use in laws already. However, he did not agree with

his colleague, Legislator Lin, who also called for the use of 'indigenous traditional territories', saying that it is clear in the Basic Law that the term, 'indigenous traditional territory' is a sub-category of the term 'indigenous land', which also includes reservation lands. Reservation lands are lands that are owned by indigenous peoples now, whereas the term traditional territory deals with lands lost in the past. Chair legislator Wu suggested adopting the general category of 'indigenous land' in the title of the draft 'Indigenous Lands Restitution Act'. Legislator Wu provided another reason for supporting this strategy to promote the law. He thought that the term 'traditional territory' was sensitive as it could denote an extension of the scope of territory to a state territory, which could conflict with state sovereignty in constitutional terms. Chair legislator Wu strongly suggested that because in the Basic Law the term 'indigenous lands' includes both lands in terms of territory and lands now and in the past, it avoids conflict with state power. In the end, the majority of indigenous legislators insisted on keeping the word 'traditional' in the definition in order to maintain their links with the histories, causes and effects of the past. Both Lin and Tseng insisted on keeping the term 'traditional territory' in order to denote sovereignty. The problem of the definition of lands had not been resolved, and many participants in the meeting mentioned that in order to clarify which lands should be part of the restitution process, an investigation and institution should be established. There was an explicit recognition among these legislators that those lands taken by the state, and specifically those taken by the Bureau of Forestry, should be brought under the restitution process. The next step, then, was to establish a law that would support a state institution to deal with the investigations and decisions related to indigenous lands.

5.3.2 Debates on the definition of restitution: to return or recover?

The title of the draft law was still to be decided, but another debate was taking place regarding the ambiguity of the term 'restitution'. The English word 'restitution' is a direct translation of the Chinese word '回復' (huei-fu), which was used in the title of the draft. In English, 'restitution' can mean 'the act of restoring anything to its rightful owner, or of making good, or of giving an equivalent for any loss, damage, or injury. Thus the term '回復' (huei-fu) could be ambiguous in terms of future actions. There are a number of ways to manage restitutions. It can take the form of compensation, or it can be as little as paying lip service by offering apologies. There are also situations where it is not possible to restore things to an original state. Consequently, all the participants in the meeting in the Yuan acknowledged a sense of ambiguity in the term restitution. Legislator Tseng, who, as previously mentioned, said, 'we want those lands cultivated by our ancestors' hoes returned to us', suggested using the term 'return'. He even indicated that the KMT (Nationalist Party) should return indigenous lands occupied by the KMT regime in the past. He wanted to adopting this clear term in order to ensure that specific lands be included in the draft law. He suggested the title of the law should be the 'Indigenous Peoples Traditional Territory Lands Re-

covering Act', substituting the term 'restitution' with 'recovering' (恢復huei-fu). Once again, there was no resolution or agreement surrounding the best meaning or actions for the term restitution, and the debate subsequently switched to discussions about the purposes of restitution.

5.3.3 Debates about the purpose of restitution

Legislator Lin hoped that the original traditional lands could be returned directly to his people who were keen to receive autonomy, something that was strongly advocated by the then president Chen. Indeed, Chen signed and announced a 'nations within a nation' partnership with Taiwan's indigenous peoples. In the context of this partnership, Lin interpreted autonomy as the ultimate form of restitution. Lin originated from a Tgdaya tribe in the mountains of north Taiwan, an area infamous for its fighting and resistance to Japanese rule in 1930, when Lin's ancestors fought a war against the Japanese colonial government. This war was later considered to be shameful, not least because of the previously mentioned 'Wushe Incident' in which many Japanese were killed. The war also indicated the failure – after almost 35 years of colonial investment and implementation – of a policy to control the 'savages'. The Tgdaya people, and neighboring tribes, have a long history of advocating autonomy stemming from their struggle against Japanese rule and their experience of being treated as rebels. Autonomy was both the theme and the major goal agreed by all participants at the meeting in December 2006. Certainly, this theme was a reminder that, as yet, no complementary laws for setting up indigenous autonomous areas had been designed or stipulated, despite the fact that article 4 of the Basic Law states that, 'The government shall guarantee the equal status and development of self-governance of indigenous peoples and implement indigenous peoples' autonomy in accordance with the will of indigenous peoples. The relevant issues shall be stipulated by laws'. Furthermore, article 5 states that:

> The state shall provide sufficient resources and allocate sufficient annual budget to assist indigenous peoples in developing autonomy. Unless otherwise provided under this Law or other laws related to autonomy, the power of autonomy and finance in regions of autonomy shall be subject to the Local Institution Law, the Act Governing the Allocation of Government Revenues and Expenditures and other statutes governing county (city).

Article 6 also brings empowerment to indigenous peoples at a state level: 'In the event that any dispute concerning the power of autonomy arises between the government and indigenous peoples, the Office of the President shall call a consultation meeting to resolve such a dispute'. These three articles address the rights to be supported by the state and to have autonomy granted according to the 'will' of indigenous peoples. The meaning of 'will' in this context can be both explicit and vague and, as such, it merits further discussion later.

In the records of the 2006 meeting, we find confusion concerning terms such as territory or lands; restitution or recovering or returning; and traditional or status quo. Ultimately, there were no decisions and there was no consensus among the participants. If there had been consensus, then the draft would be brought by the commission to the congress for further negotiation. In fact, as had been the case with previous attempts to introduce this draft bill, four indigenous legislators belonging to parties other than the ruling Democratic Progressive Party (DPP) boycotted the promotion of the law. Moreover, the law encountered another 300 legislators who insisted on maintaining the land rights status quo.

A number of legislators explained that the reason for the boycott was purely party political. Party identity is not only a label, but also the source of support for elections and political power among these indigenous legislators. It can also deliver another arena of contingencies in the process of promoting indigenous rights.

It is clear that the effective implementation of the Basic Law in terms of rights for indigenous peoples requires further legislation. This is very complicated. In fact, the final article of the Basic Law states that any amendments must be made within a period of three years: 'The relevant authority shall amend, make or repeal relevant regulations in accordance with the principles of this law within three years of its effectiveness (Article 34)'. The deadline for complementary legislation was originally set for February 2008; at the time of writing this paper (June 2011) no supplementary laws or amendments to the Basic Law have been passed. As a matter of fact, in the aforementioned meeting, the only agreement reached by the participants was to urge the Indigenous Council to bring a draft of an Indigenous Peoples Lands and Ocean Territory Act to add to the legislative negotiations taking place in Congress. This 'mission impossible' had to be completed within a few months. Not surprisingly, the Indigenous Council was unable to achieve this draft in such a short space of time, and it took a further year for the Council to present its draft Bill to Congress.

At the time of writing, a few years after this now infamous meeting, the timing and opportunities to promote any land rights for indigenous people are no longer favorable, as the ruling party is now the Nationalist Party (KMT), which has little concern for indigenous rights. Indeed, rumor has it that President Ma chose an Amis indigenous woman who speaks no Amis language to be the Minister of the Indigenous Council precisely to put a stop to the promotion of crucial indigenous rights. It certainly appears to be the case that the Minister has halted all the legal processes, though she did add the Indigenous Traditional Lands and Sea Territory Act (Draft) to the waiting list to be approved by the Executive Yuan and, subsequently, to enter the legislative procedure for first reading. However, the draft was swiftly rejected because the Minister believed that the law conflicted with the land rights of the non-indigenous or the Han people. Many indigenous activists believe it was a cynical move by the ruling KMT party to hire an indigenous person to fight against and disempower the indigenous people. It was certainly the most convenient way to postpone any indigenous agenda that would conflict with the majority interests. Many indigenous people feel that the

general environment for law-making is contingent on majority politics, and that local and national political arenas are not trustworthy. Consequently, many indigenous activists seek alternatives to promote indigenous rights. One method used by indigenous people is to move their struggle to small-scale arenas, in the hope of a 'bottom-up' movement being more successful in terms of putting forward ideas and practices such as river protection or promoting ethnic autonomy for the Truku people. Certainly, legal arenas have proved problematic. Almost no progress has been made through these channels, which, for the most part, focused major efforts and emphasis on matters such as recovery from natural disasters resulting from floods brought by typhoons or the large-scale damage caused by earthquakes that have hit Taiwan (and in particular indigenous areas) heavily in recent years. To summarize, the passing of complementary laws and amendments to the Basic Law is crucial to the claims of local indigenous people. Many efforts by indigenous officials, intellectuals and activists were aimed at trying to implement a more bottom-up approach in order to stimulate the promotion of relevant laws. However, because of the ambiguity of many terms used in the Basic Law, many activists are pessimistic about the promotion of the indigenous rights. Some of the issues concerning indigenous land rights that illustrate how difficult it is to achieve improvements using legal channels include: (1) the vague categories used to define indigenous land; (2) vague definitions of 'tribes' or autonomous units; and (3) the vagueness of the term 'autonomy', which is actually hard to define. Because of these shortcomings in the Basic Law, many indigenous people consider it to be an obsolete piece of legislation, despite the fact that it accords with the standards of the UN Declaration of Rights of Indigenous Peoples that was officially ratified in September 2007.

5.4 Vague categories used to define 'indigenous land'

There is a land category that is seen as crucial to the quest of 'Return my land' social movements. That is the term 'indigenous land'. Article 2 of the Basic Law 'refers both to the traditional territories and reservation land of indigenous peoples'. Reservation land is relatively clearly defined and administrated in Taiwan using the cadastre system; however, questions still remain regarding what traditional territories are and where they are located. It is interesting to note that the Basic Law adopts the term 'indigenous land (*yuan-tsu-ming-tsu-tu-di* 原住民族土地)', which in Chinese denotes a collective right to land. More recently, the word '*tsu*' (族) (tribe, race, ethnical group) in '*Yuan-Zu-Min-Tsu-Tu-Di*' (indigenous peoples' land) has been used to refer to both individual and collective rights. Taiwan's reservation land has already gone through a process of privatization, though alienable and disposable rights are still limited among indigenous people. Rather, rights to reservation lands are usually granted to individuals. In the Basic Law, the definition of 'indigenous land' includes both 'reservation land', which indigenous people already have ownership of, together with another category of 'traditional territories', which so far has not been defined in the Basic

Law. In fact, the definition of 'traditional territories' will be decided by an institution that will be set up in the future if the Legislative Yuan issues a law to support article 20 of the Basic Law that states:

> The government recognizes indigenous peoples' rights to land and natural resources. The government shall establish indigenous peoples' land investigation and management committee (IPLIMC) to investigate and manage indigenous peoples' land. The organization and other related matters of the committee shall be stipulated by law. The restoration, acquisition, disposal, plan, management and utilization of the land and sea area owned or occupied by indigenous peoples or indigenous persons shall be regulated by laws.

We may assume that this future indigenous peoples' land investigation and management committee (IPLIMC) will be empowered to decide on the definition of 'traditional territories' and further decide on where, when and whose traditional territories are implied in article 20. Here, I assume that indigenous land and related natural resources are the objects to be investigated and 'managed' by the (IPLIMC) in the context of land rights. It is not clear, however, whether this will result in the granting of indigenous land rights as indigenous peoples have always imagined. Moreover, to what extent will the IPLIMC be empowered with the authority to make decisions on land rights while further legislation is pending?

As previously mentioned, in order to achieve more legislative progress, the Indigenous Council has a produced draft of an *Indigenous Peoples Land and Ocean Act* (IPLOA). Many people remain curious as to how the IPLIMC will decide on and deal with the land issues in the draft law. In an interview, Yabusonngu Poiconu, a sub-section chair in charge of the indigenous land policy in the Indigenous Council, said, 'the committee shall be empowered with at least the function of a court, to judge on land issues; otherwise they won't be able to decide such complicated things'. As for the investigations into land issues, I found many indigenous people have diaspora and hybrid relations with their territories, which makes it difficult in terms of determining clear boundaries among people and their relations with specific tracts of lands. This raises another problem in relation to the definition and recognition of the 'owner' of the land and any natural resources on it. Furthermore, as discussed below, the use of the term 'tribe' in the Basic Law is another example of the controversy surrounding definitions.

5.5 What is a 'tribe'?

In the Basic Law, there are terms that refer to collective actions on lands and territories based on solid group foundations. Thus, the term 'tribe' appeared for the first time in Basic Law in reference to 'a group of indigenous persons who form a community by living together in specific areas of the indigenous peoples' regions

and follow the traditional norms with the approval of the central indigenous authority' (article 2, definitions 2). The Basic Law provides for certain groups approved by the Indigenous Council to become action groups. The term 'approval' is also controversial due to its top-down connotations. According to article 2, 'approved tribes' are tribes recognized by the state. A memorandum signed by former President Chen stated the intention to form a 'New Partnership' with indigenous peoples and to recognize them as nations within a state. However, Chen did not explain what a 'nation' is in his new partnership declaration. Many indigenous activists, and thus indigenous people imagined that an approved tribe would equate to a nation. In fact, 'tribe' is a term that has been used in colonial constructions. Tribal activities at different levels have formed the second wave of indigenous movements. We see ideas or actions conducted on a small scale in order to revitalize the health or wealth of a small indigenous community. At the same time, it is possible to see a large-scale project by an ethnic group with a large area of land to form a 'nation', an autonomous area. Such ideas and actions have been incorporated in the concept of tribal self-determination during the last decade. Since 2005, these efforts have been supported by the Basic Law. The former Minister of the Indigenous Council, Walis Berlin had been leading indigenous movements for many decades and supported the tribal movement through his legislative endeavors and policy practices. The scale of subjectivity of the indigenous people will be a critical issue in terms of the future implementation of the Basic Law. Thus, tribes become basic units composed of groups of people and communities who have rights. It is interesting to know that 'tribe' (部落) in the Taiwanese context denotes different levels recognized by government; from a small-scale village community to a large ethnic group. Many activists contest the process to define a tribe in the Basic Law. They believe that there are natural processes for defining a tribe as a unit of natural sovereignty. Poiconu, an advocate of natural sovereignty says:

> Basically speaking, sovereignty starts from a tribe with its habitat areas and then its cultivation lands, hunting and gathering areas and distant areas over which the tribe has no direct or strong control. But when any of these areas is intruded on, the people who own the territories must defend themselves in order to demonstrate the strength of their sovereignty (in Committee of Special Chapters for Indigenous People on Constitution, 2005).

A unit such as a 'tribe' actually develops naturally in a local context. Any 'approval' by the authorities will often conflict with local ideas. So far we do not have any cases to illustrate the above mentioned problems that many activists have predicted.

However, in order to resolve the definition problem hidden in the Basic Law, the Indigenous Council has been encouraging a bottom-up approach. In recent years, I have observed that the notion of 'approval' has been implemented with large amounts of funding, in a bid to support 'tribes' who are engaged in collective actions on tribal 'revitalizations'. Thus, we can observe the phenomenon of

'making a tribe' taking place under the sponsorship of government. The Basic Law includes the terms and conditions, 'with the approval of the central indigenous authority'. This means that, in future, the scale and scope of a tribal agent to act as a legal unit will be determined by the central indigenous authority. The land rights of an approved tribe will be recognized in accordance with its due tribal agent. A tribe afforded land rights is seen as the ideal status by many indigenous activists. Following the announcement of the Basic Law, achieving autonomy for a tribe-nation has been an advocacy priority among activists. Even though the Autonomy Act for indigenous peoples has yet to be passed, the Atayal, the Tsou, the Thao, the Troko, the Tao, the Saisiat and the Bunun are all engaged in autonomous movements and are demanding the establishment of an ethnic parliament in order to create a forum for the setting up of a preparatory ethnic congress and government. These actions to create ethnic autonomy are similar to nation-state building activities and movements; however, to what extent will the autonomy they achieve mirror that of a nation in a state? The current ambiguity in this area can be explained by examining those articles relating to autonomy in the Basic Law as well as by recalling a number of historical experiences.

5.6 Vague autonomy

As mentioned above, the Basic Law (2005) prescribes that the state must do its best to assist indigenous autonomy. The Basic Law states that autonomy should be decided in accordance with the 'will' of indigenous peoples. If indigenous people are thinking in terms of solid sovereignty to claim indigenous traditional territories, then, based on articles 4 and 5 of the Basic Law, the aforementioned IPLIMC is the first authority that can assist in achieving this goal. However, if the IPLIMC is not set up with the full support of legislation, then the will of the indigenous peoples will not be approved by the authority. The implication is that, according to the Basic Law, the right to autonomy is acknowledged. However, without the establishment of the IPLIMC it is not achievable. Put bluntly, the articles of the Basic Law only pay lip service to the idea of autonomy. Even if the IPLIMC is established, there will still be a direct conflict about the meaning of the term 'will'. A will is a will free of any others' will, and does not require approval from any authority. The Basic Law apparently predicts the possibility of future conflicts and embeds a device for managing such conflicts by prescribing that the Office of the President shall call a consultation meeting to resolve such disputes (article 6). This implies that the will of the President is important when it comes to issues of scale, power and authorities of autonomy and similar problems. As a result, any solutions are likely to depend heavily on the future political and economic environment and the willingness of the majority population.

Thus, we experience a gap between the idea of 'natural sovereignty' and 'autonomy approved by governments'. As some advocates of natural sovereignty say:

> If indigenous peoples own natural sovereignty, which is different from state sovereignty, there is no need to be recognized by any state. If the indigenous peoples can bring their own representatives as agents of natural sovereignty, then indigenous peoples could be independent from the state and an autonomous unit per se. So some activists are in favor of a law or constitutional reform to recognize the treaty rights of the indigenous peoples. If the indigenous peoples insist on natural sovereignty, it would be quite a paradox to achieve that status of natural sovereignty through the approval of the state. Thus, it would deem natural sovereignty less legitimate under state sovereignty, and then the theory of natural sovereignty loses its base to demonstrate that 'natural sovereignty takes precedence over the state (Committee of Special Chapters for Indigenous People on Constitution, 2005; Shih, Chen-fong 2006; Shih, Chung-shan 2006).

These theoretical debates are important for the future of indigenous autonomy since we still have no official implementation of any kind of autonomy for the indigenous peoples. How, then, can both sides involved – the indigenous people and the majority population – find a compromise in order to achieve a regime of indigenous autonomy? As we can see from the aforementioned meeting of legislators, there appeared to be little appetite for compromise and a strong desire to avoid conflicts with the state constitution, which insists on strong state sovereignty. Many observers worry about the strategy adopted by indigenous intellectuals, like the non-indigenous chief of the committee, who strongly advocated the use of more neutral terms like 'lands', in order to avoid conflict over the name of the law draft. By analyzing the debates, I have found that the indigenous legislators were aware of the conditions and limitations that would force them to compromise and to adopt clever strategies or skills to promote indigenous rights. It was also clear that if they failed to compromise to some extent, they would lose in the end. It is historical fact that many lands were lost because of state claims. Lands were not only lands but also territories that hold historical and cultural meaning. Autonomy stands on these foundations of sovereignty. Later, we see that, in fact, these legislators did not compromise and insisted on drafting the law with the basic elements of 'traditional territories'. As a result of this strategy, legislators would be exposed to future confrontations and possible conflicts, at least on the terms of the law. However, they could keep their ideas and emphasis regarding the title of the draft. As an observer, I would say the emphasis on restitution for past injustice over land rights and an autonomy based on natural sovereignty were embedded or implied in the contents of the draft law. Thus, there seems no need to insist on a certain title for the draft. Despite this, the legislators refused to compromise at all on the title of the law, even if there was an agreement about the contents. In fact, the contents of the draft law, which in the end required three readings in the legislative process, were also a cause of confrontation. This kind of insistence reflects that indigenous activists, though constrained in terms of power, are determined to adopt a strategy that puts them in direct confrontation with the state. I would like to describe this model of pursuing autonomy for

indigenous peoples as 'dependent but independent'. According to Wu's analysis on the origins and practices of autonomy advocating activities among indigenous initiators during the transition of colonial regimes from the Japanese to the Nationalists, indigenous elites have developed ideas and practices of autonomy based on a model described as 'Nation-sponsored Development of Autonomy' (Wu, 2005). Wu found that indigenous elites developed a model of actions to ask for autonomy with the help of the state. He found that the indigenous advocates had to adopt this strategy in order to achieve some level of autonomy on the condition that indigenous peoples remain minorities. Following Wu's hypothesis, we can understand that many articles in the Basic Law concerning the rights to autonomy reflect the 'Nation-sponsored Development of Autonomy' in so far as the state should assist indigenous people to achieve a degree of autonomy based on their own will. As Wu points out, this 'autonomy but ruled by state' is a paradox. Moreover, it seems to conflict with the term in the Basic Law that advocates 'autonomy by will'. It is paradoxical to see indigenous will as being based on the notion of natural sovereignty. Theoretically speaking, state sovereignty would not be above indigenous autonomy. Thus, an autonomous area ruled by the state would be a real compromise on the part of the indigenous peoples in terms of theory and practices in the future.

'Autonomy by will': the case of the Truku People's Autonomy Constitution Draft

Prior to the Truku presenting a Truku Autonomy Constitution Draft in 2006, most of the advocates had fought for recognition of an ethnic label for the Truku people that differentiated them from the Atayal. From the Japanese time, the people living in the Taroko area were considered as belonging to the Atayal people. The Japanese labeled these three peoples as a subgroup of the Atayal, something which all three ethnic groups felt to be a miscategorization. From the 1980s onwards, we see many ideas relating to these groups being recognized as different from the Atayal. The largest of these three groups is the Truku. Perhaps because the area is called Taroko, and because there had been a well-structured Presbyterian branch named Truku, independence from the Atayal in terms of ethnic names was established with the new label Truku (Tera 2003).The idea of an independent ethnic group such as the Truku people has taken many decades to be accepted. Certainly, an ethnic group recognized and re-recognized by its ethnic name by successive governments gives a strong position in the political economy. An ethnic group that has not yet been recognized by the people themselves, but is granted independence as a single tribe is confronted with many internal problems. Put simply, many individuals in the Taroko area fight for autonomy and to be recognized as a tribe independent of the Atayal. There are still many individuals who disagree with being labeled as Truku, the largest group, and would rather be categorized as Toda, Tgdaya or even by the general term *sediq* (used by the Truku, Tgdaya and Toda to indicate human beings) as an indicator of humans on the basis of their language. Thus, we find many internal confrontations regarding different ideas on ethnics. That said, these pan-Truku

activists want to see autonomy firmly on the agenda of ethnic movements. This issue also has an impact on the scoping of autonomy for indigenous territory where there are different people insisting on different ethnic names. Despite such confrontations, a Truku Ethnic Group Constitution on Autonomy was established and expresses the demand for autonomy.

The Constitution implies that the indigenous autonomous areas should be treated as a state, and be granted every kind of power afforded to a state, including diplomatic and military rights (see Box 5-1 from Siyat 2004). The Truku Constitution on Autonomy is in line with the theory of natural sovereignty. As Poiconu says:

The areas where there is natural sovereignty are traditional territories. Territory is the arena where ethnic power (natural sovereignty) rules. Territory is a spatial used term to differentiate 'we' groups from other groups. It means the 'us' group has exclusive rights to the territory and that other groups cannot interfere. This makes an indivisible unit of territory (Committee of Special Chapters For Indigenous People on Constitution, 2005).

In order to protect this natural sovereignty, indigenous people hope to be equipped with the rights to law, education, police, military, and foreign diplomacy; rights that usually go hand in hand with state sovereignty. Is it a state within a state or autonomy under a state? Either way, it is an autonomy that the ROC government should, in accordance with the will of the tribal people, provide with adequate resources and a budget to assist the development of Taroko autonomy (see article 3 in Box 5.1).

Here we have an example of 'autonomy by will' that would challenge scholars of politics and advocates of autonomy who have to face explicit theoretical confrontations and more implicit obstacles from inside. This constitution was drafted by Truku intellectuals who are usually criticized for being elites without public support. The pan-Truku movements initiated by these elites are helping to empower locals to express and act on the issue of autonomy. However, as I have observed, it is largely political elites or intellectuals who join these actions. In addition, there are many local villages that are bringing their ideas of autonomy via initiatives such as the co-management of river protection, with a view to collectively reviving and improving livelihoods, ecology, and culture. Clearly, local people have different ideas about autonomy than elites. This gap requires further observation to see how ideas and actions on autonomy will evolve.

Box 5-2 ▪ Some themes in the Truku Ethnic Group Basic Law (Draft); also called the Truku Ethnic Group Constitution on Autonomy
太魯閣族基本法草案 (太魯閣自治憲法):

Based on international trends, 'the new partnership between indigenous peoples and the Taiwanese government', and the Additional Article 10, Clause 12, of the ROC Constitution; in order to support the recognition of indigenous desire for autonomy, and in accordance with the principles of protecting the equal status of indigenous peoples and autonomous development; the ten articles of the 'Taroko Nation Autonomy Constitutional Charter' are explained below.

1 In order to respect the natural rights of the Taroko Nation and the Spirit of Gaya; and to protect its autonomous development; in accordance with the UN Draft Declaration of the Rights of Indigenous Peoples, the ROC Constitution, and the Basic Law on Indigenous Peoples, the Taroko Nation Autonomy Constitutional Charter shall be established.
2 The Taroko Nation shall implement tribal autonomy in accordance with its traditional territory; establish an autonomous government, tribal council, and regional government.
3 The ROC Government shall protect the right of the Taroko Autonomous Government to exercise autonomy; and the autonomous political, economic, social, educational and cultural development of the Taroko Autonomous Government in accordance with the principle of self-determination. The ROC Government shall, in accordance with the will of the tribal people, provide adequate resources and a budget to assist the development of Taroko autonomy.
4 The sovereignty of the Taroko Nation belongs to all Taroko People.
5 The land and resources within the autonomous territory belong to all Tribal People.
6 The Tribal Council shall be the highest legislative body of Taroko Autonomy.
7 The Taroko Autonomous Government shall be the highest executive body of the Taroko Nation.
8 The Council of Elders shall be the highest judicial body of the Autonomous Government. It shall be charged with civil affairs, criminal law, the trial of executive lawsuits, the disciplinary punishment of public officials, and the exercise of rights of impeachment and censure.
9 Tribal foreign relations shall, based on the spirit of independence and autonomy as well as the principle of equal reciprocal benefit, respect treaties and the UN Charter. In order to protect the rights of the tribal people, it shall advance international cooperation and promote international justice and world peace.
10 The Taroko Autonomous Government shall actively promote tribal education, promote tribal language, develop tribal history and culture, develop its pluralistic potential, and elevate its international perspectives.

5.7 Conclusion

It appears that Taiwan's indigenous peoples have benefited little from the Basic Law (2005), which still awaits future legislation. A clear response to land issues is cleverly avoided in the articles of the Basic Law. The same can also be said of the memorandum on 'A New Partnership Between the Indigenous Peoples and the Government of Taiwan' signed by the then President Chen, which stated an intention:

> To **restore** or **recover** tribal and ethnic traditional territories for Taiwan indigenous peoples, who were originally tribal societies where institutions of communal or individual uses are based on communal ownership of land. In order to rebuild an ethno-cultural development subjectivity to process a foundation for autonomy, the government of Taiwan should **admit** or **recognize**, regardless of the private ownership regimes on land, on the tribal and ethnic subjectivities and their ownerships over the traditional territories.

The first two Chinese words '*Huei Fu* (恢復)' in the abovementioned memorandum denote a common meaning of recovery. But exactly what is to be recovered is not clear as words like 'return' and 'giving back' remain vague. This memorandum uses the words 'recognize or admit' in terms of indigenous sovereignty over their traditional territories but it does not appear to go any further and actually grant these rights. This declaration leaves us no clearer about the extent to which land rights will be assumed, not to mention that many people still think this law is unconstitutional (Huang, Ju-zheng 2009). To quote Pasuya Poiconu, the former deputy minister of Council of Indigenous Peoples (CIP) once more, 'we (indigenous people) first have to persuade mainstream society and to produce consensus in each indigenous group.' The implementation of the Basic Law will be part of the political and economic realities in times to come.

PART III

Individualization of Land Rights

Photo 6.1

Protest for the land that is occupied by Taiwan Power Co. in Fushih village, Taroko, May, 2009. The label in the photo says, 'Return My Indigenous Lands; otherwise I will fight to Death! Shame on the township office! You never listen to what the elders say!'

6

Reservation Land Property Disputes: From a Law-Individualism Perspective

6.1 A preliminary review of the study of indigenous land property conflicts within the Reservation Land Procedure regime

In 1945, soon after the end of World War Two, the Chinese Nationalist government took over Taiwan and adopted the Japanese regime, which had also stopped non-indigenous people from taking indigenous lands. Even today, indigenous lands are still state owned. In order to maintain the existing regulations and to develop methods of management, the government introduced the 'Indigenous Reservation Land Management Procedure (IRLMP, 原住民保留地管理辦法) (Hereafter referred to as the Reservation Land Procedure) in 1948 (Yen and Yang 2004; Wu, Shuh-tsrong 2000).

The Procedure followed Japanese doctrines and the notion that, basically, indigenous lands were *terra nullius*. As a result, if indigenous people could not provide any official Japanese deeds to prove ownership of a piece of land, the Nationalist government confiscated the property. The strict implementation of the Procedure triggered many conflicts about the principles that make up the law and, subsequently, there have been a series of indigenous claims to the disputed land. In this chapter, I will focus on those claims arising from the doctrine of reservation land in order to illustrate how indigenous people provide reasons to suggest where laws are compatible – or incompatible – with their ideas and practices relating to land issues.

There has been little research on the legal conflicts concerning reservation land by law scholars in Taiwan. Equally, anthropologists in Taiwan tend not to be immersed in land tenure problems from a legal anthropological point of view, i.e. the relationships between state laws and local lives. Most of the attention for indigenous reservation land problems has originated from scholars of land administration and politics. However, in my view, these studies lack ethnographic immersion on the implementation of processes taking place inside indigenous communities. Indeed, much of the research has focused on the process of establishing the laws concerned (Chen, 2002, 2003; Yang, Chih-Wei, 2005; Wu, Shuh-Tsong, 2000; Simon, 2002; Mao, 1998). Actual and detailed discussions of the en-

counters between state laws and local ideas have, thus far, not been highlighted. Fu (2001) has written (but not yet published) a short article that discusses how certain indigenous peoples have lost their reservation lands. He uses an ethnographic methodology in order to uncover the social and political proceeds of the lost land, which was occupied by local indigenous governments or non-indigenous people (Fu 1997). A good starting point is an analysis of the legal concerns raised by Judge Tang, Wen Chang (2005) in the Huanlien District Court, based on the land claims cases he dealt with. This will also provide us with some general characteristics of indigenous reservation land conflicts. Judge Tang believes there are some typical types of conflicts arising from the implementation of the doctrine of Reservation Land Procedure. Firstly, the Procedure was not issued as a normal law, but rather as an administrative procedure that conflicts with other laws issued by the Legislative Yuan. Thus, the Procedure conflicts with, among others, the Forestry Law (2004) and the Animal Law (1989). This makes it hard to support indigenous rights in court decisions. Secondly, the restrictions on land transactions between non-indigenous peoples have reduced the value of reservation land. Consequently, reservation land is less attractive and it is harder for indigenous people to get bank loans or raise the capital necessary to buy and invest in reservation lands. Thus, the Reservation Land Procedure policy limits the chances of indigenous people surviving in normal conditions. This certainly accounts for why illegal land transactions of land have become such a big issue between indigenous and non-indigenous people (ROC Control Yuan 2004). Thirdly, the land transactions of land between indigenous and non-indigenous people are illegal, and the punishment is confiscation of the lands in question. This can be a source of ethnic and economic conflicts. The fourth characteristic of land claims conflicts mentioned by Judge Tang is the misunderstandings caused by the gap between indigenous tenure ideas and the land registration process implied in the Reservation Land Procedure. These observations are similar to those noted by the Legal Aid Foundation Huanlien Branch, who found that indigenous people asked for more legal aid than non-indigenous people. In addition, they found that in 2004, the top three per cent of all cases brought by indigenous people were about land issues (Tsai, Yun-qing). A lawyer for the Foundation, Tsai, found that the majority of 25 reservation land cases he examined were conflicts between indigenous and non-indigenous peoples (Han people), or between indigenous citizens and township governments. In all these cases, the conflicts centered on the land registration procedures. I believe it is in everybody's interest to examine these conflicts with Taiwan's state laws.

Based on the above-mentioned observations, and with a view to expanding the field of observing land conflicts beyond court cases, I carried out a review of the archives of Shoulin Township's Council of Mediation (秀林鄉調解委員會檔案). Here I examined 174 cases. In addition, I reviewed 30 cases found in the documents of the Shoulin Township Representatives Council (秀林鄉代表會議事錄); 45 claims documented by the Hualien County Representatives Council (花蓮縣議會議事錄); and I examined papers of the Formal Taiwan Province Representatives Council of Senates (台灣省議會議事錄及省政公報); docu-

ments from the Legislative Yuan Documents (立法院議事錄) and many other official land claims documents relating to the period 1945 to 2010. I read these with the aim of getting to know the people behind the names in these official documents and legal archives relating to a number of adjunct villages in the Taroko area. This is how I selected my cases studies. This is quite different from history, which mainly studies affairs from the past. Instead, I try to find people in the documents and archives who are alive today and have ongoing land claims or experiences of the aftermath of land confiscation. This provides me with the opportunity to follow conflict cases from an ethnographical perspective and to examine how land issues are related to people and societies.

I will detail some of the cases I have collected in order to demonstrate the ethnographical methods used. These methods start from a holistic ambition to study each case and illustrate the impact modern state land laws have had on indigenous people. In principle, I will arrange my cases in line with the legal procedures of land property titling, beginning from the land survey and measuring, the registering of cultivation rights or land surface rights for construction or forestation land, and then wait for five years to promote the usufruct right that is non-alienable to non-indigenous people according to the Reservation Land Procedure (appendix 2). In order to provide a preliminary typology of conflict types, I will illustrate cases that are, in accordance with my findings so far, typical of each phase of the procedure.

6.2 Conflicts concerning the Land Survey and Measurement Procedures from the 1950s to the 1970s

6.2.1 No measurements, no land rights:[10] Case of Taiwan-Power vs. original indigenous cultivators

In May 2009, a 'Fushih Tribe Land Claiming Self-Rescue Association' along with some 50 or more local villagers assembled outside the offices of the Shoulin Township government to demonstrate for the return of their indigenous lands. Some elders belonging to the association said that prior to 1920 they used to cultivate the land that was now the backyard of the Taiwan Power dormitory. 'We have lost our land for a long time and that was because there were no 'white paper and black ink' [contracts or documents] to prove our land rights at that time'. The spokesman for the association, Mr Tsing, urged the Township Office to

10 The land survey and measurement began in 1958 and finished in 1966. The measurements were processed with the following purposes: (1) to define land types in order to assess whether they are suitable for forest, herding or agriculture and to help indigenous people to use the land efficiently; (2) to allocate and appropriate reservation lands in more reasonable ways; (3) to define boundaries between reservation land and public land; and (4) to provide legitimacy for the granting of reservation land to the indigenous people (see Li, Yi-yuan 1983: 113-114). After the measurement phase, reservation lands were assigned with a land number, type indications, cadastre for the legitimacy of reservation being granted to the indigenous people. Later, the 'over all registration of lands (土地總登記)' procedure went on to clarify all land tenures.

return the land as soon as possible; otherwise, 'they would use all kinds of fierce measures and protest against the injustice'.

Actually, this group of indigenous people had been trying for almost a decade, using all kinds of possible methods, to get the lands in question returned. They visited the local Township and also County Government offices to ask them to investigate possible wrongdoing during the procedures that cancelled their land rights. However, the only answers they received stated that according to the relevant laws, they have no rights at all to claim the land in question. Having failed to find justice at the local level, the group then approached the 'Big men' in the Control Yuan and a number of indigenous legislators in the Legislative Yuan, only to be told they should ask the local township to investigate the process. The spokesman for the association is a highly educated man, whose wife has a law degree, and who had spent years carrying out ethnographical research on the history of the land using documents and oral histories. He provided oral histories, old aerial photos and official documents to prove the 'simple and obvious' fact that the land was indeed cultivated by his elders and ancestors. After more than seven years of efforts to have the land returned, there was no sign of a response from the local indigenous township government. The next step was to form an association and raise funds in order to bring an appeal to the court, despite the possibility of winning justice being slim. Initially, the association was unsure about whether to go to a general court or an administrative court. In fact, deciding whether reservation land issues should be dealt with in the general courts or an administrative court is a source of controversy among legal experts, because the procedures concerning the titling of indigenous reservation land are the responsibility of the official agents of the Township Indigenous Reservation Land Committee (TIRLC). The actions taken to give a title to indigenous people are administrative actions and therefore belong to the realm of public or administrative law. Others argue that these claims are private matters to be resolved between property owners (Tang 2002). Judge Tang confirms that many cases suffer from this confusion and this was one of the reasons why the members of the association decided to recruit a high profile lawyer to fight their cause and win the case to return the lands that were 'obviously and clearly' theirs. One high profile lawyer they approached responded with the same confusion about which court was suitable for their case. In the end, they chose to go to the administrative court in Taipei to accuse the township government of not returning their lands. The judge in the Taipei Higher Administrative Court accepted this case (#1668(2008)) as an administrative suit. However, he expressed concern about exactly what it was that the elders were asking for. Was it 'returning the land' (申請返還土地) or 'asking for a redistribution of land' (請求分配土地), both of which require a different type of hearing and evidence? A case asking for the return of land demands that only a legal owner, with title and rights, can claim his property back. A request for the redistribution of land requires a claimant to ask the township government for the registration of surface rights or cultivation rights according to the Reservation Land Procedure (see the decision on case#1668(2009)). In the end, the Judge ruled that the primary purpose of the case was to ask for the land back. Consequently, he made a decision on the case stating that because it did

not conform with the requirements of either of the scenarios mentioned above and that he could find no evidence that the elders or claimants had completed any of the legal procedures required by the Reservation Land Procedure when applying for either the return or the redistribution of the lands. The judge said that he could only take cases where there is a dispute over prior administrative decisions. He acknowledged that the plaintiffs had made many and varied attempts to get the land back, but said that they had not provided sufficient legal evidence or followed the necessary procedures at the township government level. The township representative explained in court that, 'these elders lack proof of registration' (權源證明文件), which is recorded in the Land Survey Registration Book and details the type of land use and a list of land users at different times: the Total Land Survey of the 1950s; the 1973 Illegal Land Use Survey (濫墾地調查山地保留地使用清冊); the Reservation land Use Survey (山地保留地現況調查表) of 1983; and the 1987 Illegal Land Use Survey (花蓮縣秀林鄉山胞非法濫墾使用山地保留地宜林地審查清冊). In other words, during these four surveys by the government, there was no record of any of the plaintiffs. They do not qualify, therefore, as candidates for land titles, even though there is now plenty of evidence in the form of oral histories and communal relations to support their claims of land use. The judge ruled that these plaintiffs did not hold any registration records and, therefore, they have been unable to make progress in terms of redistributing land titles. The Judge accepted the township's argument and refused to accept the appeal on the grounds of a lack of evidence that the lands were lost 'legally' before the township leased the land to the Taiwan Power Company. The plaintiffs argued that since the indigenous people were unable to provide proof of registration, then the township government should be able to demonstrate how the lands in question were legally taken by the government and the government should have first compensated the original land users before then leasing the land to others for 'national economic' purposes. In fact, the township office did not have to pay any compensation to anybody at all, because the township office viewed the land as *terra nullius* and thus believed it owned the territory and could appropriate it at will. The judge also denied this case on the grounds that, according to section 7 of the Reservation Land Procedure, the 'Council of Indigenous Peoples, together with the relevant authorities concerned should assist the aborigines in establishing the indigenous peoples reservation land cultivation rights, land surface rights, as well as lease rights and ownership rights'. However, there was no ruling that the indigenous people have the right to ask for the government to reveal its decision-making process. It is no surprise that the elders and claimants could not understand or accept why the Judge failed to see that they had actually cultivated the land in question. In fact, they were so outraged by the ruling that even the mildest of old ladies and pastors, who were seldom involved in conflict, gathered for the ensuing protests.

I asked the claimants why their names had not shown up in any of the previous land use surveys. A number of them told me that they had no idea about the land survey at all:

> For God's sake, who knew to accompany the surveyors in order to prove our land rights?' 'We neighbors knew very clearly which line and which inch of land to use (*pyusi*). It's our *gaya* (customary law) to obey the lines and borders (*ayus*). We knew this from our ancestors. The government did not inform us about joining the survey and we didn't think it was such a big deal because between the mutual recognition among neighbors and the *gaya* of ancestors our lands were safe enough.

During the early period of the implementation of the Reservation Land Procedure, we find that many indigenous people still supported their land use rights with collective norms or rules they call *gaya*. Perhaps the various surveys were designed to create a direct one-to-one relationship between the land and its owners or users. In any case, the notion of land used as common or communal property was not permitted under this type of state simplification.

Local neighbors have always adopted a policy of mutual recognition of land tenure and thus the new laws were seen only as additional support for their land rights. The procedure to parcel land for individual registration based on the Land Survey was not started until 1958. That is to say, indigenous people were still using land in collective methods prior to 1958. The Reservation Land Procedure even suggested indigenous people should plant trees collectively and share the mutual benefits of tree trading. Land tenure was constructed using local customary norms and *gaya*, so the government surveys were somewhat alien to the indigenous peoples. They did not understand that the only way to have your legal title to land recognized was for it to be recorded in the Township Survey Book.

6.2.2 The wrong registration of the wrong people

Case study: Grandma Sakura's complaint: dreams and *gaya*

Many of the elders involved in the protest were also involved in their own land conflicts. Grandma Sakura's claim – to ask her sister to return her land – was a typical example of the wrong registration of land titles that occurred frequently under the land survey procedure. About 40 years ago, around the time of the land survey in the 1950s, Grandma Sakura's husband lent a big piece of land to her sister's husband, who had just moved into the village without any land to plant. According to Grandma Sakura's memory and discourse, she believed there had been an oral contract between her husband and her sister's husband (*Anay*) to lend him the land so that the family could survive until their children had grown up enough to become independent. The promise was a free loan on the condition that one day the land would be returned. However, almost 40 years after her sister's husband's funeral, Grandma Sakura found that the loaned land had already been registered in the name of her sister's husband's by the township government. Grandma Sakura did not understand why her sister's husband would register the land in his name. This would mean that his sons would inherit the land. It seems there was no intention of returning the land. Grandma Sakura felt upset for many years and did not know what to do. One day, her grandson decided to act on her

behalf and approached the Township Mediation Committee with the request that the sister return the land. However, the sister's son said that:

> the land belongs to my father who spent more than 40 years of labor and sweat cultivating the waste land and making it fertile. It is legally registered in the Township Land Book. I don't feel worried at all; the law is with us. The law will prove that we own the land forever'.

The son said his piece and left the Township Mediation Committee in a temper. This resulted in the mediation process being stopped and Grandma Sakura was told that she could bring the case to court. But she did not want to do this and hoped to find other ways to bring her prick her sister's conscience and get her land back.

She expressed the belief that the oral contract or promise had been supported by *gaya*: 'If you break the *gaya*, you will be punished badly, even worse than what the law can deal out'. During these few days, one of Grandma Sakura's daughters kept dreaming about the land issue. In the first dream, she found her aunt's husband (the man who had borrowed the land) had fallen down into a deep gorge and was tangled in heavy wires, too badly hurt to walk. She was shocked by the dream because she had just returned from her father's grave to ask for advice about the land. She shared the dream with her family who told her that, in fact, her aunt's husband had indeed died when he fell into a deep gorge. The second night she dreamed that she was searching for her father's money, all over the house, but she could not find it anywhere. In her dream, her father told her that the money was hidden in a new place. The next day, one of their neighbors said that the dream was actually telling her that the land was registered in another's name. It was during the 1970s that the government sent surveyors up to the mountains. They called on land users and land owners to witness the land survey and they carried out measurements according to the procedures laid down in law. At that time, Grandma Sakura's family had moved down to the plains, and perhaps this is the reason why they were not informed of the survey. Consequently, the borrower and user of the land participated in the survey and were registered as the land user who was entitled to the right to cultivate (so-called surface rights). It was argued that her sister's husband did not mean to cheat her family out of the land and that it was outside of their 'legal awareness' to find out the real meaning of the land survey. However, others argued that her sister's husband had every intention of taking the land thus did not inform the real owners about the survey. They believed that this could be proved by the dream that he had fallen to his death. Slipping on stones or wood is taken as a sign or *skribut* (a Truku term) for being symbolically stopped by a *utux* (ghost), and that is always seen as a judgment for breaking a *gaya* (Xen 1998; 1999):

Gaya is so powerful that you can see another relative, who also borrowed land from us, has just returned the land to us after 40 years. He had no *gaya* to steal the land and register it in his name. People believe that *gaya* always remembers to execute fierce vengeance on its violators or on a corporate group (personal contact).

The villagers became reluctant to talk too much about this *gaya*, which had already been responsible for something bad. People did not dare to talk too much about it in public for fear that someday there would be vengeance. During my time in the field, I could sense that most of the villagers had an opinion on this matter and there was plenty of gossip about the case. Most villagers suggested that the land should be returned in order to keep the *gaya* intact and then a pig should be sacrificed and the meat shared among relatives as compensation for any damage. What people worried about most was that the son, who had inherited the land and insisted that he had a legal right to the land, would suffer bad fortune like so many others who had stolen land or violated the *gaya*. Indeed, one day, the son who had inherited the land was going up the mountain to fix a house that he wanted to run as a homestay; his mother warned him to be alert and to guard against accidents or falling down. But he ignored her and when he was coming back down the steep trail he slipped and could not walk for many days. The people's daily lives seemed to become full of warnings.

In this case we found the emergence of a special category of people who are seen as controversial by villagers. I would call this category of people 'law-individualistic'. In local people's terms, they are people who take advantage of their knowledge of certain laws and procedures in order to benefit from the support of the law. They are usually people who local people believe are violating the *gaya*. One villager commented that the Land Survey was designed to 'call for people concerned to record the 'facts' of land tenure in the government book, but unfortunately it was ruined by some people who disregard the *gaya*. They could have registered the original facts, i.e. who may actually own, or deserve to own, the lands. They are selfish and destroy the collective *gaya*'. According to this thinking, there is no reason why the land survey could not have maintained the original indigenous structure of land tenure. The Reservation Land Procedure did not force people to be selfish, but it allowed it to happen. People usually call these law-individualistic people thieves. Very often, the processes implemented by the agents of government were full of administrative mistakes or inconveniences. Land thieves are land thieves no matter whether they take advantage of the law or not. People often complained that the notification about the survey was announced on a bulletin board that few people accessed. In addition, at that time, just after the Japanese had left, not many people were able to read Chinese. The new procedures were supposed to be publicly announced, but this clearly failed. The following case from a nearby village (law suit #6444 (2001)) exemplifies a land dispute.

6.2.3 No land rights without registration

An Indigenous teacher vs. the township office

Four cases[11] were brought by an indigenous teacher who believed that the land she inherited from her parents had been stolen or registered 'illegally' in other

11 Cases 90,訴,6444 and 89,訴,155確認土地所有權存在.

people's names. She accused the township government of granting the title of land 'owner' 'illegally' to others. She stated in the court that the rights to the land in question should be granted to her parents who had first cultivated the land and still used it to this day. She had discovered by chance that the land had been registered by someone else. She believed that this was, at worst, an illegal action and, at best, a mistake made by the township government and the wrong land title holder. The judge who heard the case was confused the teacher wanted and decided that, first and foremost, she was looking for a 'correction of the title to cultivate' (更正耕作權) and not ownership of the land. If she wanted to present a case for ownership, then, she would have to challenge another governmental institution in charge of land registration, the Hualien Branch of the Land Office and not the township government. Listening to the testimony from the Township Office, the judge heard that the teacher's parents did not present themselves at the office between 1961 and 1962, the years when the land survey was conducted in the village. Consequently, the Original Land List did not list her father as the land user. In 1980, the new Land User List recorded that the right to cultivate (surface rights) was registered by the township government and also, strangely, a note was attached to the record stating that the teacher's father was the land user. In 1982, the township government carried out a third land survey which apparently recorded double ownership and informed the teacher. At that time, the teacher did not bring a claim to correct the title. Before long, the 15 year period within which a land claim was possible (negative prescription) had elapsed. The note attached to the entry in the Reservation Land Use Survey Book stated, 'the registration of the surface right is wrong and needs to be corrected to the original user'. However, because land surface rights are different – have less status in law – to land use rights, the township government did not feel any urgency to correct the mistake. What is not clear is how another person was able to register the right to cultivate (surface rights) the land. The Reservation Land Procedure declares that the right to cultivate is reserved for someone who 'has opened and cultivated prior to the enactment of said procedure' – in this case, the teacher's parents. The Reservation Land Use Survey Book also acknowledged that her father qualified for surface rights. Crucially, in 1982, the government noted that it had been a mistake to register the land to a third party. The mystery of the third party continued, but rumor had it that the registration had been done intentionally and illegally by township government officers and the land title holders. Thus, we see the emergence of a law-individualistic man who may have registered illegally, but later had this decision upheld by law. It seemed that no one could correct the obvious mistake:

> There is no justice at all in the ROC laws and courts! It is obvious that the teacher's father was most deserving of the land, not a stranger.
>
> If you didn't show up in the first land survey, then you were not registered as the land owner, even though you had cultivated the land for generations'.

> If you showed up for the survey, your name will at least be listed in the Survey Book and you will automatically have rights, even though you haven't shed a drop of sweat on that land at all.

These are some commonly-held views about the National Land Law.

In order to compensate for the numerous omissions from the first land survey, the government carried out more editions, listing land users with a view to assisting the registration of land rights. However, the above case illustrates that the justice or truth in people's mind was not reflected in the Land Survey Books. The teacher did not claim her rights before negative prescription came into effect. She said she did not know what the procedures were at that time and had assumed her parents had rights because they were still working on the land in question. Neighbors were quite clear about the local tenure structure. If consensus on land property issues was achieved at the local level, then why bother to care about whether the land had been officially registered or not?. Registration was an idea alien to these peoples' culture. Tenure had already been structured by a clear collective consensus. The registration system, on the other hand, creates a fictive tenure structure based on words and paper, something that was new to indigenous people. Inevitably, there were problems resulting from the transformation of the tenure system from a local equilibrium to a national registration system. Local customary equilibrium was balanced between related neighbors and, thus, was supported by different but related levels of collectiveness, such as families, relatives or local adjunct land users. By contrast, the surveyors involved in the registration procedures were not familiar with local contexts, and it was highly possible for distorted information to be registered in the land book. Law-individualistic people emerge as individuals who deal with their property without participation in a wider context. That is to say, with the backing of new national laws these individuals could ignore traditional or customary ways of land tenure that are more relationally embedded in a local context. The new national laws replace these traditional relations and serve as a kind of objective means by which land ownership gradually requires a new form of interdependence, where one's own wider recognitions do not function as a primary means of obtaining the land.

From the above examples emerge a new type of person that adopts individualism and leaves collectiveness behind. At this juncture, however, we see that this tendency to individualism has not yet 'atomized' as would happen later. Basically, this was because the land survey was carried out in a collective atmosphere that provides less opportunity for selfish individuals to take advantage. Later, I will discuss the procedures that were introduced after the land survey, which resulted in a structure that fostered increased law-individualism and allowed individuals to make decisions in more atomized ways. The procedures that encourage increased law-individualism can be illustrated by the following cases that took place during a time when progress was being made towards land ownership on the basis of surface rights, also known as superficies.

6.3 Conflicts during the period of limited cultivation and land surface rights (Superficies)

Cultivation rights or land surface rights are like superficies; that is to say, a real right consisting of a grant by a landed proprietor of a piece of ground, bearing a strong resemblance to the long building leases granted by landholders. The right of superficies is adopted in the reservation land procedures because the indigenous land is legally state-owned. Thus, for indigenous people to have legal permission to use or to own land, they must first go through the procedure of registering superficies that resemble a permanent rent. Before you could obtain ownership of a piece of land for agriculture or housing or forestry, you first had to be listed in the survey book and then begin to obtain the surface rights to the property. According to section 17 of the Reservation Land Procedure, you have to inherit the land, cultivate it, or live on it for private use for a period of (at least) five years after registration. However, the promotion to ownership after five or ten years is not automatic. Rather, it must be on the 'condition that the personal use has been verified factually'. Only then can the land 'be converted to land ownership registration upon the personal application of the cultivation or land surface rights holder in the presence of the authorized clerk of the Council of Indigenous Peoples'.

Thus, the application should be filed at the local land registry office. In my fieldwork I found conflicts and mistakes consistently occurred during the process of verification and promotion. Below, is such an example, in the form of the nationally famous and internationally reported case between the Shoulin township government, the Asia Cement Company and some 90 indigenous people.

6.3.1 Indigenous Land rights appropriated by the state for use by industry

Indigenous people vs. Asia Cement Co.[12]

At a time when Taiwan had just released itself from the constraints of martial law, a group of indigenous land owners took advantage of the freedom to demonstrate and lobby for their rights. In fact, since 1995, they had adopted many different measures to ask the Asia Cement Company to return their lands13. This particular group was among the very first from the indigenous community to exercise their right to protest. In fact, they attracted so much publicity that many activists and legal experts agreed to help them. For example, a human rights NGO, largely comprising lawyers, volunteered their services to help them bring a series of cases in different courts. In these cases, the indigenous plaintiffs stated that in the year of 1973 the township government had faked their signatures in order to cancel their rights to cultivation, which had already

12 I discuss this case based on the records of the court's decisions re: case #1(1999) and # 2055(2006).
13 Since martial law was lifted in 1987, indigenous peoples have been able to start lobbying for better enforcement of their land and labor rights. (Allio 1998).

been registered after the land survey during the 1960s. They believed that later the township government leased the land illegally to the Asia Cement Company, according to section 15 of the Reservation Land Procedure:

> Indigenous peoples land grants for cultivation rights, land surface rights, lease rights, or gratis land use rights is non-transferable or non-leasable, except to the indigenous heir or chosen successor, another indigenous member of the original beneficiary household, or indigenous peoples within a three-degree kinship.

The indigenous claimants believed that they still had the rights to cultivate and, because a decade had passed since registering their cultivation and surface rights, they should be promoted to ownership rights. Their accusations raised a lot controversy, even among indigenous communities and among some of the previous owners of the land related to Asia Cement. Subject of the most debate was the money these previous owners had taken from Asia Cement; money that was intended to compensate for the cancellation of the cultivation rights. According to the Reservation Land Procedure, cultivation rights cannot be sold or transferred to non-indigenous people. So it seemed that in order for Asia Cement to establish itself in the indigenous area, they first needed indigenous land owners to give up their cultivation rights. Then, the Township Office, as the representative of the 'real' land owner – the State – could take back the lands and then lease them to corporations for national economic and industrial plans. The money that changed hands was meant as private compensation and not as 'rent' or as a 'price for buying or trading' between Asia Cement and indigenous land owners. This tricky process appears to be an implicit – and perhaps complicit – attempt by Asia Cement and the township to avoid breaking Section 15 of the Reservation Land Procedure. However, there are many conflicting interpretations among indigenous land owners about this money. This is exacerbated by the fact that the process happened almost 30 years ago when these plaintiffs were young and the business was conducted by their parents who were illiterate or ignorant of legal processes. Many second generation owners believed that the money actually meant rent, so the papers they signed, which were sometimes fake, were seen by them as proof of a rental contract. As a result, they filed cases asking for the return of their land. Here we find that they still adopt natural law thinking, and believe that they were in a position to rent out the land with cultivation rights, even though the Reservation Land Procedure did not allow this. Other indigenous people accept that the transaction that took place amounted to a purchase and consequently, they no longer had any rights to the land. Yet others understood that, according to section 15, they could not lease lands that they had cultivation rights for but did not actually own. There were some indigenous people who accused those who believed they had the right to rent out the land of being ignorant of the law and refused to join the land claim case. On the other side, there were a number of people who saw an opportunity to piggy back on the case and perhaps benefit from a positive result. They certainly saw the

involvement of Han intellectuals and lawyers in the case as an advantage. Thus, a case was filed, accusing the township government and the cement company of faking the paperwork that cancelled their cultivation rights. For its part, the township government stated that the money paid was private compensation for giving up cultivation rights. This meant that once you took the money you gave up any further rights to the land. The township representative admitted, however, that the problem with this procedure was that when the township received the signed permissions, giving up the cultivation rights, the clerk did not take the next step and go to the Land Registry Office to officially cancel the cultivation rights. This oversight on the part of the township government is the major reason a number of indigenous land title owners, who had taken the compensation money and signed to handover their cultivation rights, were able to regain ownership of this land ten years later. A second mistake also occurred that encouraged a number of indigenous people to file land claims. Rumor had it that some of those who had sold out their rights managed to get ownership back as a result of bribing the township government or by using underhand methods. It was certainly the case that a number of those who were granted land titles were employed as clerks in the township governments. These clerks and others who had taken compensation but then claimed land back attracted a great deal of criticism, from within the indigenous community, but also from township representatives. Local people complained that, 'they are tricky to use legal methods to get what they don't deserve'. The judge in this trial made a decision that did not resolve the problems at all and, in fact, created more confusion among stakeholders. The decision stated that what these indigenous people wanted was to ask for their rights to be promoted ion to ownership from cultivation rights to ownership rights. It also said that the decision about whether or not to agree promotion should be made by the county government, in accordance with section 5 of the Reservation Land Procedure (see appendix 2). This decision caused a great deal of confusion.

In short, we found that vindication by the court does not always equate with justice in the peoples' minds. I would go so far as to say that justice cannot come from national laws that are designed with such limitations. We have found that many of the people asking for their rights through the courts are not always expecting real justice for their community, but rather are looking for profit for themselves. Justice or injustice from the courts is not compatible with ideal moral sensibility among people. When there are no other alternatives than to proceed through the courts, the result is that an individual moves outside of the moral circle of the community and, instead, turns to the law for support. At the point someone chooses to find support or fortune from the law, he becomes individualized.

Many of the court decisions I have heard or read about share similarities with the Asia Cement case. For example, research showed that the township government and private companies or national corporations such as Taiwan Power or Taiwan Water even took land without providing compensation, either because, once again, the township office failed to cancel the cultivation rights at the Land

Photo 6.2
Protest for the returning of Cultivation Right against the Asia Cement Co. Photo courtesy of Ciwing Masa

Registry Office, or the township turned a blind eye to the fact that the lands these corporations wanted were already registered or used by someone else, only to face claims by subsequent generations later. In my observation of land claims, truth and justice are hard to find, although some individuals have been lucky enough to get their land back. For example, the court decision listed as the case of Hua-simple-#508(2007), which related to land in my fieldwork villages. In this case, the plaintiffs asked for the return of land that was being used as a water station by Taiwan Water, who obtained the land for public use from the township government. However, prior to Taiwan Water obtaining this land for free, cultivation rights had been registered in the name of the plaintiff's father. The township admitted that it failed to cancel these cultivation rights and, consequently, the plaintiffs were awarded ownership. The plaintiff refused to acknowledge that his family had previously received any compensation for the land, and challenged testimony by an elder in court who said that her father had actually donated the land for public use. The representative from the township government also defended their actions, saying that it was obvious that the lands had been a public water station for decades and that the plaintiff had not personally cultivated the land for more than ten years. According to section 15 of the Reservation Land Procedure, this meant that the plaintiff was not entitled to ownership rights. However, the judge decided to award ownership to the plaintiff because, according to article 43 of the Land Act, 'Registration duly made according to this Act shall have conclusive validity'. That is to say, even though the registration had not followed procedure, it was still valid. Thus, the decision was made that the water station should be torn down and clear land returned to the plaintiff. I do not intend to examine this decision further, but I can imagine that the decision divided opinion. In fact, article 43 of the Land Act has become something of a standard among indigenous people, who are bringing similar cases in the hope of a similar outcome.

6.3.2 Indigenous land appropriated for Han shelters

Mr Cilu vs. nine Han families: 18 trials in more than 12 years

Mr Cilu is an employee of the controversial Asia Cement Company and earns a salary good enough to give his family an above average standard of living. His wife has a successful fishing tool shop that provides them with an extra source of income. It is quite unusual to find a double income indigenous family. It is fair to say that Mr Cilu felt financially secure. Consequently, about 15 years ago, he decided to think about asking for his father's land back. This land been occupied and nine Han families had built apartments on the property. These Han families believed that they had paid compensation money to Cilu's father and, therefore, had the right to build houses on it. Indeed, they had lived there for over 30 years, from 1977 and the moment a fierce typhoon called Wenny struck their village and swept away their houses. The houses the Han people are now living in were planned by the township government, the Nationalist Party (Kuomintang) and the provincial government, who arranged for Cilu's parents and other indigenous cultivation rights owners to receive 10,000 NTD (a good rate at that time) as compensation for the loss of their cultivation rights. However, as with the previous case, the township did not proceed to cancel the cultivation rights at the Land Office. As a result, in 1989, Cilu's mother received a deed of ownership from the township government. He could not understand why they had the deed of ownership when the land was being used by Han families. His mother said that she had no idea about the 10,000 NTD. He concluded that when his father had been alive, the family had been cheated by a powerful triumvirate of local Han politicians, the KMT and the township government. Cilu believed it was his duty to ask for the land back. He asked other indigenous people who had suffered the same problems to join him, but many were hesitant because of financial problems and a mistrust of the courts, the laws and lawyers. A number of those who hesitated believed their parents had received compensation money, so they did not have a right to make any claims. It appears to have been a mistake that promoted Cilu's cultivation rights. And, in fact, many people in the village told him that the transfer of the land had been organized by the government in order to help the Han people to survive in the aftermath of the typhoon; so they suggested that he should not to proceed with legal action, even though he possessed the ownership deeds. The township suggested that a solution was for him to lease the land to the Han people who had lived there for so many years. They warned him that the law may not offer him the solution that he was looking for and also asked him to think about what would happen to the Han families without anywhere to live. The Han people in question were very angry that their housing rights were being threatened by a mistake by the township many years ago. Despite this, Cilu still believed that there had been many injustices during the time of the land arrangements and he insisted that his family had not received any money, so they had the right to take back a clean property. In fact, Cilu started legal action in the civil courts without hiring a lawyer. The case was

heard in the court eighteen times[14] in thirteen years, but the result he was looking for remained elusive.

In the first two appeals, Cilu's claim was denied because the judges believed that his parents would have received the money like others had, which demonstrated an intention to give up the cultivation rights. But Cilu refused to accept these court decisions and so he hired a lawyer to fight a third appeal in the highest court in Taiwan. Dramatically, the court overturned previous decisions on the grounds of article 43 of the Land Act, 'Registration duly made according to this Act shall have conclusive validity'. Thus, Cilu won the case and now waited for the land to be cleared and the houses torn down by compulsory enforcement (強制執行). Meanwhile, the Han families mustered all their resources and hire lawyers to appeal the decision. A staggering fourteen more trials took place in a bid to get the Indigenous Council to influence and stop Cilu. They put forward the argument that his ownership had been based on 'incomplete' cultivation rights and that Cilu's family had not personally cultivated the land for ten years without disruption because the land had obviously been used for housing and not farming. Most of the Han families involved believed that it was a cynical move on the part of Cilu and his mother who waited for fifteen years to pass and with that the deadline for bringing any action (negative prescription 時效消滅) to claim their surface and housing rights (superficies).

To summarize the events surrounding these eighteen trials, I would say that only article 43 of the Land Act promotes indigenous rights. As a result of these trials, Cilu's family was thought of as selfish by the Han people, while some indigenous people thought he was courageous for challenging an unfair system. Later, we found another group of Han who were worried that the original indigenous owners of the land that they were living on would file a case as Cilu had done. To avoid this, they put forward a plea to the Hualien County Parliament to protect their housing rights. We also found a number of indigenous people joining with Cilu to form a local association to promote their village development and to fight against the dominance of Han people who had obtained land from indigenous people and then promoted the land as a valuable commodity. Cilu's victory certainly encouraged many indigenous people to fight for land rights. Therefore, we can see that in contrast to previous cases, this law-individualistic character had enough charisma to raise support from indigenous people who would not have got involved in such a fight a decade or more ago. Cilu's case became famous in local villages and many people who had suffered because of land

14 List of the 18 appeals on the same case in a period of 13 years: (1)1997 訴326號拆屋還地之訴, (2) 1998上字48號拆屋還地之訴, (3) 1999,台上,2533拆屋還地之訴, (4) 2000,上更(一), 22 返還土地之訴, (5) 2002 台抗 477 號債務人異議之訴 (6) 2003,訴, 126 債務人異議之訴, (7) 2003,上, 62, 債務人異議之訴 (8) 2005,台上, 349 債務人異議之訴, (9) 2005,訴, 60 債務人異議之訴, (10) 2006, 上, 11 債務人異議之訴, (11) 2007,台上, 1050 債務人異議之訴, (12) 2003,訴, 309 請求協同辦理地上權登記, (13) 93,上, 30 請求協同辦理地上權登記, (14) 2005,台上, 756 請求協同辦理地上權登記, (15)2005,訴, 981 臺北高等行政法院判決原住民保留地, (16) 2007年度重訴字第 33 號請求塗銷土地所有權移轉登記, (17) 2008年度重上字第 13 號請求塗銷土地所有權移轉登記, (18) 2009 年度台上字第三六0號請求塗銷土地所有權移轉登記. These verdicts can be accessed online at: www.law.gov.tw.

conflicts sought him out in order to exchange experiences and ideas. It did not take long for a theory to develop; that is to say, if you possessed the land right deeds, no matter whether they have been obtained legally, in error or illegally, you had a strong claim to ownership rights.

Mother Leaf's case clearly illustrates the theory of 'registration above all'. This case demonstrates the failure of an oral contract, which was less powerful than the registration of ownership. In this case, Mother Leaf had found many elders in her neighbourhood who were prepared to testify that she had bought land from the accused, a second-generation descendant who insisted that his parents had forgotten to cancel their right to the land with the township authorities and failed to transfer the rights to Mother Leaf. Mother Leaf did not hire a lawyer to fight her case, but rather asked an indigenous cousin who had experience of the Asian Cement case to assist her. The judge hesitated to believe the neighbors' testimony and the notion that there had been a transaction, even if it had only been an oral contract between Mother Leaf and the buyers. The decision was very controversial among the indigenous community, not least because there are so many similar cases where oral contracts had taken place. This judgment basically meant they were all invalid, or at least useless in terms of land claims. The problem with these oral contracts is that they took place more than a generation ago and the memories of and witnesses to the events were gone. At the same time, modern law demanded that property trading be dealt with formally, with paper deeds. Local gossip suggested that there had indeed been a purchase – otherwise the land could not have been used by the plaintiff for so many years. The defendant's cousin, however, possessed the paper deeds to the land, which had more legal weight than an oral contract. Here, then, we find another case where one of the parties is supported by law, while the other is relying on local customs and hearsay. Ultimately, Mother Leaf lost her case.

During my fieldwork I found another important example of a case (Hua simple 63, 2002 (九十一年度花簡字第六三號) in which the land had been sold and the buyer had built a house and lived on the land for more than 40 years. Later, however, he was threatened with the house being torn down because the land was still registered in the seller's name. I also found case 109, 2003 (拆屋還地92,訴,109) where an old man who had migrated from mainland China was urged to return the land he was living on because it was still registered in the name of the seller's descendant. A similar case can be found in Up Yi 74, 2003 (九十二年度上易字第七四號), where the judge ruled that ownership should belong to the seller, but that the buyer was eligible to occupy the land that they were living on because the trade of the land had happened before 1972 when the Reservation Land Procedure decided that land can only be transferred among indigenous people. To everybody's astonishment, the buyer's oral contract meant that his descendants could occupy the land but had no land title. We can see that land rights are supported by law and that local recognition does not count. One example worth noting here is the devastating case of Up YI 33, 2005 (九十四年度上易字第三三號). In this case, the seller's daughter sold the land with an oral contract and forgot to transfer the title. The land was then sold on again

to a third party. The daughter's claim to the land was given no credence by the indigenous community, but she believed that the legal process would uphold her claim. This is yet another example of indigenous people learning legal techniques in order to gain personal profits. But the consequence is the sacrifice of local balance. Below, the Brighten case provides a typical illustration.

6.3.3 Registration is paramount

Brighten vs. his indigenous neighbor

Based on the theory of 'registration above all', one of Cilu's colleagues at Asia Cement, nicknamed Brighten, had registered a piece of land that was already occupied and used for many years by one of his neighbors, an old lady who had filed a law suit demanding that Brighten return the land she had used and cultivated. The case came in front of the judge twice, and twice the judge ruled that the land had been legally redistributed to Brighten. Following this decision, the old lady still occupied the land, so Brighten countersued in the Hualien civil court and demanded that the houses on the land be torn down and the land returned to him. Brighten assumed that he had already registered the cultivation rights so he would be in a strong position in terms of claiming the full land rights. However, on this occasion the civil court judge ruled that, on the one hand, Brighten could not prove that he had occupied the land earlier than the old lady and, on the other hand, the period in which Brighten could enjoy cultivation rights had come to an end after five years. This meant he had no right to claim the land, which according to procedures should now be returned to the state (in this case the township). This decision was quite a shock. Indeed, the majority of people expected that ownership would be automatically granted after the five year term. The judge ruled that no further appeals would be heard because the total value of the land in question was now below the parameters of the law. In fact, many people in the community thought that the ruling that nobody was given the land title was a good decision in terms of maintaining community relations.

Brighten was clearly astonished to find that registration is not actually paramount. He could not understand why he had not been able to earn the land back. If we examine all nine appeals on the Brighten case, [15] there appears to be an inconsistency between the decisions of the administrative court and those made by the civil court. From the cases highlighted here, we can see that the Reservation Land Procedure has been designed to decide the power attributed to various rights through a collective process such as a collective land survey and the conditions of using land for cultivation or housing. Among the techniques and procedures employed in land claims, there is a tendency to reduce the public or collective aspects in order to prove the power afforded to a specific type of land right. It is certainly possible to gather the signatures of four neighbors who

15 A list of the nine appeals on the Brighten case in the years 2004 to 2008: (1) 花蓮縣政府訴願決定書93訴字第8號, (2) 93,訴, 3948行政訴訟, (3) 93,訴, 3948行政訴訟, (4) 花蓮縣政府訴願決定書94訴字第024號, (5) 94,訴, 4078, (6) 拆屋還地94,訴,2 96, (7) 96, 裁, 3779 最高行政法院, (8) 拆屋還地94,訴, 296, (9) 拆屋還地97,上易, 39.

are willing to testify to your ownership of land you have actually never used. You may register your name instead of that of the real cultivators. But there are still public processes that need to be completed, even with fake documents. And herein lies the problem; it appears that the public processes are so focused on the need for registration or the holding of deeds that they miss cases where land is being claimed dishonestly. This can cause controversy between individuals and in communities. The precedents set by previous rulings and increased knowledge of how to exploit the loopholes in the law have resulted in more indigenous land claims cases.

Later, I will provide examples of other cases concerning the granting of ownership rights that occur outside the collective domain and public monitoring. These examples show that indigenous people bringing land claims cases tend to be those with autonomy and the private means to do so. Moreover, they appear to take individual decisions without worrying about how others in their community may react. All the examples highlighted here suggest an increasing trend towards law-individualism among indigenous people. This, in turn, appears to reflect the original design principle of the colonial Japanese government and to prove that the implementation and practice of the Reservation Land Policy of the ROC government seems to correspond with the status of a colonial state.

6.4 Disputes arising subsequent to obtaining ownership

There are many checks in the system of public monitoring and administrative governance designed to establish whether reservation land is being used by individuals as intended, i.e. for cultivation, forestry or housing. These processes are designed to help protect the basic needs of indigenous people. There is an implicit recognition between policy designers that land can be used collectively by indigenous communities for agricultural and housing needs. The collective processes that take place before ownership rights to a piece of reservation land are granted include agreement to the condition that the property is not to be sold on to non-indigenous people. As we have seen, this process is still vulnerable to mistakes or deliberate rule breaking due to the emergence of law-individualism, as previously discussed. Below, I will illustrate how a legal environment encourages an atmosphere of increasing individualism that falls outside of collective monitoring or controls. I have found two tendencies in particular that are illustrative of this trend towards individualistic decisions regarding land use. One is changes in the law that have increased the opportunities for non-indigenous people to use indigenous land, despite the government maintaining a policy of not transferring ownership to non-indigenous people. This raises the spectre of collaboration between indigenous and non-indigenous people in order to circumvent these laws. Consequently, there is an atmosphere in which indigenous people are forced to deal with their ownership rights in secret, away from monitoring by the authorities. The second tendency my research demonstrates is the legal idea of private autonomy that goes hand in hand with the registration sys-

tem. The logic is that once a land title is granted and the paper deeds are in your possession, you may use it as an asset to borrow money, and you may sell it to others without notifying others, even those who may claim connections to the land. Here we see that the law tends to grant land titles to individuals and favors private ownership of land. Private autonomy tends to exclude relations, other than legal relations, that may be employed in land claims and results in land becoming a commodity. Here, I would warn that the extent of privatization needs to be differentiated. For example, land can be titled to co-owners of a shared property. There are certainly records of the registration of co-owners in indigenous areas. These co-owners still tend to deal with the land collectively when collective actions favour their survival. Even individual owners, with specific individual land, may cooperate with local ideas of land use. Therefore, the privatization of land titles is not an issue resulting from indigenous land conflicts. Rather, and more critically, is the way people deal with land issues from the perspective of private autonomy. We see that the Reservation Land Procedure is trying hard to help indigenous people deal with land at a local level with public monitoring, in order to avoid land rights to being taken out of local contexts and thus rendering indigenous land subject to the total control of private autonomy. The legal ideal of private autonomy is not totally unsuitable for indigenous people, but it does foster an environment in which indigenous people can disregard their collective relations. In particular, with regards to the transactions of land, private autonomy encourages people to opt out of the collective process. For this reason, private autonomy encourages people to become increasingly individualistic, even selfish, in terms of winning land rights.

Examining the cases relating to the Taroko indigenous area, I have found, generally, that Taroko society is facing a transformation; one that encourages less collectiveness and more possessive individualism in the form of law-individualism. If we follow Macpherson's idea and view possessive individualism as a person who is 'the sole proprietor of his or her skills and owes nothing to society for them' (Macpherson, 1962), then we can say that possessive individualism in the Taroko area is not strong in most of the aspects of daily life. This is because we find many indigenous people who still share their resources and production, at least among families and relatives or adjunctive neighbors.

However, we can argue that possessive individualism has been observed in the domain of land conflicts, in cases where there is an individual who is keen to occupy land. In this scenario, possessive individualism and law individualism work together to bring a sense of selfishness and a disregard for the collective atmosphere. My research also suggests that we cannot use Dumont's argument to describe Taroko society; that is to say, that 'egalitarian individualism is exceptional, a recent and specialized growth' (Macfarlane 1978). In fact, I would argue that egalitarian individualism and possessive individualism is not new in indigenous society; that individualism has not just emerged since 'land became a commodity and markets played an important part in the economic system' as expressed by Polanyi (Ibid). I would argue that possessive individualism is, indeed, becoming stronger in indigenous society and that we see indigenous communi-

ties experiencing a 'great transformation'. It is certainly moving away from a non-market, peasant society where economics is 'embedded' in social relations, but it has not yet completed the shift 'to a modern market, capitalist, system where economy and society have been split apart' (Ibid). It is important to note that, up to this point, there was no free market system for Indigenous Reservation Land. Law-individualism has become an important medium in terms of progressing the great transformation described by Polanyi. The situation in Taroko, however, is not shaped by the emergence of individualism; but rather by stronger possessive individualism that is focused on the economic domain. In the Taroko area, possessive individualism is progressed by law-individualism, particularly with respect to issues of land use, the disposal of land and land transactions. However, there is no evidence that the sharing of land and embeddedness of land use in the social context have disappeared entirely.

Private autonomy is a basis for law individualism. Below, I will illustrate a number of cases that demonstrate conflicts among family members. Incidents where individuals have opted for private autonomy or law supported individualism and disregarded their family relations in pursuit of land claims. These examples will illustrate how collective decisions are disrupted by law-individualism.

6.4.1 Typical examples of private autonomy supported by state laws

Cases of conflict within a family

The case most typical of private autonomy that rejects collectiveness and public recognition is case 91, sue, 142 (花蓮91年訴142號). In this case, siblings accused their eldest brother of selling the land they should have inherited from their father to a third party. Previously, they had taken their problem to the mediation committee at the township office, and during this process all the siblings promised to share the land. Later, however, the eldest brother rescinded and sold the land to a third party. The family went to court and the judge found that the land had been registered in the eldest brother's name right from the start and officially he had the cultivation rights. Consequently, the judge ruled that he should be promoted to land owner, rather than his father who had actually started to cultivate the land. From the judge's point of view, there was no legal proof that the land belonged to the family's father. The upshot was that the siblings had no right to claim the land as inheritors. Inevitably, this decision broke up the family, who saw their eldest brother as a law-individualistic man that was only interested in profit. The judge ruled that the eldest brother had been free to register the land because his brothers and sisters had not. Even though it was their father who had begun to cultivate the land, the law could only recognise the eldest brother's rights to the land.

Another case Hua sue 306, 2000 (花89年訴306號) also deals with brothers and sisters competing for the right to share the house their father left them. One particular son demonstrated that he had made much more of an effort than his siblings in terms of maintaining the house and insisted on having the full rights

to the house. His claim was upheld by the judge. The ruling did not compensate the plaintiffs, his siblings, in any way.

In another case – Hua Simple 231, 2003(花簡字92年231號), a family registered the land they had inherited from their father in the names of some of the brothers and sisters. Later, however, they each refused to return the share that they had. Indeed, some of them were claiming more than the share they deserved. Thus, we find a situation where many indigenous people worry that if their parents do not make proper arrangements for their land before they die, there will be problems regarding the division of the heritage. This is supported by the findings of the fieldwork by Xia (2003:48).

6.4.2 Methods used to circumvent the Reservation Land Procedure

Cooperation or corruption between indigenous people and the Han

Many policymakers from the Japanese period believed that if there were no borders between indigenous and Han peoples, and if the government adopted a laissez-faire policy regarding land economy, then eventually the indigenous people would lose their land. The Reservation Land Procedure was designed to protect against this loss of land. The Reservation Land Procedure was developed and accompanied by other policies to help transform indigenous ideas and lifestyles so that they would be more aligned to the situation in Taiwan as a whole, and in particular with the lives of the Han people. We have seen that, since its introduction, the Reservation Land Procedure has been changed, in particular a number of the sections relating to the transfer of land rights between the indigenous people and the Han. It appears that the reservation land procedure was originally designed to help indigenous people to survive through farming and forestry. Equally, the sections relating to land tenure were designed to create units of families or individuals with basic life resources. There is provision for indigenous people to use land collectively (see appendix 2), although the reality is that this seldom occurs because indigenous reservation lands tend to be in areas that are steep and scattered and are not suitable for collective investments and developments, especially in the national parks area with so many limitations and restrictions.[16] The method of land registration encourages people to use land in pieces but not in blocks. This makes titled land unsuitable for collective agriculture. In addition, there was a need to ensure that indigenous people do not profit more than Han farmers (see Chart 6.1: A survey of the annual income of indigenous and non-indigenous people).

16 Many scholars and officers are devoted to providing incentives for indigenous people to plan land collectively. To this end, a law, the 'Statute of Development and Management on Indigenous Reserved Land' was drafted but later rejected by the Legislative Yuan. The draft law intended to set up a Reserved Area for indigenous people to 'preserve the traditional culture, improve the living environment, and promote the economic development collectively'. Scholars believed that such a law would 'correct the market failure and government failure caused by ongoing regulation when the new design becomes a formal law' (Yen, A-C; Chen, C-C; Wu S-T et al. 2006).

Chart 6.1
Annual income of indigenous and non-indigenous people between 1967 and 1996 (NTD)

Groups\ year	1967	1969	1972	1974	1978	1996
Mountain indigenous	19,490	–	31,283	–	98,883	501,264
Plains indigenous	–	19,648	–	55,382	101,456	512,438
Non-indigenous					130,298	643,010

Indigenous agriculture tends to be just for daily consumption and survival, and it is vulnerable to market fluctuations. From the beginning of industrialization in Taiwan, in the 1970s, agriculture has been insufficient for indigenous people to make a living. The costs involved outweigh any profit to be gained from agriculture. As a result, there was a significant trend towards indigenous people embracing urbanization and industrialization and leaving their indigenous homelands.[17] In order to improve the situation, the government has changed the laws and invited corporations or Han people with capital to invest in the indigenous areas. The Asia Cement Company was a case in point. While the government's intention had been to invite outside capital into the area in order to help indigenous people develop careers, research show that indigenous people remain poor and unable to make good use of their lands in terms of agriculture. Following a change in the law that allowed non-indigenous people to rent indigenous land, those territories that are good for commerce are generally leased or occupied by non-indigenous people. Even in cases where indigenous people have land that has the potential to be good for economic or tourism development, the issue of a lack of capital remains a huge obstacle. As a geographer observed, 'For a few decades, many indigenous people left their homes and went to urban areas to find jobs, thus reducing the value of indigenous lands and leaving them vulnerable to take over'(Chen, Yi-Fong 2008). Thus, we see in Chamin Village that 60 per cent of the land was sold to Han people who now use it to run bed-and-breakfast hotels or profit from tourism, something that in fact indigenous people more than capable of doing (Chen, Yi-Fong 2008; Shoulin Township Historiography, 2008).[18]

17 A survey supported by the Indigenous Council found that more than half of the indigenous population are now living in urban areas.

18 However as the 1974 amendment to the reservation procedure shows, the government did not give up on the idea of considering 'reservation land' as national land. But in amendments introduced in 1990 and 1998, there is nto longer any use of the term 'national land'. Thus, as Fuji has argued regarding the granting of lands to indigenous people, the title documents do not carry the meaning of reservation land. Section 27 of the original 1948 version of the Reservation Land Procedure indicates that reservation land limitations and restrictions will be only cancelled when indigenous people have improved their standard of living and are able to live financially independently. However, as Fuji has argued, when indigenous young people head off to urban areas to earn a living, their financial situation is not based on farming on reservation land, but rather on the urban economy. Indeed, the reservation land in the homeland now becomes a real 'reservation land ', one that is beyond the role it was originally designed to play, i.e. it now has a transition role and can be used to introduce capital into indigenous communities. This is because the majority of indigenous

In a bid to circumvent the problems of a lack of capital, we can see a great deal of corruption between indigenous individuals and Han capitalists. In the Taroko area where I conducted my fieldwork, for example, the most famous illegal dealing was between indigenous people and a high profile Han who was a chief in the Shoulin Township Parliament of Representatives, known as 'Mr Big'. The case was publicised in the local media who reported that Mr Big had occupied indigenous land. The prosecutors of the local court had tried to find evidence to charge him with dealing with local 'mafia', but nothing came of it and he was free to go about his business, albeit surrounded by controversy (Kensheng Diary 2007). He also managed to stay out of the local criminal courts because he understood how to avoid breaking the law. Mr Big was also involved in the corruption case 1999 (貪污88,上更(二)) but this time it was a clerk in the civil engineering department of the Hualien County Government who was accused of accepting bribes from him in return for faking a compensation report to the National Railways, which was going to take land for railway construction. The clerk was accused of faking records that stated that Mr Big had built a KTV (Karaoke and MTV) shop worth 20,050,020 NTD (almost 435,870 Euros) and was entitled to compensation. The prosecutor carried out an investigation and found that the land was indigenous reservation land and did not belong to Mr Big who was not indigenous. The prosecutor also discovered that Mr Big seemed to have had prior knowledge of the railway construction because he had many sources in government providing him with policy information. In this way, he had tried to obtain indigenous land to build the KTV shop. In fact, the prosecutor found that the KTV shop was an illegal building without the relevant construction permits. Furthermore, the clerk had faked documents to legalize the building in order to ensure the payment of compensation. The clerk was found guilty of accepting bribes. However, he appealed the verdict (Tai Up, 1434, 2001 (90,台上,1434)) in the high criminal court and the ruling was overturned because the judge thought the prosecutor could not support his findings with laws or articles proving that the building was illegal. The prosecutor had fully intended to take the matter back to court, but the clerk died suddenly and all further hearings were stopped. Local people were very unhappy with the outcome as they felt that Mr Big had been clever at finding ways to obtain a piece of indigenous land and then claiming compensation following its sale. They believed he had become rich by employing exactly these kinds methods: 'These kinds of gangster's deeds should be punished; otherwise there is no justice at all in this world'. At the same time, there was a reluctance to be open about these kinds of practices, because that would mean admitting that someone from the indigenous community had cooperated with him. There was a feeling that these kinds of issues should be dealt with in secret; that even family members should not know. Case 50, 2001 (90, 訴, 50) is evidence of just this. In this case, Mr Big loaned money to indigenous people who needed funding to stand as candidates in an election for the Township Parliament Representatives. He did this by taking out a mortgage on the valuable plants on the

reservation lands became a 'commodity' that was used for mortgage, leasing or renting. Seen from this perspective, reservation lands can be viewed as 'private lands' (see Fu 2001).

land. The case was brought by the losing candidate's mother who said that her son had no right to mortgage her plants or take what belonged to her.
Mr Big regularly used this strategy to control candidates who were running for the local Parliament; especially those were in need of a lot of money to run in the elections. One indigenous representative in the Parliament told me that, 'Mr Big used a lot of money to obtain the position of Parliament chief and most of the members were in debt to him. So, the Indigenous Township Parliament and also the Government were virtually controlled by this non-indigenous individual and he grew stronger and stronger, winning successive terms as Parliament Chief for two decades'. In fact, these actions were no secret at all. The local prosecutors in the criminal court were always trying to convict him on corruption charges (Kenseng Diary, 2000). But these prosecutions always failed.

Returning to the abovementioned bribery case, we can see that the prosecutors were frustrated by the accused clerk's sudden death, not least because they had failed in previous attempts to convict this high profile Han individual for corruption. The prosecutors were also frustrated by the judge, who later ruled that the transfer of land that took place had not been a matter of land purchase, but rather of a land trust, which is legal under the Reservation Land Procedure. People were also astonished by the judge's opinion that despite the transaction being deemed a sale, whether or not it should be ruled guilty or not depended on the administrative procedure between the township and the accused. Basically, this meant the possibility of another trial, this time in the administrative court. Given the precedents, the chances of the sale being ruled illegal there were slim [19](see 89, 易, 895 and 90, 上易, 90). The above case received a great deal of attention and became the subject of local murmurings and gossips. The case illustrates how profits were constructed by local indigenous and non-indigenous people. Cooperation and corruption went hand in hand. We can find examples of a number of non-indigenous investors in indigenous areas seeking profit from public infrastructure construction or tourism and cooperating with and even corrupting local ethnic people in the process. Establishing a trusteeship is a brand new way for non-indigenous people to deal in indigenous land property within the law. Other ways, which are perhaps less clear cut in legal terms, include lease of ownership, mortgage or the registering of superficies. In recent decades there have been discussions among law scholars like Wang, Tay-Sheng (2003) and Lin, Jia-ling (2000) on the process of passing indigenous lands to non-indigenous people more openly. It has been observed that there are conflicting opinions among judges in decisions related to the protection of indigenous land and the extent to which use of indigenous land should be open to non-indigenous people. After much debate, in 2001, an administrative document

19 Mr. Big is indeed not a buyer. But the fact he used the name of the accused to register the land in question is actually against the reservation land procedure and thus is outlawed. But whether it is outlawed needs another administrative court to decide on. Thus, it's hard here to decide whether he is guilty or not. Thus I (the judge) reject what the prosecutor has brought as guilty'.(see case 89花易895)

was published by the Indigenous Administration Bureau in Huanlien County[20] announcing that the central government had decided to allow non-indigenous people to register superficies of indigenous land:

> The reasons why the land is marked as 'Indigenous Reservation Land' should be explained from the background of histories. Indigenous peoples are ruled by the Han and are peripheral in remote areas with low population. They are not inspired by civilizations and have fewer abilities to compete with the Han plains people. It is usually the indigenous people who are inferior to the Han when they are dealing with commerce. The marking of indigenous lands could prevent indigenous people from making bad decisions lest that the land won't transfer to non-indigenous people easily. It is intended that the Reservation Land Procedure, especially article 18, will limit the use and users to indigenous people. Despite the Procedure, we still hear of a lot of illegal acts of transferring illegal usufruct to non-indigenous people. Now the central government has decided allow the transfer of the superficies, since the superficies are usually almost as powerful as property rights, and let some profit seekers make use of indigenous lands. While this could see indigenous peoples' rights invaded step by step. However, if we look at it from another perspective, if land can be used efficiently and developed by economically strong men, then landlords can profit from rent. It is a principle of market economy and the government and the indigenous people are all members of the wider environment. Thus, we could not disobey the principle. It is not easy finding a balance between the right to survive and the operation of the market.
> (An official document to announce the new rules of the reservation land circulated among indigenous officers check the source)

6.5 Conclusion

The above opinion expressed by an indigenous official, puts forward a strong theory for allowing the market economy to lead the way in mediating the use of reservation land among indigenous and non-indigenous (mainly Han) people. In the 50 years since the implementation of the Land Reservation Procedure, we have seen many original principles changed in a way that benefits the state but does not benefit indigenous peoples. For example, section 3 of the Reservation Land Procedures says, 'The indigenous reservation lands herein refers to the mountain land originally reserved for the indigenous people for administration purposes, and reservation land should be legally delineated and annexed for indigenous people to safeguard their livelihood (appendix 2)'. Reservation land actually belongs to the state, so in legal terms, the state has the ultimate rights to use reservation land.

20 內政部以九十年五月七日台（九十）內地字第九〇六四八六四號「九十年版地政法令彙編｜地權類」原住民保留地審查會議紀錄，作成「法無明文禁止私有原住民保留地不得設定地上權予非原住民」之決議，並行文各縣市政府遵照辦理，以解決各單位承辦相關案件之困擾。

This is demonstrated in the many court cases and in local and national policies. Through the court cases studied in this chapter, we see that there are always ways for a profit seeker to avoid the law. One method, known as 'hanging indigenous names to buy reservation land for non-indigenous people' (掛人頭) is so popular that you can see the results all over Taiwan's indigenous areas, especially those that are good for tourism. This method is well-known, even among government officers, and there are many surveys to indicate that many indigenous reservation lands are actually used or occupied by non-indigenous people.

From these surveys (see Chart 6.2), we can see that the county of Hualien has a lower percentage (23.95%) of illegal non-indigenous reservation land use than other counties. Some scholars think this percentage is low because of poor monitoring, and that, in fact, many indigenous areas, especially those with connections to tourism, would score as much as 60 per cent illegal land use (Chen, Yi-Fong 2008). Illegal methods remain popular, but increasingly we see more legal ways to use and occupy indigenous reservation lands. The use of trusteeship, as we see in the case of Mr. Big, or the permission to lease superficies granted by the government provide non-indigenous people with more rights to use reservation lands. This is seen as a way of bringing together the indigenous people who have land and, in particular, Han people who have capital to invest. We would like to see this trend of neo-liberal thinking open up the boundaries between indigenous reservation lands and capital. As the cases above illustrate, there are many scenarios in which indigenous people have felt the loss of their lands and have also been exploited by the cooperation or corruption surrounding dealings on reservation lands. Indigenous landlords earned little rent when the reservation land is valued well below the market rate. The mainly Han tenants are able to use and occupy the land for long periods precisely because the rents are so cheap. The reality of renting out reservation lands has always been the loss of the land. These scenarios have historical origins in the colonial period; a time when the Japanese authorities believed that indigenous people were barbarians, incapable of rational thinking and unable to manage what they had. This social Darwinism theory was implemented for the colonial policy and resulted in the confiscation of indigenous lands and territories. Indigenous people were seen as lazy and foolish, incapable of learning the ways of civilized people who work hard and understand economics. This evolutionary theory was also designed to simplify indigenous land use and categorize their territories as waste land, leaving only a few lands for sedentary farming by the indigenous people What we have seen, however, is that clearly the Japanese authorities were cheating themselves by thinking that indigenous people were too stupid and lazy to have land tenure or be capable of land management. My research in the Taroko plains area found that indigenous people were smart landlords and even able to exploit non-indigenous labor. The theory of *terra nullius* and the taking of lands as state-owned were colonial acts that rendered indigenous people 'stupid' and with no land. Unfortunately, this kind of thinking still prevails among many people, even among indigenous ones.

There are so many restrictions on non-indigenous land use that reservation lands can only really be used for agriculture. And because indigenous people

have no capital to invest in their land, their farming remains at a subsistence level. They are forced to go to urban areas to find low paid work. Under these kinds of restrictions, reservation lands are rendered useless and worthless and are vulnerable to profit seekers. The emergence of legal individualism has seen the rejection of original or communal ways of dealing with reservation lands. Legal individualism cuts out communal relations or reciprocal responsibility. As Herskovits (1965:326) mentioned, if the national land laws are to be implemented in such a way that creates a better local equilibrium, 'Whatever absolute criteria of property may be set up, the ultimate determinant of what is property and what is not is to be sought in the attitude of the group from whose culture a given instance of ownership is taken, mistakes or distortions should have chances to be corrected' (see Hann 1998). The cases examined in this chapter show that very often court decisions do not offer the justice people want and instead judgments are processed with the logic of legal formalism. We find that laws support a legal individualism and equip the more controversial elements within communities with the skills to violate local customs and moral norms and to ignore alternative solutions to property disputes.

Chart 6.2
Indigenous Reservation Lands used by Non-Indigenous People (hectares)

County	(1) total area of Reservation area	(2) area of reservation used by non-IP	(3) area of reservation used illegally by non-IP	(4) % of area of reservation used by non-IP (2)/(1)	(5) % of area of reservation used by non-IP illegally (3)/(2)
Total Taiwan	251,080.8427	16,778,4102	11,195.1098	6.68%	66.72%
Taipei	2,080.8138	25.0601	21.3021	1.30%	85.00%
Yilang	14,930.3223	663.2927	494.3447	4.44%	74.53%
Taoyuan	12,195.7230	1,053.1682	976.4175	8.64%	92.71%
Hsinchu	18,653.5395	77.0279	56.2185	0.41%	72.98%
Miaoli	7,614.4480	804.1194	479.8616	10.56%	59.68%
Taichuan	6,680.0149	2,995.5143	2,348.6438	44.84%	78.41%
Nantou	31,589.1758	4,493.5943	3,081.3766	14.23%	68.57%
Chayi	6,606.1261	149.9028	82.8311	2.27%	55.26%
Kaoushiung	16,458.0977	255.1802	150.5387	1.55%	58.99%
Pintung	64,590.7097	1,931.8809	1,063.5890	3.00%	55.05%
Taitung	43,720.7550	3,405.9534	2,218.7205	7.79%	65.14%
Hualien	25,961.1169	923.7360	221.2657	3.56%	23.95%

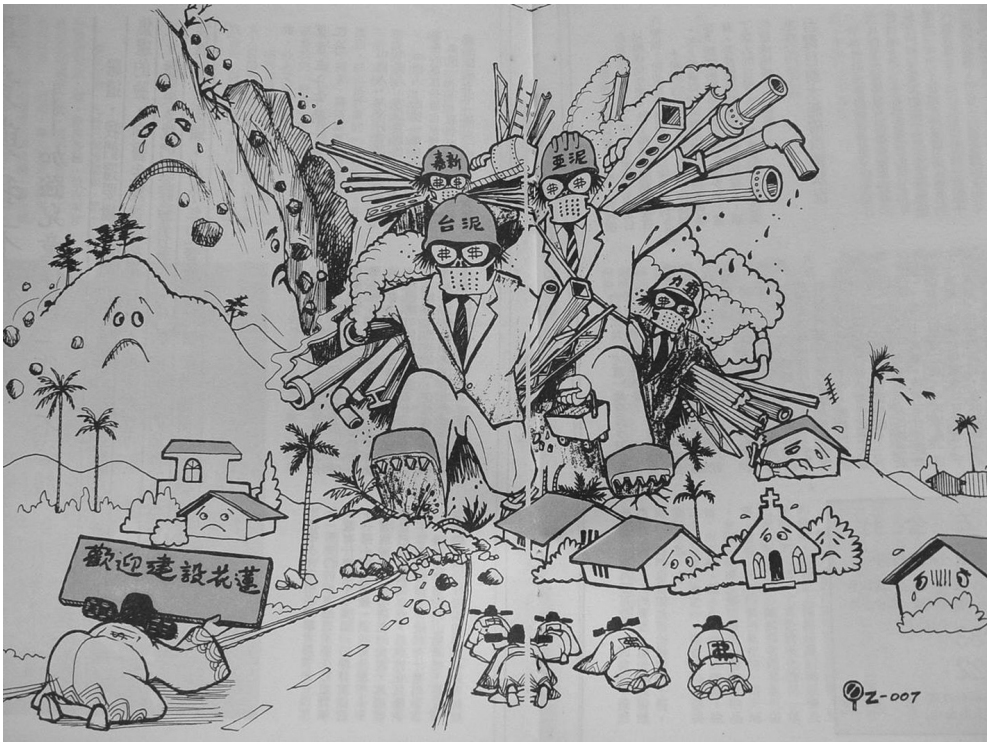


Photo 7.1
Cement Industry comes to the east! "That is the way the eastern politicians welcome Them!" (Eastern Coast Critics)

7

Land is 'Concrete' while Money is not: 'Development' Scenarios in the Taroko Area since the 1980s

Taiwanese people call the eastern part of their island the 'back mountains', indicating areas of poor development (Hsia and Yorgason 2008). This idea has been widespread among both people and policymakers (Tseng, H.P. 2002: 90). Though the east is full of natural resources, and is particularly favorable for mining and forestry industries, poor infrastructure and low levels of development mean that the area was not ready for further exploitation. Consequently, many parts were left as pristine natural areas and have become famous for their natural landscapes and beautiful scenery. But the natural resources in the area remain targets for further exploitation. Thus, we see ongoing debates about whether these landscapes should be sacrificed for the sake of developing industry in the region or whether the natural beauty of the area should be preserved (Tseng, H.P. 2001; Chi 1999; 2001; 2002; 2003; Chi and Hsiao 2005).

Many studies have provided detailed analyses of the political and economic processes relating to conflicts between the environment and the economy, like the ones arising from the setting up of cement and power plant industries. In this chapter, I will call on these analyses and studies in order to illustrate how indigenous people have reacted to these processes. This will help us to understand various development scenarios and examine how indigenous people claim their environmental, human and land rights amid the growing number of 'development' projects being initiated by the State and corporations.

7.1 Five petitions heard by members of the Control Yuan

On 22 December 1995, three members of the Control Yuan came to visit Shoulin township government to collect data and investigate issues of conflict between local people and local authorities. According to the Republic of China's Constitution and its Additional Articles, the Control Yuan has the power of 'impeachment, censure and audit. In addition, it may take corrective measures against government organizations. Members of the Control Yuan may accept people's petitions, inspect central and local governments, make investigations, and su-

pervise examinations'. These three members of the Control Yuan were warmly welcomed by the locals and received four petitions from the Taroko indigenous people. These four cases all concerned indigenous land conflicts. The first petition accused the Asia Cement Company of taking indigenous land illegally; specifically, of faking deeds that resulted in indigenous people losing their lands in Fushih village. The second petition concerned a request for land title registration from the original land users that was later rejected by the township government. This petition claimed that people who had never cultivated the land, rather than the original land users, were granted land rights. It turned out that most of these people were officers or political representatives in positions of power.

The third petition concerned an application procedure on land # 664-88-91 in Hoping village (和平村) where a base for a big cement industry project was planned. People complained that the land was only registered in the name of privileged individuals and not in the names of the original cultivators or users. The fourth petition concerned a piece of land that a cement mining company had abandoned in Pratan village (三棧) (Hao yu gong cheng gu wen gong si, 1991). By law, the land was earmarked for redistribution among indigenous people who lacked land for subsistence purposes.

These four cases concerned three villages inside the Shoulin Township where the cement industry had established itself and, in the process, had stirred up land conflicts. In fact, indigenous people had already fought for land more than a decade before the three Control Yuan members came to hear the petitions. Indigenous people were eager to find answers to their land conflicts and grabbed every chance to ask for help. However, the investigations by these three members did not bring any resolutions. With regard to the first petition, the Control Yuan members suggested that the Shoulin Township should carry out an investigation in order to establish whether any mistakes had been made in the process of cancelling the cultivation rights on the land. The indigenous people were disappointed to receive a solution that involved the 'wrong' doer investigating the 'wrong' doing. For the second and the third petition, the Control Yuan members thought that the procedures relating to land title registration for indigenous reservation lands had not yet been finalized and therefore there was no evidence of stolen lands. The land rights in the fourth petition were the subject of a court case and so the members could not express any ideas about the hearing. They did state, however, that if the judge ruled that the land should be taken back from the Asia Cement Company, then the township government could redistribute the land fairly and ensure that it did not fall into the hands of privileged elites.

In addition to these petitions concerning indigenous affairs, a member of the Control Yuan was asked to investigate a project in which the Taiwan Cement Company in Hualien City had extended its production capacity by adding more machines but had failed to carry out the required environmental impact assessment. The case was later taken to a local court where a judge would rule on whether adding machines in this way had, in fact, been illegal. This case attracted a great deal of attention from the media and local people. There were environmental demonstrations and protests to stop the expansion of cement

production that would result in greater pollution in Hualien City. These protests turned out to be the biggest demonstrations that had ever taken place in eastern Taiwan. However, the judge was to deliver a decision that would disappoint local people. His ruling stated that even though the Taiwan Cement Company had admitted to spending 5 million NTD on 'negotiations' with local people in the hope of gaining their approval for the adding of cement machines, it appears that this money never actually reached the people who were in charge of the decision making. For this reason, it could not be seen as a bribe. The cement company boss was acquitted. By the time the judge made the decision, a Control Yuan member who heard the case also believed the case should be dismissed.

All five of the cases examined by Control Yuan members led to demonstrations against state institutions and to local people questioning what was 'legal' and what went against administrative procedures. However, local people remained realistic and did not rest all their hopes for justice on the shoulders of these four Control Yuan members, even though this institution is constitutionally designed to aid the Justice Yuan in delivering administrative justice. Significantly, local people were working together to find grassroots solutions to these issues.

These five well-publicized cases signaled the start of an era – between the 1980s and the 1990s – in which the east of Taiwan, including the Taroko area, became the stage for development with a backdrop of national industry, natural environment and indigenous land rights. By examining these five cases, I hope to analyze how different people and institutions conceptualized and implemented their ideas of development.

7.2 Scenario 1: Development from top to bottom

Taiwan Cement Company in Hualien City

The Taiwan Cement Company was established with the support of the Nationalist Government in 1946. This was at a time when the Japanese had just left Taiwan, leaving behind a number of Japanese initiated cement companies.[21] The

21 After taking over Taiwan following Japanese occupation, in April 1946 the Kuomintang government established the cement industry supervisory committee, and took over the control of Kaohsiung Plant belonging to Asano Cement Co. Ltd. (formerly the Kaohsiung Cement Plant of Taiwan Cement), Taiwan Huacheng Cement Co. Ltd. (Suao Cement Plant of Taiwan Cement), Southern Cement Co. Ltd. (formerly the Chutung Plant of Taiwan Cement), and Taiwan Cement Pipes Co. Ltd. (Taiwan Cement's production plant in Taipei). The Taiwan Cement Co. was established on 1 May of the same year. The company was run, with joint capital, by the former Resource Council of the Ministry of Economic Affairs and Taiwan Provincial Government. On the 1st of January 1951, the company was converted into a limited company. In 1952, the Resource Council was abolished, and the company was run jointly by the Ministry and the provincial government. In 1953, the policy of 'land to the tiller' was launched. 11 November 1954, the company was privatized and bought the three cement plants in Kaohsiung, Suao and Chutung, as well as two cement production plants in Taipei and Kushan. In September 1962, in answer to the government's call for 'capital securitization', Taiwan Cement became the first company to go public on the stock market. It has been 50 years since the privatization of Taiwan Cement. Over this half a century, Taiwan Cement has been involved in major constructions and development at a time when Taiwan was growing strongly.

company was later transferred to private owners, mainly the Koo family who had cooperated with the Japanese government in Taiwan in the commercial and industrial sectors (Sun and Ho et al. 2007). The Koo family were big landlords that owned a lot of real estate. The nationalist government wanted to reduce the amount of land they owned and transfer it to other sectors, for example by using the '37.5% Rent Reduction Contract' land reform policy to promote industrial investment in the agricultural sector (Shieh 2006). The government bought up most of the land and leased it for a period time. It then granted rights to real cultivators in order to stimulate agriculture support and to help peasant families. However, the government also gave stocks to landlords, which were equal to the price of the land taken by government, in exchange for the then nationalized cement company. It was a method of transferring agricultural capital in order to help industrial sectors. The cement industry was defined by the Nationalist government as a national priority, necessary for society and for national military defense purposes. Thus, we see the emergence of a principle policy to protect and help the industry that continues today. The Taiwan Cement Company grew incrementally into a large corporation running cement and related businesses both inside and outside Taiwan. It has always been a highly profitable company in Taiwan. The leaders of the company are seen as important initiators and decision makers in policymaking and implementation. The Koo family's corporations have good relationships with the authorities.

By 1980, the supplies of raw materials for cement production were running out in the western part of Taiwan, so the mining authorities planned to invite cement companies, mainly in the west (see map below), to transfer their production capacity to the east. This policy of 'Going East' was advocated strongly by the then President Li Deng-Hue, who hoped that big industrial companies would stay in Taiwan and not cross the Taiwan Strait to mainland China where they were offering lower costs for industrial investment (Huang, Min-hui 1991). Keeping these companies in Taiwan was a priority for national security, even though many companies had already gone 'illegally' or 'secretly' to China. In fact, a number of cement companies had already gone to nearby countries like the Philippines and Vietnam. It appears that after many assessments, these cement companies had felt it was better to move abroad than to move to the east of Taiwan. Among these companies, only Taiwan Cement would stay in the east and proposed, with the support of the nation, the establishment of the biggest cement industrial district with the biggest production in the world. This was at a time when cement had been defined as a top polluting industry and the least welcome industry in Taiwan. Everybody assumed that Taiwan Cement was sure

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Taiwan Cement was a witness to the 'Taiwan Experience' that resulted from the changes in society and the rapid development of the economy. The paid-in capital increased from 270 million NTD at privatization to more than 32.4 billion NTD (100 times of growth) today. The production grew from an initial 500,000 tons to more than 10 million tons (a growth of more than 20 times). Annual sales amplified from 24 million NTD to 24.6 billion NTD (a growth of more than 100 times). It is truly an example for privatization of government-owned businesses. Electronic document: www.taiwancement.com/english/#About_1_1_3 (last accessed 22 June 2011).

it could profit from remaining in the country, otherwise it would had followed the other companies seeking lower costs and bigger profits abroad.

The Taiwan Cement Company implemented its 'going east' policy in two ways: one was to extend the production capacity of the factory already established in downtown Hualien; the second way was to propose a project to establish a world class cement district in the Taroko indigenous area. In this section I would like to explore how the extension plan for Hualien City not only raised critical environmental issues for the people living downtown, but also issues that local people considered to be human rights sensitive and as having an impact on the land rights of the rural indigenous people. Through this case, I also gained insight into how people in urban areas helped and cooperated with indigenous people in the Taroko area to express their environmental and land rights and how they were propelled to employ different strategies. While the state and the company were set to make profits, the urban civilians were faced with a polluted environment and the indigenous people lost their lands.

In 1992, the Taiwan Cement Co. hoped to extend its production capacity from 200,000 tons to 1.5 million tons a year. Taiwan Cement initially filed the project with the Hualien County Government and then sent it to the Provincial Construction Department for preliminary review. Later, the company was required to produce Environmental Impact Assessment Reports because the Construction Department believed that the project was intended to add more factories. However, this plan was soon changed when the project was reviewed by the industry's higher authority in central government, which decided that the Taiwan Cement project was only about renewing machinery and, therefore, no further environmental impact assessment was necessary. Thus, Taiwan Cement started the construction of a new kiln factory in 1994 with the approval of central government (Chi 1999).This construction soon raised questions and doubts from both local government and the citizens of Hualien. Hualien County Council ruled that the construction should stop because it believed that Hualien County Government had not followed due process and had cheated the citizens of Hualien in order to create an easy route for the company. Meanwhile, a number of local NGOs initiated the 'Love Hualien Self Rescue Association' in order to protest and demonstrate against the Taiwan Cement Project. 'It is an unbearable fact that we have an extensive cement project in our lovely county'. 'Everyone who lives in Hualien should write a letter to the authorities to stop the project'. Slogans and actions like these seemed to work and stimulated a collective campaign expressing people's opposition to the project. In fact, the series of protests organized by the NGOs and local people were so successful that the mayor promised to stop any new construction. However, the Taiwan Cement Company filed a petition stating that the construction should be continued because the whole process was supported not only by the law, but also had the approval of central government. The mayor reversed his decision and allowed the company to carry on with the construction on the condition that the company provided an environmental impact assessment. This reversal led NGOs to accuse the mayor of not obeying the law. The conflict came to a climax during the

summer of 1995. The media broke the news that the cement company was bribing authorities in order to quiet the noise about stopping the construction. Local prosecutors investigated the issue and arrested a number of people in the Taiwan Cement Company. Some high profile local officials had taken bribe money. Later the Ministry of Economic Affairs called a meeting of a number of government authorities to negotiate the Taiwan Cement Company project.[22] This meeting was a public signal that the highest authority was in charge of the renewal project. However, opposition from NGOs and the Love Hualien Self Rescue Association continued unabated. Protests took place not only in Hualien, but also in the capital Taipei in order to raise national awareness of the issue. These protests gave rise to Alliance Fighting against the Taiwan Cement Company. This alliance was joined by a number of members of the Legislative Yuan. The Taiwan Cement Company was so depressed by the relentless opposition that the company's president released a statement to say that they would make no further investments in the project to bring the world's largest industrial cement district to Hoping village. He made it be known that ceasing construction in Hualien would mean a loss of investment amounting to 80 billion NTD. Some leading actors in the commercial and industrial sectors established a financial and economic forum for supporters of the project in order to lobby the government to implement its policy and to stop all the irrational protests. These industrial leaders commented that the environmental assessment and related restrictions on industrial development were now creating a situation where companies would have no choice other than to leave Taiwan. President Li received a petition from these industrial representatives asking for government help to 'go east'. Meanwhile, the head of the Taiwan Cement Company admitted in court that he had used a 50 million NTD fund to subdue the opposition to their project. On 26 November 1995, as many as 5000 people (from the population of 300,000) gathered in Hualien City to protest against the project (Taiwan Environment 1993). The local governments were unable to respond to any of the claims made by local people, but could only obey the central government's orders. In the Spring of 1996, construction finally restarted on condition that Taiwan Cement provide three reports regarding their plans to protect air quality, prevent water pollution and to dispose of waste material. Ultimately, local people had failed to stop the project. The court also ruled that the accusation that the Taiwan Cement Company had engaged in bribery could not be substantiated. In September 1997, construction was completed and the factory started its trial operations. Before long, however, the equipment for collecting dust was out of order and pollution and dust in the urban area became a serious issue. All the local government could do was to impose fines again and again.

It is clear that the local government was weak and unable to stop a highly polluting industrial project supported by the central government. Indeed, this is the first scenario I would like to highlight as a top to down method used to em-

22 On 14 October 1995, the Ministry of Economics hosted a meeting to 'Renew the plan for Taiwan Cement' for all the authorities concerned.

bed cement and related industries into indigenous areas. In fact, the Taiwanese constitution is written in such a way that the counties are weak (Chang, Ji-Wen 2003).[23] Local government has little power in relation to national industrial policy and pollution control. That said, there were a number of cases at this time involving other counties that show that the local government was able to negotiate an outcome on pollution control between national policy and industrial profit seekers. For example, a case in Yi-Lan County in the north of Hualien County whose mayor, Dr. Chen Ding Nan (陳定南), insisted that the Taiwan Cement Company commission an environmental impact assessment and only signed a contract with the company on the condition that pollution was controlled and profits were shared. Yi-Lan County also stipulated a special rule called 'Control Methods and Rules Concerning New Cement Factories (Chang, Ji-wen 2003)'[24] in order to ensure that cement companies fall under the control of local government. This example showed that local county government could have a say on environmental matters and profit sharing in the processes involved in setting up highly polluting industries. Yi-Lan County acted more forcefully than Hualien County, insisting on local benefits. Yi-Lan County had a mayor from the Democratic Progressive Party (DPP), and Hualien County's mayor was a member of the ruling party. Yi-Lan County fought for the indigenous area in its county despite the institutional and legal limitations. Hualien County, however, felt compelled to obey the decisions made by central government, even though many of its citizens were pushing for a local perspective on the project.

Industrial mining and landscape conservation were issues subject to constant debate. In the Yi-Lan case cited above, we see the difficulties the cement giants faced in choosing a location for their expansion. Yi-Lan County was now out of the question, as were other urban areas. The company decided against relocating to China. The final option was a move to the indigenous area where, in theory, there were less people with less loud public voices and, moreover, land was much cheaper. The head of the company added pressure to the situation by announcing that if the extension planned for Hualien City did not go ahead, the

23 The Yi-Lan County case highlighted the limits on the autonomy of county government, and the fact that a ruling on a county's desire to control industrial pollution from industries was not supported by any laws at that time.

24 The concept of a 'Convention of Environmental Protection' adopted by the Yi-Lan County originates from examples in Japan where local governments signed conventions with companies on the prevention of pollution. The earliest cases in Japan can be traced to the signing in 1962 of a Memorandum on the Convention of Environmental Protection between Shimane county government and a number of paper and textiles companies. The signed Memorandum rules that the process to construct the factories should follow administrative procedures and ordinations related to building of equipment and dealing with waste water. If pollution occurs, compensation should be paid according to the standards the governments have set. However, the case that really showed the effectiveness of the Convention of Environmental Protection was the memorandum signed between the Yokohama City Office and a power plant that set out rules on the prevention of pollution. This convention was later adopted as a model all over Japan; hence, it is now called the Yokohama Model (see Yi-Lan County Office; see also Chang, Ji-wen 2003 'On Basic Problems of Administrative Contracts relating to Environmental Protection' in www.iolaw.org.cn/showarticle.asp?id=543 2003-12-18 10:08:10.

company would withdraw the 80 billion NTD investments it was making in the indigenous village of Hoping and it would seek to shift its operations to mainland China. This threat was enough to exert pressure on central government, which then promoted the project in Hualien City and expressed its hopes that the Hoping Cement Industrial District would proceed and bring more profits for the company and central government.

7.3 Scenario 2: Taking indigenous lands legally for the national project

Cement companies were not confronted by indigenous people's environmental claims until the late 1990s. Prior to that, they had faced land rights issues relating to indigenous communities where cement production was embedded. The most renowned company is the Asia Cement Company, whose board members include top officials from central government. As mentioned in Chapter 6, establishing cement factories resulted in the loss of cultivation and ownership rights on indigenous reservation lands. The Asia Cement Company established itself in Shoulin Township in the 1970s, at a time when environmental concerns were much less of a priority than the drive to develop the economy. The company was welcomed by the township and the government created convenient paths for the company to rent indigenous lands that were already being cultivated by indigenous people. If the deeds handed over by the township government were issued in accordance with the Indigenous Reserve Land Procedure, then the expropriation and the cancelling of the cultivation rights would be clear and complete, i.e. the indigenous people would understand clearly that they would lose their land after taking the expropriation money. It should also be clear that the money taken was not meant as rent for the indigenous people from the company, but rather it was a private expropriation relating to the plants and the housing complexes built on the land for the companies' staff and laborers. The cement companies should only pay rent to the government, which actually owned the land once the indigenous people had given up their cultivation rights. The money the indigenous people received was to compensate their superficies and cancel their legal rights. It is important to note that the Asia Cement Company was welcomed by the township government and given priority because the township government understood that it would provide income for the area that would ameliorate the township's problematic financial situation.

7.3.1 Chong-Der Industry District

Renting lands for mining in indigenous areas was much cheaper than renting in urban areas. Furthermore, the Indigenous Reserve Land Procedure had actually created space for non-indigenous people and corporations to mine. In fact, the scenario of indigenous people giving up their cultivation rights in return for expropriation money, and the land being handed over to the state and then rented out to corporations, was a popular way to access cheap land for the min-

ing industry. This scenario was also adopted by another giant corporation, the Wang's Formosa Plastic Group, which wanted a share of the highly profitable cement industry market in the early 1980s when the central government planned Chong-Der village as a mining district.[25] The Wang corporation was so eager to start its investment in the east that it began to secretly 'buy' land from indigenous people. So far, the only explanation for why Wang kept these purchases secret is that the corporation was not allowed to buy land from indigenous people because it actually belonged to state. The money Wang paid to indigenous people was private expropriation for the loss of plants and ownership (Economics Daily News 1981).[26] Consequently, this meant that Wang had not actually obtained the land. He had no legal deeds for the land, but rather had only obtained a private contract or a memorandum between the corporation and the indigenous people who were only tenants of the township land. It appears that at the time of purchase a number of Wang shareholders worried that they would not own the real estate even though they had paid the money to the land owners. They suggested that Mr. Wang should not proceed with the purchase. Wang, however, was acting under the impression that the Asia Cement Company had followed the same processes to obtain their land with explicit permission, so there was no reason the Wang Corporation could not do the same. In fact, cen-

25 In 1984, The Executive Yuan passed the East Area Multi-Development Project that would transform the villages of Sinchen, Pratan and Chongder and Hoping into a mining district.

26 A news report described the fights among shareholders and the head of the Formosa Plastic Group, Mr Wang. The fights were on the issue of buying lands from indigenous people in order to proceed with the construction of a cement factory in Chong-der village. Some shareholders suspected that the buying of indigenous reservation lands was not legal so the money that Mr. Wang had paid to the indigenous people could not be returned. These shareholders believed that the loss of the money should not be included in the company's accounts in the balance book-keeping of the company. They argued that the loss should be paid for by Mr Wang and not the shareholders. In the shareholders meeting, there were serious arguments and Mr Wang insisted that he had purchased the indigenous reservation lands for the development of the company and not for his own private reasons. Mr Wang insisted that purchase was legal because he thought the reservation lands had been granted to the indigenous people for agriculture. Having been granted rights to cultivation for 10 years, the indigenous people would automatically be granted ownership of the reservation land. Mr Wang mentioned that he believed he was buying lands that had been granted full ownership rights, but that later he discovered that the township office had not granted ownership to those sellers who had taken his money. He said he had no idea about whether the land he intended to buy would be converted into industry lands, but he thought it would be cheaper to buy at this stage because he believed there would be less risk of losing money than if he bought property that had already been converted into industrial lands. Mr Wang decided to run the risk of buying in advance, even though it was illegal. One of the shareholders in the meeting insisted that Mr Wang's reasons were unacceptable and that the shareholders should refuse to share the loss. One of Mr Wang's legal consultants said that even though the purchase appeared to be illegal, according to article 246 of the Civil Code: 'If the presentation of a contract is impossible, it is void. However, if the impossibility can be removed and if the parties, at the time when the contract was constituted, intended to have it performed after the removal of the impossibility, the contract is still valid. If the contract is subject to a suspenseful condition or to a time of commencement, and if the impossibility has been removed prior to the fulfilment of the condition or the deadline, the contract is valid'. So even though the purchase was not illegal at that time, Mr Wang's desire (wishful thinking?) to obtain the legal rights to the reservation lands he had bought from the indigenous people in Chong-der village was quite clear. (See *Economics Daily News* 1981-04-03 page: 7).

tral government had provided a budget of about 360 million NTD in order to take over and cancel cultivation and ownership rights from indigenous people and to clear the land for the proposed industrial district so that it could lease it to those corporations who wanted to invest. In simple terms, the government would buy and take indigenous land for corporations. According to this central government policy, Wang did not have to spend his money on accessing land. Local rumors suggested that Wang paid the money in a bid to jump the queue and gain priority in terms of renting the land from the township. If the government really wanted to buy the land to provide an industrial district, the government would buy the land from Wang so that Wang's corporation would profit first from selling the land. For this to happen, Wang first had to make sure that the town hall would rent the land to his corporation. Local gossip had it that the Wang Corporation already had a promising agreement with the township government leaders. The agreement meant there was no need for bribery. Besides, the township government had never said 'no' to cement companies in the past. In fact, Wang had such great expectations regarding the costs and profits for his cement factory that he thought his future production costs would only be half that of what could normally be expected. This price undercut other players in the cement industry. Legislator Huang, Shin-Chieh (黃信介), who had previously worked in the cement industry, said the price had always been controlled by the alliances built in the cement industry that balance the production and price (Fan 1993). Wang was accused of being naïve for thinking he could enter the market with a liberal spirit and not be confronted with many obstacles. Ultimately, Wang's deal failed because it was decided to establish the Taroko National Park and the indigenous village of Chong-Der was located within this area. Wang lost the money he had spent 'buying' the land. The central government's decision to set up a national park was an effort to demonstrate that Taiwan was willing to conserve its nature, under international pressure for conservation and, in particular, the US Pelly Amendment.[27] This conjunction between industry and natural conservation left central government with a dilemma because large corporations and local rent seekers had made considerable investments in the plans for an industrial district. As previously stated, ultimately the government decided to include Chong-der village inside the Taroko National Park.

27 Since 1971, the US has stipulated the Pelly Amendment as a legal basis for imposing economic sanctions on those countries who violate the International Whaling Commission (IWC) or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In 1993, the US used the Pelly Amendment to impose sanctions on Taiwan, which it accused of trading in rhino horns and tiger penises.

7.3.2 Hydropower plant projects inside Taroko National Park

With respect to the conflicts between economic development and landscape conservation, the Chong-Der Cement Industrial District project was a significant case as Tseng's study has shown (Tseng, 2002). On 22 July 1983, the Interior Minister , Lin, Yang Kang (林洋港) and the Minister of Economic Affairs, Chao, Yao-Dung (趙耀東) went together to visit Chong-Der village, the site of the planned project to build a cement industrial district. The purpose of their visit was to assess the project's impact on the environment and the landscape inside the planned Taroko National Park. There was a debate between these two ministers regarding whether the development of the industrial district was more important than the conservation of the area. The Interior Minister said he was going to support the industrial project for three reasons: 1) Taiwan had limited space but a high population density, so resources are always scarce. Therefore, it was not possible to set up a national park to the same standards as, say, the US where there were plenty of both resources and vacant lands; 2) all the dealings with government must take into account the rights of the citizens; thus, the government must also take into account any potential losses for those who had been granted mining rights. 3) With the development of modern mining technology, mining companies could avoid damage to the landscape and so it is possible to follow a policy of both industrial development and conservation (ibid).

This idea to meet the needs of both sides was popular with citizens in Hualien County, and a poll in 1984 showed that 44.8% of the population was hoping to achieve this kind of consensus. In the same poll, only 12.3% of the population put more emphasis on the conservation of landscapes than on the mining industry. This opinion was also emphasized by the then Minister of Economic affairs, Chao, Yao Dung (趙耀東). Later it turned out that the pro conservation policy for Taroko National Park was chosen by the Prime Minister Yu, Koa-Hua (俞國華), who also determined that the Wang Corporation's cement industry district project should come to an end.

Sociologist Michael Hsiao described this dilemma as 'schizophrenia' (Hsiao 2001); whether to emphasize environmental concerns and conservation, or focus on industry to bring economic growth. The Taiwanese government was also faced with a choice between the environment and the economy. A project initiated by the National Taiwan Power Corporation to build dams for generating electricity that exceeded the actual need of the local population in the east is another example. Surplus electricity was to be sent to the west of Taiwan where demand was high. Rumor had it that the extra power was actually to supply Wang's planned development in Chong-Der village. There appears to have been cooperation between private companies and government in order to see the construction of a dam for another of Wang corporations, the Formosa Petrochemical Corporation, in the west of Taiwan.[28] A hydro power plant was planned for

28 The building of these petrochemical factories is considered by many scholars to correlate with dam construction by the central government in order to provide water to the Formosa Petro-

the LiWu (*Tatsukili*) River inside the planned Taroko National Park. In fact, from 1974 onwards, the Taiwan Power Company had already invested about one billion NTD (total investment would be 50 billion) on the construction of roads accessing the dam areas because central government had granted permission for the power plant project to go ahead.

At the moment when the government decided to back the plan for a National Park (Huang, Yueh-wen, 1999),[29] this power plant project was made the subject of another review that gave local people and local authorities a chance to put forward their arguments for and against the project. Once again there was a dichotomy – landscape or industry. While there was debate about these issues, there were no strong opinions expressed by indigenous governments or people, probably because the land included in the project did not legally belong to indigenous people but to the Bureau of Forestry or the future National Park administration. Some indigenous people still insisted on zoning in order to maintain hunting areas and protect the hunting rights of indigenous people inside the park, but this idea was quickly rejected by the Prime Minister Wu, Po-shung (吳伯雄), who insisted on the enforcement of the Wild Life Act.[30] The project to extend the hydro power plant was later stopped for conservation reasons. In fact, there were still Japanese built water power plants working generating extra power to be sent to the west in the same watershed. These old dams and power generators continued to work, so they maintained the status quo of the existing power plants in the Taroko National Park on condition that no new plants were built (Taroko National Park Headquarters 2007). Thus, the state was establishing national parks but did not eliminate the damage or expel the polluters, especially big companies like Asia Cement, from mining areas (see the cover picture showing the cement mining landscape at the gate of Taroko National Park).

chemical Corp.

29 Taroko National Park is the National Park in Taiwan. Taroko had been considered a candidate by the colonial Japanese government. But the establishment of a formal national park in the area was stopped in World War Two. In the 1960s, the Nationalist government also planned to set up the national park but there was no legislation to support the plan. In 1972, the National Park Law was passed and the Taroko National Park was the first candidate for national park status. In 1979, the Executive Yuan accepted a multi-development project for Taiwan (台灣地區綜合開發計畫) to promote the conservation of the area now inside the Taroko National Park regime. In 1982, the area was promoted further with a project to develop tourism (觀光資源開發計畫) and to conserve the area's natural resources.

30 On 6 November 1994, the commission conference was headed by the Minister of the Interior, Wu Po Hshiung. The commission backed the plan to set up plan the Taroko National Park. The principle of 'conservation above all' was adopted, but the park plan also included 3000 more hectares of cement mining areas and indigenous reservation lands. As for the request from the local indigenous people for exclusive hunting areas, the commission used the Amendments to the Wild Animals Act (1994) in order to deny the claim.

As Tseng (2002) has observed:

> Under the goal of the National Park, the execution of those development projects has been restricted. However, the aim of environmental protection through the Taroko National Park seemed incomplete, especially when the regional and national policies have collided with each other at the same time. Then we may conclude that at this moment, the projects of regional environmental protection have to give priority to the economic policies for national development.

7.4 Scenario 3: Periphery Indigenous Area for Polluting Industry

7.4.1 Indigenous land rights vs. industrial development

The cement industry was seeking to profit from production on an island-wide scale. The plan to establish Taroko National Park appeared to prevent cement industries from encroaching into indigenous areas and the Chong-Der project and a number of other plans put forward by small-scale cement mining companies were rejected. However, when Wang's Corporation was 'buying' lands in the village of Chong-Der, the Koo family's Taiwan Cement Company was also 'buying' lands in the Hoping area where another industrial district especially for cement was being planned (Legislative Yuan 1999:1889). In retrospect, we can see this as evidence that there was an implicit recognition among investors in these industries to specialize or monopolize in different areas (Taiwan Cement in Hoping village and Wang in Chong-Der village), with a view to future profits. Wang lost his battle in Chong-Der, but Taiwan Cement was still buying and renting lands in Hoping village with the aim of creating the world's largest cement company. In fact, before the policy of 'going east' was advocated by the central government, many investors had smelled the possibility of profits that the future cement industry in the east would bring. On 24 May 1986, the central government decided on a national project to help prolong the cement industry in order to cope with a future shortage of cement resources in the west.[31] The national project clearly intended to transfer the cement industry to the east. From this time onwards, many people began to enter villages and a 'black' land market developed that adopted methods of cancelling the cultivation and ownership rights of indigenous reservation lands in order to form a 'hot' market that, in fact, was not allowed by law. These speculators were actually expecting to receive an extra 40% more expropriation or compensation money for land and to compensate surface damage. Those who were able to 'buy' indigenous reservation lands first would profit first if the land, originally designed for indigenous people

31 The Executive Yuan passed the 'Project on the Longitudinal Development of Cement Industry' (水泥工業長期發展方案) to cope with the lack of cement sources in the west of Taiwan and promote the 'going east' policy for cement industry.

to use for agriculture, was promoted to more valuable industrial land. Thus, we see the promotion of an investment strategy to buy indigenous lands in the east where cement industrial areas were planned. The trading of indigenous reservation lands was basically illegal, but local governments turned a blind eye as they wanted to invite capital to invest in the exploration of the natural resources in indigenous areas. Mining was particularly encouraged. While the law was trying to pave the way for indigenous people themselves to invest in mining, the reality was that they simply did not have enough capital or knowledge to start a mining project. Consequently, it was non-indigenous people and capitalists arriving on indigenous land to mine. The government was so eager to promote mining activities that mining law was even more powerful than the Indigenous Reservation Land Procedure. If a mining company obtained the leasehold from the relevant authorities, the owners of the land would have no further rights or claim on the land.[32] This phenomenon was so popular in indigenous areas that many indigenous people worried that the Reservation Land Procedure was no longer able to protect indigenous people's land rights and, in fact, helped capitalists to profit even more.[33] At this time we see many similar issues and land conflicts raised by various indigenous peoples and groups and eventually they came together to form the 'Returning My Land Alliances of the Taiwan Indigenous Peoples' (台灣原住民族還我土地運動聯盟) in 1988. The movement started primarily in the west of the country where land conflicts had already been more serious than in the east. The movement started at the time the Chong-Der cement project was rejected by the government. The movement was promoted by some Presbyterian pastors who began to worry about the loss of indigenous land (Economics Daily News 1988).[34] But their initiatives relating to the return of land in the east ap-

32 Chapter 3 of the Mining Act, concerning the access to lands for mining, had been amended in 1959 to say that mining rights grantees could use the lands of other owners under certain conditions. Concerning the access to land usufruct, one article stipulates that the right to land usufruct could be granted when necessary. As a result of the amendments to these two articles in 1959, we see the possibility of land owners or occupiers losing their land rights to miners without any conditions. In article 65 of the Mining Act, if the land has been designated as suitable for mining, then the miners can make a contract with the land owners. If contracts are not able to be negotiated, then either side can request the authority to judge on the negotiation. This article was further supported by a new amendment in 1978 stating that if either the land owners or the miners could not accept the negotiation by authority, either side could bring a case in court; meanwhile, the miners could start to use the lands for mining provided that they had set aside a budget for compensation in the event that the case was accepted.

33 In 1960, the then Mountain Reservation Lands Procedure of Taiwan Province contained an article ruling that legal private or public run mining, agricultural, fishery or herding companies or corporations could be allowed to access reservation lands on the condition that the management plans were accepted and acknowledged by the provincial government. When the reservation lands were not used by indigenous people, the province office could lease them to non-indigenous investors.

34 On 15 April 1988, many indigenous people joined the 'Return my lands' movement. In the east, indigenous people focused on the project of Chong-der and Wan-long Industry District to check whether investors would actually fulfill their agreement to provide a compensation package. An indigenous legislator Mr Li, Tien-Shen expressed that the 'Return my lands' movement was being promoted by Presbyterian pastors and representatives from all levels of local and central parliaments. The movement focused on the problem of the misuse or misappropriation of reservation lands (see Economics Daily News (經濟日報) in 15 April 1988).

peared to raise little local response. Many speculators from inside and outside the indigenous areas were still expecting profits because they had invested in the process by obtaining or buying indigenous lands.

When Wang's project was rejected by the government, members of the local Shoulin Township Representative Council immediately submitted a petition to the central government to find other places to locate the cement industry district in Shoulin Township. In fact, these members of Representative Council were from Hoping village which was thought to be the best possible location for the cement industry in Shoulin Township (Sinotech Engineering Consultants, Ltd. 1984: 0-2~0-4). A report said that Hoping village scored as the best candidate for the cement industry because it would save on transportation costs. The mining area could be combined with the industrial areas where land was relatively cheap and where population numbers were low. The area required for the cement industry was about 400 hectares. Thus, the cement industry would also concentrate itself in this village in order to limit the environmental impact. At that time, the cement industry in Taiwan was spending about 8.7 billion NTD per year on medical costs; however, if it was moved to the east, to Hoping, it would spend only about 2 million NTD per year (Liu, Yan-zheng 1995: 75). Locating to Hoping was also seen as a way to control the impact of pollution in a concentrated area, resulting in the least cost to society (Lee, Chou-han 1998: 93).The project in Hoping was assessed to be so profitable that it soon gained support from central government, which was coming under pressure on environmental issues as well as economic adjustments at that time. The concentration of the cement industry in Hoping would address both of these issues. Thus, even though it was inside the coastal conservation area and near the Taroko National Park, the project was approved in the Six-Year Planning for the National Construction Projects in 1991 (Huang, Yue-wen 1999a; 1999b). Construction began in the industrial district in 1994 but there was strong resistance from environmental organizations. The Hoping Industry District was set up in an effort to concentrate the national cement industry. The pollution would be concentrated only in this small indigenous village which was thought to be acceptable by local politicians, who hoped for industrial development.

7.4.2 Environmental rights versus industrial development

The decision by central government to set up the cement industry in Hoping soon caused discontent among environmental NGOs, including the Taiwan Environment Protection Union (Hualien Branch). These NGOs engaged in a struggle with legislators to fight against the cement industry that was encroaching on both the urban and the remote indigenous areas of Hualien. The environmental protestors were proposing alternative options for industrial development. They disclosed information to suggest that the cement industry project was just a Trojan horse for other projects, including the building of coal-fired power plants which were not mentioned in the original project. The special industrial harbor in Hoping was also close to important ecological conservation areas. The cement industry also needed other materials like clay that could be excavated in adjunct villages. This, too,

would have an environmental impact. The issue that was of the greatest concern to the environmental alliance was the planned levels of cement production. The targets also included potential exports to Southeast Asian countries. The planned profits and production capacity of Taiwan Cement were sacrificing indigenous land rights and would have serious environmental consequences.

In 1990, a severe typhoon caused a big landslide in the Taroko village of Tongmen (銅門), and more than 20 people lost their lives (Ceng 1998). The landslide and the damage were taken as a sign of too much destruction in the upstream part of the watershed. For the environmentalists, it was a clear example of how an industrial-scale taking of natural resources would bring catastrophe. The Environment Protection Union Hualien Branch initiated public hearings in the villages that were going to be affected by the cement industry. But these actions could not change the decisions already made by central government, especially since the President was advocating a policy of going east. In August 1990, officials from the Bureau of Industry and the Ministry of Economic Affairs had a meeting with local representatives. They arranged a meeting to discuss the environmental impact assessment that had been carried out in order to obtain consensus from the local people. However, critics said the meeting had not be sufficiently announced and did not give enough people a chance to express their concerns about the establishing of the cement industry in Hoping village (see a report by the Eastern Taiwan Students Alliance 1990). As with the example of the urban cement extension discussed in previous sections, the county government and the mayor would not speak out against the central policy. Thus, they failed to negotiate the processes of setting up an industrial district with due attention to the environmental consequences. Local politicians were so keen on welcoming the industry that opposing opinions were silenced with threats of expropriation or promises of compensation money. The central role played by power and policy elites in this situation cannot be neglected. Even public opinion inside the village was controlled in order to show a welcoming attitude to the cement companies. The money promised for compensation or for expropriation increased and for the local indigenous people it was a huge amount. Indeed, the compensation money that the local indigenous people could obtain for the loss of their reservation lands was sufficient to buy a house in the city of Hualien. It is an amount that the indigenous people did not dare to imagine, especially since they believed their reservation land was far cheaper than the normal price for real estate in the liberal land market. Inevitably, the indigenous people were attracted by the compensation and this once-in-a-lifetime opportunity to receive such a large amount of money. They did not care so much about the reallocation plan that would, in effect, move them into a polluted area in the cement and power plant industrial district. They gave up their support for the environmental NGOs fighting against these industrial developments. In fact, the only protests raised were those to ask for compensation rights for those locals who had sold their lands to profit seekers prior to the whole project. Some profit seekers even took land from the indigenous people for very low payments while waiting for compensation money that was thought to be much bigger than the money actually

paid for the land. Some locals considered this to be illegal. These land 'thieves' used the law to obtain lands that originally did not belong to them.

7.4.3 Indigenous land rights versus money

Some local people were very concerned about the environmental impact that would be brought by the cement industry. But the major focus of the environmental activists was the project to expand Taiwan Cement in the Hualien area. Anti-cement voices in local indigenous villages seemed to be silenced. When the Taiwan Environment Protection Union Hualien Branch was showing an environmental movie to explain the negative impact of the cement industry in Hoping to the local indigenous people, they were threatened by an indigenous township Representative Council member, who urged the union not to show the movie anymore. This Township Representative Council member was later accused by local people of buying reservation lands while hoping to get profitable expropriation money from the government. In fact, he was not the only one who was accused of taking reservation lands. The chief of the township was also accused of taking land in the name of his relatives who had no connection to the land. What worried local people most was that some indigenous people had not completed the registration processes proving ownership of the reservation lands. Thus, they would not receive expropriation money. As a Presbyterian pastor said, at that time what people worried about most was the amount of expropriation money on offer because many people had invested a great deal to obtain the lands. A former chief of the township has said that the county Representative Council member living in Hoping was expecting compensation of more than 100 million NTD. It is no surprise that she would give her support to the cement industrial district if she was going to be a 'millionaire' overnight. It seems clear that the governor of the township and a number of local politicians promoted the setting up of a cement industrial district because they would profit immediately and receive millions. Local officers, on the other hand, welcomed the industry because it would apparently provide some 3000-4000 jobs for local people. In order to counter the lack of local consensus, the township conducted a public poll that showed that there were only a few non-indigenous inhabitants – Han people – who were opposing the cement industry. Their prime reason was that those Han people could not receive the full expropriation money because they were not able to be registered as reservation land owners (United Daily News 1993:3). Most of the inhabitants would receive expropriation money that amounted to, on average, 4.5 million.[35] For most of the families, 4.5 million was an overwhelming amount of money that was very attractive to them. This was a time when poverty was rife in the area. Young people were leaving for the urban areas because agriculture no longer held any promise and things became so dire that young women and even children turned to prostitution in the indigenous

35 The total compensation money was 1,956,757,044 NTD and the average money every family could receive was 4.29 million. This equated to 1.15 million per capita.

areas. Indigenous parents 'sold' their children to brothels in cities. If land could be transferred into money that could save people's lives, it was hard to reject the seductions and temptations of such large amounts. As pastor Kau said, the industry was so welcomed that the protests against the government were concerned only with increasing the expropriation payments and not with pollution issues (United Daily News 1993:3). In 1993, the expropriation money was distributed among the villagers and soon the village was 'awash with money'. The money was so powerful that the environmental concerns being put forward by NGOs and some indigenous people based on their experiences with the Asia Cement Co., were no longer considered relevant. As an indigenous leader who was making alliances among various indigenous villages said, 'See! We were defeated by money again!' It was also a time when the protests against the expansion of cement factories in the Hualien city were defeated by the national industry policy promoted by central government and the big companies. The little group of protesters consisting of students and some indigenous intellectuals soon lost its energy. In July 1993, the Bureau of Industry issued an order to take the lands needed to implement the extension policy.

People always tell two stories to show how the village was 'awash' with huge amounts of money.

Story 1

The people who received the compensation money were so rich that they carried around large packets of cash that they did not know how to put in a bank. They used large notes to buy little things. There was one man who used a 1000 dollar bill to buy a pack of betel nuts worth only 50 dollars. When the sales girl was looking for change to give to him, he just said 'keep the change' and left.

Story 2

The people were so rich that they carried around large packets of cash, which attracted many car salesmen to bring their Mercedes or BMWs to the little village to sell to these tycoons. These tycoons would pay in cash. But they would soon destroy their brand new expensive cars because they would also be drinking too much to drive well (Economic Dairy 1988: 7).

These were the two stories most often told in adjunct villages among indigenous people expressing sarcasm about those indigenous people who spent their expropriation money in a matter of days.

Some indigenous people believed that the reason why the money was used up so rapidly was because it was it violated the *gaya*; the promises made by the ancestors not to sell or let go of the lands. The money was seen as 'dirty' and so it had to be shared or spent as soon as possible. The money was from the land that used to support the people, so the money should be shared among the people. The money was from the soil that would become concrete and cement. It was interesting to see that indigenous people symbolized the money as a loss of *gaya,* but it is sad to see the loss of land and the life it supported. In fact, many indig-

enous people complained that the job opportunities that the government and the company had promised never materialized. Only a small number of indigenous people were employed by the company who were looking for more educated workers. Indeed, the company only hired around 100 employees in total. This fact frustrated many indigenous people greatly. They felt cheated by the government and the company. The image of development they brought was like a castle in the air. As a villager said to me, 'money is not concrete at all in indigenous people's pockets. Land became concrete and brings treasure for big companies and governments. Indigenous people who lost their lands would be like an egg without shell that is without protection at all'.

With the construction of the Hoping cement district, designed to bring profits for the company, we can see that the area was almost completely under the control of the companies. A gasoline power plant was soon built and a special harbor was constructed for the export of cement. Many profit seekers were eager to rush into this area and huge amounts of capital was made available for investment. A power plant project developed according to a similar kind of scenario: local land rights were sacrificed to make space for profits. A court case (see case 1154, 2001) took place in which the accused was charged with avoiding an environmental impact assessment that was necessary for setting up a power plant.[36] The building of the harbor was also accused of providing local politicians with the opportunity to earn large amounts of expropriation money and of failing to recognize small stakeholders who were living from ocean resources (Hsieh, M.S, 1997).

In Hoping's case, indigenous reservation land rights were sacrificed for the priority given to the industry even though the reservation land procedure had been designed to help the indigenous people survive through agriculture. Ultimately, however, in the spirit of promoting industry, the government used money to acquire the land. The question of whether compensation could really substitute the loss the indigenous people have suffered is not easy to answer. Below I will outline the other costs of development that have been shouldered by indigenous people.

As Chi mentions, indigenous people were forced to bear all the costs of development, including the development of the national parks (Chi 2001, 2002). These costs manifested in the ban on mining, fishing, hunting and gathering wild flora; restrictions on the transformation of land surface; and restrictions on all construction works. To most indigenous people, the establishment of the national parks brought no benefit to their communities. On the contrary, their traditional economic and cultural activities have been seriously restricted and their lives have been made much more difficult. Chi(2002) and Wang refer to a number of examples that are often reported from the field: 'one farmer was cited and fined 1,200

36 See the case 1154, 2001(90,訴, 1154) by Taipei Local Criminal Court: in his summing up, the judge stated that he believed the reason why the Fubow power plant in the Hoping area was not built on schedule was that the local government resisted making a decision on the environmental impact assessment. So the reason to stop the building was out of the expectation of the buying plan. According to this information, it seems that the industry investors were certain that the environmental impact assessment would be approved.

NDT for trying to remove a big rock from his field with a powerful machine without prior approval. Another farmer complained that he wanted to remove a tree that stood in the middle of his field but the park administration did not allow him to do so. Many people felt very angry about the fact that they were not allowed to do anything about the monkeys and pigs that were constantly destroying their crops. We also found that indigenous people's resentment of national parks was amplified by a feeling that the National Park administration discriminated against them. Take mining as an example, while many indigenous people have been fined for picking up only small quantities of precious stone in the park, many big mining companies still continue to operate inside the park. National park administrators argued that these companies had been mining before the setting up of the national park and that they had valid mining concessions from state authorities. Indigenous people responded to this by saying that they have been living there and undertaking all kinds of activities in the area for hundreds of years, well before the mining companies started their operations, and also before the national parks were established. Now these activities were forbidden.

7.5 Scenario 4: Local resistance by the township office in Pratan Village

In the cases where the state played a big role, we found that local governments and people were suppressed by a central government that insisted on making the economy a priority. Thus, environmental and land rights were sacrificed for the sake of industry. That said, people were not so frustrated that they lost all their energy to fight back and claim their rights.

The history of the village of Pratan demonstrates an indigenous social movement that was not just based on land rights, but that also involved the needs of a healthy environment. This makes it different from the cases in those indigenous areas we have discussed in previous sections. Pratan also suffered from the losses of reservation lands and from air, water and noise pollution caused by the cement and mining industries for more than 35 years. Pratan was like other villages in this township where there was a boom in the encroachment of non-indigenous capitalists. These capitalists were able to find 'legal loopholes' that actually gave the Taiwanese government, as well as Han Chinese individuals and corporations, access to indigenous land (Simon 2002). While the people in Hoping were still expecting a large amount of money to compensate them for their losses, the people of Pratan had already realized that the promises made by the cement and mining companies were hollow. The cement industry did not bring employment opportunities and development to the community; instead, it caused out-migration of young people. As Chang's study concluded, the cement industry's policy of going east had not brought positive development; it had actually only brought negative effects to the east (Zhang, Z. Y. et al. 1994: 124). The people of Pratan village had realized that the cement and mining industry had only delivered pollution and damage to the environment.

採礦危及生命財產安全
三棧居民將有下波抗爭

【記者曾守仁／秀林報導】惟恐富山石礦公司在三棧北溪山區採礦而危及生命財產安全的秀林鄉景美村三棧社區居民，經一度邀集相關單位人員實地會勘及兩次向縣長王慶雲陳情均未能如其所願後，於前日晚間在三棧社區活動中心召開一場座談會，決議「可能」將依集會遊行法程序，向警方申請合法的「遊行」活動為下一波的主要抗爭行動。看來此一事件在短期內尚難以平息。

這項研討會由三棧社區發展協會理事長林樹金主持，與會的社區居民約三十餘人，而目前也出現在花蓮縣議會陳情現場的立委施明德委稱前要艾琳達也出席了這項會議，艾琳達表示，她會站在公正客觀的立場，幫助當地原住民朋友爭取該有的權益和保障。會中原則上通過以向警方申請合法「遊行」為下一波主要抗爭行動，但在此之前，也可能於十八日的縣長親民時間第三度陳情，或十九日與相關業務單位（礦務局為主）再度協調後，視狀況而定，如仍未能獲致他們所最希望的回應，礦區全面停工），則將決定「遊行」的細節事宜後走上街頭。

另據瞭解，此間業者富山石礦公司董事長劉瑋林，也積極地與三棧社區居民不斷進行善意的溝通與協調，故此一事件的發展如何？仍有待進一步觀察。

87.2.17

Photo 7.2
Local news pay attention to the Dangers brought by the Mining Co. in Pratan. Kensheng Daily 17, February 1998.

7.5.1 Indigenous Reservation Land Rights vs. industry in Pratan

As a man from Pratan said, 'The land here was indigenous reservation land; the leaseholds were in the hands of the township government. It is obvious that the leaseholds to the cement and mining companies were illegal deeds'. Like the case involving Asia Cement, the land rights for cultivation were just cancelled with the payments of small sums of money. This did nothing to resolve the land conflicts. Generally speaking, there were four types of land conflict caused by the leasing: one was the length of the lease term that both sides forgot to update and thus it seemed to be limitless; second was the failure to compensate the rights of the people who deserved the expropriation money; third was the occupying of extra land that was not included in the original lease; and fourth was that the mining authorities and township governments had not dealt adequately with the pollution and illegal lease problems. All four were common issues raised by local people and politicians during the time when the slogan 'going east' was strongly advocated. It was also a time when Hualien people were expressing their resistance to the extension of the cement industry in their area. In this period, 1988-89, indigenous people initiated and joined two waves of social movement demanding the 'return of my land' and organized large-scale demonstrations and protests in Taipei. These two waves of social movements had some effect in terms of compelling the government to consider giving back some land to indi-

vidual indigenous people (Yang, Lin-Hui 1996; Chang, Dai-Ping 2000; Wang, Ming-hui 2003). But to the disappointment of most of the activists, the government response paid only lip service and it gave no real attention to the claims of the indigenous people. The notion of 'natural rights' put forward by indigenous people was not understood and accepted by the government. The concept of 'natural rights' – that indigenous rights are based not on substantive or national laws, but on natural laws – appears to have been inspired by the international indigenous movements of, in particular 1993, when the UN proclaimed the year as the Year of Indigenous Peoples. Later, it was transformed into a 'Decade for Indigenous Peoples' to promote collective human rights. Indigenous activists argued strongly that indigenous societies had existed long before the state came into being, no matter whether it was a Japanese or Nationalist state. Whereas, the theory of natural rights seemed to have its origins in local indigenous society, especially in the Taroko area. Taroko was originally the place name used by outsiders, including the Qing Dynasty and the Japanese colonists, to indicate an area where many different communities lived largely devoid of government control. People in this area shared the experience of being treated as a special area with little direct control. What played a key role was the war between the Japanese army and the people inside the area. These war experiences made them feel strong as a group, or as a community or ethnic group (although within this group they differentiated themselves as sub tribes: Truku, Tgdaya and Tausai). An association named the 'Taroko Development Association' (太魯閣建設協會) brought together local people and politicians from different villages in the Taroko area to exchange ideas on autonomy and land right issues. They often discussed the idea of natural rights, especially in relation to land conflicts. The logic behind this concept runs as follows: indigenous people have not recognized the Han state, which had not asked for consent from the indigenous peoples to form the country. Furthermore, the Han state has frequently acted without adhering to the principles of justice and peace, especially with regard to the use of force to acquire land belonging to indigenous peoples. 'Indigenous peoples were the first masters of this island, so they have a natural sovereignty over this island.'[37] Ideas such as these were regularly exchanged during this period when many indigenous people were feeling depressed about land and natural resource issues (Xie 1987). In fact, this was a period in Taiwan when all kinds of social movements were established. Many indigenous peoples were inspired and were looking for ways to express their resentment or discontent with the government during the 1980s and 1990s.

37 On 10 December 1993, demonstrations were held on the streets of Taipei. This was the third wave of the 'Return my land' movement. The protests demonstrated that: 1) the indigenous people were the earliest owners of Taiwan and so deserve natural sovereignty; 2) indigenous peoples have the right to not recognize the Han-dominated country, which has consistently put forward unfair and unjust procedures rather than enter into peaceful negotiations. Indigenous peoples have the right to object to the behaviour of the Han who used excessive force in order to incorporate indigenous land into the regime; 3) the problems between the indigenous peoples should be considered as problems between the nation and the invaded; and 4) the fact that indigenous peoples are still oppressed means that there is no real Republic.

7.5.2 Resistance using 'township authority'

Indigenous people's efforts to express their resistance to government or companies have always suffered from a lack of support from even the local township government. This was particularly true in situations when there were fights over money among local people. When conflicts resulted from governmental orders or plans, indigenous people could not afford to fight against the state and rent seekers, so indigenous governments usually obeyed orders from above rather than help indigenous people.

In 1992, there was a case in which the indigenous Wanlong Township Representative Council (萬榮鄉代表會) helped to expel polluting mining companies that stole land from indigenous people. The issue had already existed for more than 35 years, but one day some of the indigenous members of the township Representative Council asked the township office to start an investigation into how the mining companies were able to steal reservation land and bring so much noise and pollution to the village. The two companies were owned by non-indigenous people and, largely due to low profits from mining operations during that time, the mining companies were not obeying the rules for controlling the emission of polluting substances. Crucially, these two companies occupied land belonging to a Representative Council member. This person knew that his land had been occupied but he could not do anything about it until he had been elected. He found that the township office had the right to reject the extension of another term of mining lease. He discovered that the township had the right to punish the mining companies for occupying and stealing land from indigenous people. He also solicited support from other members in the Representative Council and the newly elected chief of the township office. This was the first successful case in which indigenous people were able to turn away the companies that had brought so much damage and pollution. This experience inspired members of the Shoulin Township Representative Council to start to fight against mining and cement companies that were causing damage to their local environment. Indeed, from 1996 onwards there was a series of protests directed by local Representative Council members in Shoulin Township fighting against the four companies located around the small village of Pratan. In fact, the protests had been initiated by a number of indigenous land owners whose lands were occupied by these mining companies. These land owners were led by a Representative Council member who also suffered from the occupation by the mining companies that had claimed land in 1996 (Huang, Xian-long 1996). Subsequently, the claim was supported by the township office, which started to investigate the areas for lease and the non-lease areas that belonged to indigenous people. This investigation soon led to the return of some pieces of land to indigenous people. It inspired more people to start similar actions. The Representative Council members were also connecting with higher level parliament members and even legislators and they invited environmental NGOs to help them support their case. There were disagreements on the standards and rules for pollution

control between the companies and the local people. A newspaper article stated that the Representative Council members had walked off the mining premises to show their anger to these state or privately owned companies (Keng-Sheng Daily 1998). This was also the time of the previously mentioned Tongmen landslide, which had resulted in many local people worrying that their own environments were also suffering from ecological degradation as a result of mining and logging operations by profit seekers. The climax of these protests came when local Representative Council members and local people united to expel these companies. The township office immediately rejected the extension of the mining concession and said that the factory would only be allowed on condition that it strictly adhered to the rules of pollution control. This case showed how the local township official used the Indigenous Reservation Land Procedure to support his demands. Leaders such as this official gained increasing support from local people who wanted their voices heard and to take actions for self-determination on many issues such as the co-management of natural resources with institutions such as the county government, the national park administration or the Bureau of Forestry.

7.6 Conclusion

Taiwan experienced rapid economic development in the 1970s and 1980s and it inspired an entire development discourse on the 'Taiwanese miracle' (Simon 2002). As Simon's article 'The Underside of a Miracle: Industrialization, Land, and Taiwan's Indigenous Peoples' has pointed out, this view overlooked three important facts that should be taken into account when examining the development in Taiwan. First: rapid development was made possible largely by an oppressive regime of martial law that quelled worker unrest. Second: development took place at immense social and environmental costs. And finally, those costs have been disproportionately borne by Taiwan's indigenous peoples. Through the cases that I have presented above, it should be clear that many burdens were shouldered by the local indigenous people. They suffered from these development plans in terms of environmental degradation and lack of recognition of human rights. From the perspective of obtaining environmental justice, the 'borrowing a golden hen to lay golden eggs' (in the words of a Hualien County Council member) development scenario invited western companies to come to the east to invest for future profits; however, it did not bring a promising future for the local people at all. As for the cement industry, it did not bring jobs or a great deal of tangible or intangible profits as the companies and governments had promised. What it did bring was pollution and the loss of lands. What is more, these industries were protected, even when they polluted the environment and violated human rights.

In relation to land conflicts between the local indigenous land owners and the Asia Cement Company, I found an official document from the Ministry of

Interior defending the corporation and urging the county government consider extending the company's mining lease (Ministry of the Interior 2005):

> 'Asia Cement was set up with encouragement from the national policy of going east for cement industries. Asia Cement has existed from 1979 until now; a lot of investments have been made. The factory has brought much revenue and many job opportunities to citizens in the east. And the factory has obeyed all the relevant laws and rules. If the land lease contracts on the lands the factory are using expire, and if the leases are discontinued this would lead to a disruption of cement prices and supplements. Moreover, there would be a negative impact on the factory and the industry, not to mention that the company would require compensation from the government. Thus, the extension of the mining lease should be seriously considered (Ministry of Interior, 2005).

I think it would have been difficult for this case to make a difference to the indigenous people because most of the processes had been undertaken legally, although some administrative mistakes had occurred. As a result of these frustrating cases, many indigenous communities are in devastating situations having been flooded with money, capital, pollution, industry and mining. It is argued that negotiations not calculations are needed in relation to corporations and development in indigenous areas. The spirit of free, prior inform and sharing of profit is brought to help indigenous development in the article 21 of the Basic Law stipulating that:

> The government or private party shall consult indigenous peoples and obtain their consent or participation, and share benefits with indigenous peoples generated from land development, resource utilization, ecology conservation and academic research in indigenous people's regions. In the event that the government, laws or regulations impose restrictions on indigenous peoples' utilization of their land and natural resources, the government shall first consult with indigenous peoples or indigenous individuals and obtain their consent. A fixed proportion of revenues generated in accordance with the preceding two paragraphs shall be allocated to the indigenous peoples' development fund to serve as returns or compensation.

This article is vague in the sense of knowing who exactly should be asked for consent and granted the revenues; indeed, in recent times all we have seen is indigenous communities being disempowered rather than consulted.

PART IV

Collectivization of Land Rights

Photo 8.1
River protection by the Skadang community. The project was sponsored by the Taroko National Park Headquarters. The placards they hold say: No fire! No Playing in the Water! No Swimming! No Fishing! (06/07/2005 Courtesy of the author)

8

Contingent Ecology: Taiwanese Scenarios of River Protection in the Taroko Area

8.1 Community visions of river protection

River protection is action taken by local people that includes patrolling, prevention of poaching and the monitoring of certain aspects of the river's ecology, environment and its natural resources whether it be on the riparian banks or on a watershed level. Here, I use the term that is a direct translation from the Chinese *Hu-Shi* (護溪) meaning river protection or from fong-*shi-hu-yu* (封溪護魚) meaning closing the river to protect the fish. It is a term that has been widely used in Taiwan in the last decade and there have been over 200 similar collective actions taking place all over the island in both indigenous and non-indigenous areas. River protection *(Hu-Shi)* is a key phrase in the context of Taiwan's environmental issues and it describes in the simplest terms what local people do on the river in order, primarily, to bring back the fish and other necessary elements of a biological environment to create a 'natural' river. Before we start to examine what people see as the visions and practices of river protection, we should start with some basic information on river ecology in the past from a local perpsective.

8.1.1 Communities and ecologies in the past

By the 1980s, as the industrial development reached a climax, nearly all of Taiwan's rivers, streams and creeks were so polluted and overharvested that there were no longer any healthy waterways in the country (Tzeng 1986). Many Taiwanese call the relatively unspoiled eastern part of Taiwan, where industry was not so widely dispersed, the 'last clean land of the Island' (最後淨土), a somewhat Buddhist idea. Some less polluted rivers survive, but many still suffer from overharvest or illegal poaching of the natural resources. People compare the different ecological and environmental situations of certain rivers by saying that there used to be more fish and eels and crabs. 'Where have all the fish gone?' This desire to bring back fish to the rivers was an almost automatic response when people were asked to come up with ideas for river protection. The three rivers discussed in this chapter have actually been utilized for hydropower dams

and farms. In the upper and middle stream areas they are given over to logging or mining. Downstream, or at the mouth of the river, are the indigenous villages that had formed following the period of forced resettlement instigated by the Japanese from 1928 (Zhang, Yong-zhou 2004; Zhang, Jun-yan 2005). These villages are a mix of different populations from different tribes and ethnicities; thus, they are still in a fuzzy process of inner and outer negotiations regarding different governance regimes. The impact of certain 'development' programs in the upper stream means that river banks and mouths are always dirty and polluted with garbage, especially in the summer when the heat brings many people to the rivers in order to cool down. Many local people believe that the reason why there are no fish in the rivers is because of the illicit poaching. One inhabitant along the Skadang River told us:

> the more natural the river, the more poachers would come. In the past we have different sections of the river looked after by different families who could manage and co-manage the river's resources with different families or tribes. But since the government claimed the river as state property, the river was getting worse. The river is state owned 'public' land, which means many people from outside the area would come to take what they wanted from the river.

Rivers and related ecosystems were neither under the control of indigenous villagers, nor were they under the full control of the authorities, whether that be the Bureau of Rivers, the Bureau of Forestry, the National Parks or local government. The problems of pollution and garbage in the mouth of the river where the indigenous population lives and many outsiders come for summer recreation, has not been viewed as an issue requiring management. Poaching, for example, has become so frequent and popular that even locals adopt the attitude that 'if we don't fish, then outsiders will'. This reflects the tragedy of the commons described by Hardin (1968), where traditional management and public administrative regulations were severely limited. 'It has been a long time that a community is not a community at all here (personal contact).' The river is not as affluent as it was before. Indeed, I find that Li's observation, 'where nation states have stepped in to control natural resources, particularly forests and rangelands, inefficiency and short term profit-seeking by the state have caused rapid deterioration' (Li, Tania Murray 2010:503) best describes the situation of the rivers in the Taroko area. Poaching and overload from visitors and tourists only scratches the surface of this story. The reality is that ecology is not a priority in the minds of locals who are busy dealing with human and societal problems. The first time I visited the community of Pratan, which I am discussing as one of my examples, was fifteen years ago. At that time, it was seen as a heartland for young indigenous prostitutes and the cement and mining industries. The human situations were so poor that, at that time, the environment and ecological problems were not a priority. Indeed, this was a period of radical compartmentalization of ecological zones, outside of the monitoring and reflection of the human living environment. This compartmentalization occurred as a result of the following attitudes:

(1) an ecological environment is a zone that you do not have to care about because the locals are not allowed to take care of it using their traditional methods. Furthermore, because it is under state control, the state will take care of it; (2) an ecological environment is important for natural resources and for finding food, but this is no longer allowed by the authorities. The result is a tragedy of commons where indigenous people have to compete with poachers for access to their ecological environment. It is impossible not to see a situation where people are living together with the nature but are unable to have a say on its management as anything other than a tragedy of commons being inflicted on the community from outside. The consequences are devastating. During my fieldwork I saw a local logic in action that suggests that indigenous communities now have negative, rather than positive, relations with nature. They take from nature, but are unable or cannot afford to give positive feedback to it. Nature has become a source and not a 'place'. There is no reciprocity. Simply put, locals are forced to access their ecological environment illegally and because they find themselves competing with other people or poachers in this space, they no longer care about their environment and cannot give anything back, despite a tradition of *gaya* and ancestral rules. This is ecology in moral crisis. Even though local people were fed up with the pollution brought mainly by outsiders, especially in the summer months, the authorities in charge of tourism or environmental issues did not reflect on the overloaded ecology as an issue that must be dealt with. Instead, they focused on things like employing lifeguards to prevent the people swimming or having fun in the 'clear and cool' river from drowning or getting into danger. The river environment and the communities around it were never thought of as an ecosystem by any of the authorities concerned. Geertz proposed that as a researcher 'one can achieve a more exact specification of the relations between selected human activities, biological transactions, and physical processes by including them within, including them in a singular analytical system, an ecosystem' (King and Wilder 2006; Geertz 1963a: 3). Even though everybody seemed to recognize the ecological consequences of reckless use by insiders and outsiders in the watershed, right from the very start of the Taroko National Park regime in 1986, we find a number of government sponsored civil engineering projects in these areas planning and designing places for recreation.

Although today these areas are the subject of river protection schemes, for many years these public lands were used as free recreation areas (though in the past some taxes or entrance fees were charged by local governments). Inevitably, it was the local communities that shouldered the burden of huge tourist numbers and overcrowding. Yet local communities, who had suffered displacement and disempowerment, had no say on access to these areas. As Bates and Lee say, nature is none of local communities' business: 'the problem occasioned by treating culture and environment as two separate and independent domains' (Bates and Lees 1996: 3-4). This kind of separation is also reflected in the internal divisions among government departments dealing with local indigenous welfare and nature conservation.

Such division was common in Taiwan until some communities began to ask to have a say and to get involved in these areas. The Taroko people living in the region of these three rivers felt an obvious injustice about the fact that mining companies and cement factories were still working in the National Park area, but that the indigenous locals could not even do something as simple as picking up stones from the rivers. This injustice is embedded deeply in the locals' minds. It was not long before other indigenous areas began to fight for what I would describe as 'autonomy' on human-nature relations. They encountered many obstacles from both local and provincial and national governments. For example, the community in Danayiku in south central Taiwan, where the Tsou people live, became famous and attracted large numbers of visitors following a program to bring back fish to their tiny creeks. Now, tourists were pouring into this once unknown and inaccessible remote small indigenous village. At the same time, in the east of Taiwan, some local indigenous people began to return to their homelands. As a result, from the 1990s we see a rise in local level social movements in indigenous communities, also in the east. These social movements brought a lot of local and intra indigenous NGOs to the areas where they exchanged ideas and experiences in a bid to make their visions and ambitions come true. To a large extent, the models in Danayiku and elsewhere were so 'successful' that they have inspired a number of the communities that I am discussing in this research. What follows is an outline of how local people observe and learn from these models or cases elsewhere, which are almost seen as 'utopia' in the locals' minds.

8.1.2 Visions and models from 'utopia': Tanayiku and Smagus

Tanayiku Ecological Park has been run by the local Tsou people since at least 1989. It is successful to the extent that local indigenous people are managing their environment by themselves and they are allowed to make profits from tourism to support the welfare of their communities. Besides providing care for the elderly or tuition fee support for students, most important of all is the fact that the residents of this community can make their living through tourism in situ. In the following section, I will describe how Taroko people from the three case study communities are observing and learning from this model. Danayiku is a village of around 400 residents and, in the course of a year, they can earn over 30,000,000 NTD alone from the collecting of entrance fees to the park, not to mention other income from villagers supplying tourists with the things that they need. While the landscape in the area is much like any other mountain village, it is the fish that attract the visitors. Indeed, so much fish has not been seen in Taiwan's rivers for a long time. Thus, the place becomes a hot spot for tourism and also a good model for teaching activists and community workers. It has become a 'pilgrimage' destination for practitioners of river protection from over 200 communities in Taiwan (River Protection Association 2006). The vision of Danayiku is vivid in the sense that in situ villagers have subjectivity in environmental affairs. Most of the visitors from the villages in the Taroko area mention the profitable vision and some local practitioners express respect for the pro-

cesses that the Danayiku people have gone through. As Hipwell (2007) mentions in his paper,

> The Tsou had not, before 1989, been well-organized enough to prevent these activities (of poaching), and complained that Taiwanese police and natural resources officials had been accepting bribes from poachers. The organizing involved in establishing a locally drafted 'Treaty of Shanmei Tanayiku Stream Conservation Self-management or Tanayiku Environment Law, which banned all fishing in the creek. The creek remained closed until 1995, during which time the Tsou restocked the creek with the fish species that had been nearly extirpated. Some locals were trained as guides and conservation officers to enforce the Tanayiku Environment Law, monitor tourist activity, and ensure the ecological health of the creek. In 1999, the Tsou were able to re-open portions of the creek to restricted fishing. In order to manage tourists and protect the creek from poachers, access to its watershed, already difficult due to steep terrain, has been further restricted by the construction of a wall and gate.

There are many other successful cases demonstrating the vision of local indigenous people, such as the river protection initiatives in North Taiwan where the Atayal people live (Lu, D.J 2004; Su 2006). As previously discussed in this research, the Atayal people and cultures are closely related to the Taroko people. For example, the Atayal use the word *gaga* to refer to ancestral disciplines, rules or local laws; this is very close to the term used by the Taroko people, *gaya*. A villager in Pratan explained that the people in the Atayal tribe Marikuong in the north of Taiwan used the ideas of *gaga* to formulate rules on river protection: 'We had *gaya* too in the past, but now we have to reintroduce it to have our rules'. The need to have *gaya* was fundamental to many locals' narrations on river protection. As far as they are concerned, *gaya* is the reason why the cases like Marikuong have been successful in terms of returning fish to the rivers. In pragmatic terms, local Taroko people judged the Marikuong case to be successful in terms of collecting entrance fee or 'tariffs' for fishing that would support the local economy (although it should be noted that the implementation of this scheme was met with a series of obstacles) (Yen and Kuan 2003; Kuan 2002). Indigenous visitors to these successful indigenous communities were enlightened by what they saw and brought these visions back to their own villages. However, many overlooked the difficulties that these model villages had encountered, and chose to see a simplified idea that could transform their own ideas of river protection:

> We would bring back fish to our rivers, which are embedded in globally beautiful national park scenery that is easily accessible and convenient. Ideas are easy in the beginning, but in practice we could sense that the projects local people are implementing were vague, albeit full of ambition and vision to first bring the fish back and then bring the tourists back to support the local economy.

In the next section, I will describe how local people in each of the three research villages managed their ecologies and communities using a method that I would like to call 'total social engineering'.

8.1.3 Ecologies and communities in a vision of 'total social engineering'

On the 6th of July 2005, an indigenous Christian pastor, Hayu, said prayers at the opening ceremony of the co-management project between the Skadang community and the Taroko National Park:

> Because of our greed, we have broken the Wonders of the Creation. What used to be fresh and green in the forest is now damaged; the rivers that used to be full of life are now barren and dry, as if there is no water. A place full of blessings is now a place cursed. Today we want to evoke our responsibility for management of the ecology through the actions of river protection. Here I pray to God to give us strength to support our fellows in the village and to devote every individual's efforts to managing the assets our ancestors have left for us; the place named the Secret Valley the Skadang River, full of secrets and fresh interests. We hope the God Utux Barow of Weaving will help us protect and manage the river. In this way, our tribe can cooperate with the National Park headquarters to bring about renewed self-confidence and pride and to once again find the wisdom of our ancestors. This will allow our community to revive and young people will have jobs to make their livings […].

In order to assist in the implementation of the river protection, the Skadang community established an NGO, the 'Skadang and Hohos Tribes Natural Ecology Promotion and Self-Management Association, Shoulin Township, Hualien County' (花蓮縣秀林鄉同禮部落自然生態自治協會). This organization helped with the coordination between two groups of people who used to belong to different tribes in the mountains but now are living together in the same resettlement location. People from different tribes have conflicts with each other about things such as church, transportation or on tribal characteristics. This NGO tried hard to help the cooperation within the area (and also outside) in relation to the river protection co-management project with the Taroko National Park. A plan of 'Finding and Visiting the Homelands' was also included in the co-management project. In addition, the association invites people to visit the river and buy local products such as the rare, but high quality, arrow bamboo shoots. The promotion of agricultural products was intended to prevent brokers from taking a cut of the profits, something the indigenous people have put up with for many years. In addition, a project to 'find the roots of the ancestors' also encouraged the community to set up an ecotourism program along the Skadang River, where indigenous locals can work as tour guides and earn money to support the community economy, especially during periods when agriculture and hunting (though illegal) was fallow. The project lasted for three years and was planned and supported by the National Park, which hoped to establish a partnership

with the local indigenous communities inside the National Park regime. Even though 'conservation explicitly addresses the long-term future, project-type activities are generally narrowly instrumental and planned in short-term episodes governed by the project rhythm of donor agencies' (Persoon et al. 2003). Local Skadang people were also expecting to cooperate with the park and have opportunities to transform the social and environmental situation and resolve economic problems. As the professor who is hired to mediate between the National Park and the locals says, 'it's a project that brings 'economic', 'social-cultural' and 'environmental' to meet local goals' (Lee, Kuang-Chung et Al. 2005; see Hierro et al. 2005). I would call the co-management of river protection total social engineering within the community. There is a feeling that visions of the river are penetrating through lively landscapes and places that are full of memories of indigenous cultures. It will be a river that could support people's livelihoods and cultural identity as well as sustain the ecology. Throughout this paper, I describe and analyze the processes and provide detailed case studies in order to urge the kind of study advocated by Brosius and Russell, i.e. a 'better quality of social research for conservation'. That through ethnography, though time consuming:

> we learn to recognize the hidden agendas of our informants, their unspoken disagreements with others that might compel them to provide partial accounts, and we are provided with a plethora of small gems of local knowledge that allow us to weigh and compare the statements of our informants (Brosius and Russell, 2003: 48-49).

During my fieldwork, I have been lucky to find a number of local scholars (either sponsored by the National Park or Masters' students) who have also paid a great deal of attention to this subject.

As King and Wilder (2006: 236) and Vayda (1961; 1974; 1999) have described, there is a political ecology of contingency in total social engineering. The term 'contingency' is used by many scholars to describe the uncertain causes and effects of processes. Sometimes I feel the term 'contingency' is redundant in scholarship because it explains nothing and simply describes a sense of complexity. Vyada, Bradley and Walters (Vyada et al. 1999) urge for:

> an alternative to the present plethora of programmatic statements on behalf of political ecology, a proposal called 'evenemental or event ecology' is suggested to bring more analysis on the causes and effects between ecology and politics.

Inspired by this as a way of viewing the processes involved in these co-management scenarios, I will outline my findings according to Borrini-Feyerabend, i.e. beginning from 'the point of departure, the phases of organizing for the partnership, negotiating plans and agreements in order to find compromises and short hands among these implementations that I would agree are processes of 'learning by doing" (Borrini-Feyerabend et al. 2000).

Government funding is one of the incentives to help local people to initiate plans, however, some of the successful cases, like the aforementioned project in Danayiku, took almost no funding from governments (Hipwell 2007:889). The Smagus tribe also rejected governmental funding and supported themselves using their own property and labor (Horng and Lin 2004). In fact, scholars and practitioners considered the act of refusing funding to be a major factor in terms of stepping into a more successful stage of community-based natural resources management. Among the initiators of co-management projects in the Taroko area, we found that the decision about whether or not to take government funding was an issue prior to implementing co-management. We see a political economy among authorities, communities and politicians that, as I will reveal later, would have considerable impact on the implementation of co-management.

The Skadang and Hohos communities are located inside the Taroko National Park. The eventual partnership between the Skadang and Hohos communities and the National Park headquarters was not initiated directly by these indigenous communities and their vision of natural resource management, but rather the Chair of the national headquarters had her own ambitions to assist those indigenous communities inside her regime. She sponsored a local team of academics to establish a forum for the local community and the headquarters to meet and express their ideas and to find incentives to work together. This forum was intended to find common ground that would facilitate the local community and the National Park in terms of management of the park. This was at a time when partnerships between indigenous peoples and the state were being encouraged by the then President Chen, S.B. (新夥伴關係). In fact, my research suggests that the local people always hoped to attract projects to the mountain where their reservation lands were located. They used the forum to express their hope that these projects would improve access to their areas by bringing roads or better cable cars. Without this infrastructure local people had to climb the steep and dangerous mountain trails. They also hoped their original houses could be registered as legal, which would give them the rights to renovate them or build hostels to host eco-tourists. They hoped to have electricity finally brought to the area. However, these demands were rejected or dismissed with very vague answers. The inevitable result was the failure of the forum. Ultimately, the communities and the National Park wanted different outcomes. The headquarters considered the reservation lands in the mountains to be host to hunters and poachers. It was never the authorities' intention to construct roads and provide convenient access to the area because there was never any question of allowing indigenous people to initiate developments that would result in violations in a zone that was a restricted area. Indeed, the National Park would rather buy reservation lands from the indigenous people in order to implement their strategy of isolating the land and disrupting the close relationships between the land and the indigenous people. Consequently, the National Park headquarters made a budget every financial year with a view to buying lands back from the indigenous people. Another strategy employed by the authorities was to divert indigenous people's interests to other places that they saw as more suitable for development projects, such

as the Skadang River, which had been zoned as a recreation area. The project to build a partnership between indigenous communities and the National Park transformed into a project about river protection co-management, something that initially the communities did not see as a priority. However, inspired by their visits to the successful projects in Danayiku and Smagus, along with the generous budgets on offer from the National Park, there was an undeniable incentive for the locals to compromise and participate in a new association of local people being established by the academics.

A local NGO structured a division of labor in order to run this local association. Indigenous people were given positions including head of the association and project manager and other locals were elected as members in charge of various other tasks. They volunteered their labor for free, believing it to be an honor to serve their tribal people. It took two years of organization took get this river protection co-management project up and running.

With the tricky initiation of the Skadang case in mind, I will discuss how other communities encountered similar problems in their projects. I will begin by examining the initiation process that took place within communities in order to illustrate how compromise and cooperation dealt with internal conflicts within these heterogeneous communities.

8.2 Fermentation within communities

8.2.1 Initiatives and initiators

The implicit intention of the National Park headquarters was to divert the locals towards river protection instead of developments in the mountains. This intention was supported by an idea to facilitate the Skadang and Hohos tribes to establish ecotourism in the area around the Skadang River. A civil engineering planning report sponsored by the headquarters in the 1990s added weight to this proposal. The report suggested the establishment of a trail and using the riparian banks of the Skadang River as recreation areas. The plan also included infrastructure such as toilets and shops. However, the first obstacle was that the lands suitable for these facilities were reservation lands belonging to the Skadang tribe. At that time, the intention was to use governmental power and authority to buy the land. The locals rejected this as they wanted the land to plant vegetables and keep chickens and ducks. A place called Fivehouses was a section along the beautiful riparian river notorious for being full of garbage and bad smells from human waste and the debris resulting from both tourists and a chicken farm that had been set up by indigenous locals. As far as the National Park headquarters was concerned, it was an eyesore and an example of bad river management. For example, there were no toilets along the more than two kilometers of trail. The headquarters blamed the inhabitants of Fivehouses and said they should accept responsibility for the tourists. An easy way for the headquarters to eliminate this 'shame' would have been to take over the land and build a public toi-

let. However, disagreements and objections from the inhabitants kept the land in their hands and the problems of pollution persisted. Indeed, it remained an ongoing problem and National Park officers were continually looking for solutions. Ecological tourism, run by indigenous people in order to support the local economy, could provide an answer as it would require the locals to build a toilet and a café or a shop. The headquarters took the opportunity to employ intermediaries from universities to assist in this project and it provided a budget to lease the land at Fivehouses and carry out the necessary construction. The headquarters also offered to provide support for a training program for tour guides and to facilitate a project for historical and cultural documentation with a view to promoting ecological tourism run by the indigenous locals. This was an attractive offer from the headquarters and I would say that the officers came up with considerate ideas that would be mutually beneficial. However, the locals did not seem to understand the benefits. Indeed, the indigenous association also encountered problems. Cooperation on the project required the consent of the people of Fivehouses. This proved impossible as inhabitants refused to join the association and cooperate because of a number of land disputes that had occurred in the community in the past. For example, there were disputes about land that had been registered in the names of the current inhabitants. A number of Hohos people saw these residents as latecomers who had registered the land without the consent of the Hohos tribe. Even though all those involved used the trail every day, the latecomers and land takers were not seen as part of the group. The National Park attempted to initiate negotiations within the tribe in order to bypass the long history of land disputes and encourage the idea that all the people belonged to the same group. However, there was an added complication: the inhabitants living on the river bank in a place called Threehouses were more dependent on the natural resources of the river and the forest. There is no direct evidence that the headquarters intended to push communities to stop traditional activities along the river such as hunting and gathering. However, these were obstacles that the new association had little opportunity to overcome, especially as the majority of the association's leaders were young people with little experience or authority to deal with the affairs of the older generation. Here is an example of how the headquarters underestimated the heterogeneity of this group of people who, in reality, were still learning how to cooperate and reconcile their very different characters, modes of behavior, modes of communications and definitions of land boundaries. It was also naïve of the headquarters to expect so much in terms of the capacity and ability of the new NGO to overcome considerable property issues and to come up with an ecotourism package for the Skadang river area run by locals who would rather begin a project in the mountains where their land and homes are located. The reality is that a toilet and a café were never the real obstacles to this project; rather, as we shall see below, it was the unwillingness of a single family in Threehouses to agree about 'river protection' that was a problem.

The family in question owned the reservation riparian land in the area known as Threehouses. The family rejected the river protection co-management

project that they believed would stop them from accessing the river resources. They responded with a simple action; they erected a billboard saying, 'This land is private property and you are not allowed to enter without our permission! Fierce Dogs inside!' Attempts on behalf of the indigenous association to compromise and find a solution for Threehouses failed. The actions initiated by the Threehouses family to stop the Skadang people passing the trail stirred up many historical conflicts among the two tribes. In response to the blocking of the trail by the Threehouses family, the Skadang people challenged their rights to the land, causing a land conflict among the two tribes. The ripples from this conflict spread throughout the community. For example, a cable car runner from the Hohos tribe was accused of stealing and occupying lands belonging to both Skadang and Hohos inhabitants at cable stations and where supporting pillars for the cable stood. The claimants blocked the way for the cable transporters, which resulted in a fight so furious that it almost broke up the association. In fact, the association asked the headquarters for help on the cable car affair. Cable cars are crucial infrastructure that supports the basic needs of the two tribes. The response of the headquarters was vague insofar as it said that agreement from the land owners was needed before the headquarters could help with the building of a new cable car system. Very few locals trusted this excuse and believed that the basic policy was to promote disconnection. During the implementation of the river protection project, both sides produced a lot of obstacles (big and small) but we also found that many of the questions and requests for help from the locals were not responded to or supported. This led to the locals feeling frustrated, to the extent that they considered the project a trap and not a 'partnership' at all. They believed it would be a series of trivial and basic support that did not meet their expectations of what they believed 'co-management' to be. Or, they viewed it as patronage; that is to say, the boss getting his servants to carry out tasks he does not want to do. Some indigenous people articulated their feelings using the Chinese word for partnership, *huo ban (夥伴)*, which could be written as 伙伴 (pronounce the same as *huo ban*) but which denotes a patronage situation (patron-client relationship) rather than an equal partnership. Both sides of the co-management project were stuck and haunted by a series of problems that were difficult to overcome.

Through the above description of the initiation of the Skadang River protection project, we can see that co-management was never a real priority in terms of local needs.

It is hard to predict given the many contingencies, but I would say that a detailed survey of property relationships at the beginning of the project would reveal relevant histories and present use and prevent problems later on. Failure to establish this information leads to questions about who has the right to protect or to act will almost certainly block progress. Properties matter, even those on the riparian banks of the river that, legally, belonged to the state. The definition of private land was vague even in cases where it had been registered in the national cadastre system. As discussed in chapter 6, the case of Aunt Yeh from the Hohos tribe rested on her complaint that the land that belonged to her had been

stolen; that the people who said they owned the land had an oral contract but no paper deeds. Though the land dispute was finalized by the courts, it continued to cause conflict among villagers. The authorities can be accused of diminishing the problem and naively hoping that it would be resolved through a program of river protection and by providing incentives to make money from a café and a toilet. On the face of it, getting land owners to agree to rent the land to the National Park for free in exchange for the right to run and manage the toilets and shops was an attractive offer. However, the land owners still worried about the security of their private property, particularly given their past experience of renting lands to the police station but with no return. Furthermore, a number of villagers were against the construction of the toilet and café as they believed that it would only profit the 'land thieves', which is how they viewed the current land owners. What is more, the locals simply did not trust that the headquarters would really let the management of the café be in the hands of indigenous people, not least because many of them had seen that other shops built by the headquarters ended up in the hands of Han people, despite a process that purported to be open and even give priority to indigenous people. The headquarters hoped to ease locals' worries by introducing a monopoly policy[38] solely for Skadang inhabitants. However, this did little to reassure the locals that they would see any profits. Another example that led indigenous people to distrust the headquarters was the headquarters use of the 'Internal Consumption Co-operative Society Act' (員工消費合作社辦法) to support its employees and officers in establishing a co-operative society to run all the shops inside the National Park. In addition, only employees could share in the profits derived from this monopoly of all the concessions inside the park. One indigenous intellectual told me that he viewed it as an immoral and 'colonial' act for employees of the headquarters to direct that all the tourists should come to shops managed by the park and only staffed by low-paid indigenous locals. Once again, this act reinforced the negative message with the locals that you should never trust the headquarters.

What we see is that property matters, even though all the fish in the river legally belonged to the nation. Residents on the riparian banks believed that they had the traditional rights to access the resources in the river. Many elders and locals emphasize the traditional co-management of different sections of the river by different families or tribes. They are concerned that the introduction of a state-sponsored river protection project would take away their traditional rights and deem their traditional access to the river, or even their property, illegal and

38 Article 19: In order to promote co-management of ecotourism, Skadang indigenous people could rent their reservation land for free to the National Park headquarters. The headquarters could invest in the planning and construction of the necessary facilities to help ecotourism (like toilets, a tourist service center or shops). The headquarters will entrust the Skadang people to manage these facilities. Two thirds of the income will go to the locals and one third will help to maintain these facilities. (For proof of this, there should be a contract between the headquarters and the Skadang people).
Article 20: In order to promote the subjectivity of the Skadang indigenous community, Skadang indigenous people shall not sell or rent or transfer their reservation lands to non-Skadang people or non-indigenous people. They shall not cooperate on the management of Skadang land or the facilities mentioned in the previous article except with the headquarters.

that they could even face legal action. Through this case we see that both sides of the river protection co-management project have simplified issues of ambiguous property and of the 'commons' that are contingently mixed with private, public and communal domains that are hard to define. Besides these properties issues, institutional problems, entangled in the context of local politics, also influence the implementation of such projects, as will be discussed later.

8.2.2 Internal conflicts arising from the heterogeneity of the community

Below (Box 8.1), I have reproduced the conversations that took place between some of the participants in the ceremony and announcement of the Skadang River protection project. These conversations highlight the problems and difficulties that troubled both the headquarters and the community. The participants in these conversations are so significant that they warrant full quotation. This provides the reader with a sense of a political ecology or economy in which locals are entangled not just with each other but also with outsiders to such an extent that it influenced the implementation of the project. Subsequently, I will provide an interpretation of these conversations in order to examine how participants have tried to understand what actually happened and deal with their frustrations and overcome obstacles in order to bring about crucial cooperation. I will then connect this to similar problems encountered by other guinea pig communities.

Box 8.1 ▪ An Informal meeting immediately after the ceremony of the Launching and Announcement of the Project of River Protection on Skadang River on 7 June 2005.

(The participants of this meeting are the chief of the association, the wife of the Chief and cashier to the association, Prof. Li the sponsored negotiator, the village Elder Tien who was not part of the association, Mr. Chen a township parliament representative, Prof. Simon a long term fieldworker and researcher from Canada, and the author, then a field research assistant to Prof. Simon).

Elder Tien: I wonder why, after you announce the start of river protection, we cannot swim there [the river] anymore? Especially the landlords in the Fivehouses section of the river have complained about this. If you really want river protection, you would not have your association doing this alone. We have other associations and churches and the township office; why don't we implement the project together? You know the leader in Pratan where they are also carrying out river protection now? Even though she is a parliament member in the township office, she has been accused of stealing the association's money. Because of this they have fights and internal strife. Now the Skadang River is also subject to a river protection project, but I still saw people catching fish when I brought some of my customers and visitors there one night last week. The case

in Danayiku only succeeded after five years of efforts, so we have to take this step by step and not think that you can achieve everything within one year. Dear Chief of the association, you have to be able to be good at negotiations, otherwise, […]

Chief: ya? That's what we need, [is to hear] your concerns. We have to start from understandings, concerns and devotions then we are gonna make it.

Elder Tien: But you, chief, do not seem to be so good at the art of negotiation, you need to prove yourself on this.

Chief: The problem with the inhabitants in Fivehouses is complicated; they hope the National Park will help them build a toilet and a shop so that they can make money.

Parliament representative Chen: We have eight NGO associations in this village and I hope your association will mediate between these eight associations. I will back you up. River protection belongs not just to the Skadang and the Hohos, the Skadang River does not belong only to your community. No, you are only a small part of the total Fushih village. And all the other associations also belong to this village. If the National Park won't take an entrance fee in the future for [access] to the river landscape, then they have to budget for support for river protection. These funds should be appropriated and divided equally among all of us. Skadang and Hohos do not belong to this village?! Is that true? If that is true, you Skadang and Hohos should go back up to your own mountains where you are from. If it is left to me to do the negotiations, I will demand that all the eight leaders cooperate on this and I will not divide them like the parliamentary representative in the Pratan community. If you do things like her, everybody will think you are selfish […]. Concerning the land of the Taiwan Power Dormitory that is now claimed by our fellows, I will ask the Township Office to see whether it's private or public reservation land. You know that the reason why the mayor of our Township is delaying the decision is because of the voting on her next term. Politicians should participate but cannot go too deep into our actions because they just try to grab what they need. It is only us local fellows who can take the job to implement these procedures. This time, the Skadang and Hohos communities are acting with their own will and ideas, but you have got to be alert to the fact that there may be a gap between what the National Park wants and what the tribes think.

Chief of the association: Everybody thinks about his profits! But, you know it takes almost one day to patrol the entire river back and forth. But there is not a single piece of land [there] belonging to us, the Skadang and Hohos tribes. The reason why we devote so much time to this is not because of profits. We won't expect any entrance fees. We hope that one day our efforts will be rewarded by nature and a recovered natural ecology. What we want is simply the conservation of nature.

Parliament representative Chen: Ok, no entrance fees; then everybody can do the river protection.

Elder Tien: But is it possible that the National Park headquarters will allow us to collect entrance fees from tourists to this river, like the case in Danayiku? The headquarters could authorize us to manage and take entrance fees! Why not?

Chief of the association: Here today we came up with a problem! (Glances shift to Prof. Li)

Professor Li: In the short term, collecting entrance fees or any kind of fees from tourists seems to be impossible because a system of taking entrance fees was cancelled by the National Park at least a decade ago. But we may have alternative ways to raise money, like working as tour guides. We manage all the needs of tour guides through the association, then we […]

Elder Tien (interrupting): From this summer on, I do the same thing and I work as a tour guide and I take money from my customers.

Chief: But there are business problems here on the Skadang River! We found many tour agencies are bringing a lot of tourists here. We cannot do anything to stop them from doing what they want. For example, they just come all the way from Taipei to do river tracking; can we stop them doing this?

Elder Tien: It means we don't have consensus among the communities! There are no young people in the communities. And we just have tourists who go to the National Park, and what are we gonna show visitors to our communities?

Chief: We don't have an overall project yet!

Elder Tien: Many people just work and struggle alone but always fail. So the tribe and community should work first to come up with an overall project and procedures. We wanted to do what our community in Kolo was doing, but later I found it was only me doing it alone.

Chief: Are activities like river tracking allowed in the National Park?! I asked the headquarters once only to find the answer that, 'It depends on the decision from your community'. I think if it really depends on us, then we should have the authority or legitimacy! Without this umbrella to empower us, we cannot do it […]! So we need to know the rules of the game!

Elder Tien: The National Park is preparing another consortium from Taipei to help you negotiate. But it seems there is no further progress.

Chief: If we cannot cooperate, then you elders should help and participate more! We protect the river, but you (facing Elder Tien) just make use of the river! You don't cooperate; I want you, my dear elders, to participate!

Elder Tien: The chair of the National Park headquarters just gave you a million to build a toilet and a café there on the Skadang River. We, including the parliament representative, felt unhappy when we heard that the Skadang and Hohos got the funds but other communities, like where I am from, got nothing at all. It means we are not welcome to participate. So one day I joined a meeting with a Legislator, Mr. Kung, and gave him three suggestions: one is to urge the National Park to revive the National Park Consulting Council [that had been established with local people to consult on the management of the national park]. Second is to change the place names in our area into the names of our traditional territories. The third suggestion was to allow every association in the village to sell their products in the National Park and to take no rent from the National Park.

Chief: The vice chairman of the Bureau of Indigenous Affairs in Hualien County Government only promotes the south part of the Hualien County, but not the

north where the Taroko are located. The vice chairman says we are not united! When I heard that, I was so angry! And he just gets sarcastic, saying that we carry out actions on river protection 'in secret'. What a bad joke from him. How come we are doing it in secret? Don't you see our announcements in the mass media!

Parliament representative Chen: (angrily) If I am the representative in the County Parliament, I will ask him to stand still for three minutes and not move at all!

Elder Tien: Recently, Hualien County Government Office held an Arrow Shoots Festival in Hualien City. That's bad; they should have it here in Skadang and Hohos where we have the most delicious arrow shoots of all Hualien.

Parliament representative Chen: The Amis people are more loyal to the government, so they would hold it in the Amis tribal areas. But we Truku are not united and disloyal. And even though we are supported by governmental funds we still complain a lot!

Chief of the association: What are the extent and limits of the authorities and powers and the rights to protect the river? We should have a clear boundary! If swimming is not allowed, tell me which law says so? If activities like river tracking are not allowed, what is the law? Otherwise, our responsible patrollers will be faced with a lot of fights with the swimmers or people playing in the water! We have all kinds of interest groups there! Today the vice mayor of this county and the chair of the national park joined the ceremony, but could they back us up on these issues. Someone suggested having licenses, like CPR training or diving skills. But is that so [important]? We need to have common rules, like a tribal constitution? What are we gonna do about the project supported by the national park on the investigations of our cultures and histories?

Prof. Li: The auxiliary project of documenting cultures and histories has been taken over by another leader in the community, so he will be in charge of the project. So it won't be on your or the association's executive members' shoulders to take on and do everything.

Prof. Li: Because this is a new business that the National Park has never done before, the headquarters felt 'away from' it and did not interfere with you so much!

Chief of the association: They don't coordinate much either inside the headquarters! Different branches or departments do not know what the hell is going on anyway. Even the Interpretation & Education Section office doesn't know what we are doing and only the Department of Conservation knows I think!

Chief of the association: So swimming should not be allowed! This is our goal! But remember river protection doesn't mean to closing the river!

Wife of the chief: There is a shortage of human resources, so the headquarters wants you guys to accept such a difficult deal, to make you suffer!

Prof. Scott: The National Park needs you, but you don't owe anything to the national park! You have to remember this!

Prof. Li: you don't protect the river for the national park but for the tourists, so don't fight against the tourists, instead to find support from them!

8.2.3 Organizational problems

From my observations of the conversations, the most crucial issue mentioned is the capability of the association to handle so many affairs with such limited human resources and skills. The association was in no real shape to be taking charge of the division of labor and other affairs, despite every branch having a head. These heads were usually unfamiliar with administrative matters such as finance or auditing or even writing reports. As for auditing, the Chief's wife was selected to take charge of this on the grounds that she was an assistant audit controller in a hospital. She was suitable for the role because of her professional skills. But this was a double-edge sword, because having the wife of the Chief managing the finances would raise questions. Indeed, Elder Tien used a threatening and sarcastic tone to remind the Chief that mistakes in audits would cause trouble for the Chief, or even worse could end up with the Chief going to jail, like the cases in Pratan village that were being heard in court. In fact, Elder Tien was someone frequently accused of taking money from the government and of profiting more than most in the area. He was notorious for making use of local culture and community resources to apply for government funding. The association had no choice but to ask for the Chief's wife to help with the financial management. These problems are symptomatic of the association's organization. The Chief was actually an employee of the notorious Asia Cement Company, which provides some jobs to indigenous workers, in this case for a relatively high salary. The Chief's job meant that he had a rotating schedule of working eight hour days, but every two days he had to sit up all night to keep the cement machines working continuously. The reality of this situation was that the Chief rarely got enough rest. The moments he did have away from work were taken up with working for the association. One of his worries was that the elder in charge of the documentation project would just take the money but not to be able to submit reports because he could not type or even write. The elder in charge was in fact a pastor from the Hohos tribe. The Chief was a member of the Skadang. The pastor was a controversial figure who, for example, had raised a number of difficult issues that had split the church that used to host the two tribes that had come down from the mountains and settled on the plains. The pastor may have been controversial, but he was old and experienced with the older traditions. For this reason he was respected and had been chosen as the leader of the project that was supposed research and document their roots and histories and cultures.

8.2.4 Legitimacy problems

Besides these troublesome organizational issues, we see from the dialogue in Box 8.1 that locals from the wider community were challenging the legitimacy of the Skadang and Hohos and criticized them for monopolizing the river protection scheme and accepting funding from the government. Elder Tien, for instance, stated that the money should be divided among all eight associations in the administrative village; that way, the tasks of river protection could be coordinated

by these eight associations. In my opinion, there was some envy at play here, and that basically he was upset that the association had been given funds and his association had received nothing. The township representative, Mr. Chen, is another case in point. His style of speech was notorious for making a lot of promises and coming up with ideas, but few people trusted his logic, largely because he always got drunk and talked in an irresponsible and irrational way. Many people wondered how he had won three elections as the local representative of the township council. Some locals told me that what counts in elections here is not a person's ability, but rather how much money he has. In this informal meeting, Mr Chen claimed to have the interests and welfare of his fellows in the same administrative village – Fushih village – where his family was based, at heart. So he agreed with Elder Tien to share the funds from the National Park at the administrative village level, but objected to it only going to the Skadang and Hohos tribes who had just moved down from the remote mountains and occupied only a small part of the total village. His tone in the conversation was quite threatening, saying that the Skadang and Hohos should go back to the mountains. This was quite typical of his interactions and it made the locals angry. Little wonder, then, that no one would believe that he could negotiate between the eight associations. Elder Tien could not negotiate between the eight associations either because he was not that welcome in other villages. This issue of legitimacy concerning who had the right to take the government funds and implement the river protection project was complicated by the threats made by these two 'big' men.
The township representative, Mr. Chen said that if there was no issue about sharing any future profits, then he did not care who carried out the river protection. Actually, everyone's burden will become no one's burden. Thus, the outcome is a tragedy of the commons. Here we see that, in many locals' minds, the ecology was actually secondary to the economy, especially in the minds of politicians. In my view, ecology, seen from a perspective of total social engineering, would provide support and improve local's livelihoods. This perspective is very different from that of the National Park. The township representative reflected on the apparent gap between the headquarters and the community. The chief advocated that their association should actually implement the river protection voluntarily, out of a devotion to the environment. However, Elder Tien and the township representative, Mr. Chen remained curious about the possibility of profiting from visitors, as the people of Danayiku had done. This issue of collecting fees from tourists was a key concern in most of the communities that were undertaking river protection.

8.2.5 Issues of collecting and distributing fees

Under the rules of the National Park regime, it was impossible for those communities active in conservation to have a fee collecting privilege. In fact, as far as I am aware, no study has figured out why the local and private associations in Danayiku were able to collect compulsory entrance fees or a fee for cleaning garbage. Indeed, collecting fees was illegal because, basically, the river was public

land and there was no legal authority for the local community to collect money. It was no surprise then that the two elders were curious and quite concerned about this issue. Prof. Li responded that it was impossible to have a direct collection but suggested an alternative way of collecting money from by providing services to tourists as tour guides.

The Chief and his fellows were overwhelmed by so many questions and problems within this short meeting of about twenty minutes. I talked to the Chief later and he told me that he had decided not to worry too much about the issues raised by Elder Tien and the township representative, Mr. Chen, and instead to focus on the co-management project with the headquarters and his association. But the troubles brought by these two ambitious elders were not so easy to ignore. Indeed, their ideas of sharing the funding spread. A few days after the meeting, when I went to other communities, I found that many people were angry about the river protection scheme, saying that the Skadang people could not monopolize the river. 'Come on! The river belongs to Fushih village and I will go and swim tomorrow to see what they do to me. Come on! Every citizen in this village could go there to swim'. The National Park sent a low-ranking officer to help negotiations, which did nothing to appease the locals. The Skadang association was frustrated that politicians could destroy so much and they felt their association was isolated and that the National Park could do nothing to help this situation.

8.2.6 Scaling up stakeholders?

Returning to the Skadang river protection case, we can view the worries of the Chief of the association as stakeholder problems. Co-management issues concern many visible or invisible stakeholders who hold 'bundles of rights' to the river. The crucial stakeholders appear to be the residents in the Fivehouses and the Threehouses area who did not want to join the association and were not willing to accept the river protection because they would lose their rights to access the river resources and their traditional methods of stewardship. The most troublesome issue was, in fact, an old and complicated land conflict. This issue was beyond the association's original remit and capability. If the property issue was not resolved, the river protection scheme would be ineffective because tourists would still pollute the Fivehouses and Threehouses areas and the residents would still access the fish there.

There were a number of difficulties that could not be solved by either of the two sides in the co-management project. This situation was exacerbated by the headquarters of the national park not being ready or prepared to deal with this new policy of co-management. In terms of the Skadang case, the river protection was so troubled that it was unable to survive. It did not take long for the locals to lose interest and ambition. The patrolling carried on with only three members of the community. These three patrollers were actually the most 'famous' and 'notorious' hunters in the village and it did not take long for people to question the notion of having hunters carrying out patrols to catch poachers. People lost faith

in the river protection scheme. What's more, few outsiders trusted the river protection either. Ultimately, the National Park sent an official letter putting a stop to it. The letter gave the reason for cancelling the project that the National Parks Council in central government felt that the Taroko National Park should not give money to communities outside the realm of National Park boundaries. The Skadang and Hohos were angry with this decision and local people complained that it was irresponsible of the headquarters to stop in such a way without negotiating with the partnership communities.

8.3 Conclusion

The Skadang case highlights organizational and institutional problems inside a community association. This includes fundamental problems of human resources and the division of labor. In addition, there were problems of land conflicts. Resolving these issues by recruiting and scaling up the crucial Skadang river area as a communal property resources management regime was always going to be difficult to implement. Though there were traditional communal ways of managing the river, property conflicts remained a dilemma for the locals.

Following Ostrom's principles regarding the design of an institution mechanism, we can see that in the Skadang case there were no 'clearly defined boundaries of jurisdiction over the resource' (1990; 2005). Indeed, some locals insisted on their customary rights to river resources and they feared that these rights would be cancelled by the river protection scheme. Land conflicts that emerged from the process of applying for indigenous reservation land harmed the customary rules among the locals to ruin what Ostrom suggests that 'locally appropriate rules must be devised' (Ostrom 1990). Thus, it is hard to have a 'clearly defined user group or community [to] manage the resource' because there is no 'clear identification of rights to resources and rules about them'(ibid). Those river land property owners or resource users rejected the idea of being 'involved to take part in decision making about the resources'. Consequently, the local NGO that resource users refused to join lost its legitimacy to have 'decision making taking place in public, in arenas to which all resource users have accesses. 'Conflict resolution mechanisms are not clear, accessible and rapid' (ibid). The National Park headquarters also stopped the project that seemed to go astray outside of its regime. There was no 'accountable monitoring and effective authority structures' that could stop illegal poaching or various accesses to the river. Thus, 'graduated sanctions' are not 'devised for non-compliance with collective rules' (ibid). Not to mention that such sanctions must be applied consistently, rapidly and impartially. From the cases in Truku, we find that the only traditional rules for river protection were communal and had already been destroyed by national and colonial rules. Clearly, new rules and methods of implementation are required.

Photo 9.1
Initiation ceremony of the Pratan River Protection in 2004 (Taiwan News). The ceremony held by the Hualien County Mayor Mr. Sheh, who also invited stakeholders for different contexts to join the initiation or the declaration of 'Closing River' in Pratan. Some vivid stakeholders concerned with the Pratan river were invited, like the Township Office, Toroko National Park, Agriculture Water Management Association (花蓮縣農田水利處), Institute of Water Resource (花蓮縣水產培育所), Police Station and some local NGOs. Source: web.hl.gov.tw/board/show.asp?idno=4294.

9

River Protection Co-management in Pratan and Mqeleqi

9.1 External participation and support for local scenarios of river protection

9.1.1 Support from government: trend or paradigm shift?

Conservation areas or national property lands in Taiwan, including forest, river and coastal areas, suffered tensions as a result of the rules and restrictions relating to local ideas and practices. As many studies have pointed out, this is a 'classical paradigm of natural resource management and/or conservation characterized by the use of scientific knowledge under the strong influence of the national government' (Lu, 2004:1; Huang, Y.W.). In the Taroko area, tensions between the state and the local population have a long history and the complex relationship began, at least, in the Japanese colonial time when laws and regulations had no respect or regard for local values. Protests and claims by indigenous locals about the rights to land, natural resources are increasing and legal procedures are becoming more frequent. There are signs that the authorities are increasingly listening to and taking care of indigenous issues. However, scholars who have closely and continuously observed these tensions have found a lack of legal structure to deal with local concerns. In addition, government policies tend to be blind to indigenous issues and individual government departments pay little attention to indigenous affairs. My own experience of the situation relating to the Taroko National Park is that the attitude of the National Park headquarters changed frequently. While the prevailing atmosphere among staff is that indigenous affairs were extra work, a burden and an annoyance, getting in the way of their regular conservation tasks, there are many officers who do come up with ideas and actions to help indigenous locals. The locals' attitudes to the various Chairs of the National Park headquarters were usually along the lines of 'Mr. Shu is a good drinker, he drinks a lot and goes easy on us and he has actually done a lot for us indigenous people'. Or, 'Mrs. Huang is a student of Mr. Shu, so is a good drinker and follows the custom of keeping good relations with us!' We found the headquarters tried to ease the many tensions with locals using friendships or fictive brother-and-sister-ship, but this approach is something of a double-edged sword. The closer relationships are, the more demanding they

can be. My observations are that it is difficult to be a civil servant in these government departments. The pattern in recent years certainly appears to be that central government nominate a Chair to run the headquarters for a short time until the locals figure out what kind of character he or she has and use this to make further claims. This is usually the moment when a new Chair is appointed. In fact, there are no clear guidelines or procedures to support the National Park headquarters in the business of co-management, so chairs or senior officers often find creative ways to manipulate governmental budgets in order to meet their promises to locals.

In my opinion, establishing legal constructions should be the priority in terms of assisting co-management. Take the 2009 proposal to amend the National Park Law. These changes would strengthen restrictions and rules relating to the National Park regime and also detail plans to establish more conservation areas on land belonging to indigenous peoples. The 2009 amendment proposal included vague ideas to establish a Consulting Council on Co-management, a forum for both locals and the National Park. However, it remains at the discretion of the Chair of the headquarters whether this council will actually be set up and such a body has little authority to devolve decision-making powers and management rights to locals. Previous versions of this toothless forum were powerless to make decisions based on the participation of locals and to enforce the implementation of any sort of co-management. One article in the proposal to amend the National Park Law states that the National Park headquarters should promote the co-management on the condition that the law establishing autonomy for indigenous people is passed and implemented. Critics see this condition as a strategy for the National Parks to avoid the burden of establishing laws and implementing procedures. In fact, it is impossible to pass an autonomy law for indigenous people because the ruling Kuomintang (Nationalist) party has little desire to promote indigenous affairs and welfare. It appears that they use these conditions and articles to prevent indigenous legislators from hijacking the proposal and the reality is that the National Park headquarters promotes the strengthening of a top-down conservation policy and the extension of their regime.

There appears to be a trend not just in Taiwan, but also internationally (Brosius et Al. 2003; Persoon et al. 2006) for conservation officers to be less tolerant of indigenous issues. In the following section, I will illustrate the tensions between the pros and cons of more conservation for the indigenous locals. One day, I attended a meeting hosted by the Taroko National Park to assess a report on designing a network of cycle paths inside and around the park. Someone at the meeting mentioned the need for a participatory design process. This was met with an angry outburst from the Chair of the National Park headquarters who said that the 'Council of Co-management was of no use at all because the indigenous representatives just wanted to grab what they wanted and did not care about others. That's the reason why I would stop the Council'. Through her anger, I could see that she was fed up with the dysfunctional council and did not want to become embroiled with it again (see also a discussion of this council by

Chen, S.H. 2003). She was an official who helped manipulate the system to find ways to fund local river protection co-management projects; she did this using her own methods and without the help of the Co-management Council. Below, I will illustrate such a case in Pratan.

9.1.2 Co-management of river protection in Pratan Village

In 2006, the then Chair of the headquarters provided considerable funds to support Pratan community's river protection project (Yu, Wan-li 2004), which was outside the national park regime. The headquarters also helped with training indigenous locals to run ecotourism businesses based on river protection.

In addition to expensive infrastructure construction, the headquarters also sponsored a survey to monitor the river ecology after the project had been functioning for a while (Yang, Yuen-Po 2005; Chen, Zhen-wen 2004). However, on discovering that Pratan was 'outside' the national park regime, no further support came from the headquarters.

In fact, the Pratan community's river protection project survived without the headquarters' help. Pratan village fell partially under the remit of the park regime, but also came under the remit of the ambitious township and county offices that assisted in a number of basic law procedures. Pratan locals also had access to other competitive government agencies who were hoping to rack up more administrative accomplishments. For example, the Labor Council in Central Government financed a basic monthly salary for local people patrolling the river for a period of up to three years. The Institute of Fisheries funded preliminary research on river ecology and introduced 3000 young Taiwan Shoveljaw carp (*Onychostoma barbatulum*) into the Pratan River in order to increase the group of native species. Consequently, Pratan village became a star community that received a great deal of both internal and external support. The money provided by the Council of Labor was sufficient to sustain twelve locals with a stable income. This went a long way to ease the tensions from some locals who were looking for something substantial in return for the services they had devoted to the nature. A number of villagers in the Pratan community who initially resisted river protection changed their attitudes and cooperated with the protection agenda having found work funded by the Labor Council. There was apparent competition among local and central authorities to have their rulings on the locals, especially in relation to ecotourism, made a priority on the agenda of governmental projects. Pratan falls mainly outside of the boundary of the Taroko National Park, so the Township and the County were eager to establish co-management with the locals, especially because the main leader of the Pratan community was an active politician with good connections and access to governmental resources and political economy. In Pratan, then, we see locals starting to implement their ideas on a more voluntary basis and by gathering support from within their community. This is in contrast to, for example, Skadang that, as we have seen, received much more external support and incentives. However, this meant there was less cohesiveness within the community. Tensions between hunters and gatherers in

Skadang who insisted on accessing the river resources were eased with salaries provided from outside authorities. However, internal tensions persisted in the form of electoral competition at different levels among political parties or the appropriation of funding or profits. Before providing further detail about the 'contingencies' that haunt these villages, I will examine the double-edged sword that is governmental support.

9.1.3 The double-edged sword of governmental support

Support from different levels of government was always a double-edged sword for communities who became too dependent on it. For example, the salaries for the patrollers became a burden for local leaders who had initially established the patrols on a voluntary basis. Indeed, the salary issue became something of a conflict. Those local people who had been against river protection at the start demanded that hunters and gatherers be paid for patrolling in order to compensate for their loss of rights to access river resources. This fuelled a complex struggle inside the community. Many local people felt frustrated by such apparent selfishness and worried that if the government stopped paying salaries there would no longer be any will to carry out patrols voluntarily. In addition, the community appeared to be divided in regard to the introduction of young fish into the river. There were locals who disapproved of artificial methods to sustain the river's ecology and biodiversity. There were others who believed that the introduction of fish had more to do with attracting tourists than river protection.

Pratan had received government support in terms of infrastructure, salaries and bio-resources. The outcome of this support was a community that became famous nationally and attracted many tourists to see places that had once been unknown and isolated. As more tourists came to the village, locals became increasingly inspired to act and prepare for a better future in terms of their income, self-esteem and cultural identity. Some locals remodeled their houses, transforming them into hostels or Bed-and-Breakfast accommodation for tourists. Others established shops or food stands to make money from the visitors. Local leaders, meanwhile, were busy with the question of whether they could take entrance or other fees from tourists, as the Danayiku people had done in their area. After consulting many experts, the answer appeared to be that it was not possible to charge entrance fees. It should also be noted, however, that before the fish returned and attracted the tourists, there had been debates about the legitimacy of closing the river. In the next section, I will outline the legal arguments put forward by both the authorities and some locals for closing the river in order to bring the fish back. By examining the laws used for closing or protecting the river, we find yet another double-edged sword.

9.2 Legal support for generating income for locals

For the government authorities and officers concerned, co-management of river protection was such a new idea that it required a paradigm shift in terms of administration. It required designing a structure of devolved power and a division of labor for the management of natural resources. Many officers and public servants were quite ambitious and willing to assist the indigenous people with implementing their visions of co-management that, ultimately, they hoped would also support the local economy.

Fortunately, there were a number of existing laws that could be used to support various scenarios of river protection. This required extending the interpretations of some of the sections or articles of laws that were stipulated many decades ago under authoritarian regimes, when ideas of co-management, devolution and empowering local were impossible to imagine.

Two laws in particular were extensively interpreted by practitioners of river protection. The most commonly used law was the Fishery Act. According to the Fishery Act, 'governments in charge of fishery resources and the management of fishery industry structures have the rights to arrange fishery zones, restrictive periods or bans'. This article is a strong argument for both the locals and authorities to close a river in order to revive its ecology. Bolstered by this legal support, authorities were eager to help the locals close the rivers for a period of time and wait for the fish to come back. During the years 2004 to 2005 county government, backed up by the Fishery Act, supported the closure of many rivers that had some sort of 'co-management' with locals. The county government and the mayor, Mr. Sheh, invited stakeholders from various contexts to attend 'Closing the River' ceremonies. In Pratan, for example, stakeholders including the Shoulin Township office, the Taroko National Park headquarters, Agriculture Water Management Association (花蓮縣農田水利處), Institute of Water Resource (花蓮縣水產培育所), the local police and some local NGOs were invited (Yu, Wan-li, 2004). In fact, these occasions often became celebrations and often there were announcements of initiatives that would bring together the locals, the government and stakeholders to launch a vision that indigenous people could use to form ideas and practices of 'co-management'. In particular, these occasions provided the locals with opportunities to negotiate with stakeholders for more support and solutions to certain issues.

I will now describe in more detail the failures of the different stakeholders to co-operate before going on to raise an important issue regarding the interpretation of certain laws relating to river protection. As I have pointed out, river protection was always intended, in the first instance, as a strategy by both locals and concerned authorities to return fish to the rivers as a way of bringing in tourists and generating income for the communities. In the short term, this required legal support for the locals. With regard to the issue of taking money from tourists in the form of entrance fees, the chief of the township office said she would discuss the matter with experts in the county government in the hope of finding a legal basis for this practice. But her hope proved to be in vain as there was no

direct legal support for private individuals to collect money from tourists coming to visit public land. This would be condemned as illegal or robbery and, in fact, there had been complaints from tourists in other communities who were charged illegitimate entrance fees, for example, in Smagus. The local township authorized the Danayiku community association to collect entrance fees from visitors to their village. But the debate continued about whether the local township had the right to give a license to certain local private NGOs to collect money from visitors on public land belonging, for the most part, to central government institutions like the Bureau of Forestry or the Bureau of Rivers, or in some cases to the county government. It has been argued that the authorities were lenient on Daniyiku community and the township because they wanted to help. Only a handful of scholars have pointed out this double standard and we can say that Danayiku was contingently lucky in terms of avoiding confrontations with visitors or the authorities when collecting entrance fees. Danayiku was lucky because many other communities experienced problems and challenges when they started to collect any sort of fees. The most famous case relates to the Smagus tribe and occurred in 2009 when the area was already popular with tourists. The Smagus started to collect entrance fees from visitors and saying that the money would be used to fund garbage cleaning services. The arrangement was that, if you booked an overnight stay in Smagus, then the entrance fee to the Smagus Park was waived. The bottom line was that the Smagus people believed they had a right to be paid for their services in terms of cleaning and maintaining the park, and in terms of compensation for tourists trespassing on private indigenous reservation lands. On the face of it, this seemed reasonable and many visitors agreed to pay, but this action was soon challenged by different levels of government who wanted to stop the 'illegal' taking of entrance fees. The major argument they used was that the forest lands in Smagus Park were state owned property and the right to pass through reservation lands should be protected. Some agents of the government said, 'You cannot just close the road and collect money from people passing by the entrance, that's robbery!' Consequently, the Smagus stopped collecting fees without any support or license from the authorities. The chief of Shoulin Township realized that her township and the Pratan locals would face many challenges from higher authorities, so she said she would try to obtain the license through the township council who had the right to rule on township territory. Her plan was to either help the locals to collect fees directly, or she would empower her township office to collect the entrance fee and redistribute a portion of the revenue to the locals as payment for their river protection services. This had been the case in north Taiwan where an Atayal tribe carrying out river protection had received money collected by the township office (see Yen and Kuan). However, a number of locals worried that the Chief of the Township would just take the money and use it to finance her rule and campaign for re-election. At the same time, even if the township took the entrance fee, they could not be sure that another level of government would not challenge this. So this scenario was seen as high risk by many locals who feared that their efforts would result in frustration and disappointment.

The Tourism Promotion Act (觀光發展促進條例) that had been enacted in 1971 was seen as another possible source of legal support for locals collecting entrance fees. This act has only recently been interpreted as having certain sections and articles that can implement special zoning, i.e. that visitors or tourists can only enter certain zones if they are accompanied by special tour guides.[39] The term 'special tour guide' can be interpreted as referring to locals with knowledge of their cultures, ecology and landscapes. The discovery and re-interpretation of this article of the old law provides one solution to the lack of legal support for collecting money. However, to achieve this goal, the government and the locals must set up a Natural Human Ecological Landscape Zone (自然人文生態景觀區). This is supported by article 1, section 2, rule 5 of the Promotion of Tourism Act, which says:

> Governments concerned can set up this zone when the places in question are full of special natural landscapes that would be hard to recover once lost. These places could be habitats for natural flora and fauna in indigenous reservation lands, mountain areas with limited access, wildlife conservation areas, water resources conservations areas, natural reservation areas, historical reservation areas inside national parks, special landscape areas or ecological conservation areas and so on (Lin, Hung-Kuei 2005).

9.2.1 Co-management of river protection in the Mqelegi community

The aforementioned law inspired river protection practitioners to establish a zone to include both indigenous reservation lands and also national lands. The zone featured forest, river and riparian lands. Crucially, the law supported the locals in terms of having the right to ask money from tourists directly. This law certainly seemed to be a solution. Based on this interpretation, the Shoulin Township office felt renewed enthusiasm and sought support from other governmental authorities, and local practitioners were encouraged to seek opportunities to promote the Natural Human Ecological Landscape Zone. Pratan and Mqelegi village were both eager to be promoted as the site for this zone, but it was Mqelegi that was chosen as the first candidate. The people of Pratan felt frustrated because they had devoted a great deal of energy but gained nothing. There are many reasons why Pratan community was not chosen, but the official reason given was that Pratan was partly inside the Taroko National Park, which was a stakeholder that would be in competition with the ruling authorities. Adding another stakeholder to the mix would complicate the process of setting up a special zone because the county government and the township offices would feel under pressure to bring the National Park under their rule. The reality of the decision, however, was that local politicians had already immersed themselves inside the management structure of the Mqlegi Association, which was a local NGO.

39 Section 19 of the 1st article.

This plan to make Mqlegi a special zone was approved by the county mayor and the township chief. Both county and township budgets were provided to fund a high profile academic to draft the zoning plan and to start negotiations with the relevant authorities, including the Bureau of Forestry. The fact that the clerk in charge of this case in the county branch of the Bureau of Forestry was a post-graduate student of the professor in charge of the draft seemed like a good sign that the process would go without a hitch.

However, it took almost four years of negotiations with the Bureau of Forestry to reach the point where the special zoning plan was rejected by the Bureau of Forestry. Among the answers given for the failure of the plan was the fact that the term 'authority concerned' in the Tourism Promotion Act was vague. This meant that the Bureau of Forestry could interpret this as meaning that the Bureau of Forestry and the Department of Transportation should be in charge of tourism and were the authorities referred to in the Tourism Promotion Act. When the Bureau of Forestry discovered that the zoning plan was designed to include state forest lands that were under their administration, they were concerned that the local county and township governments would encroach onto state lands that had already been set aside as conservation or tourism areas that were run by the Bureau of Forestry. From the local government's perspective they were planning only inside the Mqeleqi administrative village, where they believed that they had decision-making powers even though the village belonged to the Bureau of Forestry and the county. Because there was a great deal of competition about the ruling, responsibilities and profits of certain areas, a sense of department-centralism developed within government and penetrated intergovernmental communications. The zoning plan that had been inspired and encouraged by so many central and local government officials was finally rejected at the end of 2009. Understandably, the decision aroused considerable anger and frustration among locals. Consequently, we can say that, to date, the law has been unable to provide a solution to meet the complicated and embedded needs of different stakeholders and, in particular, those at different levels of government.

The vision of building a synergy between ecology, economy and cultural identity through river protection and total social engineering has been frustrated, but the patrolling along the river continues in many places, despite the lack of external support and the failure of zoning. What has frustrated the locals most is the number of invisible or unexpected stakeholders who have apparently brought many troubles to the river protection scheme.

Based on the Fishery Law, the authorities can close a river to form a protection zone; however, there are no clear articles ruling that people cannot play or swim in the rivers. This troubles the practitioners very much. The Fishery Law also supports the authorities re-opening rivers for fishery activities when the fish stocks are sufficient. Moreover, the government can charge the fishers a tariff for using the river (Lu D. J. 2004, 2008). This money could only be collected by the government and there was no clear law or methods of implementation to support the transfer of money directly to the locals who were providing the services

to the environment or to compensate them for the damage caused by mining or industrial pollution. Consequently, there was a sense of environmental injustice. Environmental injustice was a common experience and river protection practitioners felt frustrated to find that what should have been a simple action to prevent damage became so difficult. Indeed, environmental injustice occurred on a daily basis. Pratan, famous for its gorge and creek landscape, was overrun with luxury four-wheel drives from all over Taiwan. Many outsiders claimed that it was public land, so they had the right to get close to the river and they ignored the notices saying that the river was part of a protection project. Ironically, more and more tourists arrived in the area precisely because of the famous river protection project. These small communities became so overcrowded at times that many locals joked that there were more tourists than there were fish or stones in the river. The question of capacity had been addressed in the zoning plan but this made no difference to the situation at all. The burden was always on the locals' shoulders but the profits were always out of local reach. The worst-case scenario appeared to be coming true – that the river protection project was actually causing an ecological crisis.

One final contingency is the problem caused by the Hualien County Agriculture Water Management Association (花蓮縣農田水利處) who had a representative at the aforementioned opening ceremony of the river protection project in Pratan. On the day of the opening ceremony, the leaders of Pratan community had the opportunity to talk to the representative of the Agriculture Water Management Association. They believed that the association was one of the most crucial stakeholders in terms of the river and the management of dams, canals and artificial water channels diverting water from the river for use on a vast area of agricultural land. In fact, the Agriculture Water Management Association had evolved as a common property resources management device (largely among Han farmers) since the Japanese time when the colonial government supported farmers' claims that the water in the river was their common property without consensus from the indigenous communities who lived on the land where water came from. The practitioners of river protection in Pratan were very worried about the Agriculture Water Management Association making decisions, such as opening a sluice to direct water to agricultural lands, which would result in the river drying up or the fish being killed. The opening ceremony was seen as a crucial opportunity to express these concerns. However, the meeting apparently had little effect, as in 2006, after the locals had successfully returned fish to the river; a drought meant that farmers demanded water from the river to sustain their agriculture. The Agriculture Water Management Association diverted all the water into artificial channels leading to farm lands and, consequently, the river downstream in Pratan dried up and many fish died. The frustrated locals who had struggled so hard to build up their livelihoods felt that they had little choice other than to start poaching again. Many argued that they would rather 'live on the fish than let the fish die because of the failures of governments'. Once again we see a tragedy of the commons.

9.3 Governance through co-management or autonomy?

As a result of the difficulties I have described, the locals found that it was a risk to rely on the government, and the few successful cases in Taiwan were those where indigenous people had tried to remain independent and not take support from outside. Simply put, the government had very different ideas about purposes, time limits, management terms and administrative limits than the locals. Independence and self-empowerment were ways to manage natural resources, although it was impossible to be completely isolated from outside interference. The cases in Danyiku and Smagus have shown that there is 'geopolitical resistance to colonization' (Hipwell 2007:876). Research shows that Danyiku and Smagus succeeded in keeping out governmental interference and that self-management was contingent on the authority's willingness to keep one eye closed and another open. The contingency in these successful communities did not exist in the Taroko scenario where natural resource governance was embedded in stronger regimes. The people of Taroko could not just close an area off or isolate themselves from external interference. If we see governance as the complex ways that individuals and institutions, public and private, manage their common concerns (Borrini-Feyerabend et al.; Agrawal 2005; Sato 2000), then co-management is a good way for communities and the relevant authorities to manage natural resources successfully, meeting the needs of both sides. However, as we have seen, many of these co-management projects failed to reach the standard Borrini-Feyerabend et al (2000) describe as 'a situation in which two or more social actors negotiate, define and guarantee amongst themselves a fair sharing of the management functions, entitlements and responsibilities for a given territory, area or set of natural resources'.

But there is no question of a 'fair share',when the National Park just cancelled the co-management project without discussion. Furthermore, the township, the county and the Bureau of Forestry had different ideas about their roles. The local communities were determined to achieve their goal of 'autonomy' either through 'sovereignty' or through the management of natural resources. Co-management would be a way to avoid the serious problems surrounding ownership and access rights. Co-management of natural resources would also bypass the fact that property requires clear cut boundaries and the various types of property categories need clear definition in order to enforce duties and rights. Co-management of natural resources also has the purpose of bringing tourists to the area to come and see the fish and, hopefully, it will make some money without having to get involved in defining properties. Even though the river ecology was not actually a priority for local people, the strategy to bring back the fish was seen as a way of improving lives and achieving a vision of combining ecology, culture and livelihoods. My research demonstrates the existence of a contingent ecology in the realm of ambiguous stakeholders with ambiguous management strategies and some vague categories of properties. The locals and a number of indigenous intellectuals critical of government interference had ideas about sovereignty and autonomy mixed up with many international, national and regional ideas. This

inspired the locals to think of alternative ways to make a living and to bring back self-esteem.

9.4 Conclusion: uncertain and contingent futures

Natural resource management (NRM) is indeed a political issue. Through the cases in Taroko outlined here, we see that 'governance' of natural resources is embedded in a nexus of conceptions and practices. In the three cases I have discussed, we find communities without strong reciprocities and solidarities at a river or watershed level. In particular, these communities are deprived of positive reciprocal relations with the river where 'colonialists had dismantled communal property regimes and institutions as a prelude to establishing colonial economies' (Gadgil and Guha 1992). A total social engineering perspective is vulnerable to difficulties because of the heterogeneity that comes from a community that is hybrid in terms of character and social structure. Different community components with different local contexts bring about different visions and ideas in terms of practice. Through these cases, we see that indigenous locals use moral and emotional reasoning to regain a sense of the participation in the governance of the environment. Co-management is way of including governmental resources to help bring about a synergy of livelihoods, nature and culture. The research shows that legal support is limited. Nonetheless, the state laws support the state taking indigenous private property to build public infrastructure. Indigenous property has actually been recognized to a very limited extent since the days of Japanese rule; however, many collectively owned lands that now belong to the Bureau of Forestry and the National Park headquarters were seen as *terra nullius*. The Tourism Promotion Act shows some promise in terms of co-management, but the government is not so willing to offer up the benefits or duties to the locals. Whether the Tourism Promotion Act can deliver a promising future in terms of the environment and the indigenous people remains to be seen and there is a tendency in conservation arenas to advocate stricter rules in relation to national lands. Little wonder, then, that many scholars think that the new articles concerning the indigenous peoples are only basic directions of policy but not basic rights at all.

Through the cases outlined in this chapter, I have found that there may be more chance of success in terms of implementation if the design of co-management is well thought through before the process even starts. This would lead to a better division of labor among stakeholders.

The cases also illustrate how important property regimes are to the implementations of co-management. Many scholars found that successful co-management must be based on a clear definition of property, such as that in the successful case of Kakadu National Park in Australia where the indigenous peoples were granted land rights and sponsorship of co-management. Berkes mentions that legal recognition of communal resource-use rights, as in Japanese coastal fisheries, is key to the success of exclusion under communal-property regimes. Even in

terms of private property, the legitimacy of state property in the eyes of the local community is important for enforcement (Berkes et al. 2001). These international cases are inspiring Taiwanese indigenous people, and the implementation of co-management of natural resources reflects a greater need for sovereignty that comes from a doctrine of communal property. Under communal-property regimes, 'exclusion' means the ability to exclude people other than the members of a defined group (Berkes et al. 2001).

I found, however, that indigenous locals did not stubbornly insist on 'total' sovereignty in the way that a nation state demands full control. Instead, they were willing to accept 'soft' sovereignty in the form of co-management in areas of ambiguous properties. In fact, the role the government plays is still based on the prerequisite of nation sovereignty. Given the many frustrations experienced by indigenous practitioners, it is no wonder that they insist on starting from a definition of property. Indigenous locals are looking for adjustments to the governance of natural resources and who is entitled to what rights regarding certain property types. The question of autonomy or co-management is next on the agenda.

Photo 10.1
Entrance to the Pratan village

10

Conclusion

10.1 State of nature/state of the nature

The majority of the Taroko land problems and claims have their roots in the Japanese colonial regime. In chapter 2, I described the formation of the area of Taroko and the state law frames introduced in the indigenous areas. I found that the Japanese authorities viewed the indigenous people's ways of living and their character as being 'state of nature'. I adopt this term to describe the methods and ideologies adopted by the Japanese authorities in order to examine and manage the indigenous people. The term 'state of nature' has been used by Western political philosophers to describe the conditions or characters of those 'others' that were situated in pre-state conditions.

Japanese ideas of indigenous people demonstrate a 'state of nature' that can be characterized by a spectrum of different capabilities and rationalities. At one end of the spectrum is 'animals' with no capacity for rationality; this is followed by 'semi-rational human beings' with limited capacity for rational thought, i.e. people who are not capable of being civilized. Then, at the other end of the spectrum are Japanese 'citizens', fully capable of rationality and deserving of all the rights a state can grant. Thus, we see that the Japanese authorities adopted evolutionary concepts to differentiate the indigenous people and put them into three categories: the raw (uncooked), the semi-cooked, and the cooked. The raw people like those in the Taroko area were considered animals with no knowledge of rationalities and only deserving of war and occupation. The semi-cooked or the cooked indigenous people were later treated as Japanese citizens deserving of recognition and land titles.

Despite this categorization, it was in the interests of the Japanese colonial government to maintain the savage status of the indigenous peoples who might otherwise lay claim to ownership of Taiwan's richest natural resources. Identifying indigenous people as savages gave the colonial government the right to occupy their land. This was a widely shared ideology among the major colonial powers at that time. Like the British colonizers' view of aboriginal land in Australia as *terra nullius*, the Japanese government perceived the savages of Taiwan as lacking knowledge of property ownership, and thus claimed their indigenous lands as government property. As O'Brien says:

> […] seventeenth-century English colonists used two devices to dispossess New England Indians: they declared lands '*vacuum domicilium*' (empty of habitation), and (rejecting full Indian sovereignty over their lands) they 'purchased' Indian land according to English legal principles. Even when they did 'purchase' Indian lands, they assumed their land rights really emanated from crown grants secured through the 'right of discovery', and the biblical directive to 'subdue the earth and multiply'. In this equation, 'Wandering Indians' failed to 'subdue the earth' because they did not use the land in European ways (1999: 208).

In a similar way, Taiwan indigenous people actually lost all of their territory because it was deemed national land that only the Japanese State owned the ultimate right to.

10.2 *Terra Nullius*/Sovereignty

During the Japanese encounters with the 'raw' Atayal people and also the indigenous peoples in the Taroko area, the cruelties were numerous on both sides. But the raw Taroko people never had a chance of being promoted to semi-cooked or cooked before the Japanese authorities waged war on them in 1914. The Japanese started from the premise that the lands in these 'raw' areas were *terra nullius*. Of course, the Japanese authorities had to be blind not to admit that there were people living on these lands with their own methods of tenure or management. Many of the Japanese consultants, like Mochiji Rokusaburou, put policy priority on lands that could be used by the state and the indigenous people who occupied them were deemed a problem. The doctrine of *terra nullius* was first suggested by the American consultant LeGendre, who signed memorandums with the barbarians in the south of Taiwan on behalf of the United States in order to urge the indigenous people not to harm any American sailors that drifted ashore. In fact, it was the Qing government that was the *de jure* subject who should have signed the memorandums with the US, but LeGendre, in his role as an ambassador in Xiamen in south east China, signed the agreement with the barbarians instead. He seemed to think that the southern barbarians were representatives of the sovereignty of the southern area. Following this logic, the people who signed on behalf of the indigenous people in the south should be considered the holders of sovereignty. Yet LeGendre still believed that the areas out of China's direct control or administrations were *terra nullius* and, thus, belonged to no one and certainly not to the indigenous people. At a time when many colonial states were competing for the land of Taiwan and elsewhere, the theory of *terra nullius* was adopted by the Japanese as a way of approaching the lands and people in indigenous areas. In fact, the Japanese approach was a cruel one; they refused to see that the indigenous people had their own lands and way of lives. 'State of nature' was a fictive notion and a legal device adopted by the Japanese colonial authorities to neglect human rights.

These theories were different to Western theories such as John Locke's 'social contract', which preached that to move from 'state of nature' to 'state' or 'civil or political society' requires a social contract, to provide a bridge for people in 'pre-state' conditions to cross into a condition of state. Many Western philosophers like Locke and Rousseau had different presumptions or ideas about the conditions of the 'state of nature'. Locke thought that people in 'state of nature' did not obey a unitary law or, indeed, any overall rules and they did not recognize mediations or punishments. In *Leviathan*, Hobbes wrote of how people are selfish and compete amongst themselves without caring for others. This reiterates the point that there are different kinds of 'state of nature' and how people in a 'state of nature' can be so individualized that they are unable to follow any collective rules made by a state or, in fact, any other unit (Tully 1993). Even John Locke, who had great knowledge of the North American Indian peoples (ibid), still urged the state to welcome people in the condition of 'state of nature' using the 'social contract' theory that the North American Indian people would join the state in their own time and of their own free will if they thought doing so would protect their original properties. Though colonial history shows us that this idea was ultimately rejected in these American Indian areas, an idea still existed that the state should be set up on the condition that the people in a 'state of nature' could still keep their properties. There is no evidence to suggest that Japanese colonialists were influenced by these ideas, but we can see from the Taroko case that there was no social contract to bridge the 'state of nature' and 'the state of the nature'. On the contrary, *Terra nullius* was the bridge between the two and the Japanese considered the land in these areas as uninhabited or only inhabited by human beings who lived like wild animals, who were not civilized.

In this period, other colonial powers treated these mini-nations differently. For example, when the English went to Canada and New Zealand, they recognized that the indigenous peoples in those territories were nations. They signed international treaties with indigenous people. These treaties became the basis for later legal claims (Yen and Yang 2004: 241). By contrast, the 'raw' indigenous people of Taiwan were not treated like those in other colonial situations. As Yen and Yang found, the Japanese did not recognize Taiwan's indigenous peoples as a nation. They did not sign treaties with them. They treated them like animals. (Yen and Yang 2004: 241; Vickers 2008). Moreover, the Japanese responded to the 'animals' cruelty in kind. The indigenous people of Taroko were simply animals that needed to be conquered.

10.3 War/Peace/Natural Sovereignty

In my fieldwork, I found that Taroko intellectuals have many different reflections on the history of the Japanese time. In particular, there were many different perspectives about indigenous ideals of peace and war, and later the taking of lands and properties by the Japanese army and authorities. Indigenous logic is one of conquering, being conquered or surrendering under certain conditions,

and many rules are based on indigenous customs. For example, with respect to the processes of war, indigenous people believed that if the war was started for convincing reasons then the outcome could be submission without conditions. If, however, the conflict is started without convincing reasons, the indigenous people consider it as invasion and submission to the army should only occur under certain conditions. Based on these indigenous interpretations, I find that indigenous people have an idea of 'sovereignty' and that they firmly believed their sovereignty was based on the fact that they had occupied the lands, without being bothered, prior to any states that came later. In one sense, this so-called 'natural sovereignty' precedes any state sovereignty and, in another sense, it relates to the natural habitats and resources that are occupied by states. Based on this idea, indigenous people are claiming their rights to, in particular, land and natural resources. Consequently, I find that the Japanese method of ruling the indigenous lands has resulted in three topologies that the indigenous people use differently as strategies for land claims.

10.4 Gaya as institution: in situ, diaspora and hybridity

In chapters 3 and 4, I illustrated three topographies related to indigenous settlements and traditional territories: in situ, hybrid and diaspora. These typologies suggest a decline in the claimants' closeness to and knowledge of the territories they claim. They seem to divert into objective empiricism and subjective re-constructionism in terms of the ideas and methodology for mapping traditional territories. In an in situ scenario, landscapes are demonstrated through checks and balances on the politics of representation and the 'subjectivity' of local people or 'objectivity' of land natural resources. But in a diaspora scenario, where stakeholders lack information to keep a check on the relationships between people and traditional territories, the politics of representations are more controversial. We find that locals use a method of scoping on a large scale in order to include territories governed by ancestral *gaya*, a regime of autonomy of the Taroko people. Future perspectives are concerned with mapping that demands tracing the past. In this scenario, where some direct connections are maintained in the form of, for example, elders who are tour guides, a space or zero-or-sum emerges and awaits rescue. Without rescue, this zero-or-sum space is nothing more than an imagined homeland or a lost land or non-place to the indigenous descendants.
These three ideal types of mapping topology also indicate how levels of communal properties are being constructed. Through these topologies we find that a small tribe seems to function in an in situ scenario. In an in situ scenario, people maintain *gaya* rules for land use, though many land conflicts still result from the implementation of national laws. In diaspora or hybridity scenarios, the Taroko people have lost their connections with the lands or traditional territories; however, with mapping they can employ an idea of utopian autonomy to try to gain back their territories. *Gaya* is an institution that substitutes national laws; *gaya* is practiced on their lands while national laws conflict with indigenous ways

of land use. So *gaya* is a utopian doctrine used to govern traditional territories based on their natural sovereignty.

10.5 Imagining the autonomy of *Gaya* in Basic Law

In chapter 5 we found that indigenous peoples have not benefited from the new Basic Law that is awaiting further time-consuming amendment. A clear solution to land issues is deliberately avoided in the text of the relevant articles in the Basic Law. There is a similar opaqueness about the two memoranda for 'A New Partnership between the Indigenous Peoples and the Government of Taiwan' signed by President Chen (see appendix 3)'. For example, the 5th article states:

> To restore or recover tribal and ethnic traditional territories for Taiwan indigenous peoples are originally tribal societies where institutions of communal or individual uses are based on communal ownership of land. In order to rebuild an ethno-cultural development subjectivity to process a foundation for autonomy, the government of Taiwan should acknowledge or recognize, regardless of the private ownership regimes on land, the tribal and ethnic subjectivities and their ownership of the traditional territories.

In the above translation, the words 'restore' or 'recover' have been translated from the Chinese idiom '*Huei Fu*' (恢復), which denotes a common meaning of recovery. But exactly what is going to be recovered is not clear from the text. Indeed, the indigenous peoples have always asked for the article to be worded using terms such as 'return' or 'give back'. The above translation uses the terms 'recognize or acknowledge' in relation to indigenous subjectivity of their traditional territories, but there is no sign of anything being acknowledged or of rights being recognized. A more favourable term would be 'Indigenous subjectivity', which recognizes indigenous natural sovereignty. Therefore, many indigenous laws and policies must be reconsidered.

In the preceding chapters, we have discussed how people reconceptualize lands in their collective imagination. Based on natural sovereignty, Taroko people have adopted mappings to project autonomy without interference from outsiders. Through their desire for autonomy, they projected a time when ancestors were living in their traditional territories according to their own *gaya*. Natural sovereignty is the ultimate right to protect *gaya* and the ultimate institution for governing the lands that are now occupied by the state. We find that the Taroko people have a doctrine in which sovereignty is the basis for re-coordinating land, human-units, rights and institutions according to ancestors' rules. In a Draft Taroko Autonomy Constitution, we see that the Taroko people want to be a state or a nation within the state. In a Taroko state or with Taroko autonomy, the indigenous people would manage land-human relations according to their *gaya*. Natural sovereignty seems to be a solution, but many activists still worry about the many different and competing authorities governing their lands, including

privatized or reservation lands, or lands taken by industries, national parks or the Forestry Bureau. The impact of these *de jure* regimes on indigenous people's practices related to land and natural resources were discussed.

10.6 Law-individualism

The theory of *terra nullius* and taking lands and declaring them as state-owned were colonial deeds designed to render indigenous people landless and, ultimately, 'stupid' and therefore incapable of dealing with rational matters such as economics. This kind of thinking still prevails among many people, even among indigenous ones. During my research I found a number of documents circulating among government officials in the department responsible for indigenous affairs that talk of laziness and irrationality. Such themes have informed officials' thinking and policymaking.

The fact that such views prevail in the 21st century is highlighted by the words of a top officer in Hualien County in charge of indigenous affairs: 'They are not inspired by civilization and have fewer abilities to compete with the Han and the plains people. It is usually the indigenous people who are inferior to the Han when they are dealing with commerce.' It seems that indigenous people are consistently labeled as not so advanced in terms of dealing with matters of commerce and economics. The system of land reservation appears to have been set up as a bridge to help indigenous people advance, step by step, in terms of capability and rationality. It is a fact that indigenous people are not as advanced as, say, their Han counterparts, in commercial dealings. However, the reason for this has nothing to do with laziness or isolation. In chapter 6, I demonstrate how indigenous people act both collectively and as individuals and prove to be just as rational or as calculating in matters of economics. They still consider many affairs in collective terms, but they also take their own personal interests into account. In my opinion, indigenous people have not been able to advance because they are part of legal and economic structures that limit their ability in the commercial sector. Thus, we see that colonialism has resulted in the reforming of not only governance, but also of ownership.

There are many restrictions on land use and it appears that the reservation land is designed only for agricultural use and cannot be used to provide indigenous people with a basic livelihood. This situation is compounded by the fact that indigenous people have no capital to invest in small pieces of land. They are often forced to move to urban areas in search of low-paid work. Given these limitations, reservation lands are rendered useless and worthless, which has the effect of inviting profit seekers in to take advantage. During this process, the phenomenon of 'legal individualism' emerged and threatened, and sometimes even violated communal ways of dealing with reservation lands. 'Legal individualism' cuts out communal relations and provides a clear cut method of dealing with lands at the nexus of relations or reciprocal responsibility. The process of granting reservation lands is seen as a way of helping indigenous people to learn

the logic of individual autonomy that is supported by laws and administration. By this, I do not mean that the Reservation Land Management Procedures are suitable in terms of helping indigenous people to define and manage land tenure to the extent that it is secure and clear as some economists imagine. In fact, all the Reservation Procedures, starting with the survey and demarcation require collective and mutual recognition, even though more individualized actions are encouraged by later procedures. These procedures are helping indigenous people to own lands securely within the modern cadastre system. Problems arise around the boundary between capital and value equivalences. If we look at previous studies of indigenous land rights, we get a sense of déjà vu. Taiwan's history shows that from the Dutch time through to the Qing Dynasty indigenous lands have been steadily encroached on legally, socially or politically. In his paper 'State, Proprietary Rights, and Ethnic Relations in Qing Taiwan, 1680-1840', Prof. Chen finds that, 'Despite the official separation policy, numerous Han immigrants (still) encroached on tribal territory in search of new lands and water resources.' Han people and the authorities are using similar methods in the Taroko area; in particular, a special contractual system described by Chen (ibid) that institutionalizes 'the separation of title rights and usufruct or cultivate rights on the same piece of land. Both the title holder and functional landowner could independently sell or sublet their property rights; indeed, a major characteristic of Taiwan's land development was the early and rapid subdivision of property rights among tenant cultivators'. Thus, land rights were separated into two independent parts—subsoil rights held by the title holders and topsoil rights acquired by those households that actually managed the land. This scenario is called 'fan-chan-han-dieam' (番產漢佃) by scholars indicating that indigenous lands were actually cultivated by Han people (see also Shepherd, 1993; Ke 2001). From my study, I also found a new form of indigenous lands being worked by Han people '*fan-chan-han-dieam*' (番產漢佃) emerging in the reservation land system and in the modern cadastre system. We see the rise of illegal holders, permanent leases and many other regulations on the use of certain pieces of reservation land. In theory, the Reservation Land Management Procedures help indigenous people to maintain legal rights over reservation land, but in practice these rights are being encroached on, even by indigenous people themselves. This is a new phenomenon, different from what Li (1982: 104-105、119) called 'controlled capitalization among indigenous areas', a policy to use indigenous land for agriculture in order to help indigenous people survive and with the reservation land protected legally by the government. As agriculture was unable to produce the necessary profits and provide subsistence for indigenous people, the land became vulnerable to capital from outside and prospectors seeking to invest in reservation lands for tourism or mining. The government seems to be unaware of this trend and rather than coming up with better institutions to help the indigenous people survive, in my opinion the Reservation Land Procedure is now being used for state land appropriations related to industry and mining and conservation or preservation of the nature. Moreover, the value of reservation land is now uncontrolled.

According to the Japanese Counselor Mochiji Rokusaburou, it is impossible for indigenous people to have regular land rights until these 'raw savages' have been cultivated, civilized and are capable of economic rationale. Mochiji Rokusaburou put this view of gradual evolution forward during the Qing Dynasty to show that raw savages could evolve into cooked barbarians or be 'Sinicized' and become normal citizens. After more than a century, we are at a point where indigenous people have indeed learned the ways of cultivation and are capable of economic rationale, but does this mean that the time has come to open Pandora's Box and allow free transactions of reservation lands? No. The reason why a new form of '*fan-chan-han-dieam*' (番產漢佃) regarding reservation land tenure is emerging is not because indigenous people are incapable of getting to grip with economics, but because of the legal limitations and the doctrine of *terra nullius*.

In terms of national land laws being implemented in a more balanced way, Herskovits (1965:326) mentions that, 'Whatever absolute criteria of property may be set up, the ultimate determinant of what is property and what is not is to be sought in the attitude of the group from whose culture a given instance of ownership is taken, mistakes or distortions should have chances to be corrected' (see Hann 1998).There are so many regulations and limitations that the indigenous people are unable to develop and fall into the trap of conforming to their stereotype of being 'drunkards' and 'lazy'.

Furthermore, the authorities are still apt to deny 'customary land rights' or 'original titles' (Huang, Ju-zheng 2009). This has become a significant cause of conflict between the state and the indigenous people in many areas and in many cases around the world. As Ali observed in Southeast Asia (2004:337), 'the indigenous people are being displaced from their lands, their ancestral traditional abodes and surroundings in the name of or as consequence of development activities by the government. Therefore, the conflict between public agencies and the people has resulted in a conflict of traditional rights versus statutory rights or management (ibid: 338).'

'Indigenous land rights are conceptualized within the framework of a separate legal regime, distinct from the rest of the country' (ibid: 338). We may think that the concept of land rights for the hill people is inextricably linked to collective customs and traditions with 'emotional attachment to the land, as well as issues of morality and justice that are always a central component of debates about property' (Hann), but these rules and principles have been attacked and mixed with many other ideas resulting in a blurring of land issues within communities. We find many cases where land claims are helped by rumors or street conversations or mediations from elders or even prayers in churches. Communities have alternatives to legal methods to resolve land conflicts.

Frequently, we see that the law demonstrated in the court decisions mentioned in chapter 6 is unable to offer the justice people wanted. Instead, we see that the laws are supporting a form of legal individualism that is causing controversy within communities and breaking down the abovementioned alternative routes to securing property. As Geertz (1983:289-290) has mentioned, 'the as/therefore level of things is as difficult of determination as the if/then level is (in

theory, anyway) clear and inescapable.' It appears that many cases seem to be clear in terms of the legal logic of if/then, but unclear in terms of local concepts of as/there dimensions. Local knowledge and practices need to be acknowledged in the human-land-nature relationship where we can see that customary laws are still embedded in strong societal foundations. Many customary rules and ways of recognizing 'property' still have a strong basis of social support.

Taiwan experienced rapid economic development in the 1970s and 1980s and this inspired an entire development discourse on the 'Taiwanese miracle' (Simon 2002). As Simon's article 'The Underside of a Miracle: Industrialization, Land, and Taiwan's Indigenous Peoples' has pointed out, this view has overlooked three important facts that should be taken into account when looking closely at development in Taiwan. First, rapid development was made possible largely by an oppressive regime of martial law that quelled worker unrest. Second: development took place at immense social and environmental costs. And finally, these costs have been disproportionately borne by Taiwan's indigenous peoples. Through the cases that I have presented illustrating the encroachment of industries into indigenous areas, it should be clear that many burdens were shouldered by the local indigenous people. They suffered greatly as a result of these development plans in terms of environmental degradation and lack of recognition of human rights. From the perspective of environmental justice, a scenario of development like 'borrowing a golden hen to lay golden eggs' (words of a Hualien county parliament member), which invited companies from the west to come to the east of Taiwan to invest, did not bring the promised profits or bright future for the local people. As for the cement industry, it did not bring jobs or other tangible or intangible profits as the companies and governments had insinuated. What these industries have brought is pollution and loss of land.

A report sponsored by the Taroko National Park headquarters states that the park generated about 5 billion NTD of profits through the tourism industry for the area each year. This news, headlined in a local newspaper raised much discussion. Some indigenous people complained that the headquarters had not hired some high profile scholars just to calculate how much the indigenous people have lost each year because of the park (Lin, Yan-zhou 2006).

It would be hard to calculate how much the indigenous people have profited from the Taroko National Park, which was supposed to 'bring more economic benefits to the host community (Lin, Y.Z. 2006). The report focuses on the direct income to the National Park, which researchers claim could be income for the local indigenous people. But as many indigenous people argue, most of the income goes to the headquarters' employees who set up businesses inside the park and who dominate the restaurants and souvenir shops. This is considered a serious injustice by the local indigenous people. Capital is not helping the local poor, but rather the capital owners and the government elites who have most of the opportunities for rent seeking and the instrumentalization of state power to secure property. This is evidenced in the case of the land conflict between local indigenous land owners and the Asia Cement Company. I found an official document from the Ministry of Interior that defended Asia Cement and suggests

that the local county government should consider keeping the cement factories for a number of reasons. The seventh reason the government lists is:

> An official document from the Mining Department in the Ministry of Economy issued as Number 09200253480 on 15th December 2003 says, 'Asia Cement was set up by the encouragement from the national policy of going east for cement industries. From the year 1979 on, the Asia Cement was set up till now; a lot of investments have been made. The factory has offered many taxes and job opportunities to the eastern citizens. And the factory has obeyed the relevant laws and rules. If the land lease contracts on the lands that the factory are using have now expired, and if the leases are not continued, this would lead to a disruption of the cement prices and supplements. Besides, there will be a negative impact on the factory or the industry, not to mention that the company would require compensation from the authorities. Thus, it should be considered seriously whether to extend the lease for mining (Ministry of Interior 2005).

This case does nothing to help the indigenous side because most of the processes have been carried out legally, although it is acknowledged that some administrative mistakes occurred. Through these frustrating cases, many indigenous communities find themselves in devastating situations, flooded with money, capital, pollution, industry and mining. The government seems to think that the answer lies in more negotiations and more corporations getting involved in development in indigenous areas. Article 21 of the Indigenous Peoples Basic Law, promulgated on 5th February 2005, stipulates that:

> The government or private party shall consult indigenous peoples and obtain their consent or participation, and share with indigenous peoples benefits generated from land development, resource utilization, ecology conservation and academic researchers in indigenous people's regions. In the event that the government, laws or regulations impose restrictions on indigenous peoples' utilization of their land and natural resources, the government shall first consult with indigenous peoples or indigenous persons and obtain their consent. A fixed proportion of revenues generated in accordance with the preceding two paragraphs shall be allocated to the indigenous peoples' development fund to serve as returns or compensation.

This article is vague in the sense of knowing who is the real subject of consent and who will be granted the revenues. This is certainly reflected in how disempowered indigenous communities have become in recent times.

It relates to the reconsideration of the arrangements among human units, different characteristics of land, institutions and bundles of rights that are beyond the existence of laws and legal devices or governments now. So far we do not have cases to show how freely the concept of 'prior informed consent' is practiced in Taiwan, but my chapters describing the river protection co-manage-

ment practices illustrate how the local and government authorities concerned are experimenting with this new trend of reconsidering human-land management. Through these cases, we see that indigenous locals are putting forward moral and emotional reasons for regaining governance of the environment. Co-management is a way to include governmental resources and to help achieve the promising vision of combining livelihoods, nature and culture.

Ultimately, however, the current legal support is so limited that the implementation has been ineffective. Nonetheless, the state laws support the state taking indigenous private property for the construction of public infrastructure and without the need for reasonable compensation. Indigenous property had actually been recognized to very limited extent by the Japanese, but their compensation was limited because many collectively owned lands were *terra nullius* and now belong to the Bureau of Forestry and the National Park headquarters, who both share the responsibility for implementing co-management with the indigenous locals. The Act of Tourism Promotion seems to be promising in terms of co-management, but actually there are no official procedures laying out how the locals can participate in the governance of government properties. I am curious to see whether the article in the Act of Tourism Promotion Act will provide a promising future for the environment and the indigenous people, particularly as there is a tendency among conservation areas to advocate much stricter rules on national lands that are now seen as a tragedy of commons, symbolized by landslides and floods. No wonder, then, that many scholars think that adding new articles to the Constitution concerning the indigenous peoples will only result in the direction of basic policy but not basic rights. They view these words in the Constitution as weak in terms of the protection and promotion of indigenous rights.

10.7 Property relates to sovereignty

Through these river protection co-management cases, we find that there may be more chance of successful implementation when conditions are considered and incorporated in the design principles before co-management begins. If this occurs, there is a better division of labor between the parties. The cases featured here show that locals actually began with no advantages at all. On the contrary, the locals started from almost zero and the 'bundles of rights' to the river properties are not generally controlled by the locals.

From the cases presented here, we find that property boundaries define the 'bundle of rights' that are really concerned with the implementation of co-management. Indeed, many scholars found that successful co-management should be based on a clear definition of property and they often refer to the successful case of Kakadu National Park in Australia, where the indigenous people were granted land rights and sponsorship of co-management projects. Berkes mentions that legal recognition of communal resource-use rights, as occurred in the Japanese coastal fisheries, is key to the success of exclusion under communal-

property regimes. Or, as with private property, the legitimacy of state property in the eyes of the local community is important for enforcement (Berkes et al. 2001). These cases are inspiring Taiwanese indigenous people, and the implementation of co-management or governance of natural resources reflects a stronger demonstration of the idea of sovereignty that comes from a doctrine of communal property. Furthermore, under communal property regimes, 'exclusion' means the ability to exclude people other than the members of a defined group (Berkes et al. 2001).

I find that indigenous locals have avoided a perspective that stubbornly insists on 'sovereignty' and demands full control and total sovereignty like a nation-state. Instead, they start from the perspective of soft sovereignty and the co-management of areas with ambiguous properties. The reality is that the role the government play is still based on the idea of hardcore national sovereignty. No wonder, then, after so many frustrations and the impact of so many government restrictions that many indigenous activists still insist on starting from the simple premise of pinning down a definition of property and a vision of who has what rights to certain objects or property types. Autonomy or co-management is set firmly on the land rights agenda.

Appendix 1
The Indigenous Peoples Basic Law

Presidential Decree

February 5, 2005
Presidential decree Hua-tsung-yi-tzu-no. 09400017741
The Indigenous Peoples Basic Law is hereby enacted and promulgated.
President: Shui-bian Chen
Premier: Chang-ting Hsieh

Article 1
This Law is enacted for the purposes of protecting the fundamental rights of indigenous peoples, promoting their subsistence and development and building inter-ethnic relations based on co-existence and prosperity.

Definitions:
1 Indigenous peoples: refer to the traditional peoples who have inhibited in Taiwan and are subject to the state's jurisdiction, including Amis tribe, Atayal tribe, Paiwan tribe, Bunun tribe, Puyuma tribe, Rukai tribe, Tsou tribe, Saisiyat tribe, Yami tribe, Tsao tribe, Kavalan tribe, Taroko tribe and any other tribes who regard themselves as indigenous peoples and obtain the approval of the central indigenous authority upon application.
2 Indigenous person: refers to any individual who is a member of any of indigenous peoples.
3 Indigenous peoples' regions: refer to areas approved by the Executive Yuan upon application made by the central indigenous authority where indigenous peoples have traditionally inhabited, featuring indigenous history and cultural characteristics.
4 Tribe: refers to a group of indigenous persons who form a community by living together in specific areas of the indigenous peoples' regions and following the traditional norms with the approval of the central indigenous authority.
5 Indigenous land: refers to the traditional territories and reservation land of indigenous peoples.

Article 3
For the purpose of reviewing and coordinating matters related to this Law, the Executive Yuan shall establish a promotion committee which shall be called by the Premier.
Two thirds of the afore-mentioned promotion committee members shall comprise members of indigenous tribes in accordance with their respective proportions. The organization bylaws of the committee shall be made by the Executive Yuan.

Article 4
The government shall guarantee the equal status and development of self-governance of indigenous peoples and implement indigenous peoples' autonomy in accordance with the will of indigenous peoples. The relevant issues shall be stipulated by laws.

Article 5
The state shall provide sufficient resources and allocate abundant annual budget to assist indigenous peoples in developing autonomy.
Unless otherwise provided under this Law or other laws related to autonomy, the power of autonomy and finance in regions of autonomy shall be subject to the Local Institution Law, the Act Governing the Allocation of Government Revenues and Expenditures and other statutes governing county (city).

Article 6
In the event that any dispute concerning the power of autonomy arises between the government and indigenous peoples, the Office of the President shall call a consultation meeting to resolve such dispute.

Article 7
The government shall protect indigenous peoples' rights to education by upholding the principles of versatility, equality, and reverence in accordance with the will of indigenous peoples. The relevant issues shall be stipulated by laws.

Article 8
Governments of municipal cities and counties where indigenous peoples' regions are located shall establish specialized units in charge of indigenous affairs. Other county (city) governments may establish specialized units or have specialized personnel in charge of indigenous affairs.

Article 9
The government shall establish special unit responsible for indigenous language researches and indigenous language proficiency evaluation system in order to actively engage in the promotion of indigenous language development.
The government shall provide preferential measures for indigenous peoples or hold special civil service examinations designed for indigenous peoples where under the relevant laws and regulations may require beneficiaries or candidates to pass the afore-mentioned evaluation or have proficiency in indigenous language.
The development of indigenous language shall be stipulated by law.

Article 10
The government shall keep and maintain indigenous cultures, give guidance to the cultural industry and incubate professional talent.

Article 11
The government shall restore the traditional names of indigenous tribes, rivers and mountains in indigenous peoples' regions in accordance with the will of indigenous peoples.

Article 12
The government shall protect indigenous peoples' rights and access to broadcast and media, establish indigenous peoples' cultural affairs foundation and formulate plans to establish indigenous-language broadcast media and institutions exclusively for indigenous peoples.
Issues related to the establishment of the afore-mentioned foundation shall be stipulated by laws.

Article 13
The government shall protect indigenous peoples' traditional biological diversity knowledge and intellectual creations, and promote the development thereof. The related issues shall be provided for by the laws.

Article 14
The government shall formulate economic policies for indigenous peoples and give guidance on conservation and utilization of natural resources for the purpose of developing indigenous economy in accordance with the will of indigenous peoples and characteristics of environmental resources.

Article 15
The government shall generously allocate budget for indigenous peoples and supervise utilities providers to actively improve transportation, post, telecommunication, irrigation works, tourism and other public construction in indigenous peoples' region.
For the purpose of implementing the affairs as set out in the preceding paragraph, the government may establish construction funds of indigenous peoples' regions. The fund's utilization procedure shall be stipulated by laws.

Article 16
The government shall formulate indigenous housing policies, give guidance to indigenous persons to construct, purchase or lease dwellings, and actively promote the tribal renewal project.

Article 17
The government shall protect indigenous peoples' employment rights, provide vocational trainings which are suitable for the conditions and characteristics of indigenous society, give guidance to indigenous persons to obtain professional qualifications and technician certificates, build complete indigenous employment service network to protect their employment opportunities and fair remuneration and promotion.

The protection of indigenous peoples' employment rights shall be provided for bylaws.

Article 18

The government shall establish indigenous peoples' development fund for developing indigenous peoples' economy and assisting indigenous businesses. The sources of the fund shall include budget allocated by the central government in accordance with the budget procedure, compensations made to indigenous peoples' land, reparation, revenues, funds distributed in accordance with other relevant laws and regulations as well as other revenues.

Article 19

Indigenous persons may undertake the following non-profit seeking activities in indigenous peoples' regions:

1 Hunting wild animals.
2 Collecting wild plants and fungus.
3 Collecting minerals, rocks and soils.
4 Utilizing water resources.

The above activities can only be conducted for traditional culture, ritual or self-consumption.

Article 20

The government recognizes indigenous peoples' rights to land and natural resources.

The government shall establish indigenous peoples' land investigation and management committee to investigate and manage indigenous peoples' land. The organization and other related matters of the committee shall be stipulated by law.

The restoration, acquisition, disposal, plan, management and utilization of the land and sea area owned or occupied by indigenous peoples or indigenous persons shall be regulated by laws.

Article 21

The government or private party shall consult indigenous peoples and obtain their consent or participation, and share with indigenous peoples benefits generated from land development, resource utilization, ecology conservation and academic researches in indigenous people's regions.

In the event that the government, laws or regulations impose restrictions on indigenous peoples' utilization of their land and natural resources, the government shall first consult with indigenous peoples or indigenous persons and obtain their consent.

A fixed proportion of revenues generated in accordance with the preceding two paragraphs shall be allocated to the indigenous peoples' development fund to serve as returns or compensations.

Article 22
The government shall obtain consent from the locally affected indigenous peoples and formulate a common management mechanism before establishing national parks, national scenery, forest district, ecological protection zone, recreation zone and other resource management institutions. The regulations shall be made by the central relevant authority jointly with the central indigenous affairs authority.

Article 23
The government shall respect indigenous peoples' rights to choose their life style, customs, clothing, modes of social and economic institutions, methods of resource utilization and types of land ownership and management.

Article 24
The government shall formulate public health and medical policies for indigenous peoples in accordance with the characteristics of indigenous peoples, incorporate indigenous peoples' regions into the national medical network, implement indigenous peoples' health care, establish comprehensive and long-term health care, emergency care and evacuation system, and protect indigenous peoples' health and physical safety.
The government shall respect the traditional medicine and health methods of indigenous peoples and undertake researches and promotions.

Article 25
The government shall establish a natural disaster prevention and relief system in indigenous peoples' regions and natural disaster prevention priority zones to protect physical and property safety of indigenous peoples.

Article 26
The government shall actively implement social welfare for indigenous peoples, undertake planning to establish indigenous peoples' social security system and give special protection to the rights of indigenous children as well as women and mentally or physically disabled indigenous persons.
The government may provide subsidies for those indigenous persons who lack resources to participate in the social insurance scheme or use medical and welfare resources.

Article 27
The government shall actively promote savings and cooperative businesses by indigenous peoples, give guidance to the management thereof, and grant them with preferential tax measures.

Article 28
The government shall provide protection and assistance for indigenous persons living outside indigenous peoples' regions in respect of their health, accommo-

dation, finance, education, caring, employment, medical care and adaptation to the society.

Article 29
In order to protect the dignity and fundamental human rights of indigenous peoples, the government shall provide for a separate chapter devoted to indigenous peoples' human rights in the national human rights legislations.

Article 30
The government shall respect tribal languages, traditional customs, cultures and values of indigenous peoples in dealing with indigenous affairs, making laws or implementing judicial and administration remedial procedures, notarization, mediation, arbitration or any other similar procedure for the purpose of protecting the lawful rights of indigenous peoples. In the event that an indigenous person does not understand the Chinese language, an interpreter who speaks the tribal language shall be provided.
For the purpose of protecting indigenous peoples' rights and access to the judiciary, indigenous peoples' court or tribunal may be established.

Article 31
The government may not store toxic materials in indigenous peoples' regions in contrary to the will of indigenous peoples.

Article 32
The government may not forcefully evict indigenous persons from their land, except in the case of imminent and obvious danger.
Indigenous persons shall be properly accommodated and compensated for losses suffered as a result of forced eviction as set out in the preceding paragraph.

Article 33
The government shall actively promote exchanges and cooperation between indigenous peoples and international indigenous peoples and ethnic minorities in economical, social, political, cultural, religious, academic and ecological issues.

Article 34
The relevant authority shall amend, make or repeal relevant regulations in accordance with the principles of this law within three years from its effectiveness.

Article 35
This law takes effect upon promulgation.

Appendix 2
Indigenous Peoples Reservation Land Development Management Procedure

Executive Yuan March 26, 1990 Ordinance no. Tai-(79)-nei-tzu-ti-05901 Executive Yuan March 18, 1998 Amendment ordinance Tai-(87)-nei-tzu-ti-11303

Article I ▪ General Provisions

Section 1

Said procedure is promulgated pursuant to Section 37 of the Mountain Slope Conservation & Utilization Law and Section 17 paragraph 2 of the Agrarian Development Law.

Section 2

The term indigenous peoples central authority refers to the Ministry of Interiors; provincial (municipality) authority, the provincial (municipality) government; county (city) authority, the local county (city) government. The Council of Agriculture of Executive Yuan and the central authority concerned will administer jointly all agrarian matters.

The executing authority of said procedure is the village (town/city/ district) administration office.

Section 3

The indigenous people's reservation land herein refers to the mountain land originally reserved by the indigenous peoples administration office and reservation land legally delineated and annexed for indigenous peoples to safeguard their livelihood.

Section 4

The indigenous peoples herein refer to mountain indigenous peoples and plain-land indigenous peoples. The status recognition of the indigenous peoples stated in the foregoing paragraph is as determined by the Council of Indigenous Peoples, Executive Yuan.

Section 5

The general registration of indigenous people's reservation land is conducted by local registration authorities as per assignment of the provincial (municipality) Indigenous affairs department. Said land is under the ownership of the Republic of China and its administration authority is Council of Indigenous Peoples, Executive Yuan. Said land should be properly identified as indigenous people's reservation land in the "remarks" column of the land registration book.

The provincial (municipality) Indigenous affairs department together with the original land administration authority should assign the local registration office to transfer the administration authority for public land duly reg-

istered and delineated or annexed as indigenous peoples reservation land to Council of Indigenous Peoples , as well as identify said land as indigenous peoples reservation land under the same procedure as aforementioned.

Section 6

The village (town/city/district) administration office of the locality where reservation land is located should organize a reservation land rights evaluation committee to handle the following matters:

- Investigation and mediation of indigenous people's reservation land right disputes.
- Evaluation of indigenous peoples reservation land allocation, repossession, deed title transfer, compensation-free usage, or public school utilization applications.
- Negotiation of indigenous people's reservation land reallocation compensation.
- Evaluation of indigenous people's reservation land lease applications.

The aforementioned reservation land rights evaluation committee should be composed of four-fifths indigenous peoples. Organization guidelines are as determined by Council of Indigenous Peoples.

The indigenous people's reservation land applications should be submitted to the Indigenous Peoples Reservation Land Rights Evaluation Committee for evaluation. Village (town/city/district) administration offices should submit applications to the committee for evaluation within one month after acceptance; and the committee should complete evaluation within a month and present an evaluation report. In case report is late, then the village (town/city/district) administration office concerned should submit application to the higher government authority concerned for approbation.

The village (town/city/district) administration office should submit the indigenous Peoples Reservation Land Rights Evaluation Committee findings, other than those provided in clause 1 of paragraph 1, to the higher government authority concerned for approbation.

Article II ▪ Land Administration

Section 7

Council of Indigenous Peoples together with the relevant authorities concerned should assist the aborigines in establishing the indigenous people's reservation land cultivation rights, land surface rights, as well as lease rights and ownership rights.

Section 8

The indigenous peoples should request the services of Council of Indigenous Peoples in applying for the cultivation rights registration with the land administration authority for the following indigenous people's reservation land:

- Land that the indigenous peoples has opened and cultivated prior to the enactment of said procedure.

- Land that the government zoning plan designated as pastoral land and breeding land, or the Urban Planning Act has designated as agricultural zone, conservation zone farm, and arid land.

Section 9

Indigenous peoples should request the services of Council of Indigenous Peoples in applying for the land surface rights registration with the land administration authority for the following indigenous people's reservation land:

- Land that the indigenous peoples has leased for forestation and completed forestation work prior to the enactment of said procedure.
- Indigenous peoples have forestation skills and the government allocated a forestation land, designated by the zoning plan or urban planning program as the forest land of conservation zone.

Article II ▪ School Education

Section 10

Size of cultivation rights or land surface rights grants for applications according to the preceding two provisions should be based on the number of indigenous peoples in a household and should not exceed the following standards:

- For land designated as pastoral land or breeding land in the zoning plan, land grant per person is 0.6 hectare for farmland or 1 hectare for other purposes; combination of farm and other purposes land, the average ratio of the two standards; for forest land, 1.5 hectare.
- For land designated as agricultural zone, conservation zone farm, and arid land in the Urban Planning Act, land grant per person is 0.6 hectare for farmland or 1 hectare for arid land; combination of farm and arid land, the average ratio of the two standards; for conservation zone forest land, 1.5 hectare.
- Land grant established on the foregoing provisions is not subject to change with household population increase or decrease. Maximum land grant area per household is 20 hectares; however, land terrain limitations will allow an additional area of 10% (maximum).

Section 11

The village (town/city/district) should recover, within the prescribed deadline, the land area exceeding the foregoing measurement standards in the indigenous peoples reservation land cultivation right or land surface rights granted to aborigines. If land was used for farming, recovery should be affected after the harvest season and before the commencement of the next planting season.

Section 12

The indigenous peoples should limit land surface rights establishment within the base of his/her existing house of residence in the reservation land; area of said land shall be based on the area of the building and its appertaining facilities.

In adaptation to living requirements, indigenous peoples should apply for a land surface right on reservation land needed for the legally permitted building construction.

Maximum area of the land stated in foregoing two paragraphs is 0.1 hectare per household.

Indigenous peoples together with Council of Indigenous Peoples should register the land surface rights mentioned in paragraphs 1 and 2 with the local registry office concerned.

Section 13

Indigenous peoples intending to engage in industrial/commercial business should submit a business plan to the village (town/city/district) administration office for the evaluation of the Indigenous Peoples Reservation land Evaluation Committee and approval of the municipality or county (city) government authorities concerned. Land lease should comply with the legal provisions concerning building construction on indigenous peoples land; maximum lease period is nine years, upon its expiration, contract should be renewed for continued lease.

The aforementioned business plan should not obstruct environmental resource conservation, national land preservation, or cause pollution.

Section 14

Indigenous people's religious building or facility construction should have the approval of the religious authorities concerned. A construction plan should be submitted to the village (town/city/district) administration office for the evaluation of the Indigenous Peoples Reservation land Evaluation Committee and approval of municipality or county (city) authorities. Upon approval, free usage of land is granted and said building/facility may be constructed on indigenous peoples land in accordance with legal provisions. Maximum lease period is nine years, upon its expiration; contract should be renewed for continued lease. Land area used for said purpose should not exceed 0.3 hectares.

Section 15

Indigenous peoples land grants for cultivation rights, land surface rights, lease rights, or gratis land use rights is non-transferable or non-leasable, except to Indigenous heir or chosen successor, another indigenous member of the original beneficiary household, or indigenous peoples within three-degree kinship.

Indigenous peoples intending to expand business area or facilitate farming operations in the aforementioned aborigine reservation land should apply for land usage conversion with the municipality or county (city) authorities concerned. Right amendment registration follows approval.

Section 16

Indigenous peoples violating the provisions in paragraph 1 of the preceding section is subject to land repossession by village (town/city/district) administration office and the following penalties:

- Court petition for the cancellation of cultivation right or land surface right registration or
- Termination of lease or gratis usage grant

Section 17

Cultivation or land surface rights obtained through said procedure inherited and personally operation or employed for private use for a period of five years after registration, and condition has been verified factual, may be converted to land ownership registration upon the personal application of the cultivation or land surface rights holder with the presence of the authorized clerk of Council of Indigenous Peoples. Application should be filed at the local land registry office.

Purpose and usage of said land has been converted pursuant to the urban planning or non urban land zoning conversion plan prior to the land ownership transfer application shall not affect the cultivation or land surface rights holder's entitlement for land ownership transfer.

Section 18

Upon acquiring ownership of a reservation land, said ownership may only be transferred to another aborigine, except for land legally defined for a particular purpose. The aforementioned legally defined purpose refers to the land the government requires pursuant to national economic policies or public enterprise endeavors.

Section 19

In the event of the demise of the cultivation, land surface, lease or gratis usage rights holder, and upon the absence of an heir, or inability to personally cultivate, relocation or career transfer of the heir making him/her incapable of inheriting, then upon the resolution of the Indigenous Peoples Reservation Land Rights Evaluation Committee, the village (town/city/district) administration office execute repossession proceedings.

A court appeal should be filed for the cancellation of the aforementioned cultivation or land surface right registration. However, if right has expired, then the municipality or county (city) government authority concerned is authorized to cancel said right registration.

Section 20

A repossessed aborigine reservation land should be reallocated to another local aborigine within thirty days after the official announcement of the village (town/city/district) administration office under the following order of priority:

- Indigenous peoples whose land allocation area is insufficient and has traditional relation with the particular land concerned.
- Individuals who have not received any land allocation.
- Individuals allocated with smaller land allocation. Indigenous peoples who transferred or subleased aborigine reservation land illegally are not eligible for allocation application.

The village (town/city/district) administration office should require the owner of the improvements on the repossessed aborigine reservation land,

as stated in paragraph 1, to harvest or remove said improvements within a given deadline; failure to harvest or remove improvements after said deadline shall place said matters under the discretion of the village (town/city/district) administration office.

Should the aforementioned improvement be legitimate crop or building, then upon the valuation of the village (town/city/district) administration office, the new land grant holder should compensate the previous holder for said improvements and assume ownership.

Article III ▪ Land Development, Usage and Conservation

Section 21

Council of Indigenous Peoples, provincial (municipal) Indigenous affairs department, or county (city) government should plan the development, usage, and conservation of the indigenous peoples reservation land located within its area of jurisdiction, based on development conditions and land usage characteristics. The aforementioned development, usage, and conservation plans should be implemented under a cooperative, common, or assigned arrangement.

Section 22

Government authorities concerned should implement aborigine reservation land rezoning or community reintegration as provided by law.

Section 23

In the event that special government purposes shall require the use of public aborigine reservation land, the authorities concerned (which requires the use of land) should prepare a land use plan and submit plan for the evaluation and opinion of the Indigenous Peoples Reservation Land Rights Evaluation Committee and approval of the higher authorities concerned. Legitimate usage, lease, or acquisition should follow. However public production land usage is limited to the village (town/city/district) administration office requirements; land for agricultural experimental practice is limited to agricultural labs or schools.

Section 24

Indigenous peoples development or construction endeavors should be provided priority assistance to foster indigenous peoples reservation land mining, sand & gravel, tourism & amusement, as well as industrial resource or social welfare institution establishment, providing said pursuits should not obstruct national land preservation, environmental resource conservation, indigenous peoples livelihood, and indigenous peoples administration matters.

Indigenous peoples reservation land lease applications pursuant to the above development and construction should be accompanied by a development or construction plan, submitted to the respective village (town/city/ district) administration office for the evaluation of the Indigenous Peoples Reservation Land Rights Evaluation Committee and approval for the provincial

(municipal) authorities concerned. Then upon the approval of the industry authorities concerned and issuance of the relevant development or construction documents, lease right is granted to aborigine applicant. Maximum lease period is nine years; lease may be renewed upon expiration according to the original regulations and procedure.

The aforementioned development of construction plan should include the following documents:

- Progressive annual development or construction plan.
- Land use application layout; should be expressed in a 1/5000 scale relief map and cadastre.
- Land registration title.
- Indigenous peoples employment or retraining guidance plan.

A thirty-day announcement period from the village (town/city/district) administration office is required in the case of lease applications from state and private enterprises or enterprises without aborigine status (hereafter referred as non-aborigine) for development and construction. Upon the absence of an aborigine contender application during said period, the provisions in paragraph 2 apply.

Council of Indigenous Peoples should formulate guidance measures providing the indigenous peoples employment and retraining plans as provided in paragraph 3 of item 4.

Section 25

Lease renewal applied pursuant to the foregoing provision should be made with the original development or construction approving authorities and according to the development or construction application procedures. In the event the supporting documents for the renewal is the same as those submitted during the initial application should be attached to the application, then reference to the initial application documents should be stated on the application thus making it unnecessary to attach related documents. Application is exempted from the paragraph 4 requirement of the preceding provision.

Section 26

In the case of a land ownership right granted to an aborigine based on a development or construction application filed pursuant to Section 24, negotiated price should be submitted to the provincial (municipal) authorities for consent and investment participation. Investment rights transfers are limited to aborigines only.

A compensation price negotiation should be conducted with indigenous peoples possessing cultivation rights, land surface rights, or lease rights; upon compensation payment, the land management authority should notify the local land registry office for the cancellation of said cultivation right or land surface right registration.

Section 27

Under one of the following circumstances, indigenous peoples reservation land lease granted pursuant to the provisions stated in Sections 23 to 25

should be revoked and land repossessed; no compensation should be paid to facility investments made:

- Development or construction is not consistent with the development or construction plan and any plan amendment approval or development/ construction deadline extension has been processed.
- User violated plan.
- Subletting or surrendering right to another
- Other conditions for lease termination provided in the lease agreement.

Section 28

A non- indigenous peoples already leasing indigenous peoples reservation land and continuing to engage in cultivation or to use said property prior to the enactment of said procedure could continue with said lease.

Lease renewal of land leased for cultivation, forestation but later converted for building land through a new urban plan, revised urban plan or non-urban land usage conversion, shall be limited to 0.03 hectares per household.

Non-indigenous people whose domicile is within a mountain village (town/ city/district) should legally lease, for his/her housing base, aborigine reservation land for building purposes. Area of land should not exceed 0.03 hectares.

Section 29

The foregoing leased aborigine reservation land could not be sublet or transferred to another person. Violation of the foregoing provisions shall result in lease revocation and land repossession.

Section 30

Rental of indigenous people's reservation land is paid to the municipality or village (town/city/ district) treasury authority; and said funds are used for the management and economic development of the aborigine reservation land. Rental management and utilization plan is prepared by Council of Indigenous.

Article IV ▪ Forest Produce Management

Section 31

Unless otherwise provided in said procedure, the natural forest produce matters of indigenous people's reservation land are determined by the forest produce settlement regulations.

Section 32

In an effort to foster indigenous people's reservation land development or business development budget preparation, aborigine reservation land logging plan proposals should be prepared by the village (town/city/district) and submitted the central forestry authorities for approval. Public bidding through the municipality or county (city) authorities concerned follows approbation.

Section 33

The foregoing logging plan should ensure continued productivity and should not obstruct national land preservation as a rule, as well as be consistent with the indigenous people's administration policies and land utilization plan.

Section 34

Under one of the following circumstances, application for indigenous people's reservation land nature forest produce acquisition may be submitted to the village (town/city/district) administration office for the approval of the municipality or county (city) authorities concerned:

- Construction materials required for the urgent rescue/restoration of disaster situation or reconstruction of mountain public facility.
- Gratis acquisition of byproducts or other materials for personal use within the area designated by the municipality or county (city) government granted to indigenous peoples.
- Bamboo materials needed for the fungus cultivation or handicraft production of indigenous peoples.
- Removal of wood obstructing forestation, land clearing, or operations at the average of 30 cubic meters per hectare of lumber or less.

Section 35

Loggers violating the foregoing provisions are subject to legal prosecution and confiscation of illegal lumber or logs; if confiscation is impossible then violators are liable to compensation.

Section 36

Cutting inspection documents for bamboo and wood inside the indigenous people's reservation land forestation area should comply with the forest product logging/acquisition inspection regulations.

Section 37

Bamboo and trees the village (town/city/district) administration office planted in the indigenous peoples reservation land belongs to the ownership of the village (town/city/district) administration office.

Section 38

Under one the following circumstances, the respective government authorities concerned should restrict logging operations for ecological resource preservation and national land preservation purposes:

- Sloping land or thin soil stratum where reforestation is difficult.
- Logging could result in soil erosion or affect public welfare.
- Site inspection revealed need for enhanced conservation efforts.
- Site is located in a catchment area, river source belt, coastal wash terrain, coastal windbreaker terrain, or sand dune region.
- Trees used as stool or culture plant.
- Trees under logging ban due to ecology, scenery, national monument, or relic preservation or other prohibition reasons.

Section 39

Indigenous peoples should be employed for the labor, except for technical manpower, needed in aborigine reservation land or public forest logging operations.

Section 40

The provincial (municipal) and county (city) government authorities should meet with the authorities concerned for indigenous peoples reservation land forestation for forestation guidance and incentive policy promulgation, however said guidance and incentive policymaking is under the jurisdiction of Council of Indigenous Peoples.

Article V ▪ Addenda

Section 41

In the event indigenous peoples reservation land and land improvements which indigenous peoples may rightfully use is placed under use or logging (on reservation land) restriction due to government public construction requirements, then damages said aborigine incurred are due for compensation.

Section 42

An indigenous peoples legally acquiring ownership of indigenous peoples reservation land may apply for a mortgage loan in said land.

Section 43

Said procedure takes effect on date of enactment.

Appendix 3
A New Partnership between the Indigenous Peoples and the Government of Taiwan

(Chinese: 原住民族和台灣政府新的夥伴關係) is a treaty-like document signed in Ponso no Tao on 1999-09-10 by the representatives of the indigenous peoples of Taiwan and the then-presidential candidate Chen Shui-bian (who went on to win the 2000 presidential election for the Democratic Progressive Party).

1 The seven articles in the documents include:
2 Recognizing the inherent sovereignty of Taiwan's Indigenous Peoples
3 Promoting autonomy for Indigenous Peoples
4 Concluding a land treaty with Taiwan's Indigenous Peoples
5 Reinstating traditional names of Indigenous communities and natural landmarks
6 Recovering traditional territories of Indigenous communities and Peoples
7 Recovering use of traditional natural resources and furthering the development of self-determination
8 Providing legislative (parliamentary) representation for each Indigenous People

The document later became the official indigenous policy for the DPP Government. However, as the document was signed before Shui-bian Chen became the President; the efficacy of the document has been contested. On 2002-10-19, Chen, as the head of state and government, reaffirmed the new partnership between indigenous nations and the Government of Taiwan in a ceremony with indigenous tribal representatives.

http://en.wikipedia.org/wiki/A_New_Partnership_Between_the_Indigenous_Peoples_and_the_Government_of_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: invididualization 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 (ITTLS) 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.

論文摘要

Accessing Indigenous Land Rights through Claims in Taroko Area, Eastern Taiwan

太魯閣區域原住民土地權的宣稱與實踐

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本論文在於探索太魯閣區域的原住民如何透過種種的土地宣稱來索還土地權利;也探討原住民如何在不同的法律政治結構中，思考與實踐另類的土地與人還有制度以及權利之間的財產權配置方式。本論文追索百年來歷經晚清、日本殖民政府到國民政府等不同統治制度的太魯閣區域內，原住民在遭逢不同的土地等相關政策的介入下，所產生的種種土地宣稱。本論文以民族誌式的好奇，探索太魯閣人們日常生活中種種關於土地等自然資源的近用與人地關係，來發掘當地人與種種的法律制度或管理機構的關係中或土地利用關係中的文化或社會脈絡，以探詢原住民生活中的抱怨或抵抗乃至種種的宣稱、抗議、陳情或官司訴訟及還我土地運動等的論述及實踐，以分析原住民所陳述的理由及證據。

本研究發現由於日本殖民政府對於太魯閣原住民區域先入為主地以當時國際法上流行的「無主地」理論看待，因此在行政及法律上偏向於否定原住民為擁有人格及法律上「人」的資格，尤其當日本帝國以行遂其對於原住民居住區域內的自然資源的需索的目的與手段時，來自原住民的抵抗更加強了日本人對於原住民不是人而是動物或是野獸的觀點。筆者將日本殖民政府這一套殖民統治論述及手段類比成當時西方殖民者所發展的「自然狀態」(state of nature)論述，發現日本殖民政府透過進化論認為太魯閣區域的原住民是進化階段最差、未能文明化及理性化的生蕃，因此在管理上以「未歸化的生番地」看待之，加強以隘勇線及鐵絲網、地雷圍堵，使得太魯閣區域成為一個漸漸被孤立的區域而有待被大軍征伐。

本論文在第二章描述了太魯閣成為一個「區域」空間單位的過程，太魯閣區域在管轄上以及對待手段上有了不一樣的開始，也形塑了太魯閣區域內，儘管原本三個亞族:太魯閣亞族、德其達亞亞族、陶賽亞族相互敵我的關係也漸漸形成一個共同歷經戰爭而倖免於死難，卻被剝奪土地權力的想像共同體區域族群。透過將太魯閣人描寫為野蠻及無理性能力的「自然狀態」式論述及太魯閣區域內土地自然資

源珍貴必須被開發的驅力(沙金含量可抵國家預算)，日本人終於發動大軍征伐太魯閣區域，以行遂其成為掌控全島自然資源之現代國家(state of the nature)。從自然狀態(state of nature)之觀點與對待到掌控自然資源之現代國家(state of the nature)之成立，是日本殖民政府時代對於土地自然資源的處理方式，也是後來產生眾多原住民土地宣稱的主要根由。

本研究發現循著西方在殖民過程中所發展的自然狀態(state of nature)論述與實踐的比較，有些歐洲發源的殖民國家援引社會契約論尊重原住民原來的財產權及主權，以條約或買賣的方法的原則來處理原住民的土地自然資源權利，日本殖民政府則未能以保障人民財產權的社會契約論來使處於自然狀態(state of nature)的原住民能透過社會契約論來漸漸過渡到「社會」及國家的狀態之中，反而幾乎沒收原住民土地自然資源財產，而讓殖民政權成為掌控所有自然資源之現代國家(state of the nature)。這凸顯出日本在當時殖民列強環伺的狀況下，根據自然狀態理論論述所發展出的獨特殖民技術。當然當時清朝中國的戰敗以及馬關條約的簽訂，直接在主權上認定台灣島在整個島的主權已經割讓給日本，戰爭戰利品的處置在當時還屬自然狀態式的處理方式時，原本不完全接受清國管轄的原住民在台灣主權割讓的大背景中，化外之民的權利的議題也不能勾起多大反省。

但是身歷所有戰役及軍警管轄式處理手段的原住民在被剝奪土地等自然資源近用的財產權的經驗中，漸漸地形成一種關於自然資源的自然主權觀念(natural sovereignty)。這種觀點產生於太魯閣人以往日常生活中的*gaya*習慣法之中，如土地的先佔權與長期占有權，甚至土地買賣、讓與、借貸等習慣早已在晚清時代的日常生活中存在。這些習慣我們可以從晚清台灣東部的原漢互動中看到蛛絲馬跡。本文統稱這些非系統性的習慣慣例為習慣法，也是太魯閣人常說的*gaya*。但仔細分析太魯閣人關於*gaya*的論述，其中關於土地先佔權與長期占有權，甚至土地買賣、割讓、借貸等習慣及思維幾乎可以完全類比於西方羅馬法以降所確立的原則。因此問題的癥結不在於原住民習慣法與法律原理原則是否不可與羅馬-日本-中國法系之間相容的問題，而在於原住民身為人所應具有的法律人格意義上的人格主權不被承認的問題。正如同太魯閣人無法理解日本政府一紙日令26號能將土地變成國有，使得原住民數代耕墾遊獵的土地一夕之間成為不合法的因由；而日本官方為了自圓其說其自然狀態的論述，卻可眼睜睜看著擁有土地管理方式的原住民為無理性且浪費土地資源的蕃人。由於太魯閣原住民遭遇到來自殖民官方的種種否認，幾乎是全面地發生在日常生活之中，生業基礎的農地、獵場、居地等以及人格等都遭到隨意的否認，使得原住民產生否定國家統治的基礎，原住民認為自己社會早先於國家的成立，而且有自己原先的律法並且可以保有自己的財產、有自己的發展。這些先於國家的權利即原本普遍於原住民及其與大自然資源與領域的互動之中。因此台灣原住民很容易產生並認同「自然主權」的觀念，因為「自然」兩個字同時提示到國家摧毀了原住民本然自由的發展權利以及已經大部分被剝奪了的自然資源財產權。使得「自然主權」一辭有了本土的理論基礎；也包含了西方inherent right天賦人權的精神，而同時強調原住民喪失了原本對於自然資源進用的權利的意涵，使得「自然主權」成為台灣原住民運動的理論基礎。這個理論基礎在許多的原住民運動中都可以看到其底蘊。

本研究發現近十多年來在太魯閣地區流行的部落地圖繪圖運動，即顯示出原住民以自然主權概念為理論基礎宣稱土地權的企圖。我的研究發現，經歷不同程度人地關係剝離的原住民社區在製圖時所採用的方式不同。本論文在第三章、第四章舉出了當代原住民社區與傳統領域之間的兩種拓譜情境關係:混雜與離散。這兩種情境主要以原住民當事人對於其傳統領域的熟悉程度來區別之。在離散的情境中，當事人對於傳統領域幾乎缺乏實際的人地經驗，從事傳統領域繪圖的原住民因此較難在繪圖的過程中以較實證的方式檢驗關於傳統領域的訊息，使得繪圖的過程充滿了類似於"誰有什麼權力說哪個地方是什麼?"之類的「再現問題政治學」。筆者在太魯閣地區的田野中發現，為了因應再現政治的困擾，當地人發展出以族群/民族的尺度來框架整個傳統領域的繪圖工作，並以共同遵守*gaya*祖靈倫理訓示為依歸的自治共同體願景的創建來成就傳統領域繪圖的工作。而在混雜的情境中，大部分原住民當事人對於傳統領域的理解很有限，對於傳統領域仍保有些許的記憶，如某些保有童年片段記憶的耆老在回訪傳統領域的尋根之旅的路途中，建構出了一種零合的空間。如果耆老不把片段的記憶傳述給後代人，則這些傳統領域將變成沒有記憶(零)的空間。而經過耆老的片段歷史講述，得以使這些空間成為曾經有祖先活生生地生活的「地方」，但也只是經過建構的想像共同體。

在這兩種情境中原住民儘管對於原鄉或過去祖先的領域陌生，但卻也激發了原住民以集體認同的方式來集體地渴望與訴求回復土地權利。依傳統慣習的統治方式的自治區則是以自然主權的角度為論證基礎的實踐上的烏托邦想像。至於日治時代以來未被遷離過的原居社區，我們則可以發現原住民仍然能保守土地的慣習來規律與日常生活中的人地關係。儘管我們發現晚近的國家法律與原住民的習慣法之間有競合的地方，尤其保留地管理辦法帶來的法律-個人主義使得人們在法律的支持下漸漸成為法律上的自治私人，而能夠漸漸突破社區集體的約束來使得法律上被承認的權力所有者能夠成為如McPherson 所謂的占有式個人主義，能夠讓他的財產客體化成我自己生產或完全控制的東西，而不用考慮社會及社區對於該財產的貢獻與近用權。由於目前政府不讓保留地流通於非原住民手上，因此我們可以發現許多原住民或非原住民以鑽法律漏洞的方式讓一些原住民能背離集體或其他權益關係人，以完全所有者之姿，掛人頭買賣土地給資本家，而成為平地資本介入保留地的方式。這是筆者在研究過程中發現原住民區域與資本注意接軌的方式，而一般原住民保留地的原住民擁有者普遍上還因為保留地價值低落無法使其農林住用的保留地透過原住民獨力資本求得發展。本論文提出法律個人主義的人格概念，提示出台灣原住民漸漸因現代法律的支持，使保留地土地擁有權能相對地脫離群體的複雜權力關係，而能成為個人獨立運用的財產，但不是說原住民最近才發展出這種個人主義，以反駁Polany 所認為的是晚近因應商品化及市場化而產生的。本文則認為個人主義的擁有方式是原住民本來具有的，只是法政上保留地政策強調保留地的農業及生態限制使用方式，是得原住民一直成為資本主義的犧牲者，而不是成為資本主義的擅長者。在第七章本論文則舉了保留地工業區化的過程來呈現政府以及工業資本家以法律個人主義的方式，讓原住民失去保護家園環境權與土地權的過程，以彰顯國家政策仍然不以原住民的發展為前提的政策對待方式。

法律個人主義因此使得部落產生了一些爭議的人，如運用法律知識獲取不當土地利益或者與非原住民資本家掛勾的失敗者。在第六章中，我們發現從日本政府以來，推行土地權利的私有化於原住民社會的實驗其實遇到了很大的瓶頸，這困難主要來自於保留地並未能與時俱進讓進入工商時代的原住民適應地在地發展，而農業及生

態或水土上的限制使得缺乏資本的原住民只能讓保留地的價值每況愈下，也難以完成其為了幫助原住民生計發展的立法旨意。經歷過這些土地利用限制與發展困境的原住民，因此對於國家將其發展忽略及邊緣化的政策與治理感覺到須另外思考自主的發展方式，讓原住民自主集體地利用財產效用的想法漸漸產生，我們除了在繪圖構建民族集體的自治區領域並且聲稱不應該消滅的自然主權及土地權的訴求上看到原住民企求更多的土地權利的努力，原住民的還我土地運動也可以在立法機構中的延續看到重要的發展。尤其原住民基本法立法以來，我們可以發現原住民立法委員與運動者儘管在國家法律及憲法的現制下，企圖衝撞國家主權而希冀能保留原住民自然主權的精神，以企圖讓原住民能獲得實質土地權以作為自治區的基礎。本論文在第六章就舉例說明並探討了一個立法的會議，來凸顯出原住民立法方向上對於土地權利的著重並且以之為其他權力的基礎的伏筆。

除此之外我們也看到原住民土地權力的集體化方式，如本論文第八第九章所描述的普遍發展於原住民河川社區的護溪與共管行動，依然可以看到自然主權的基底理念之外，也可以看到原住民在思考結合生態、生計與文化的理念之下，從新思考河川與土地權利屬性還有治理機構以及治理的權力關係人或單位的結合方式以突破現有法政的限制的企圖。儘管護溪共管方式在法律支持的欠缺情況下，往往失敗，但我們可以看到原民透過護溪的行動重提了關於自然資源土地與管理方式以及權力基礎還有管理者之間的關係的方向，則是有待持續觀察的方向。

Samenvatting

Taiwan gaat door een moeilijke fase ten aanzien van landclaims door inheemse gemeenschappen. Claims zijn divers en vormen de uitdrukking van een scala aan mens-land relaties. Ik onderzoek deze variëteit aan claims vanuit een etnografische nieuwsgierigheid in termen van gemopper, klachten, verklaringen, verzoeken, discussies, daden van verzet, uitdrukking van gevoelens, vermoedens, pleidooien, rechtszaken, beschuldigingen, aanklachten of zelfs grappen en indirecte kritiek. Ik doe dit om te achterhalen hoe inheemse volken denken over landrechten en vervreemding van hulpbronnen dat plaats vindt in de confrontatie tussen twee of meer groepen mensen en overheden. Het is ook een confrontatie tussen verschillende regiems van soevereiniteit.

Ik onderzoek wat de kenmerken zijn van de landrechten waardoor inheemse mensen zich onbegrepen voelen, genegeerd, en bedreigd door anderen die in de afgelopen eeuw het Taroko-gebied zijn ingetrokken en wat het bewijs is of de discussies op basis waarvan zij hun rechten op het land claimen in verschillende historische, economische, politieke en wettelijke situaties. Ik heb ook onderzocht wat zij ondernemen en hoe ze zich organiseren om hun claims tot uitdrukking te brengen.

Op basis van mijn bekendheid met het Taroko-gebied ben ik onderzoek gaan doen en heb me hierbij gericht op de volgende onderzoeksvragen:

1 Hoe construeren inheemse volken de discussies over het bewijs om hun claims op landrechten te ondersteunen? Zoals Appell suggereert: 'We should begin with a single productive resource and work back to the individual(s) who have interests of various kinds in that resource.' Ik heb onderscheid gemaakt tussen de verschillende typen belangen zoals een individu die heeft bij een losse claim die ik in het veld ben tegengekomen. Ik let daarbij ook op de verschillende typen sociale relaties tussen individuen en het schaalniveau waarop zij opereren (Appell 1976).

2 De volgende stap is na te gaan of zulke belangen wel of niet erkend worden als *emic* categorieën binnen de grotere sociale groep, en of ze beschermd worden door wederzijdse erkenning of codificatie in wetten (rechten) en regels die zich op een bepaalde manier verhouden met de *etic* categorieën (Appell 1976, 1984; Wiber 1991). Ik heb kritisch de claims onderzocht die gemaakt worden voor landrechten in de ideologieën en praktijken van de verschillende instanties op verschillende tijden en in verschillende politieke situaties.

3 In het bijzonder ben ik ingegaan op de manier waarop ideeën tussen verschillende groepen en contexten zijn overgedragen wanneer claims worden gemaakt in het Taroko-gebied. Claims zijn nuttig bij het tot uitdrukking brengen van ideeën in bijzondere contexten, maar zij zijn vaak ook meer dan demonstraties of verklaringen van hetgeen eigenlijk al duidelijk is en zij spelen ook een rol in de ideologische en politieke discussies bij het verwerven van landrechten.

4 Het onderzoeken van instellingen – formele concrete organisaties, wetgeving en regulering, en de ongeschreven sociale en culturele normen – levert een beter begrip op van waar en waarom conflicten zich voordoen, waar claimen worden ingediend en waarom die soms leiden tot perverse resultaten. Of meer positief geformuleerd: hoe kunnen programma's en beleidsmaatregelen worden geformuleerd op basis van het zoeken en scheppen van overeenstemmingen tussen regels (Gerritsen and Straton 2006: 181).

5 Dit stelt alle participanten in staat hun clusters van regels te herstructureren teneinde beter hun gedeelde doeleinden te dienen (Ostrom 2005). Taiwan is ook 'vergiftigd op een problematisch moment bij het toepassen van mondiale en regionale, juridische en ontwikkelingsbeleid met betrekking tot het beheer van het milieu en de natuurlijke hulpbronnen, en de rechten van inheemse volken (Roseman 2003: 138). Daarom is er dringend behoefte aan een analyse op dit gebied ten einde licht te werpen op beleidsimplementatie in de toekomst. Bovendien is een etnografie van de mens-land relaties in het Taroko-gebied nodig om de redenen te begrijpen waarom conflicten zich nu voordoen en ook vanwege suggesties voor toekomstig beleid dat wordt ondersteund door de Indigenous Peoples Basic Law (2005) en verdere juridische constructies die het belang aangeven van 'het respecteren en erkennen van inheemse opvattingen en manieren van beheer van eigendom' (Indigenous Peoples Basic Law 2005, Article 20; Yang, Chih-wei 2005).

Tijdens de periode van het doctoraal onderzoek, is me gebleken dat het historisch gedeelte het moeilijkst te bestuderen is omdat het een goede beheersing van de Japanse taal vereist om het verspreide materiaal te vinden in zeer verschillende plaatsen en dit vervolgens te analyseren. Maar gebaseerd op voldoende kennis en orale geschiedenissen, kreeg ik de kans de formatie te reconstrueren van een speciaal gebied als Taroko om de juridische en overheidsstructuren daar te vinden. Op basis hiervan kreeg ik een beter besef van de redenen waarom vanaf de Japanse tijd tot nu toe landclaims werden gemaakt. Naast de interpretaties van de geschiedenis vond ik dat landclaims worden ontwikkeld in twee dimensies: individualisering en collectivisering van landrechten. Ik ga er van uit dat conflicten over landrechten over reservaten leiden tot lastige kwesties ten aanzien van individualisering die het collectieve karakter vernietigen en een brug slaan naar kapitalisme waarmee inheemse mensen niet geholpen zijn. Ik heb gevonden dat de overheden en de kapitalisten zich in mijnbouw- en industriële projecten nog

steeds inheems land toe-eigenen via individualisering van inheemse landrechten. Ten einde de slechte effecten van individualisering te vermijden, denken inheemse mensen na over collectieve rechten. De praktijk van het in kaart brengen van het territorium, van het beschermen van de rivieren en van lokale autonomie illustreren de manieren waarop inheemse mensen hun soevereiniteit en hun landrechten onder collectieve controle hopen terug te krijgen.

Mijn dissertatie bestaat uit de volgende hoofdstukken:

In hoofdstuk 2 beschrijf ik het gebied van Taroko en de juridische rechtsorde die de staat heeft geïntroduceerd in de inheemse gebieden. De wijze waarop de Japanse autoriteiten aankeken tegen de manieren van leven van de inheemse bevolking, hun persoonlijkheidskenmerken en karakteristieken vormen tezamen het perspectief van wat ik noem 'de natuurstaat'. De term 'de natuurstaat' is gebruikt door westerse politieke filosofen om de condities en karakteristieken van 'de ander' te beschrijven die (nog) leven in omstandigheden van voor de staatsformatie. Ik heb deze term gebruikt om de bespreken hoe de Japanse autoriteiten op basis van deze premisse zijn begonnen met het ontwikkelen van beleid om over de inheemse volken te heersen en hun natuurlijke hulpbronnen te beheren met het doel het bereiken van een 'staat van de natuur' die leidde tot controle over deze mensen en de aanwezige hulpbronnen.

Met betrekking tot het eigendom van het land, was het meeste land in Taiwan in handen van de Japanse autoriteiten. Ten aanzien van het inheemse gebied heb ik de classificatie gebruikt van een Japanse officier, Iwaki Kamehiko, die belast was met het beheer van het inheemse land tijdens de laatste jaren van de Japanse heerschappij. Hij maakte een onderscheid tussen drie categorieën inheems land: 1. In 1934 leefde ongeveer 51% van de totale inheemse bevolking (84.000) in inheemse dorpen en was het hen toegestaan op deze oorspronkelijke plaats te blijven wonen; 2. ongeveer 24% van de inheemse bevolking werd vermengd met andere groepen; en 3. ongeveer 25% werd verplaatst naar nieuwe gebieden. Met andere woorden tenminste de helft van de inheemse bevolking werd geconfronteerd met een bepaalde vorm van migratie. In mijn onderzoeksgebied in Taroko heeft bijna de hele inheemse bevolking te maken gehad met dit beleid. Gebaseerd op historische analyses heb ik me gericht op hoe de Taroko bevolking in verschillende contexten landrechten hebben geclaimd met behulp van karteringsactiviteiten.

In mijn beschrijvingen in de hoofdstukken 3 en 4 weerklinken de categorieën van Iwaki Kamehiko. Zij geven aan wat de ervaringen zijn van de inheemse bevolking in Taroko met de verschillende vormen van migratie die verder kunnen worden onderscheiden als drie typen: 1. diaspora: mensen worden volledig gescheiden van hun oorspronkelijke woongebied door gedwongen of halfgedwongen migratie; 2. hydribe: gemengde gemeenschappen samengesteld met mensen van verschillende herkomst, van verschillende stammen of dorpen met

verschillende gebruiken of gaya; en 3. in situ gemeenschappen: mensen die nog steeds in hun oorspronkelijke gebied wonen maar die onder controle van nieuwe politieke regimes.

Recente karteringsactiviteiten met betrekking tot het gebied van de Taroko bevolking reflecteren deze drie vormen van mens-land relaties. Eerder heb ik de karteringsprojecten en –activiteiten geïntroduceerd waaraan ik heb deelgenomen zowel in het Taroko-gebied als daarbuiten. Deze karteringsprojecten hadden plaats op verschillende niveaus en hadden verschillende sponsoren en uitvoerders. Het grootste karteringsproject waarbij ik betrokken ben geweest was de Indigenous Traditional Territorial and Land Survey (ITTLS) in opdracht van de Council of Indigenous Peoples van de centrale overheid. Dit project omvatte alle karteringsactiviteiten in alle 55 inheemse gemeentes (townships) in Taiwan gedurende een periode van vijf jaar (2001-2006). Het Taroko-gebied kent drie gemeentes: Shoulin, Wanlong en Chousi en was daarom ook betrokken bij dit nationale karteringsproject. Tijdens deze jaren werd mij duidelijk dat de inheemse bevolking deze karteringsactiviteiten beschouwd heeft als een instrument om hun claims op het land tot uitdrukking te brengen.

In hoofdstuk 5 bespreek ik enkele van de wettelijke en juridische processen die door wetgevers, ambtenaren en inheemse activisten ondernomen zijn, om te onderzoeken hoe zij denken over land en gebieden, iets dat heel direct verbonden is met de opleving van inheemse rechten. Ik illustreer enkele processen zowel voor als na de doorbraak met betrekking tot de Indigenous Peoples Basic Law (IPBL 2005) ten einde een beter begrip te krijgen van de manier waarop activisten ideeën over land en territorium gebruiken als wettelijke hulpmiddelen in hun strijd voor het verkrijgen van inheemse landrechten. Aan de hand van een case studie uit het Taroko-gebied heb ik aangetoond hoe de Truku bevolking strijdt en handelt om autonomie verwerven en om trends in de juridische strijd en discussies, en in de inheemse beweging aan te geven. Ik bespreek in het bijzonder hoe de Truku bevolking omgaat met de onderlinge verbondenheid van land, soevereiniteit, mensen en rechten om hiermee een toekomstbeeld van autonomie te scheppen waarvan zij denken dat het veel van de problemen waarmee zij nu kampen (en waardoor ze in het verleden veel geleden hebben) voorkomen kan worden. Dit leidt tot de conclusie dat wetgeving een andere manier is om een ideaal utopia van land en territorium in kaart te brengen.

Naast dit in kaart brengen van een utopia van inheems territorium, worden deze landclaims ook in de formeel juridische en institutionele kaders gebracht. Landreservaten vormen een gebruikelijke en vaak voorkomende arena voor claims. Landreservaten hebben betrekking op land dat in het verleden gereserveerd is voor toekomstig gebruik door de inheemse bevolking en waarover zij eigendomsrechten hebben verkregen.

Inheemse volken in Taiwan hebben deze rechten op landreservaten gekregen sinds de Japanse koloniale overheersing. Echter deze vorm van landbezit conflicteert in sommige opzichten nog met inheemse ideeën en gebruiken. In Hoofdstuk 6 onderzoek ik de belangrijkste typen conflicten en land die het resultaat zijn van het conflict tussen de etic substantieve wetten van de staat en de lokale regels of gaya (inheemse term voor gebruiksregels en –rechten). Op basis van ongeveer 400 gevallen van landclaims, verzameld op verschillende niveaus van juridische overheidsinstellingen, maar ook op basis van interviews en interactie met lokale inheemse activisten in het Taroko-gebied, is mij duidelijk geworden dat wetten uitgevaardigd door de staat, zoals de Indigenous Reservation Land Management Procedure (IRLMP), die de processen behandelt voor uitgifte van inheemse landreservaten, de voornaamste strijdpunten opleveren voor conflicten over land. Deze IRLMP volgt vier procedures: 1. landmeting en -survey; 2. registratie van oppervlaktes; 3. duur van feitelijke gebruiksrechten; en 4. het toekennen van eigendomsrechten. Het zijn vooral deze procedures die leiden tot steeds sterkere individualistische ideeën onder de inheemse mensen en gemeenschappen. Op basis van deze procedures komt steeds sterker naar voren de mogelijkheid van een individuele rechtspersoon die ondersteund wordt door de individualistische ideeën gebaseerd op een Romeins-Japan-Chinees burgerlijk wetsysteem. Vanuit deze vier procedures komt een juridisch-individualisme naar boven dat McPherson (1962) definieerde als 'possessive individualism', which equips people to be […] the sole proprietor of his or her skills and owes nothing to society for them.' Vanuit dit perspectief behandelt dit hoofdstuk case studies om aan te tonen hoe landreservaten door dit rechtsindividualisme verbonden worden met kapitalisme, dat niet goed is ingebed in inheemse gemeenschappen in het Taroko-gebied.

Veel studies richten zich op gedetailleerde analyses van de politieke en economische processen die gevolgd worden bij het opzetten van industriële complexen voor cementfabrieken en elektriciteitscentrales, maar het ontbreekt daarin aan een etnografisch perspectief over de inheemse bewegingen en over de processen van inbedding in de industriële cementcomplexen en andere nationale projecten zoals de elektriciteitscentrales en nationale parken.

In hoofdstuk 7 illustreer ik hoe de inheemse bevolking een rol gespeeld heeft (van een kleine rol tot een hoofdrol) in al deze processen. Dit is noodzakelijk om al deze 'ontwikkelings'-processen te begrijpen. In deze scenario's heb ik een hegemonie gevonden van het neoliberalisme in het Taroko-gebied dat zichzelf gevestigd heeft via wat Davey Harvey beschreef als 'verrijking door onteigening'. Ik heb dat gedaan aan de hand van de metafoor van 'geld' in de inheemse gemeenschappen om zodoende het oprukken van deze hegemonie in de ontwikkelingsscenario's te bespreken.

In hoofdstuk 8 en 9 is beschreven hoe inheemse mensen en enkele overheidsinstellingen nieuwe vormen van bestuur hebben geconstrueerd voor 'ambigu ge-

meenschappelijk bezit' via 'onzeker co-management' van bescherming van rivieren in drie gemeenschappen in de Taroko-gebied: Skadang, Pratan en Meqreq in de periode 2000-2010. Gebleken is dat inheemse lokale mensen verwachtten dat ze beheerssystemen konden krijgen gebaseerd op co-management waardoor hun bestaan en identiteit verbeterd zouden worden. Echter de betrokken overheden hebben weinig inspanningen geleverd op dit gebied vanwege de beperkingen van een ontoereikende wettelijke infrastructuur.

'Toeval' is een term die ik gebruik om de resultaten te beschrijven die voortkomen uit onbekende of onvoorspelbare oorzaken en gevolgen in het proces van implementatie van co-management van rivierbescherming. Ik heb hiervoor de methodologie gebruikt van Vayda & Walters (1999) – evenemental or event ecology – om de zichtbare lijn van oorzaken en effecten uit te drukken die door mijn observaties liep. Voor de resultaten die niet duidelijke lijnen van oorzaak-en-gevolg vertoonden heb ik geprobeerd de situatie te contextualiseren met andere indirecte bronnen van informatie zoals geruchten, geroddel of mijn eigen ervaringen. Hoewel het misschien lijkt dat ik de term 'toeval' gebruik om frustratie uit de drukken over het falen van de drie gepresenteerde cases, worden mogelijke lijnen van oorzaak-en-gevolg wel aangegeven teneinde enkele suggesties te doen voor toekomstige implementatie van co-management van rivierbescherming. Dubbelzinnigheid over eigendom, lokale managementcapaciteit, juridische infrastructuur en de interpretatie en implementatie van wetten, samen met ideeën van zelfbeschikking zijn de belangrijkste onderwerpen die gecontextualiseerd worden om tot de conclusie te komen dat de inheemse bevolking landrechten claimt door middel van deze collectieve acties. Lokale ideeën over soevereiniteit illustreren deze landclaims die een nieuwe contextualisering inzetten van land, mensen, gemeenschappen, instituties en rechten.

Curriculum Vitae

Yung-ching Lo was born in Huanlien County in East Taiwan on the 24th of July 1971. He studied anthropology at National Taiwan University where he got his master degree. His master thesis focused on the indigenous conversions to Christianity in a small Tsou Tribe in the Ali Mt., Chia-yi County. Later he worked as a secretary general in an indigenous NGO: Thao Tribal and Cultural Development Association in Sun Moon Lake that helped the reconstruction projects after the 921 Earthquake in 1999. He lived with the Thao people for several years; during that time he acted as community worker to help revive indigenous environmental and land rights. Later he continued to join the Indigenous Traditional Territories Mapping Project sponsored by the Indigenous Council, Executive Yuan. At the same time, he joined the PhD program in the Department of Geography in National Taiwan University for 2 years. He focused on indigenous mappings as he worked as the project manager to coordinate among 55 indigenous townships that joined the national mapping project for 5 years. During these years, he transferred to Centre for Environmental Sciences (CML) and Department of Cultural Anthropology and Development Sociology at Leiden University in the Netherlands to study Environmental anthropology under the supervision of Dr. Prof. Gerard Persoon. With the help of Academia Sinica and Chiang Ching-kuo Foundation for International Scholarly Exchange and Jonny Walker Keep Walking Fund, he is able to conduct his PhD thesis on the land claims of the Taroko people in East Taiwan. The research that he conducted in that capacity resulted in the present Phd thesis.