

From Village Land to “Native Reserve”: Changes in Property Rights in Sabah, Malaysia, 1950–1996¹

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In this paper I explore the interactions between colonial law and native customary law in the formation of contemporary property regimes in a rural village in Sabah, Malaysia, that I call Govuton.³ Govuton was one of the few known villages in Sabah that rejected colonial policies of land settlement that focused on settling private, individual property claims. Instead, village leaders negotiated with colonial officials for their village lands to be legally designated as corporately-held village property under the title of “Native Reserve.” While the Native Reserve served to protect village access to jointly-held property in the colonial period, in the contemporary period new land disputes are arising as different images of community and tradition are strategically deployed by villagers in order to win struggles over rights of ownership and access to resources in the current political economy. By adopting such an historical and site-specific view of the transformation of property rights several broader themes regarding the relationship between state and society and natural resource management emerge. First, this case study challenges the idea the colonial governments were a monolithic force imposing laws on an unresisting native population. Second, the notion that “the community” is an appropriate unit for natural resource management is questioned. And finally, this case study raises the possibility that the current trend toward strengthening or reinvigorating native customary law is not always in the interests of native peoples with diverse interests in natural resource management.

KEY WORDS: property rights; native customary law; legal pluralism; colonial rule; state-society relations; natural resource management.

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³Following anthropological conventions, Govuton is a pseudonym for a rural village in Sabah, Malaysia.

INTRODUCTION

In recent years divergent trends have arisen between advocacy and scholarly projects aimed at understanding marginalized communities and natural resource use (Brosius *et al.*, 1998). Brosius *et al.* summarize the disjuncture between advocacy and scholarship as follows: “advocates have found concepts of *indigenous, community, custom, tradition, and rights* useful in promoting possibilities for local empowerment in national and transnational policy discussions, while scholars have become increasingly aware of the fragility mutability, hybridity, and political variability of these concepts” (p. 159). In an effort to bridge this gap between scholarly critique and generic management strategies, Brosius *et al.* call for case studies that examine the specific contexts and histories of communities and their natural resource management regimes. The following case study of the transformation of property relations in Sabah aims in part to fill this need for more locally specific and historically informed studies that delve into the intricacies of changing natural resource management systems in the face of new markets and new political environments.

One of the goals of this analysis is to provide both scholars and advocates with a more contextualized understanding of the impacts of mobilizing concepts such as “community” and “native customary law” in the name of local empowerment and the conservation of biodiversity. Furthermore, by adopting such an historical and site-specific perspective toward the on-going transformation of property regimes I am able to gain a window on several larger themes that are intertwined with changing property relations. First, this analysis enriches our understanding of state-society relations by looking beyond the notion of a colonial government that imposed legal structures on a pliant and unresisting subject population (Berry, 1993; Comaroff, 1989; Moore, 1986). Instead I demonstrate the role of negotiation and cooperation between the colonial state and indigenous society, the diversity of discourses mobilized by various actors within both the community and state (Agrawal, 1999a, 1999b; Moore, 1993, 1997), and the role of contingency in the expression of both state rule and local agency. I argue that the relationship between state authority and local people should not be conceptualized as an oppositional binary, based on modes of domination and resistance (Nugent, 1994), but instead the relationship should be conceptualized as mutually constitutive and deeply intertwined (Corrigan, 1994; Gupta, 1995, 1998; Li, 1999; Nugent, 1994). In brief, we can not conclude that colonial law was simply a body of immutable rules imposed on the indigenous population. Nor can we conclude that if the indigenous people did not overly resist colonial land settlement policies that they were passive subjects. Instead we need to examine the nature of the negotiations between colonial administrators and

local leaders, and explore what creative forms of state control developed and what new forms of local autonomy emerged from these state-society interactions.

Second, I highlight the notion that communities are internally diverse in terms of how individuals view property relations and the varying strategies that they employ to secure access to land (Agrawal, 1999a, 1999b; Li, 1996). Colonial governments tended to treat communities and their property regimes as homogenous and stable institutions. For instance, in North Borneo, G. C. Woolley, the Commissioner of Lands, published seven different reports, focusing on the customary laws of six different ethnic groups in North Borneo (see Woolley, 1953a, 1953b, 1953c, 1953d, 1953e, 1962a, 1962b). In five of his seven publications he failed to discuss the nuances in property rights regarding natural resources. In these five reports his discussion of land tenure focuses solely on the inheritance of land; he made no mention of rights to forest products, fruit trees or water. More recent ethnographic scholarship in Borneo has demonstrated that there is a long history of these forms of property rights (see *intra alia* Appell, 1992; Peluso 1996; Sather 1990).⁴ In contrast to the colonial interpretation of native property rights this study shows how community members adapted both rhetoric and actions regarding property rights in the face of external changes brought about under colonialism. Local villagers did not necessarily present a single unified notion of traditional property rights to the colonial authorities. Rather this case shows how villagers in Govuton tried various ways and relied on various discourses in order to gain state-sanctioned ownership of land that they had access to.⁵ Thus, native customary laws may have been used in instrumental ways by local people for material and political gains.

Furthermore, I argue that since communities are deeply embedded in state regimes, property rights and other social relations are reconfigured through discursive practices which draw upon both local and state generated idioms in the context of changing political and economic conditions (Gupta, 1995). Thus, access to resources and the transformation of property rights is shaped by both internal village conflicts over cultural meaning, social identity, and power and also by the incorporation of rural areas into the colonial and national political economy (see *inter alia* Berry, 1993; Brosius, 1997; Li, 1996; Moore, 1986; Peluso, 1992, 1996; Peters, 1994).

Third, I explore notions of legal pluralism and native customary law and demonstrate that present day understandings of native customary rights to natural resources took shape in the crucible of colonial rule through formal codification of native customary law (Moore, 1986; Zerner, 1994). Thus,

⁴I wish to thank Dr. George Appell for drawing this point to my attention.

⁵For similar findings in the African context see Moore, 1986.

current expressions of native customary law bear the imprint of regimes designed for rule. Furthermore, colonial codification of customary law took a highly fluid set of practices and made them static, representing the nature of these laws in a certain period of time and a certain political-economic context (Moore, 1986; Zerner, 1994). In the village of Govuton the result is that some villagers find the colonial interpretation of native customary law to be restrictive, not enabling, forms of tenure. I conclude that in Govuton colonial interpretations of customary laws have locked villagers a mode of agricultural production that is not empowering for all members of the community in the present political economy.

In the following pages I explore the case study of the formation of the Native Reserve in Govuton in order to understand the ways in which local people responded to colonial policies of land settlement in the 1950s. In the first section I draw on both regional archival data from the Ranau District (see Fig. 1 for the location of Ranau District in Sabah) and oral histories from the village of Govuton regarding the formation of the Native Reserve. In the second section I present ethnographic data from my year of field work in Govuton, examining contemporary land use practices, property rights and land disputes within the village. The goal of this section is to trace the impacts of colonial codification of native customary laws into present day society. While it is possible to understand many of the current land disputes as a legacy of the multiple legal systems implemented under colonial rule, it is also important to consider how land disputes are articulated in response to the values and social meanings attached to land and resource accumulation, and how these issues are shaped by changes in the political economy. In brief I argue that the present day land disputes are not simply an inevitable result of legal pluralism, but they are also the result of the continuously mobile nature of property relations.

I conclude that while formal recognition of village-owned land under the concept of Native Reserve might have empowered local people to resist outside appropriation of local lands in the 1950s, today the Native Reserve is not as empowering as it once might have been. In other words, the Native Reserve served to strengthen local autonomy in the late colonial period, effectively barring the state and other extra-locals from appropriating village communally-owned land. Yet in the contemporary period, the Native Reserve restricts local autonomy and decision-making in terms of land. While the Native Reserve may still bar extra-locals from encroaching on village land, it also bars villagers in Govuton from the economic benefits associated with private property rights. As a result, some villagers express frustration at the restrictions associated with village ownership of land in the Native Reserve. Conversely, other villagers still benefit from the Native Reserve as they rely on the community-owned forested areas to support

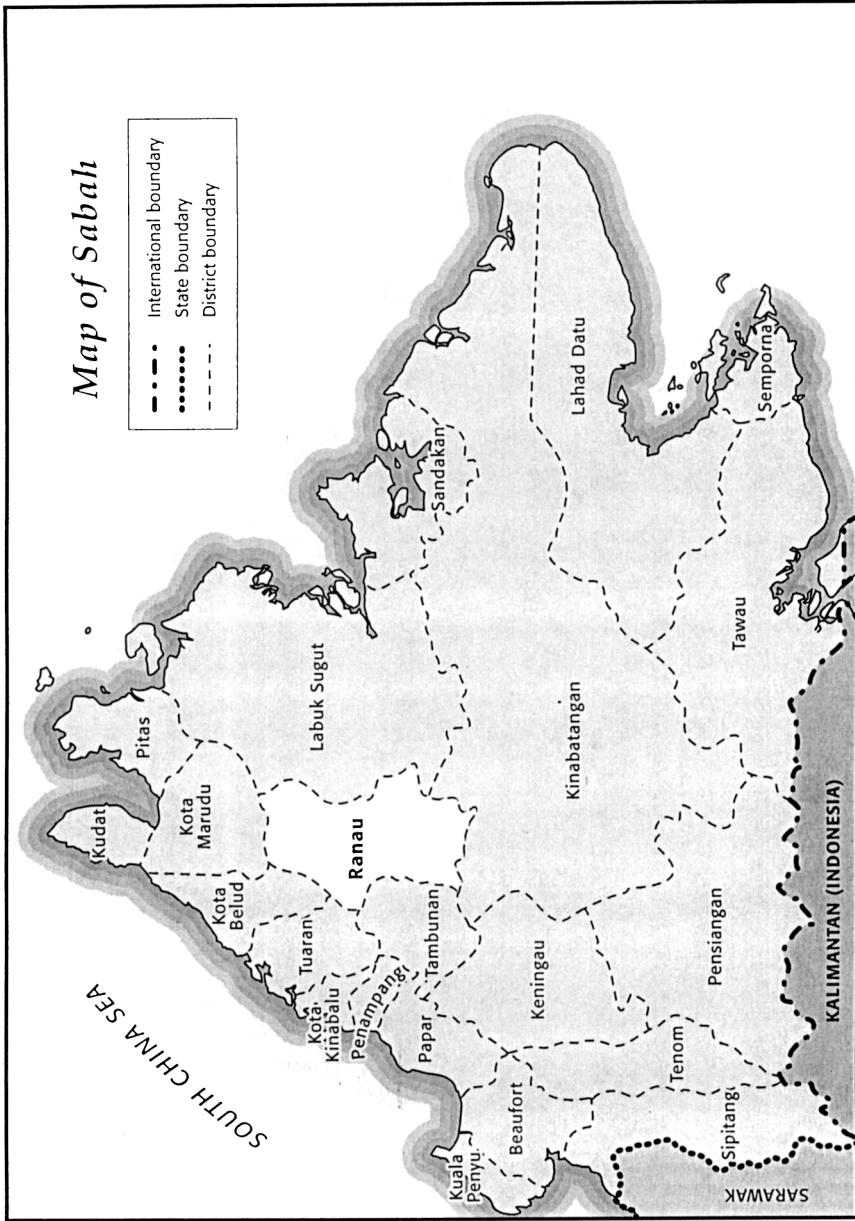


Fig. 1. Location of Ranau District in Sabah.

a particular lifestyle, based either on subsistence needs or cultural values. I closely explore a specific land dispute in order to understand the multitudinous factors that influence peoples' present day actions and discourses regarding rights of access to land within the Native Reserve.

This case study has significance in terms of policies aimed at empowering communities toward local control over natural resources. At a time when advocates all over Southeast Asia are proposing the strengthening of native customary law (Lynch & Talbott, 1995; Moniaga, 1993), this study highlights the complexities of bolstering a particular imagining or rendition of native customary law without a thorough understanding of the context in which the customary laws were encoded, and benefits and restrictions that these laws may potentially bring to the entire community. In brief, there are many pitfalls for policy-makers who uncritically adopt concepts of "native customary rights" as appropriate loci for local autonomy, social change, or conservation of natural resources without examining where these rights came from and how they have changed over time.

While the concept of "community" is in vogue as an appropriate unit for natural resource management by advocates of native rights and community-based conservation (see Agrawal, 1999a, 1999b; Brosius *et al.*, 1998), this case demonstrates that conflicts, internal stratification, and competing individual needs make it difficult to view local communities as harmonious, idyllic, and commonly united in their resource needs (Agrawal, 1999a, 1999b; Li, 1996; Zerner, 1994). It also illustrates that individuals within a community can have drastically varying notions about appropriate resource use, and that one individual's connections to external forms of power and authority can be used to suppress alternative discourses and practices regarding resource use and management.

THE NATIVE RESERVE IN GOVUTON

The village of Govuton lies in at the foot of Mount Kinabalu. The landscape is very steep and hilly and has been classified as lower montane rainforest (Kityama, 1987). Govuton is a long-established village of swidden agriculturalists, with a current population of roughly 2000 people, divided into nine hamlets. Historically each of these hamlets would have represented a long house. Today people live in households of extended families. The contemporary economic base in the village is a complex, composite agrarian economy—families mix subsistence swidden agriculture with commercial agriculture of temperature vegetable crops. Some families also own wet rice fields and fruit orchards in distant villages. Additionally, most extended families have at least one wage earner. The majority of the villagers belong to the Dusunic-speaking linguistic group, and also refer to their ethnicity as Dusun.

In the late 1950s a group of local leaders in Govuton mobilized to protect their communally-owned village lands from colonial appropriation. These lands included areas used for subsistence and commercial agriculture, as well as forested areas to which villagers traditionally had access for hunting and gathering of forest resources. Used by villagers for centuries, these lands and forests not only had material importance in daily life, but also symbolic importance in village folklore and ritual life (Doolittle, 1999).

Rather than requesting private title to lands that each family could rightfully claim under the colonial Land Laws of 1953, local leaders in Govuton turned to a little used section of the Land Laws under which communal titles could be issued to villages, for “lands held for the common use and benefit of natives.” Such communal titles were referred to in the Land Laws as “Native Reserves.”

In exploring the formation of the Native Reserve in Govuton both archival data and oral histories shed light on the course of events. These different forms of data provide contradictory images that diverge in their accounts of the agency, or the motivating force behind formation of the Native Reserve. In reports and letters produced by colonial administrators,⁶ the paternalistic need to protect natives from foreign land speculators was emphasized. In letters from leaders in Govuton, as well as in oral histories, the desire to secure local access and traditional rights to lands in the face of state appropriation of village land (which would eventually open the door to land speculators) was emphasized. Rather than trying to reconcile these varying accounts, we can look closely at them in order to understand how colonial law was employed by different actors for different purposes.

The View from Govuton: Protecting Traditional Lands

The impetus to form the Native Reserve in Govuton emerged as a result of local discontent at state policies which appeared to be aimed at appropriating village-owned lands. In 1957 the Director of Agriculture expressed an

⁶It is necessary to make a note on the term “colonial.” Sabah (known as North Borneo until Independence in 1963) was ruled by the North Borneo Chartered Company from 1881–1941. After World War II, from 1946 until Independence, North Borneo was a Crown Colony of England. This article begins with the late 1950s. These two periods of British rule, which I collectively refer to as colonial rule, differed in subtle ways. Nevertheless, many of the administrative policies and all of the Land Laws instituted by the North Borneo Chartered Company remained in place under Crown rule. In fact, many of the British colonial officers who came to North Borneo to serve under the North Borneo Chartered Company remained when North Borneo became a Crown colony. For the most part, the laws and the men who implemented them remained constant between the two eras (see for example Ross-Larson, 1976; J. Ongkili, 1972; and K. Tregonning, 1965). Thus, for the purposes of this analysis, I focus on similarities rather than variations between Company and Crown rule.

interest in the highlands surrounding Govuton. A road connecting Govuton to the coast was near completion and it was hoped that temperate fruits and vegetables could be grown commercially in the cool climate. At the request of the Director of Agriculture, the Department of Lands and Surveys began to survey land around Govuton. This was the first step required before land could be alienated to individuals for commercial agricultural development. To the villagers in Govuton this meant that outsiders would soon follow, staking claims to what the state perceived as state land and what local people perceived as village land.

Local leaders initially tried to resist the state's efforts to survey the land, claiming that the area the Lands and Surveys Department was surveying fell within the village's "'reserve' for rattan and roof-making leaves" (Director of Agriculture, 1958). Thus, local leaders invoked notions of native customary rights of access, based on a tradition of using forest resources, in order to claim this area. These rights of access were acknowledged in the Land Laws of 1953 which recognized that villages should be allowed access to timber reserved for subsistence use. But these initial efforts to draw attention to native rights to the land were unsuccessful. In April 1958, the West Coast Resident asked the Conservator of Forests to find "an alternative source of domestic timber and housing material for the village of 'Govuton'" (West Coast Resident, 1958). This letter indicated that the Resident had no intention of allowing the villagers to claim the area in question based on native customary rights, as they were legally entitled to under the colonial Land Laws.

At the same time that some local leaders were trying to highlight the village's communal access to land, other villagers from Govuton attempted to take advantage of the colonial project of land settlement by filing application for Native Titles (individual, private ownership of land issued under the 1957 Land Laws) to the land in question.⁷ In other words, villagers from Govuton did not speak with one voice, nor act as a unified body in their attempts to seek state recognition of traditional rights of access to village land. These internal struggles over property rights within Govuton demonstrate how local people strategically invoke varying practices in order to gain access to land. In brief, villagers asserted various different interpretations of local

⁷Native Title was the formal mechanism through which natives could get recognition of some of the land that they held under native customary rights in the colonial Land Laws. Natives could claim rights to the following types of land: 1) land under cultivation or land being used for housing, 2) land planted with fruit trees at the rate of 20 or more per acre, 3) isolated fruit trees if enclosed by a fence, 4) grazing land stocked with animals, 5) wet and dry padi land so long as it was cultivated for at least three years prior to registration, 6) burial grounds, and 7) rights of way. While the land laws were relatively inclusive, for the most part natives were successful at gaining Native Title only when they could prove that the lands in question was used for permanent cultivation (Doolittle, 1999).

property relations and state laws in their attempts to get state sanctioned ownership of the land that they had access to. Some tried to assert the primacy of their customary rights; others tried to use the new colonial Land Laws as opportunities to secure rights of access to land.

The primary advocate of community ownership of the village land was a Govuton leader, Native Chief Gisil.⁸ Native Chief Gisil found an ally within the colonial administration with the arrival of John Dusing as District Officer for Ranau. In 1961, Dusing made the recommendation that the forested area around Govuton be declared a Native Reserve, thereby officially initiating the process of state recognition of village ownership of the land.⁹ Neither archival data nor oral histories state why John Dusing supported the Native Reserve. However, Dusing was the first District Officer in Ranau who was a Dusun (the largest ethnic minority in Sabah and the ethnicity of the villagers in Govuton), and we can therefore speculate that he was sympathetic to native peoples' claims to land. There is some evidence to support this speculation. When Sabah achieved Independence the first native Chief Minister, Donald Stephens, appointed John Dusing as his Secretary of State. Tun Mustapha (the Head of State) refused to support the nomination of John Dusing as Secretary of State, claiming that Dusing would favor Dusun people in the distribution of government projects (Yahya Bin Mohamad, 1990). The historical record, therefore, suggests that Dusing was noted for his pro-native sentiments. Regardless of the reason why the proposal for the Native Reserve was supported by the state, it was through political networks between the Native Chief from Govuton and the District Officer from Ranau, that the voices of leaders interested in village ownership of the land were privileged over other, dissenting, local voices. On November 1, 1966, Native Chief Gisil and the *Orang Tua* (Headman) in Govuton officially applied to the government for 3120 acres of land surrounding Govuton to be gazetted as a Native Reserve. While the official signing of the gazette by the Chief Minister did not occur until 1983, some of the older men in Govuton remember helping the Lands and Surveys Department “*tenom batu*” (literally, “plant stones,” meaning to set boundary markers) for the Native Reserve in 1968.¹⁰ In the eyes of Govuton's residents, the Native Reserve and village ownership of the land and forests was recognized by the state by the late 1960s.

⁸The institution of Native Chief was established under colonial rule, in which certain local leaders were given state recognition. Native Chiefs were expected to serve as local representatives of the colonial government, collecting taxes and recording land transfers. They were also responsible for settling native disputes according to the local customary laws. See Bilson Kurus, 1994, and Peter Phelan, 1988.

⁹See various files on “Govuton” in the Land Office in Ranau.

¹⁰While plans to gazette the Native Reserve began in the early 1960s, for unknown reasons the area was not officially gazetted by the Chief Minister until November 3, 1983.

The View from the State: Natives as Unsophisticated “Wights”

A dominant discourse surrounding native land rights and land use systems emerged during the period when Sabah was ruled by the North Borneo Chartered Company (Doolittle, 1999). This discourse continued during Crown rule, as evidenced in the colonial documents produced during this period. In one strand of this discourse, colonial administrators were concerned with the perceived inability of natives to manage their lands in a rapidly changing market economy.¹¹ Evidence of this concern is found in the restrictions against natives selling their Native Titles to non-natives without governmental sanction. The notion behind this restriction was that natives did not understand commercial land transactions, and if they were not “protected from their own improvidence,” they would sell all their land to foreign speculators and be left with no land of their own to cultivate (Circular Notice to Officers, 1928).

Debates within the colonial administration over the possibilities of natives selling all their lands to non-natives peaked in the late 1950s. On one side of the debate were colonial officers who believed that the “North Borneo native is a poor unsophisticated wight,¹² who is easy meat for a non-native land shark” (Director of Lands and Surveys, 1957). These officers felt that it was their paternalistic duty to protect natives “against the cunningness of the sophisticated non-natives, who carrot-wise, dangle treasury notes or trade goods before their noses” (Director of Lands and Surveys, 1957).¹³ Yet other officers felt that the idea that natives were naïve regarding the commercial value of land was pure fiction. According to one colonial official:

The average North Borneo native is just as cute a land shark as any non-native. Every native knows the value of a scruffy bit of land . . . to which he has done nothing for years and years, but which suddenly appreciated in value because of the proximity to urban . . . development or because it is served by a new road. (Director of Lands and Surveys, 1957)

Clearly colonial administrators held contradictory images of the ability of natives to manage their land without colonial intervention. The records in the Ranau District Office from the mid-1950s illustrates that this debate was resolved in a way that represented concessions to both these competing

¹¹The persistence of this concern between the eras of Company rule and Crown rule demonstrates that few if any changes occurred in how British rulers treated natives and their land rights between the two periods.

¹²“Wight” is an old English word meaning “person . . . thing, creature of unknown origin” (The Oxford Encyclopedic English Dictionary. Oxford: Clarendon Press, 1991).

¹³T. Harper (1997) also comments on colonial policies of “official paternalism” in Peninsular Malaya that were aimed at protecting the *orang asli* (literally, the original people) from “unseemly commercialization of Orang Asli life,” (p. 9).

colonial views: if natives wished to sell their lands to non-natives, they could do so with government sanction, but they would be charged a substantial premium for the transfer of their Native Titles. The colonial officers in Ranau hoped that the premiums would deter some natives since it would lower the profits they would realize from the sale of their lands (West Coast Resident Chisholm, 1957). Importantly, in terms of state strategies of rule, if natives did choose to sell their lands, it also would raise the profits to the state. Thus, protection was offered to natives, yet natives could choose to forfeit state protection for a price.

This debate undoubtedly influenced colonial administrators’ decisions regarding the formation of the Native Reserve in Govuton. While the impetus to form the Native Reserve came from leaders within Govuton, the final authority to gazette the area as a Native Reserve had to come from colonial authorities. Elsewhere I have demonstrated that colonial land policies were dominated by a preoccupation with settling native claims only when such claims could be reduced to individual, private property (Doolittle, 1999). Native rights to forest resources, scatterd fruit trees, and communally-owned land were generally ignored during the actual practice of land settlement. This oversight was considered necessary by colonial administrators. It was the goal of the state to tax native lands and to systematically organize native property rights, thereby facilitating alienation of “waste” lands for plantations. Attention to all the details of native customary rights would only delay the profits that the state was eager to gain. The focus of the colonial administration on taxation over the settlement of all native rights was clearly stated by District Officer Francis, who wrote in 1902:

... no native titles had been issued except for padi lands; orchards, house sites, grazing lands, timber reserves, sago, reserves for expansion have all been excluded from the settlement, mainly ... because they were *not assessable with rents* or with only small rents.¹⁴

Therefore, one way to make sense of the state’s support of a Native Reserve in Govuton, a situation in which village communal property was protected and no tax revenue was derived by the state, is by placing the decision within the context of administrative debate over protecting natives and their lands from non-native land speculators. In other words, local communal rights were supported by colonial officers in order to “protect” natives from losing their lands, despite the state’s broader economic agendas. Viewed more critically, however, this form of protection also had the effect of intensifying state control over the native population.¹⁵ Local traditional

¹⁴Memorandum by A. B. C. Francis. Colonial Office 874/985, p. 4. Italics mine.

¹⁵For more details in how state management of local property rights can be seen as strategies aimed at intensifying state control see Tania Li, 1997.

land rights became contingent on formal sanction and registration with the colonial government. Thus, local customary rights which previously flowed largely from local practices and changed through local practice, could only gain legitimacy through the final authority of the state, and could only be changed by authority of the state.¹⁶ Moreover, the formation of the Native Reserve isolated the natives in Govuton from broader economic changes associated with the commercialization of land that the state and non-natives were enjoying throughout North Borneo, continuing the colonial trend of keeping natives in a marginal position in relation to the ruling elite. While “protecting” natives was the rhetoric used to justify certain forms of colonial property law, this rhetoric elides the important function of these laws in empowering the state.

The implementation of the colonial laws concerning the Native Reserve was brought about due to the political and social networks that were drawn between local society and state agents.¹⁷ Without pressure from the local population, it is unlikely that the state would have sanctioned the formation of the Native Reserve. This evidence emphasizes the notion that the relationship between state authority and local people is not always based on state domination and local resistance (cf. Nugent, 1994). These data show that at the local level there is conscious decision-making and planning that results in local attempts to negotiate with state agents to influence state practices.

CONTEMPORARY PROPERTY RIGHTS AND LAND DISPUTES IN THE NATIVE RESERVE

Statutory Law Versus Customary Law

According to the Gazette Notification for the Native Reserve, the headmen¹⁸ of Govuton and Native Chiefs of the district were appointed as the “trustees” of the reserve.¹⁹ The Gazette Notification reads “(1) The Reserve is for the sole use of the natives at Kampung [village] Govuton for the construction of dwelling houses and other ancillary buildings; (2) The residents of the Kampung [village] may be permitted to practice traditional Kampung [village] industries, rearing of fowl, domestic animals and do cash

¹⁶For documentation of similar findings elsewhere in Southeast Asia see Nancy Peluso and Peter Vandergeest, 1998.

¹⁷For a seminal study that focuses on the networks formed between state agents and local people, and the influences that these networks have on the transformation of property rights see Sara Berry, 1993.

¹⁸Govuton is a large village and is divided into several hamlets and each hamlet has its own headman.

¹⁹“Declaration of the Kampung ‘Govuton’ Native Residential Reserve Ranau District” on file in the District Office in Ranau in the Land Office.

crop farming within the Reserve.” Additionally, no individual may sell land within the Native Reserve since it is considered as village communal property, not as individual private property. These rules are the extent of the statutory laws about land use in Govuton. They are the production of the colonial imaginings of how native communal tenure should be represented in statutory law. Like other aspects of the colonial project, this synoptic reordering of property arrangements was an effort to make complex local society legible and manageable for centralized rule (cf. Scott, 1998). In short, the written colonial law delineating land use within the Native Reserve does not capture the complexity of local social relationships surrounding property rights in Govuton. In everyday practices statutory laws are overlaid with *adat* (customary laws), creating competing sources of legitimacy for property claims within the Native Reserve. This disjuncture between the government’s panoptic visions and the local complexities of property relations is significant because it created a source of conflicts over the current interpretations of the rights that villagers have to the land and resources within the Native Reserve (Table I).

Villagers in Govuton have a more elaborate land tenure system, following village *adat*, than that which exists in statutory law. Even though the Gazette Notification for the Native Reserve makes no distinction in how the land in the reserve is used, the villagers have divided the land into two categories: *tanah kampong* (village land) and *hutan simpan* (forest reserve)

Table I. Land Classification and Land Use in Gouvton’s Native Reserve

State land classification	Village land classification	Land use by locals
Native Reserve	<i>tanah kampong</i> (village land)	A. Uses sanctioned by customary law 1. constructing houses 2. making small home gardens 3. planting fruit trees 4. making fish ponds 5. grazing livestock 6. making swidden gardens B. Uses sanctioned by statutory law 1. house construction 2. making commercial gardens 3. grazing of livestock 4. practicing traditional industries
Native Reserve	<i>hutan simpan</i> (forest reserve)	A. Uses sanctioned by customary law 1. cutting trees for household construction and fuel wood 2. hunting 3. collecting wild vegetables B. Uses sanctioned by statutory law 1. No distinction from <i>tanah kampong</i> (same as B. above)

(see Fig. 2). *Tanah kampong* is the area within the Native Reserve where people may build houses, make vegetable and swidden gardens, graze their livestock, plant fruit trees, and build fish ponds. The *hutan simpan* is an area of forest surrounding the village. According to village *adat* people may collect forest resources and wood for personal consumption in the *hutan simpan*; it is also used for hunting. But even these two local categories of land, *tanah kampong* and *hutan simpan*, do not capture the complexity of daily practices or the *defacto* property relations formed through action, which I elaborate in the following sections to illustrate the ways in which contests over resource use play out in terms of divergent images of community²⁰ and divergent interpretations of rights of access.

Contemporary Property Regimes in *Tanah Kampong*

Farmers in Govuton combine swidden rice agriculture with intensive cultivation of temperate vegetables for cash crops. Like many other communities in Malaysian and Indonesian Borneo, an indigenous labor theory of value forms the core of property relations in Govuton.²¹ Thus, a pioneer who clears the land from primary forest has permanent usufruct rights to that land. Although land in Govuton has been farmed for multiple generations and the original clearer of the forest has long since died, the notion that the first person to clear the forest can claim usufruct rights to the land is still embedded in local discourse surrounding property relations. This notion, however, is intertwined with principles of inheritance as the usufruct rights conferred on the first person to clear the forest are passed from parents to children for generations. When asked how they came to have access to a specific plot of land, most villagers in Govuton said that they had inherited the land from their *nenek moyang* (ancestors), who first cleared the land.

Primary usufruct rights in Govuton also include the right to sell the use rights to another person, if cash is needed. But primary usufruct rights to agricultural land within the Native Reserve are limited in two ways. It is expected that kin and neighbors needing a place to farm can borrow any land that is left in fallow. And useful products growing naturally on fallow land (such as bamboo [*Gigantochlae* spp.] and wild vegetables) as well as abandoned or naturalized crops (such as taro [*Caladium* spp.] and bananas

²⁰Here I am building on the insights of Li who argues that divergent and competing images of community become “culturally available points of leverage in ongoing processes of negotiation” over access to land (Tania Li, 1996, p. 509).

²¹For more on “an indigenous labor theory of value” see Li, 1996, pp. 511–512. For other empirical literature on relationships between individuals, communities, and the formation of property relations in Borneo see, Peluso, 1996; George Appell, 1991, 1986; Michael Dove, 1983, 1985; D. Freeman, 1970; Anna Tsing, 1993.

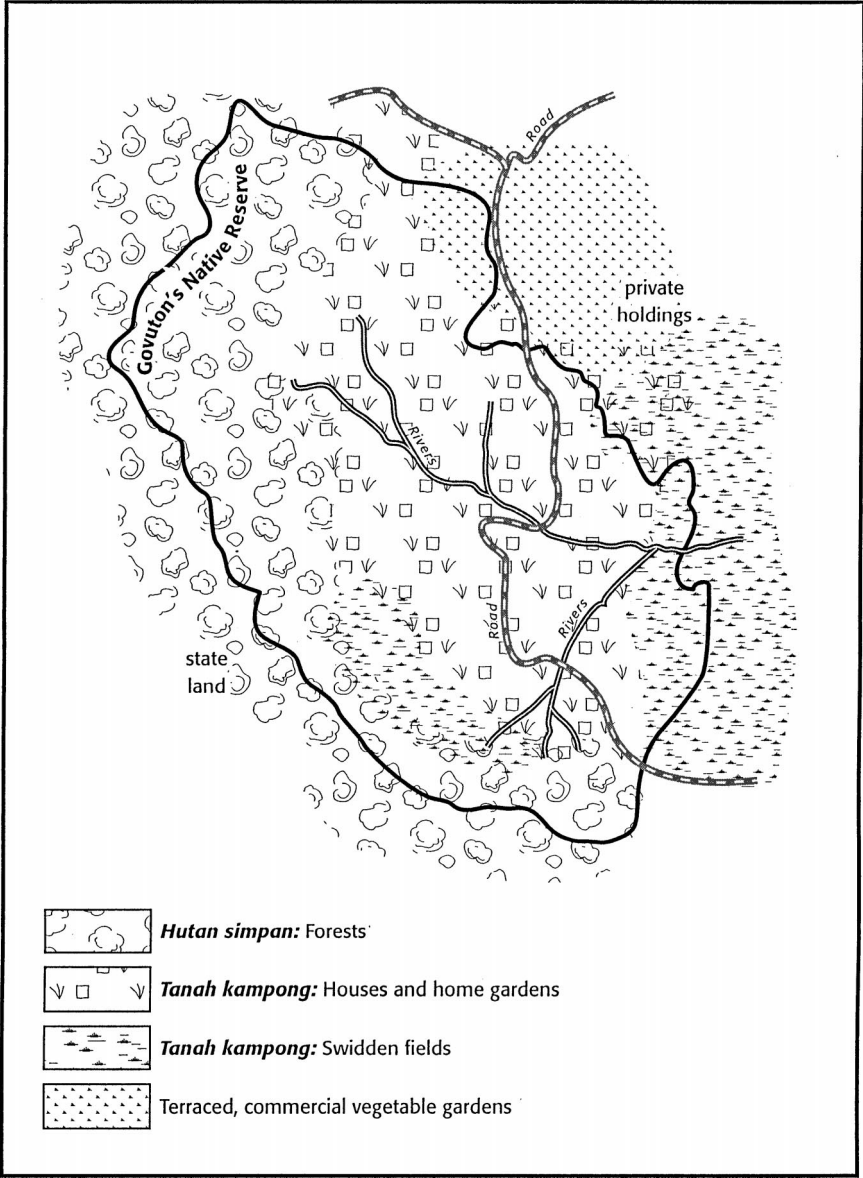


Fig. 2. Land use in Govuton's Native Reserve.

[*Musa* spp.] that propagate naturally as fallow fields return to secondary growth), can be harvested by anyone needing them for consumption. These rights of access to land, in part, delineate the boundaries of a 'community,' loosely defined in terms of kinship, proximity and need (for similar findings in Sulawesi see Li, 1996).

Community access to fallow land is elaborated through what has generally been referred in the literature to as a "moral economy of peasants," in which reciprocity and exchange form the foundation of social relationships.²² Such a notion of shared community access to agricultural land in the Native Reserve was possible in the past due to the agricultural cycle of a swidden field. Long periods of fallow meant that land was available for community use when the family with primary use rights was not cultivating it. The use of fallow land by other people is culturally elaborated as a valuable service in Govuton since the secondary forest is kept back, and the owner is spared the hard labor of opening up the land in the future when he returns to it. This image of fallow land varies from other indigenous discourses about the function of the fallow period (cf. Dove, 1983). Rather than emphasizing the important ecological functions of regeneration for the swidden-fallow cycle, villagers in Govuton placed more emphasis on the value of keeping regeneration in check.

These community rights of access to fallowed village land are not well articulated rights in present day social life and currently are being subsumed as a result of two converging trends. First, as some villagers turn to wage labor instead of farming, their family's land lies in fallow for extended periods of time. Second, an increasing emphasis on intensive, commercial vegetable agriculture means that some land is cultivated on a permanent basis. Therefore, land is removed from the swidden-fallow cycle and is no longer available to kin and other villagers in need. Thus, while there may be more land in fallow than in the past, once a farmer decides to use fallow land for permanent agriculture, he is effectively privatizing and enclosing land, making it inaccessible to other villagers for an indefinite period of time. In other words, the shift from reliance on swidden agriculture to intensive, permanent agriculture has rendered the property relations surrounding the community use of fallow land problematic.

In other communities in Indonesian Borneo, research has suggested that notions of community and identity can come together in powerful ways to support an "ethic of access" which tempers the inequitable accumulation of resources that can arise as a result of commercial intensification (Peluso, 1996). In Indonesian Borneo, this ethic of access is most prominent with

²²For more on the "moral economy" of peasants and the "subsistence ethic" see E. P. Thompson, 1975 and James Scott, 1976.

crops that have social and ritual meaning, such as the long-living durian trees, which have complex inter-generational inheritance patterns and imbue the landscape with a social history of the community. Thus, kinship ties and community investment in the landscape link kin and villagers together in shared ownership of the commercially valuable durian trees.²³ Conversely, Peluso shows that crops like rubber have different social meaning and neither individuals nor communities form emotional attachments to rubber crops. Thus, land cultivated with rubber lacks an ethic of access and as a result is considered as private, individual property.

A similar, although less clear, trend can be seen in Govuton. The notion of community access to fallowed land can be seen as an ethic of access. Kinship and community ties and reciprocal relationships of exchange dictate that kin and neighbors in need should have access to fallow land, but presently the more powerful emphasis is on the commercial cultivation of vegetables, overriding the ethic of access. In areas where people are cultivating plots of land for the commercial production of vegetables there is an absence of locally-agreed rules about how much land a single family can cultivate on a permanent basis. Wealthier families hire laborers to help them keep as much of their lands under cultivation as possible, reducing the amount of land that previously would have remained fallow. Also, sharecropping arrangements are arising, in which a family still allows neighbors or kin to use their land, but the primary owner demands a portion of the harvest or the profit (usually one third) in return for the use of the land. Thus, community rights of access to fallow lands, or a local ethic of access, is overridden by the growing commercial production of crops in which intensive cultivation is gradually replacing extensive cultivation. Individual ambitions of wealth and resource accumulations are being emphasized over kin and neighbors' needs. This trend is depicted differently by different village members. Some villagers draw on national discourses of development and modernity to validate their hard work and initiative to participate in commercial agricultural development, other villagers draw on local discourses which validate indigenous technical knowledge and farming skills that allow one farmer to be more successful than others; and finally other villagers see the trend toward resource accumulation as a disintegration of cultural values which emphasized village equity in access to resources over individual accumulation.

The opportunities provided by a new cultivation system necessitate a change in the village property relations (Appell, 1985, 1987). Since there have been few formal discussions about the distribution of rights under this

²³This relationship between kin and shared ownership of durian trees is so strong that according to one informant in Peluso's (1996) study, "Selling your durian tree is like selling your own grandfather" (p. 538).

trend toward commercial and intensive agriculture, the same plot of land can be claimed by different parties, each relying on various strategic discourses to substantiate their claims. For instance, a person may claim the right to cultivate fallow land through notions of communal rights of access. Yet with the new emphasis on commercial vegetable production, another person may claim the right to exclude community access based on their primary rights of access derived from inheritance principles.

Conflicting ways to legitimize claims on land become particularly problematic when a person begins to cultivate permanent crops on land previously left fallow by another person, thereby indefinitely removing the land from community access. In the following pages I illustrate the growing tension in Govuton over property relations by closely exploring the roots of a specific land dispute. Drawing on this land dispute, I explore how various images of community and rights of access are employed in order to validate claims on land. This land dispute is important because it highlights how individual ambitions are negotiated and legitimized over kin and neighbors' needs. Furthermore, this dispute illustrates how connections to state institutions serve as a locus of legitimate authority for some villagers in Govuton. Thus, power and wealth derived from external sources become forceful ways to influence land ownership at the local level.

Community Rights of Access Versus Individual Rights of Exclusion, Part I

Many people in Govuton do not anticipate a future as agriculturists. They are counting on profits from intensive vegetable production to educate their children and to launch them in non-agrarian careers. Enclosing land in the Native Reserve for permanent, commercial vegetable agriculture, effectively removing it from the swidden fallow cycle and from community access, is one of the ways by which profits can be realized. But, as the following land dispute demonstrates, an ability to appropriate fallow *tanah kampong* (village land) for individual, permanent use depends, at least in part, on integration into the broader legal, administrative and economic systems outside of Govuton.

Intang Versus Kemburong

Intang²⁴ was one of the wealthier and more influential men in Govuton during the period of my research in 1996. His power and wealth stemmed from the fact that he worked for many years as a driver for the District

²⁴In order to protect the anonymity of my informants all of the names used in this case study are pseudonyms.

Officer. During this time he formed social networks with many state officials in the District Office. These links to state agents and institutions allowed Intang to act as a broker of state derived power at the local level. For instance, Intang had unusual success in getting Native Title to land that he owned in villages outside Govuton. Many people in Govuton owned land in neighboring villages and have filed applications for Native Title for these lands, yet most of them have been waiting for over 25 years for their titles from the state. Without connections to individuals in the Lands and Surveys Department, connections that Intang had, applications for Native Title take decades to be processed. According to Intang, he got his titles quickly because he has *teman rapat* (close, intimate friends) in the Lands and Survey Department.

Title to land held outside Govuton has far-reaching implications. In order to get a bank loan, a person must provide a title to land as collateral. Thus, Intang has been able to borrow money from the bank to launch several business enterprises, while most other people in Govuton are unable to do so. When people in Govuton need money, instead of turning to a bank, they turn to Intang. As a money-lender Intang provides a valuable service to many people in Govuton, yet he is often disliked and distrusted. Many people feel that he demands too high interest payments on his loans and that he is taking advantage of less fortunate villagers. In short, Intang is overstepping culturally acceptable boundaries of exchange and reciprocity by making a profit by loaning money to villagers.

Intang's accumulation of wealth outside Govuton has facilitated his accumulation of *tanah kampong* within the Native Reserve, where he owns a large, permanent vegetable garden whose products he sells in Kota Belud, a market center. This piece of land has several qualities that make it valuable for the commercial production of vegetables. It is located near the road and near a source of water for irrigation, and is one of the flattest pieces of land in the hilly region, so it is less work to cultivate. Intang bought the use rights to this particular plot of land from another villager, Momin, who claimed that, although he had not cultivated the land for years, he inherited the land from his father. Thus, in order to gain access to this land, Intang strategically used the discourse of inheritance as the legitimate locus of ownership. Once these rights were secured, Intang maintained his ownership of the land through permanent cultivation, which further legitimated his claims, since now the point of reference for these claims is not only inheritance, but also a labor theory of ownership. But by planting permanent crops, Intang has effectively removed the land from community access, creating local tensions.

Momin no longer lives in Govuton, and his right to sell the land to Intang was questioned by other residents. Since his father had essentially abandoned his land, leaving it uncultivated for decades, it had become available for

communal access. Indeed, another family, headed by Kemburong, had built a house on a small portion of this land. When Intang bought the use rights to the land from Momin, he evicted Kemburong from the house she had lived in for over ten years, claiming that he had legitimately bought the rights to the land.

Kemburong felt she had the primary rights, at least to the area of the land where her house was. She used the discourse of the rights of community access to abandoned land within the Native Reserve, based on need, to legitimate her claim. Intang felt that he had the primary rights to the land since he purchased these rights from the person who claimed to have inherited the primary use rights to the land. The dispute went to the Native Court at the District level. It was ruled that by abandoning the land and moving out of the village, Momin's father (and Momin himself) had relinquished their rights to the land. By relinquishing these rights, the broader community had access to the land and Kemburong had the right to build a house there. The Native Court reasoned that abandoned *tanah kampong* had reverted to community land and therefore Momin no longer retained the primary use rights and no longer had the right to sell the rights to the land. The Native Court, therefore, supported the customary law which allowed villagers in need to claim use rights to abandoned land within the Native Reserve.

Despite this ruling in the Native Court, Kemburong abandoned her house and Intang enclosed the land with a fence and established cultivation of vegetables on the land. Local gossip suggested that Intang had offered Kemburong money to move off of the valuable piece of land. Kemburong herself denied this, but simply stated that she “felt badly” (*merasa sangat tidak senang*) about the land after the court battle and wanted to move.²⁵ This case demonstrates how cultural notions of access to property are adapted to meet new conditions, and in turn structure daily land use practices (cf. Li, 1996, p. 509). By cultivating the land with permanent crops, by installing an irrigation system and by building a fence, Intang's land use practices strengthened his future claims to the land. Yet Kemburong's dilapidated house on one corner of Intang's garden provides a constant reminder that Intang acquired the land through contest and negotiation. The fact that Intang should have failed in his appropriation of the land, since the Native Court ruled against him, complicates this analysis, but highlights the notion that his externally derived wealth and power provided him with leverage in local disputes. Intang's power allowed him to not only override the Court ruling through his actions, but to also potentially alter the future trajectory of changes in property rights in the Native Reserve.

²⁵It is not an unusual cultural practice to move one's home after a tragic incident, although usually such incidents are associated with illness and/or death.

This dispute shows that land rights provided by rules and traditions are not guaranteed, but instead serve as points of leverage in ongoing negotiations (Li, 1996). While the Court attempted to enforce the rules associated with customary law, neither the Court nor other villagers were able to compel Intang to leave the land.²⁶ Instead Intang successfully wielded his power and altered the ways in which customary rights of access to property are negotiated through his actions. Thus, negotiations over land rights include references to power and wealth that are not necessarily encompassed in the rules and traditions of property rights, but are powerful enough to change rules of access to land. In this particular dispute, Intang’s individual ambition to provide his children with finances to pursue livelihoods outside Govuton subsumed notions of community access to fallow land. At the moment it is too early to tell if this trend will continue. Perhaps other villagers will try to follow Intang’s initiative and secure permanent rights to fallow land in the Native Reserve through the practice of permanent vegetable production.

Native Reserve Versus Native Title: Community Rights of Access Versus Individual Rights of Inclusion, Part II

It is instructive to focus our attention on land matters in the broader, regional context in order to understand the trend in Govuton toward individual accumulation of land, a trend that is overriding older practices of community access to village land. Govuton’s Native Reserve, as a form of native property rights, stands out in marked contrast to other forms of native property rights in contemporary Sabah. Most native claims to lands elsewhere in Sabah were recognized in colonial statutory law through the use of Native Titles (Doolittle, 1999). Today, farmers who have Native Titles may choose to sell or rent their land without significant interference from the government, and they can also secure bank loans in order to buy additional lands or improve current lands, using their Native Titles as collateral. Conversely, natives within Govuton’s Native Reserve are restricted by the colonial codification of native customary laws which limits rights to land within the Native Reserve to use rights only. People in Govuton feel hampered by this; in today’s political economy the inability to sell or lease land or to secure a bank loan are seen as significant impediments to individual rights.

Many people in Govuton express frustrations with the Native Reserve as a form of local property rights. While different features of property relations

²⁶A common complaint about the Native Court in Sabah is that it lacks the power to enforce its decisions. The police are responsible for upholding civil law, not native law, and therefore there is no authoritative body to ensure compliance with Native Court decisions.

within the Native Reserve concern individuals differently, all the concerns coalesce around the fact that usufruct rights to land in the Native Reserve are too limiting, particularly when compared with rights that other natives experience elsewhere in Sabah. For instance, some poor villagers complained that if they needed money, they could only get a small sum from community members for the sale of their use rights; land without a defensible title has very little commercial value. If a villager in Govuton wishes to sell his use rights to a plot of land he can usually get roughly \$M 500.²⁷ A similar plot of land held under Native Title outside the Native Reserve is worth between \$M 2500 and \$M 3000 because the title has value as collateral and is transferable without restrictions.

Other villagers complained that cultivating land in the Native Reserve is more work and more costly than cultivating land owned under Native Title. Here they are referring to the fact that goats, pigs, cows and water buffalo all graze freely in the Native Reserve; to keep livestock out of their gardens farmers must build fences. Under Native Title the situation is reversed; people who own livestock must keep them tethered or fenced on their own land. In other words, individual rights take precedence over community rights outside the Native Reserve, where community rights take precedence over individual rights.

In this context, the actions and discursive strategies of people like Intang make sense—these farmers are trying to compete with farmers outside the Native Reserve who have private property. The formation of the Native Reserve produced a static colonial interpretation of native life and native property relations in a particular political and economic context. While leaders in Govuton in the 1950s saw the Native Reserve as a way to assert local autonomy and protect traditional lands, today it provides villagers with less autonomy over land matters than other natives in Sabah who own land under Native Titles. In other words, the regional political-economic context has changed, making the Native Reserve less appealing to some villagers, particularly those who desire to become more active in the commercialization of vegetable crops.

Conversely, other villagers find protection and benefit from the Native Reserve, particularly when access to the forested area, the *hutan simpan* is considered. Table II represents some of the various ways in which villagers utilized the *hutan simpan* on a daily basis.²⁸ What is most interesting is the fact

²⁷At the time of research US \$1.00 was equivalent to approximately \$M2.50.

²⁸The data in this table were collected over a 3 month period in which 6 households in the hamlet (30% of the population) kept journals in which they recorded their daily wages from labor, income from the sale of forest products, income from the sale of cultivated products, and their consumption of forest products and cultivated products. While this sample size is too small to draw definitive conclusions, I believe the results are interesting nevertheless,

Table II. Various Uses of the *Hutan Simpan* in Govuton

Name and household size	Average monthly income*	% of income from garden and forest	% of days spent gathering in forest over 3 month period	Types of resources collected
Lehimboi 9	\$1,392	garden 0% forest 0%	35%	firewood, fish, squirrels, wild fruits, wild vegetables, fodder for pigs
Gitom 14	\$1,164	garden 14% forest 0%	34%	firewood, fish, frogs, monkeys, birds, snake, armadillo, wild fruits, wild vegetables, fodder for pigs
Lumbow 18	\$1,078	garden 75% forest 0%	4%	fish, wild vegetables
Selimboi 15	\$1,062	garden 6% forest 0%	30%	firewood, fish, wild fruits, wild vegetables, fodder for pigs
Siking 4	\$1,025	garden 30% forest 0%	10%	firewood, fish, wild vegetables
Masin 10	\$878	garden 6% forest 6%	41%	firewood, fish, wild fruits, wild vegetables, fodder for pigs
Gamid 5	\$201	garden 69% forest 0%	89%	firewood, fish, wild fruits, wild vegetables, fodder for pigs

*This figure combines both wage labor and income from the sale of garden produce.

that there does not appear to be any direct relationship between wage income and use of the forest. For instance, Lumbow’s wage is similar to Selimboi’s, Gitom’s, and Lehimboi’s wage (roughly \$M 1200 per month), yet his family relies on forest resources much less then they do. In a three month period, Lumbow’s household only spent only 4% of the days collecting forest resources. In contrast, Selimboi, Gitom, and Lehimboi’s households each spent between 30% to 36% of the days collecting forest resources. Cultural values may be as important as subsistence needs in determining use of the forest reserve. For instance, according to Selimboi “Sometimes you just prefer the taste of wild *lemiding* (forest ferns) over eggplant.” And during special festival times, the older villagers enjoy roasted song birds as an accompaniment to their *tapai* (rice wine) drinking. For these villagers, the fact that all the village land is not privately owned means that they can enjoy wild foods that

particularly when the data from the table are combined with the ethnographic data provided from interviews and participant observation.

they might not otherwise have access to. For other villagers, such as Gamid, whose average monthly wage was only \$M 201, the *hutan simpan* provides vital subsistence foods. He and his family rely heavily on access to the *hutan simpan* in order to survive. In a three month period, members of Gamid's household spent 89% of the days gathering resources in the forest. Thus, villagers' opinions of the property rights and access to resources within the Native Reserve vary depending on both their material and cultural needs.

In sum, many factors influence the transition from community rights of access to land and resources within the Native Reserve to the individualization of rights to land within the Reserve. Some villagers respond to material and political incentives to increase the trend toward the individualization of rights to land. Other villagers express both material and cultural reasons for maintaining community access to land and natural resources. What is evident is that the colonial codification of native customary law does not adequately capture the complexities of the contemporary resource use regimes in Govuton. Furthermore, the village is becoming increasingly internally stratified, making consensus regarding rights of access to resources difficult. In the face of continuous mobile social relations, the future of rights to land and resources in Govuton is by no means predictable. It is possible that the current trend toward the individualization of land will continue as certain individuals gain power and wealth, increasing village stratification. It is also possible that the villagers will once again mobilize to change the current statutory laws and reach a new agreement regarding the particularities of community ownership of the land and natural resources within the Native Reserve. If this occurs, village stratification would be slowed and individuals seeking substantial profits from the use of natural resources would have to look outside the Native Reserve. What is certain is that the transformation of property relations will continue to reflect local and regional struggles over power, wealth, and cultural meaning.

CONCLUSIONS

The data I have presented on changes in property relations in Govuton from the 1950s are instructive on several points relating to contemporary studies in both state-society relations and property relations.

First, while states may in general attempt to systematize and organize the world according to principles that simplify local property relations (Scott, 1998), in specific localities local responses may pose obstacles or present alternatives that allow for creative and new forms of state control and local autonomy (Agrawal, 1999a, 1999b). It must be emphasized that these interactions between state and society take place from positions of power

that are asymmetrical. Thus, while villagers in Govuton initially employed various techniques to resist state appropriation of village land in the 1950s, these actions took place within the new legal structures of colonial rule. In the end, a process of negotiation allowed for local control over community land, yet the realm of negotiation was restricted by the parameters of statutory law. Importantly, state sanctioning of village community land as a Native Reserve stands out as an unusual practice in colonial law in Sabah; it was stimulated by local leaders who reacted to the anticipated loss of access to traditional resources. Therefore, the implementation of the colonial laws in Govuton was brought about by actions initiated within society and was made possible by the political and social networks formed between local society and state agents. Elsewhere in Sabah colonial administrators knowingly overlooked complex patterns of local property relations in their efforts to settle quickly native claims to land. In the case of Govuton, colonial administrators were influenced by local leaders who refused to allow their communally-owned village lands to be appropriated by the state.

This leads to a second, parallel conclusion about property relations. The Native Reserve emerged as an innovative form of state rule, created in response to local negotiation with state agents over property claims. In the case of the Native Reserve in Govuton, the state seems to have retreated in its ambitions of providing each person with individual title to their land. Yet at the same time, the colonial state asserted control over native lands by providing Govuton with a community-held title that was based on colonial imaginings of how native customary laws should be codified. In this way colonial intervention in land matters was redefined by placing the emphasis on paternalistic protection over natives rather than on economic growth, and the Native Reserve also had the effect of intensifying state control since recognition of native customary rights to land in statutory law were contingent on government sanction. Thus, while local people were able to alter the direction of state control over people and land, ultimately the broader trend toward rural incorporation into the state’s project of land settlement continued.

While colonial control was redefined through the formation of the Native Reserve, so were local property relations transformed, leading us to the third finding of this case. In the past, an ethic of access contributed to the notions of community access to fallow land within the Native Reserve. However, this ethic of access is increasingly transformed by desires of some villagers to individualize ownership of community land through the practice of permanent cultivation of commercial vegetables. The process of enclosure of community land represents the goals of some farmers to make a profit from agriculture so that their children can be educated and find employment outside of the agricultural sector—goals that are not compatible

with an ethic of community access to fallow land. As a result, contests over access to land in Govuton are articulated in terms of competing representations of community and divergent images of rights of access. Notions of an ethic of access and rights to fallow land within the Native Reserve are placed in opposition to the principles associated with inheritance and the rights to transfer or sell inherited land. Thus, land rights provided by rules and traditions within Govuton are not guaranteed, but instead serve as points of leverage in ongoing negotiations. Furthermore, cultural notions of access to property are adapted to meet new political-economic conditions, and in turn structure daily land use practices (see also Li, 1996). At this point individual access to land is taking precedence over community access and is transforming property relations within the Native Reserve. Moreover, in struggles over access to land, negotiating points are not only based on internal village social relations, but rely on wealth and power that are based on external relationships. Thus, the most powerful people in Govuton, such as Intang, rely on power derived from outside the community in their contests over access to land at the local level.

Fourth, by focusing on the temporal variations in local perceptions of the Native Reserve, this case demonstrates that legal definitions of customary land tenure may be empowering at one time and place, and disempowering at another time and place. The formation of the Native Reserve served to counter colonial appropriation of local lands in the late 1950s, thereby strengthening local claims of access to traditional lands. Moreover, this move allowed the community of Govuton to claim collectively more land than they would have been able to claim individually. Under colonial land laws, natives could only claim access to land that they could prove they had cultivated continuously for at least three years. But by drawing on the colonial concept of a Native Reserve, the village of Govuton was able to secure community access to land that the village not only used for cultivation, but also for hunting and gathering for forest resources. However, as I have suggested, some villagers in Govuton feel that the Native Reserve is disempowering in today's political economy. These farmers compare the apparent advantages of owning a Native Title with the perceived disadvantage of having only use rights to land in the Native Reserve. Unable to gain access to credit or to sell their land for a significant profit, these farmers express their frustrations at not having a permanent and transferable title to the land they use. But rather than any consensus regarding the Native Reserve developing among villagers in Govuton, the evidence also suggests that some villagers rely on the Native Reserve for access to forest resources for subsistence needs and cultural values. Individual ownership of all the land within the Native Reserve would make these uses of the forests in the Native Reserve problematic. At the

moment future changes in property rights in Govuton are unpredictable as different villagers try various strategies to strengthen claims to land and to secure continued access to forested resources.

The case study of the Native Reserve in Govuton demonstrated how local leaders were able to use the colonial legal system to protect a large area of traditional native lands from alienation to outsiders. Thus, in the 1950s and 1960s local leaders were able to coopt the colonial organizing symbols and legal practices to their advantage. However, social relations and property relations are always in flux. While the formation of the Native Reserve may have frozen a particular vision of “native customary law” in the colonial legal system, it did not freeze local level conflicts over cultural identity and power. Nor did it limit the ways in which these conflicts are used as negotiating points in struggles over access to land. As a result the transformation of property regimes in Govuton continues today as these struggles are played out in daily practices which effectively over-turn the statutory laws regarding the Native Reserve (Peluso, 1998).

Finally, this case study has significance for advocates of reinvigorating native customary law and community control over natural resources. Conservation groups in Sabah have argued that the legal entity of the Native Reserve may be an effective way to simultaneously promote community control over natural resources and conservation (J. Payne, personal communication). Yet this case study has demonstrated that the notion of a Native Reserve relies on a particular imagining of “community” and a static rendition of native customary law; images that rest on the assumption that villagers in Sabah are homogenous and timeless in their cultural identity and their natural resource management regimes. By examining the nuances in the transformation of property relations in Govuton, and the disjunctures within the local community over conceptions of community ties, appropriate resource use, and land tenure regimes, I have shown that this constitution of community and native customary law does not necessarily adequately represent local concerns. Furthermore, this particular constitution of community and communal management of resources within the Native Reserve has become the source of contemporary conflicts over natural resource use. While the institution of Native Reserve may have promise for wider application in Sabah, particularly when communities feel that access to their land and natural resources is threatened by external forces, this case highlights the importance of understanding the nuances of community identity, the potential conflicts over resource use between various sectors of the community, which local voices are heard and which ones are suppressed, and the history of changes in property regimes in a particular locality.

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