Colliding Discourses: Western Land Laws and Native Customary Rights in North Borneo, 1881-1918

Amity Doolittle

A comparison of European tobacco plantations and native shifting cultivation in North Borneo between 1881 and 1928 illustrates the discursive and political strategies through which colonial administrators justified intervention into native land matters and articulated their vision of 'appropriate' land management. The discourse of rational law, scientific agriculture and commercialisation provided the tools of colonial power that pushed native people and their customary laws into an increasingly peripheral position in relationship to the centralising state.

Our readers are so well acquainted with the outlines of the enterprise which has been entered into by the [Company]...that it is unnecessary to recapitulate the struggles for possession, the difficulties of planting a young Government firmly on its feet, and the endeavours to introduce usages, laws and institutions of a civilised nation into a country which tradition tells us was formerly only a happy hunting ground for pirates and the orang utan.¹

This article explores the early days of colonial rule in present-day Sabah under the North Borneo Chartered Company (hereafter referred to as 'the Company'), focusing on the imposition of Western-based land laws as a source of colonial power and legitimisation over local society. Although colonial power as expressed through the land laws was fragmentary and open to contestation – both within and outside the Company – there is no denying the impact of these laws and policies on the landscape and the lives of the natives who inhabited it. Native rights to land were incrementally reduced with

Amity Doolittle is Program Director of the Tropical Resources Institute at Yale University's School of Forestry and Environmental Studies. Her e-mail contact is amity.doolittle@yale.edu

The research upon which this article is based was made possible by the financial support of Fulbright-Hays, Doctoral Dissertation Research Abroad Award; National Science Foundation, Law and Social Science Program, Dissertation Improvement Award (#SBR 9511470); and the Social Science Research Council/American Council of Learned Societies, Southeast Asia Program, International Doctoral Dissertation Award. I would like to thank the many readers who helped me refine this analysis: Arun Agrawal, George and Laura Appell, Michael Doolittle, Michael Dove, Emily Harwell, Celia Lowe, Nancy Peluso, Hugh Raffles, James Scott and Janet Sturgeon. Any errors remain my own. Archival sources for this article came from three places: the Microfilms in the Sabah State Archives and the North Borneo Chartered Company Archive files (NBCA), both in Kota Kinabalu, Sabah; and the Colonial Office Records (CO), Public Records Office, Kew, England. Maps were created by Metaglyfix.

¹ British North Borneo Herald, 1 Jan. 1886.
each new colonial law and policy, while European rights to land were increasingly privileged. These events occurred as the Company endeavoured to transform the land into a marketable commodity based on plantation agriculture.

The article investigates some of the problems that arose from the imposition of Western legal principles concerning land ownership in North Borneo. This analysis is divided into two sections. First, drawing primarily on administrative reports and diaries of Company administrators, the key conflicts that arose from the introduction of the new land laws are detailed. Next, tobacco plantations will serve as a case study within North Borneo to illustrate the discursive and political strategies through which the Company administrators and the European planters justified their intervention in native land matters and articulated their vision of 'appropriate' land management.

The aim of this analysis is to throw light on the ideological foundations of official attitudes and discourses towards native customary law and land use systems in North Borneo, using archival data to demonstrate how law was a primary site of colonial control and power over local people. At the theoretical level, this analysis illustrates how the invention of knowledge is a powerful form of state rule. It must be emphasised that native peoples and their laws, customs and land use practices are explored here through the views of the administrators, as it was the latter rather than the former who wrote the voluminous minutes, memorandums and reports. Seen through the eyes of administrators, the natives represented consumers of natural resources and actual or potential taxpayers and were viewed within the framework of law and order. There is only fragmentary evidence that rarely gives a clear picture of how Company policies were received at the local level during the period prior to World War Two. As a result, this article is primarily a study of the attitudes and policies of the Company in North Borneo.


3 Elsewhere I have examined several case studies of local reaction to the land laws introduced during colonialism. See Amity Doolittle, 'Controlling the land: Property rights and power struggles in Sabah, Malaysia, 1881-1996' (Ph.D. diss., Yale University, 1999); idem., 'From village land to “Native Reserve”: Changes in property rights in Sabah, 1950-1996', Human Ecology, 29, 1 (2001): 69-98; idem., 'Controlling the land: Property rights and power struggles in Sabah, Malaysia 1881-1996', in Environmental change in native and colonial histories of Borneo: Lessons from the past, prospects for the future, ed. Reed Wadley (Lieden: KTIV Press, forthcoming). In this article citations of 'Controlling the land' refer to the dissertation. North Borneo was under the rule of the North Borneo Chartered Company from 1877 until 1946, when it became a British colony until independence in 1963. Rather than separating out these two periods as distinct, I am grouping them together under the rubric of 'colonialism'. It has been argued elsewhere that there were no significant changes in policy during the transition from Company rule to colonial rule, and in fact many of the administrators remained in their posts after 1946; Kennedy G. Tregonning, Under Chartered Company rule (Singapore: University of Malaya Press, 1958), p. 50. Moreover, in the eyes of native peoples, Company rule and colonial rule are conflated as the time of the orang putih (white people).
The beginnings of the North Borneo Chartered Company, 1877-81

In 1877 the acquisition of North Borneo by the Chartered Company was negotiated on two fronts. The Sultan of Brunei controlled the western areas of North Borneo, while the Sultan of Sulu claimed ownership of the eastern side (see Map 1). Both Sultanates had been long-time participants in the lucrative trade with China, but by the late nineteenth century they were suffering from weakened authority and were impoverished as a result of European commercial competition. The Brunei Sultan and his Court were largely bankrupt, lacking the necessary revenue to pay retainers and maintain their influence over the territory.4

On 29 December 1877 Baron von Overbeck, an Austrian businessman from Hong Kong, met with Brunei's Sultan Abdul Mumin and one of his chief ministers, the Pengiran Temonggong. Overbeck had financial backing from his past employers, Alfred and Edward Dent, heads of a prominent British trading company in Shanghai and London. The object of their involvement in North Borneo was to 'form a British Company somewhat, though on a smaller scale, after the manner of the late East India Company, the main desire being to develop the agricultural resources of the northern part of Borneo'.

William H. Treacher, the acting Governor of Labuan (the British island colony in the mouth of Brunei Bay), supervised the negotiations between the Sultan and Overbeck. For a yearly sum of Straits $12,000 paid to the Sultan and $3,000 to his minister,


Overbeck and the Dents became rulers over a large section of North Borneo. The territory transferred was impressive—nearly 28,000 square miles—but the jurisdiction of Brunei over northern Borneo had long been merely nominal, and the Sultan of Sulu also claimed a large part of the territory. To remove any doubts to the title, Overbeck sailed from Brunei to Sulu to acquire the rights in North Borneo claimed by the Sultan of Sulu, Jamal ul-Azam, who was to receive an additional yearly sum of $5,000.7

In 1880, Overbeck sold his shares in North Borneo to the Dents, who then sought financial backing for their commercial venture from businessmen in England. While the Dents were considered in England to be highly respectable merchants and bankers, 'respectability' was not enough to attract serious investors. The Dents desired British approval of their venture as well as protection against the intervention of any foreign power. Alfred Dent argued to the Foreign and Colonial Offices that North Borneo was important because of its commercial potential and strategic location in the China Seas. Sensing more sympathy from the Foreign Office than the Colonial Office, he spent two months in 1878 preparing a statement of his case. The proposed North Borneo Chartered Company, Dent assured the Foreign Secretary, was and would remain British. It would seek no monopoly, trade would be free subject to customs and duties, and slavery would be abolished. To accomplish these ends Dent sought a Royal Charter for the Company, which would enable it to exercise effective jurisdiction and would afford protection from Britain against intervention by other European states.8

Finally, after two years of delays, the British government granted Alfred Dent a Royal Charter in November 1881. The final motivation to do so on the part of both the Foreign and Colonial Office was the fear that without official sanction from Britain, he would face bankruptcy and be forced to sell his interest to another European power. As with the British involvement in the states of Peninsular Malaya, the fear that Britain's informal control over the region might be challenged by other European powers was the impetus needed for the government to take action.9

---


7 Tarling, Sulu and Sabah, p. 196. There is considerable debate over the motives behind the Sulu cession of North Borneo. Tarling (p. 197) has argued that the Sultan was only leasing the land to the Company, and intended to reclaim it. Part of the problem has arisen from problems with translations. As with the Brunei grants the word pajak was used, meaning 'farm' or 'lease' rather than 'cede'. The English translation of the Charter, however, included the words 'forever and in perpetuity'.


9 Ibid., pp. 120-3; for accounts of British foreign policy in Southeast Asia see Nicholas Tarling, British policy in the Malay Peninsula and Archipelago, 1824-1871 (Kuala Lumpur: Oxford University Press, 1969); idem., The fall of imperial Britain in South-East Asia (Singapore: Oxford University Press, 1993); William Lea, Southeast Asia: A history (New York: Oxford University Press, 1976), p. 120; and Barbara Andaya and Leonard Andaya, A history of Malaysia (London: Macmillan, 1982), p. 125.
CONFlicting responsibilities of the Company

The North Borneo Chartered Company had a dual mission in North Borneo. First, it was concerned with economic growth through the exploitation of the territory's natural resources. Its Charter authorised it to improve, develop and cultivate any land in the territory, and to acquire additional lands if desired. It further authorised the Company to settle the territories, promote immigration and grant mining and timber concessions, along with land leases for agriculture for limited terms or in perpetuity. Owen Rutter, a long-time officer of the Company and later a plantation owner in North Borneo, wrote about the fiscal concerns of the governor of the territory:

He [the Governor] is responsible to the Court of Directors, and the Court of Directors is responsible to the shareholders [to ensure] that dividend-making revenue is produced. He is responsible for the progress of the country, but that progress is apt to be gauged in terms of revenue rather than in terms of development.

This preoccupation with revenue production provides us with insight into the motives that lay behind the imposition of Western legal principles. Individual ownership of land, titles and a system of taxation were all crucial to the production of revenue based on the commodification of land.

The second concern of the Company was its obligation, stipulated in the 1881 charter, to respect native rights and customs. This concern over native welfare and

customs was raised at the insistence of individuals in the British government who were opposed to the revival of rule by chartered company after the final demise of the East India Company. The section of the charter titled 'Administration of Justice to the Inhabitants' required the Company to pay careful attention to

the customs and laws of the class or tribe or nation to which the parties respectively belong, especially with respect to the holding, possession, transfer, and disposition of lands and goods and testate or intestate succession thereto, and marriage, divorce and legitimacy and other rights of property and personal rights.12

There were inherent conflicts between these two considerations. While the Company had a legal responsibility to protect native customs and rights, in practice its policies and regulations aimed at revenue production often restricted those same rights, particularly with respect to land. In fact, these two conflicting responsibilities – the economic development of the territory and the safeguarding of native customs – proved to be the crux of many of the future administrative conflicts in North Borneo.

The primary tool through which the Company supported economic growth based on plantation agriculture was the introduction of a Western legal system; this was a complicated process, due in large part to the dual objectives of the Company. Many of the governors of North Borneo found themselves in a bind: the very property rights and native legal institutions that they were charged to respect soon became an obstacle to the expansion of commercial agriculture. As a result, the Company instituted a system of legal pluralism in which some native customary laws were supported while those which hampered the commercial exploitation of land were replaced with Western legal concepts.13 Over the ensuing decades of Company rule, conflicts emerged not only from the native people who felt that their rights were being impinged on, but also from within the Company administration as to the best way to honour the Charter and to achieve economic growth.

The following sections examine the land laws and policies instituted between 1881 and 1928. This was a period characterised by rapid imposition of new laws and major changes in the ways in which natives could claim their rights to land. During this period there were twelve different governors of North Borneo (see Appendix 2), each with different agendas and styles of rule. Rather than paying equal attention to each of the governors, the discussion will focus on three periods of particularly interesting debates and controversies over native customary rights to land and the imposition of Western land laws.

13 This process of injecting new forms of organisation and force into a territory while simultaneously coopting some elements of local social organisation is a type of colonial state-making described in State power and social forces: Domination and transformation in the Third World, ed. Joseph Migdal et al. (Cambridge: Cambridge University Press, 1994); see specifically the chapter by Michael Bratton, 'Peasant-state relations in postcolonial Africa: Patterns of engagement and disengagement' (pp. 230-54).
The emergence of land laws: defining 'native rights'

Protecting natives from their own improvidence

William Treacher, the first Governor of North Borneo, devoted much of his attention to the abolition of slavery in the territory. His preoccupation with this matter was in large part due to the urging of the Court of Directors and the anti-slavery lobby in Britain. Consequently he gave scant attention to formulating land laws. The first two pieces of land legislation that Treacher introduced, Proclamation 23 of 1881 and the Land Proclamation of 1885, entirely failed to understand native customary rights to land. The only mention of native rights to land occurred in Articles 26 and 27 of the 1885 document, in which Treacher placed the ultimate authority over land with the state by refusing to allow natives to buy or sell land to foreigners, unless such transactions took place through the state.

In many ways the 1885 Proclamation did more damage to native land rights than subsequent, more comprehensive legislation. This first law set the stage for later laws and established unequivocally that the state was the ultimate authority over land. Furthermore, based on this proclamation, native rights to land would subsequently have to be mediated through the state and made compliant with its broader agenda of commercial development.

In 1888 Charles Creagh replaced Treacher as Governor. Creagh had seen a version of the Torrens system of land registration in operation in Perak and other Malay states. He urged the adoption of the Torrens system in North Borneo and called for urgent measures to protect native rights to land. The resulting legislation, ‘Native Rights to Land’ (Proclamation III of 1889), addressed both these issues. This proclamation was primarily concerned with how native rights to land would be settled when applications by foreigners for ‘government waste land’ were received. The legislation stated that as soon as the boundaries of the land application were defined, it was the duty of the district officer to inform the native chiefs in the area about new foreign concessions. They should then submit to him all native claims that existed in the area of the application. Once he

14 See Appendix I for a summary of the land laws discussed in this article.
15 Black, Gambling style of government, pp. 55-60. Governor Treacher’s preoccupation with abolishing slavery over establishing new laws provides evidence that in the early years the Company was not solely concerned with domination and revenue production. This moment of concern over local welfare was short lived, however, and by 1888 Treacher was replaced by Governor Creagh, who made land matters and the imposition of Western land laws a priority.
16 ‘Land regulations, North Borneo’, Journal of the Straits Branch of the Royal Asiatic Society [henceforth JSBRAS], 15 (1885): 158. In the 1881 Proclamation the Labuan Land Ordinance (Number 2 of 1863) was adopted as law in North Borneo.
17 Black, Gambling style of government, p. 109. The Torrens system of land registration was developed in the 1850s for use in South Australia. It involved title to land by registration rather than by deed; land registers were maintained by the government. Land in the registers needed to be accurately described and the records had to be kept up-to-date. In principle a title or deed would be issued eventually to all the owners of lands on the register. One of the benefits of this system from the state’s perspective was that it quickly – and with the least amount of expense on the part of the state – produced revenue in the form of land taxes; David S. Y. Wong, Tenure and land dealings in the Malay States (Singapore: Singapore University Press, 1975), pp. 16-20. Furthermore, the Torrens system was perceived as the most appropriate way to register land in a largely illiterate society. As one colonial officer in North Borneo wrote, ‘A man of the smallest intelligence and education can buy, sell, and mortgage land without the intervention of a lawyer. It is this fact that makes the Torrens system eminently suitable in countries where many landowners are Natives or Chinese’ (A. C. Pearson, ‘Report on land administration’, 1909, CO 874/796).
had received these claims in writing, he was to forward them to the government secretary, who would compile the register; the native lands would then be surveyed and delineated with boundary markers.18

Once native rights were determined to be legitimate by the district officer, they could be settled in one of two ways, both requiring government sanction. The land could be ‘reserved’ from the foreign concession for the native owners through the clear demarcation of their holdings. If possible, a consolidation of native holdings was attempted by moving isolated natives to grants of land in close proximity to each other; the other method of settling native claims to land was by compensation in cash. Finally, the Proclamation set strict terms for foreigners who did not respect native rights: they would be evicted from the land.

Proclamation III was the first land law that made any attempt to recognise the nature of native rights and to provide the mechanism by which the latter could be formalised in the eyes of the Company. Unfortunately, time would show that Governor Creagh and several of his successors were unable to fully uphold the letter of this law. With less than thirty Company administrators and £30,000 for annual expenses, the administration found itself unable to adequately settle native claims to land.19

While the Company began to register native claims as early as 1889, by delineating native rights on land earmarked for foreign concessions, it was not until the introduction of the Land Laws of 1913 that the registration of all such claims became compulsory. Cecil Parr, the first governor intent on demarcating and taxing all cultivated land in the state, issued a comprehensive set of legislation in 1913 that required the registration of native claims.20 In the Land Laws of 1913 different categories of land grants were established for natives and non-natives, called Native Title and Country Lease respectively. Native Title was the formal mechanism whereby natives could get state recognition of land that they held under customary rights, defined by this law essentially as they had been in 1889. The only change was that now natives could claim rights not only to isolated fruit trees, but also to sago, rattan and other plants of economic value that they could prove they had continuously kept and managed.21 While this was an important concession in the legislature, in practice colonial officers almost never found

18 Proclamation No III of 1889, North Borneo Herald and Gazette [henceforth NBHIG], 1 Feb. 1889, pp. 53-4. To date I have found no documentation of how Creagh determined the validity of these ways in which natives could claim land. He may well have been influenced by W. E. Maxwell’s classic study, ‘The law and customs of Malays with reference to the tenure of land’, JSBRAS, 13 (1884): 75-220. This was considered at the time an elaborate and systematic study of indigenous land tenure; Wong, Tenure and land dealings, argues that Maxwell’s theory played a significant role in the development of land laws in British Malaya. Given that Creagh served in Malaya before moving to North Borneo, it is likely he was familiar with this study. The most influential element of Maxwell’s ideas was the notion that indigenous cultivators had only usufructuary rights over land, while a superior proprietary ownership in all land had once been vested in a native ruler; this ownership, it was believed, now devolved to the British.
19 Tregonning, Under Chartered Company rule, p. 50. It is interesting to note that the legacy of the colonial administration’s inability to fully settle native claims to land still survives in present-day Sabah. At present the Lands and Surveys Department has a backlog of over 120,000 unsettled claims, and my research shows that the average waiting time for the registration of claims based on Native Title is 10-25 years. To this day, the Department is unwilling to expedite Native Titles since they produce little income in comparison to other classifications of land ownership.
20 Black, Gambling style of government, p. 216.
21 Proclamation No. IV of 1913 (Land Laws), Article 26 (c), The ordinances of the State of North Borneo, 1881-1914 (Sandakan: Government Publishing Office, 1915).
the time or the manpower to survey and issue titles to fruit trees and forest products. This point will be discussed in further detail below.

Prior to 1913 native claims were recognised as 'native rights' but the owner was not issued a title, nor was registration of land compulsory. Under the 1913 Land Laws, natives were granted titles to their land through registration with the Land Office. With the registration of land under Native Title came the initiation of land taxes; the owner was required to pay $1.00 per acre to cover survey fees and an annual quit rent of $0.50 per acre.\[^{22}\]

Country Lease was the mechanism by which non-natives could lease state land, with a one-time premium of $42.00 per acre and an annual quit rent of $2.50 an acre.\[^{23}\] Furthermore, a Country Lease was a leasehold, limited to a term of anywhere from 99 to 999 years. Importantly, it gave the owner the right to sell the lease to a third party at the will of the original lessor, during the period of the lease. Native Title was considered a more generous title (by the Company) since it was free from premium, had an annual rent of only 50 cents an acre, and was a heritable and permanent title. But the cost was dear: natives could not sell or transfer titles to a non-native without permission from the government. The notion behind this restriction was that natives were not wise in the ways of commercial land transactions, so that if not 'protected from their own improvidence', they would sell all their land to foreign land speculators and be left with none to cultivate.\[^{24}\]

As we can see, the Company was slow to legally recognise native rights to land. It took nearly thirty years (1885-1913) to establish clear land laws that provided natives with a state-recognised title. Yet, even once native rights were given some measure of formal recognition in land laws, Company administrators still failed to put this legal recognition into action. This failure was due in large part to the lack of Company officers and insufficient finances, but another major obstacle was the debate within the Company administration over the actual implementation of the land laws. While the land laws may have defined what constituted native customary tenure according to Company rule, in practice officers had a great deal of latitude in how they settled these claims. As a result, many natives never got title to the land that they used in their agricultural cycle; land cultivated for fruit trees, forested areas used for gathering, and land left fallow were lost to foreigners before they could be registered.

The Company officers' latitude of implementation existed at two levels in the administration. The first level was in the creation of policy documents (usually in the form of Minutes, Memoranda, Circulat and Notificationa) from the Governor of North Borneo, which at times were framed in direct defiance of the letter of the land laws. The second level was in the hands of Company officers who were often faced with complexities of native life that defied the types of simplification required by the land laws and policies. The following discussion explores three points in the Company's history.

\[^{22}\] Ibid., Article 57. These sums of $1.00 for a survey fee and $0.50 per acre of rent often represented more cash than a native agriculturist could afford. As a result, the tax books were frequently cluttered with debts carried over from year to year. For 'native rights' prior to 1913, see Proclamation No III of 1889, NBHG, 1 Feb. 1889, pp. 53-4.

\[^{23}\] These figure were cited in a Minute by Governor Pearson to the Government Secretary, 13 Feb. 1920, CO 874/985. However, figures for rent and premium varied significantly over the years. They also varied according to how the land was cultivated.

\[^{24}\] 'Circular notice to officers, 1928, NBCA # 815.
where confusion over the implementation of the land laws came to a head. At each point colonial administrators debated the definition of native customary tenure, and with each debate the primary outcome was the additional restriction of native rights.

**Land settlement**

Land settlement in North Borneo began in 1913. There were two incentives for colonial officials to settle native claims to land. First was the need to increase revenue through taxation of native holdings. In his ‘Report on Administration, 1911’, Sir Richard Dane pointed out that in Peninsular Malaya significant revenue was derived from native quit rents, arguing that in North Borneo these potential rents were being lost. Commenting on the ineffective land settlement under Governor Ernest Birch’s administration (1901-3), Dane urged the survey and settlement of all indigenous land holdings and the payment of rent on them. The second incentive for the settlement of native claims to land was to determine which lands could be deemed as ‘waste lands’ and made available to foreign plantation owners for commercial agricultural development.

Despite the fact that Proclamation III of 1889 and the Land Laws of 1913 recognised various ways in which natives could claim land, the primary objective of demarcation of native land rights in the period from 1913 onward was the surveying and registration of land kept under permanent cultivation only. The reports of the Land Settlement Department make it clear that settlement officers found the demarcation of native rights other than permanent agriculture far too confusing to undertake. As the Commissioner of Lands, G. C. Woolley, reported in 1915, ‘At present the state of affairs with regard to titles other than those for native-owned rice fields is somewhat chaotic.’ Yet this confusion existed only in the perceptions of Company officers, as natives themselves never considered their customary land laws as chaotic. Consequently, Company administrators found it convenient to describe land in fallow or secondary forests as unowned, empty, waste, abandoned or useless because land classified in this manner was far easier to appropriate and transfer into other uses than if such lands were viewed as integral components of native agricultural and land tenure systems.

During the settlement of native rights, natives were asked to clear the boundaries of their permanent agricultural land. But the District Officers whose job it was to oversee land settlement were plagued by difficulties. In the words of one District Officer who was attempting to survey native claims:

To all intents and purposes the kampongs [villages] were deserted. After much shouting and the sending of the few old women and small boys, that were about, to


27 Woolley’s comment is in ‘Recommendation of Governor Parr re: settlement work’, 4 Feb. 1915, CO 874/797. In James Scott’s *Seeing like a state: How certain schemes to improve the human condition have failed* (New Haven: Yale University Press, 1998), he discusses how centralised states impose a legible property system on society, arguing that they employ schematic shorthand to organise complex property systems. This system radically abridges the customary practices of daily life by forcing the intricacies of local tenure systems into a simplified system that facilitates revenue production. See also the relevant discussion in Michael Dove, *Theories of swidden agriculture, and the political economy of ignorance*, *Agroforestry Systems*, 1 (1983): 85-99.
search, the headman deigned to put in an appearance. His non-appearance earlier he excused on the grounds of ‘Oh sahaya potong rentas lagi tuan’ ['Oh, I have been clearing more boundaries, Sir']: I have underlined the word ‘lagi’ [more] on purpose as there were...already apparently over 100 acres rentased [cleared], whereas 50 acres should have been the maximum. Hereupon commenced a lengthy discussion. I tried the arts of persuasion but without success; I mentioned possible penalties only to be met with stony silence. I have emphasised the point that the Government’s ‘hukum-an’ [trial or penalty] would, in spite of opposition, be carried out, only to receive such replies as ‘Baik la tuan, jikalu Prentauh kasi masok jail tidapa, kalu mati, tidapa juga.’ ['Fine, Sir, if the Government puts me in jail, never mind, if I die, never mind'].

There are numerous accounts in the Company papers detailing the district officers’ struggles with land settlement. The letters describe many instances of both passive resistance and active resistance on the part of the natives; it was not unusual for inhabitants of a village to fail to be present on the assigned day that the surveyor was available for boundary marking. This reflects the local perception of the survey process as inherently disempowering. Unable to stake their claims through their presence, they resisted by making themselves absent.

Company officials persisted in the task of land settlement, however fragmentary the results, hoping to overcome resistance by gaining the cooperation of the native chiefs. The latter were made exempt from the payment of land rents, in return for which they would be held responsible in part for ensuring that the population in their areas complied with the land settlement plans. But even that was apparently not enough incentive for native participation. For example, the Assistant District Officer from Keningau in the Interior Residency, in his report to the Resident of Tenom, expressed his dismay over the lack of compliance from the native chiefs:

Paid chief Sebayai at Tambunan was arrested and detained until his people pointed out their lands. Sebayai was subsequently dismissed [from government service]. This year an attempt was made to roughly mark out and register native lands. With the exception of two paid Government chiefs all the natives refused to point out their lands... Much of the cultivated land is common land or used by others than the customary owner.

As illustrated in the final sentence of the above quote, one of the primary difficulties that faced the Company officers as they grappled with native rights to land was their inability – or perhaps their unwillingness – to understand the native system of land

28 Letter from Assistant District Officer Cook to the Resident of the Interior, 30 Apr. 1913, NBCA #1356.
29 It was policy that each adult who paid the poll tax could claim roughly 3 acres. Other authors have shown how avoidance of coercive state polities was a form of peasant protest in the pre-colonial and early colonial periods. See, most notably, Michael Adas, 'From avoidance to confrontation: Peasant protest in precolonial and colonial Southeast Asia,' Comparative Studies in Society and History, 23, 3 (1981): 217-47.
30 'Annual report on land settlement, 1916', CO 874/797; examples of letters are in NBCA #1356.
31 Letter from Assistant District Officer in Keningau to Resident Tenom, 13 May 1913, NBCA #1356. I will address how the colonial administrators dealt with (or more accurately, ignored) the issue of commonly held land below.
tenure. In their view, natives were mostly ‘nomadic’, moving from place to place to
cultivate jungle land, but rarely staying on one piece of land and ‘improving’ it in a
Western sense. To many Company officers in North Borneo these features suggested that
the natives were ‘squatters’, not landowners. Furthermore, the notion of the village (as
opposed to an individual farmer) holding rights over agricultural land frustrated the
officials, who were insistent on simplifying indigenous claims and settling individual
rights only. Finally, the notion that the ownership of some resources such as fruit trees
could be held by an individual or a group, irrespective of the ownership of the land
underneath, was a complicated arrangement that collided with the rigid British view of
individual property rights. While the land laws recognised many elements of native land
tenure systems, the policies and practices of Company administration remained focused
on a Western notion of individual private property.

It is noteworthy that even the primary British authority on native customary law in
North Borneo, G. C. Woolley, did not adequately address the complexity and variations
in property law among the many ethnic groups. Woolley published seven reports
focusing on the customary laws of six different groups in North Borneo. In five of his
seven publications he failed to discuss the nuances in property rights regarding natural
resources. In these five reports his only discussion of land tenure focused on the
inheritance of land; he made no mention of rights to forest products, fruit trees or
water. Yet Woolley was not ignorant of these complexities: his report on the Timoguns
discussed the existence of village corporate ownership of land, with the use rights to the
land devolving to the first clearer of the jungle, and he also commented on fruit trees in
the jungle owned separately from the land. His report on the Dusun in Pututan
mentioned the elaborate customary laws surrounding tree rights on village communal
lands.

It is clear from the previous discussion that Company officers focused on settling
permanent native holdings while other types of property, such as scattered fruit trees,
sago plants, swidden lands, communal village lands and forest rights (which were
recognised by law), were not titled. There are several reasons why this occurred. First, to
acknowledge these rights and to draw boundaries around them would take up vast

32 This language was ubiquitous through Company documents. A good example is Governor Creagh's
'Report to the Chairman of the North Borneo Chartered Company', 4 Aug. 1888, CO 874/246.
33 See George Appell, 'The history of research on traditional land tenure and tree ownership in Borneo',
paper delivered at the Second Biennial Conference of the Borneo Research Council, Kota Kinabalu, 13-17
July 1992; and idem, 'Community resources in Borneo: Failure of the concept of common property and
its implications for the conservation of forest resources and the protection of indigenous land rights', Yale
School of Forestry and Environmental Studies Bulletin Series, 98 (1995): 32-56. Appell analyses the residual
attitudes of the Company that were carried over into the British colonial period between 1946 and 1962.
34 G. C. Woolley, Tuaran adat, Native Affairs Bulletin No. 2 (Jesselton: North Borneo Government
Printer, 1953); idem., Murut adat, Native Affairs Bulletin No. 3 (Jesselton: North Borneo Government
Printer, 1953); idem., Dusun adat, Native Affairs Bulletins Nos. 4-5 (Jesselton: North Borneo Government
Printer, 1953); idem., Kwajau adat, Native Affairs Bulletin No. 6 (Jesselton: North Borneo Government
Printer, 1953); idem., The Timoguns, Native Affairs Bulletin No. 1 (Jesselton: North Borneo Government
Printer, 1962); idem., Dusun customs in Putatan District, Native Affairs Bulletin No. 7 (Jesselton: North
Borneo Government Printer, 1962). I want to thank Dr George Appell for drawing my attention to this
oversight in Woolley's publications. Also see Appell, 'Community resources in Borneo', for a description of
problems encountered by the ethnic group called the Rungus during land settlement in the Kudat
Peninsula of Sabah under colonial rule.
35 Woolley, 'Timoguns', pp. 28-9; idem., 'Dusun customs', pp. 50-1.
amounts of land that the Company wanted to sell to European planters. It was quickly realised that it was easier to settle with a single monetary compensation for claims to isolated fruit trees destroyed by plantation owners than to give natives title to the land surrounding the trees, thereby prohibiting plantation owners from acquiring the land in the first place.36

Moreover, by settling native claims to permanent holdings, the British could exact a land tax, which it was hoped would significantly increase land revenue for the Company. The following statement illustrates the rigid thinking on the topic of land registration and taxation:

They [the natives] should be educated gradually to realise that they can no longer with impunity acquire land by the hitherto accepted custom of merely settling on it without any reference to Government and must be taught [that] under the new regime the punctual payment of rent will be considered by Government the first duty of a land holder.37

Fiscal returns initially appear to have influenced which aspects of native land tenure were recognised under the land settlement policies, for the registration of permanent native holdings did in fact rapidly begin to produce the expected revenue. In 1914 the rent roll for indigenously held land produced around $6,000; by 1920 the amount had risen to $32,605. Yet paradoxically, this latter figure represented only a tiny amount of the overall yearly budget for the Company.38 Therefore, it was not merely the financial aspects of land registration that drove Company officials to pursue native land settlement so vigorously. Notions of making order out of a territory perceived to be in a state of chaos; creating rational, governable subjects through the imposition of law; and making the resources of North Borneo available for the benefit of all people played an important role in legitimising Company rule in the territory.39

Governor Pearson's attempts to limit Native Title: Circular 14 of 1920

By 1919 Company officials appeared to be winding down their efforts to demarcate and settle native claims to land under permanent cultivation. The Tambunan District Officer reported in 1918 that 'land settlement was finally completed' the previous year. In the 1919 Annual Report of the Land Settlement Department, the Commissioner of Land stated that 'no large area of Native holdings now await demarcation'.40 While many Company officials felt that they had sufficiently demarcated and settled native holdings to land under permanent cultivation, they also realised that the demarcation of village communal reserves, forest reserves, land used for shifting cultivation and isolated fruit

36 For evidence of this logic in the colonial administration, see the Letter from Land Officer to Government Secretary, 25 Aug. 1919, CO 874/797; and Administrative report for the year of 1910, CO 648/3.
38 'General return of revenue, expenditure, trade, and population for 1890-1931', NBCA # 579; figures from Black, Gambling style of government, p. 218.
39 Doolittle, 'Controlling the land' discusses in more detail the specific modes of discourse relevant to the colonial treatment of land matters.
trees had been neglected. However, to most of them it did not seem urgent or practical to demarcate these rights. For example, in 1919 Acting Commissioner of Lands C. F. Macaskie reported that 'in practice I do not think that it would be possible to mark or register such rights as isolated fruit trees'. Later in the report he stated that he saw no urgency in the demarcation of communal reserves. He concluded his report by recommending that these rights be dealt with only when conflicts arose if foreigners applied for the same lands. These statements reflect the fact that some Company officers, while recognising the validity of native claims to land other than that held under permanent cultivation, doubted the practicality of trying to demarcate those rights.

Based on the reports that land settlement was near completion (and ignoring statements that many aspects of native customary tenure had not been demarcated), Governor Pearson issued a memorandum to the District Officers in February 1920, informing them that in the future the Company would be under no obligation to grant natives land under Native Title. Pearson argued that since Native Title was supposed to be recognition of 'ancient native customary rights' to land, once settlement of native claims was complete, then natives should have no future claims to land based on customary rights. All claims based on customary tenure were considered to have been settled or to have lapsed by default. Customary laws would effectively be replaced entirely by statutory laws. He recommended that once land settlement was completed, natives looking for new land should have to acquire it under 'a Country Grant, and the terms would be the same whether the applicant was a Native, Chinese or other alien'.

What Governor Pearson found most objectionable about claims to state land under Native Title was the loss of potential revenue to the Company through native 'profiteering':

It had hitherto been regarded by Land Officers as an accepted state of affairs that any Native of a district, provided he has a few dollars, has the right to select from any vacant land in his district and acquire it on 'native Title'[sic], in other words free from premium, with a permanent rent of 50 cents per acre. An alien applying for the same land pays...an enhanced rent of $2.50...and a premium of $42.00 per acre.

The result is that Natives have in many cases acquired land, planted it, sold it through Government to an alien for a big lump sum, and then selected a new block, and repeated the process.

After careful perusal of part IV Land Laws, I am still of the opinion that...part IV was intended to apply exclusively to land held under 'Customary Tenure.' I fancy it was probably adapted or adopted from the F.M.S. [Federated Malay States] Laws...If the view is correct, the 'Settlement' of any area closes that area to any future application on Native Title.43

41 Letter from the Land Office to the Government Secretary, 25 Aug. 1919, CO 874/797.
42 Minutes by Governor Pearson to Government Secretary, 12 Feb. and 13 Feb. 1920 (quotation on 'Country Grant' from the latter), CO 874/985. His comment on Native Title is in a Memorandum by A.B.C. Francis n.d. (1920), in the same file.
43 Minute by Governor Pearson, 13 Feb. 1920.
Macaskie, the Acting Commissioner of Lands, advised Pearson that the Land Laws of 1913 clearly did allow natives to apply for state land under Native Title regardless of whether native customary rights existed. Macaskie wrote:

I am of the opinion that under the Land Law:

(i) Any native who can prove he own, 'native rights' (section 26) may demand a native title or money compensation (section 27, 69) as rights.

(ii) Any native who wishes to take up State land may apply for a native title (section 56) but the grant of refusal is at the discretion of the Collector [of Land Revenue].

Pearson suggested that the Land Laws of 1913 be amended to restrict natives from applying for state land under Native Title once land settlement of customary rights was completed, in order to restrict the use of Native Title to his interpretation of customary tenure (as defined by the 1913 legislation). If customary tenure could not be proved, then under the amended land laws native land grants would be subjected to the same premiums and rent as foreigners. He sent a draft of this amendment, Circular 14 of 1920, to his District Officers. The proposed amendment provoked a heated debate within the Company administration over the validity of restricting the rights of natives to acquire land under Native Title, demonstrating that the Company was not a monolithic force but open to internal contradictions.

One of the first officers of the Company to respond to Circular 14 was the Land Settlement Officer, Maxwell Hall; he argued that since land settlement was not complete, the state could not bar future applications for Native Title. In a letter to the government secretary he explained that 'our settlement was not a full settlement. --We dealt with claims which brought rent, but rejected others. We omitted sago swamps, village and grazing lands and hill lands. I think that there is no area which may be considered closed by settlement.'

Further opposition to the governor's proposed amendment came from the District Officers, who were typically defenders of the local population in North Borneo and other British colonies. One of the most vocal was A. B. Francis, who had served in the territory since 1902. On the question of whether land settlement of native rights was complete, Francis wrote that 'no native titles [have] 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'. He further argued that 'the whole tenor of the land law is to allow...'

44 Minute by C. F. F. Macaskie to Government Secretary, 17 Mar. 1920, CO 874/985.
46 Letter from J. Maxwell Hall, Commissioner of Lands to the Government Secretary, 8 Mar. 1920, CO 874/985; emphasis added.
natives certain priority and preference over aliens, and he could see no reason why Governor Pearson objected to natives making a few dollars in the entrepreneurial sale of land. District Officer Barraut echoed Francis' sentiments, commenting that 'I don't see the harm...if they [natives] do speculate in land, it opens up the country if they take fresh land up and plant it, and they will know they can make money by cultivating it. I should have thought it was a good thing to encourage.'

This debate illustrates the tensions in Company administration in North Borneo. Obligations to the natives and to the Company's shareholders left individuals in the administration with mixed motives in their political and administrative actions. Additionally, different departments within the Company had different mandates, creating conflicting agendas of rule. For instance, the welfare of the native people was the concern of the District Officers. Consequently it is not surprising that some District Officers, such as Francis and Barraut, felt a 'paternalistic' duty to the natives and acted on the premise that they should be given priority in land matters over foreigners and encouraged in entrepreneurial activities, even at the expense of increased state revenue. Other officers such as Governor Pearson, who represented the upper echelon of Company rule, felt a stronger responsibility to the shareholders of the Company. It was his mandate to ensure the financial viability of the Company. As reflected in Pearson's previous comment, his primary concern was the loss of the $42.00 premium per acre that resulted when a foreigner bought land from a native rather than from the Company. In fact, Pearson was concerned that the 'Chinaman' and natives were acting together to defraud the Company of land revenue. He was worried that natives were acting as agents for foreigners by acquiring land free from premium under Native Title and then selling it to foreigners for less money than the latter would have to pay the state in the form of land premium.

At this point in the history of North Borneo the Governor was as yet unable to rewrite the treatment of native customary law in statutory law to meet his concerns regarding increased revenue. District Officers such as Francis and Barraut, who recognised that settlement of native customary rights to land was not complete and who supported native entrepreneurial activities, successfully opposed Pearson's proposed amendment to the land laws. The debate of native applications for land under Native Title, however, would not end here. In 1928 a new governor would renew the discussions and succeed where Pearson had failed.

48 As cited in Minute by W. L. W., 14 Mar. 1921, CO 874/985.
49 Minute by M. W. E., 11 Apr. 1920, CO 874/985. There is no evidence or documentation that this concern was valid. On conflicting interests within government agencies, see also Vandergeest and Peluso, 'Territorialization and state power'.
50 Governor Humphreys passed Ordinance V of 1928, which revised the Land Ordinance of 1913 on the definition of Native Title. Under Ordinance V natives were allowed to acquire land under Native Title for subsistence cultivation only, but not for commercial cultivation. If they wanted to cultivate their land with commercial crops, they needed to acquire it under a Country Lease, and pay an increased rent to the state (See Governor's Dispatch No. 259, 30 Apr. 1928, CO 874/985, and 'Circular notice to officers', 24 Dec. 1931,
Native reserves

As discussed previously, one of the original goals of the land laws was to formally recognise all lands that natives owned under native customary tenure. This included lands that a village used in common, to be called 'native reserves' or 'communal lands,' as well as permanent individual holdings. However, there was no official procedure in the land laws or in policy documents for determining which lands were communal or granting titles for Native Reserves. As a result, land settlement officers were reluctant to go into the field and demarcate these complex rights.

In some cases communal lands were marked as Native Reserves on survey office maps, but no formal title was issued and no ground survey was completed. Other times communal lands were legally gazetted as Native Reserves and the Headmen or Native Chiefs were appointed as the trustees of the lands for the village. However, even such official demarcation provided no long-term security of ownership to the village. The case of the Native Reserve in the village of Tenom illustrates this point.

In 1928, Governor John Humphreys considered the agricultural development of Tenom as the key to the continued economic growth of North Borneo. At this time Tenom represented the ‘frontier’ to the interior of the territory. While it was connected by railroad to the capital city of Jesselton (later renamed Kota Kinabalu after Independence in 1963), previous governors had restricted foreigners from applying for land in this area. Tenom and other areas in the interior were considered as ‘Native Areas.’

While no legal definition existed in the land laws, Native Areas were generally understood as:

neighbourhoods where under present conditions and circumstances there is an objection to the presence of aliens in any considerable numbers. The reason for this objection may be based on one or more of a number of factors, e.g. congestion of ownership, the nature of the country and its inhabitants, danger to the aliens, distance from a Government station.

Humphreys felt that the designation of Tenom as a Native Area was no longer useful, particularly since the Chinese immigrants nearby were eager to acquire land from the state. In reviewing the question of foreign concessions for land in the area, Humphreys NBCA # 815). According to the Land Commissioner the new Ordinance provided a 'clearer definition of Native Land Tenure and Native Rights as derived from the old Malay theory of Customary Tenure, and is intended to confine “Native Titles” to land used for genuine native “homestead” occupation as opposed to commercial exploitation' (‘Annual report of the Land Office, 1928, CO 874/519). This situation was not unique to North Borneo. An analogous colonial policy can be found in Peninsular Malaya, which encouraged native production of rice for subsistence use, but not rubber for commercial use; Donald Nonini, British colonial rule and the resistance of the Malay peasantry, 1900-1957 (New Haven: Yale University Press, 1992). In Kalimantan, Dove has argued, the state and its representatives often place obstacles between natives and commercial production because the former are needed as a source of labour for plantation agriculture; Michael Dove, ‘Ethnographic representations of the “Other” by others: The ethnographic challenge posed by planters’ views of peasants in Indonesia’, in Agrarian transformations in upland Indonesia, ed. Tania Li (London: Harwood Academic Publishers, 1998), pp. 203-29.

51 Letter from the Governor to the President, 22 June 1928, CO 874/985. This question of long-term security attached to communal lands designated as Native Reserves is the focus of my current fieldwork in the village of Govuton (a pseudonym); see Doolittle, ‘From village land to “Native Reserve”’; idem., ‘Controlling the land’.

52 Circular No. 481, Letter from the Governor to the President, 23 Aug. 1928, NBCA Microfilm # 217/82.

53 Memorandum by A. B. C. Francis, n.d (1920?), CO 874/985.
found that a large area of land (over 3,000 acres) had been demarcated on Tenom maps as Native Reserves. Yet natives had failed to make claims on the land set aside for them within that Reserve. The District Officer in Tenom reported on the apathy of the natives, who, when called on to make their claims on the land, only placed claims for a total of 75 acres. (As mentioned earlier, there was often little response to government calls to claim their land because the process of surveying was inherently disempowering: many of the claims based on customary practices were overlooked, and there was no effective avenue for voicing native concerns.) At the same time, he had received nearly 200 applications (totalling about 2,000 acres) from the Chinese for this same land. Since the District Officer understood that the land was to remain set aside for the native population only, he had turned down these applications, yet in a letter to the Governor he expressed the opinion that the designation of the area in Tenom as a Native Reserve was in fact an impediment to 'progress'.

In response to this report, Humphreys wrote to the President of the Company. Arguing that 'free civilising intercourse and economic development has always been the aim of the Court [of Directors]', he suggested that the time had come to abolish restrictions on foreign land ownership in the Native Areas. He also expressed the opinion that land development in the hands of the Chinese would in fact benefit the native Murut population around Tenom:

> It may also be not unreasonably suggested that the depraved habits of the Muruts and such wasteful barbarism as excessive tapai-drinking [rice wine], shifting cultivation, and nomadic villages, are actually fostered by denying him [sic] contact with people of a superior civilisation whose example would hasten their disappearance.

Using his executive powers, Governor Humphreys published Notification 24 of 1928, which removed all land and agricultural restrictions in Tenom by abolishing the Native Reserves and opening up these areas for settlement by foreign agriculturists. In addition, he called for all districts 'to be opened to applicants for land without distinction of nationality'. At home in London, the Court of Directors applauded his actions, which they felt were finally 'sweeping away barriers to alien penetration of the Interior' and represented a 'significant step in the land policies' in North Borneo.

As the Native Reserves in Tenom were opened up for development and ownership by the Chinese population, the archival records indicate that only one Company official spoke out against this action. Woolley, the Company expert on native laws and customs, felt that Humphreys was too willing to sacrifice the interests of the native for 'material progress'. He suggested an alternative plan for development, arguing that the Chinese could sub-lease the land from the Muruts for a limited period of time. Humphreys called

---

54 Circular No. 481, 23 Aug. 1928. This use of the term 'Native Reserve' by the Company appears to differ slightly from later uses of the term. In this context a Native Reserve was an area of land set aside for natives to make claims on for individual title (Native Title). In the case of one village, a Native Reserve was a legal term imbuing the concept of corporately held lands with legal status. Within this later use of the term, individuals had usage rights to land, but could not apply for an individual title. Instead, the use of and access to land within the Native Reserve was supposed to be governed by local systems of property rights; Doolittle, 'From village land to "Native Reserve"'; idem., 'Controlling the land'.

55 Circular No. 481, 23 Aug. 1928.

56 Memo from President of the Company to the Governor, 'Development of the Interior', 23 Aug. 1928, NBCA #217/82.
this proposal ‘fantastic’, however, and concluded that only by opening the lands to Chinese and abolishing the Native Reserves would there be a ‘sound base for agricultural development’ in the Interior.\textsuperscript{57} In this way, Humphreys’ goal of agricultural development for the Interior resulted in the restriction of native rights to land in Tenom, despite the supposed protection of these rights within the land laws. Thus, the motivations of a single Company official were sufficient to alter the implementation of the colonial land laws.

These cases all illustrate how individuals within the Company administration used Western laws and Western reason to diminish native rights to land. Whenever native customary laws were invoked and incorporated within the new land laws, it was done with the goal of controlling and limiting native access to ‘state’ land. In the eyes of colonial rulers, the partial codification of customary laws and their support for native institutions such as chiefs and headmen demonstrated their concern for the welfare of the population. Yet equally importantly, these acts were part of state-building strategies that relied on indirect rule. In this way the Company appropriated certain elements of the existing social system (e.g., headmen, native chiefs and customary law) as long as these elements were compatible with Company rule and the commercial exploitation of land. Building on the above discussion of the emergence of the land laws and their impact on native customary land rights between 1881 and 1928, we will now focus on the discursive and legal strategies that the Company used to privilege their form of agriculture over the native agricultural systems. The analysis concentrates on the rise of tobacco plantations in North Borneo during this same period.

**The discourses of appropriate land use: pitting shifting cultivation against ‘rotational’ plantation agriculture**

It has been argued elsewhere that the land laws in North Borneo emerged out of the need to identify, demarcate and market land for sale to European investors. The series of land laws, in which the principles whereby native holdings, state land and land for lease were defined, all had an underlying fiscal rationale.\textsuperscript{58} In an age when plantation agriculture was exploding in various parts of Southeast Asia, the Company was able to attract investors from other areas with liberal land leases and promises of large tracts of land. In contrast with Deli (Sumatra), where tobacco planters were hampered by heavy taxation and a lack of suitable land, the Company established less restrictive regulations and easy terms to welcome prospective agriculturists to North Borneo.\textsuperscript{59}

As discussed above, Company administrators did in fact attempt to recognise many types of native customary tenure to land and resources, but several of the Governors produced circulars, notifications, and memorandums that often diminished native rights. At the same time, the legislation offered protection for European plantation agriculturists, who produced important state revenue. As the following section shows, the rise of European estates often took place at the expense of native rights.

\textsuperscript{57} Circular No. 481, 23 Aug. 1928.
The rise of tobacco estates

In the late 1880s, with enthusiastic encouragement from the Company, tobacco estates in North Borneo multiplied rapidly. During this period the Company's policies toward land can only be characterised as *laissez-faire*. It was prepared to grant concessions to Europeans of up to 40,000 acres at an initial premium of $.30 per acre, free of quit rent, for 999 years. Export duty on estate tobacco was charged at a maximum of $.01 per pound for a period of 20 years, computed from 5 years after the initial crop. These incentives proved to be so attractive that applications for land grants were received for 200,000 acres of land in 1887 alone, forcing the Company to adopt more conservative land policies. In 1888 the minimum premium was raised to $1 per acre and by 1890 it stood at $6 per acre.60

A boom in land sales for tobacco plantations characterised the period 1887-90. The value of tobacco exports rose from $1,619 in 1885 to $396,314 five years later, when the government began to charge a small export fee on tobacco. By 1895 the value of tobacco exports reached $1,176,000. At the height of the boom in land grants the Company received over $200,000 in revenue from land leases for three years in a row, peaking at $256,183 in 1889. With total revenue for 1889 standing at $507,785, land leases to Europeans alone were responsible for over 50 per cent of the state's yearly revenues.61

Native claims within tobacco plantations

The boom in land concessions to tobacco planters caught the Land Department totally unprepared. In the rush to grant concessions, large areas of land later recognised to be under native ownership had been leased to Europeans. Daly, the Resident of the West Coast, reported in 1888:

> I find that large blocks of land, enclosing native homesteads, villages and even rivers themselves, regardless of all Government reserves, have been alienated...and paid for at so much an acre by lessees, one of whom [a European] on the Bingkoka river actually claims the right of stopping all navigation in the river so far as it passes through his property, as he maintains that he has paid for that river as the area of its surface was computed in the 11,170 acres granted to him.62

As has been shown, at this point in time the Company made no attempt to guarantee native claims to land before they made concessions to foreigners. The year after Daly's remarks, however, in response to the growing number of land disputes between natives and planters, Governor Creagh issued Proclamation III, which defined native rights to land and the mechanisms whereby native claims should be settled by District Officers with the help of Native Chiefs. The legislation, though, was vague as to whether native rights should be settled before or after the concessions were granted to the European planters, emphasising only that natives must be compensated, either by having their claims excised from the foreign concession, by being resettled to land of equal size or by cash payment. In practice, native rights were often settled only after European planters received their grants and began cultivating the land. A case study of one dispute allows a close-up view of the complex issues involved.

60 Ibid., pp. 93-4.
61 'Comparative statement of trade, 1885-1890', CO 874/89.
62 Cited in Governor Creagh's report to the Chairman of the British North Borneo Chartered Company, 4 Aug. 1888, CO 874/246.
Count Gelose d’Elsloo versus the natives of Marudu Bay

The Dutch tobacco planter Count Gelose d’Elsloo consistently took a high-handed attitude with both the government and the natives. By 1888 the Count owned 30 square miles along the southern end of Marudu Bay on the North Coast of Borneo and he was annoyed by the ‘unexpected difficulty arising from native rights’ on his tobacco estate. G. Davies, the Kudat District Officer, was responsible for settling disputes between the Count and the local Dusun population. Davies wrote to the Count in 1889 that ‘there will be great difficulty in settling “Native Rights”...if we proceed on the plan of cutting out the land to which [native] people are entitled under Proclamation No. III of 1889’. He went on to say that if they did cut out all the land from the Count’s estate to which natives were claiming rights, then the best land in Marudu Bay would cease to be available for his tobacco company.  

To remedy the situation, Davies came up with an alternative scheme that would allow the natives to remain on the land that the government had sold to the Count. It was proposed that the natives would ‘carry out their little planting operations as in the past, subject to the understanding that they shall always give way to the tobacco planters, when both want to use the same piece of land during the same season’. Davies further suggested that natives be encouraged to plant on the land that the Count had previously used to grow tobacco, paying him 10 per cent of their crop for the privilege. The natives would also be ‘ordered before cutting any jungle to apply to the manager of the estate near where they lived...to find out whether the place they proposed to plant will be required by him [the estate manager] during the next two...seasons’.

Count Gelose d’Elsloo was not satisfied with this arrangement and responded: ‘I told you that the planting by natives on land where jungle is growing would certainly not enrich the land and also deprive us of the timber grown on it required for building.’ To appease him on this point, Davies suggested that the ‘native shall not be allowed to cut down valuable timber suitable for posts of houses...so long as there is sufficient land cleared or land with small trees on it’. This concession seemed to satisfy the Count, and Governor Creagh supported Davies’ settlement of the native claims to land on this particular estate.

This exchange of letters took place only five months after Governor Creagh had issued his Proclamation, yet the native claims to the land on the tobacco concession were not settled according to its stipulations. The land was not surveyed and set aside for native ownership, nor did the natives receive any cash settlement. Instead, they were confined to using land previously used by the estate and were required to pay a tax to the estate holder. Furthermore, they had to always apply to the estate manager for permission to cultivate the land, which they had to do according to the needs of the estate rather than their own land claims.

Despite the 1889 legislation, then, native claims to land were not recognised when they interfered with income-producing plantation schemes. In practice, plantations were

---

63 Letter from Count Gelose d’Elsloo, 9 July 1889 and letter from the Resident in Kudat to Count Gelose, 6 July 1889, CO 874/248; the Dutchman’s reputation is mentioned in Black, Gambling style of government, p. 111.
64 Letter from the Resident in Kudat to Count Gelose, 6 July 1889; emphasis added.
65 Letter from Count Gelose d’Elsloo to Resident Davies, 9 July 1889; letter from Resident Davies to the Government Secretary, 9 July 1889; letter from the Government Secretary to Resident Davies, 25 July 1889; CO 874/248.
equated with economic progress and growth and given precedence over native needs because the Company needed revenue. This case study shows that District Officers had significant latitude in how they negotiated land disputes, despite the regulations outlined in Proclamation III. Moreover, it is evident that native claims to land were often considered only if they did not impinge on the income-producing plantation schemes.

The next section compares how Company officials viewed native dry-rice cultivation and tobacco plantations, both forms of shifting cultivation. As the Company rationalised its own form of shifting cultivation over the local version, it justified its intervention in native agriculture with moral tones of superior scientific knowledge and the inherent value of plantation agriculture that produces an economic surplus. This review of the Company's official position on native shifting cultivation and tobacco cultivation sheds light on how Company administrators like District Officer Davies justified denying natives their rights to land.

### Shifting cultivation versus rotational plantation agriculture

Throughout Company rule in North Borneo, administrators continuously expressed their disapproval of the wasteful native practice of shifting cultivation. In his description of Labuan, an island off the shores of Brunei, Governor Treacher reported in 1890 that valuable timber trees had been destroyed 'chiefly by the destructive mode of cultivation practiced by the Kadyans and other squatters from Borneo, who were allowed to destroy the forest for a crop or two of rice, the soil...not being rich enough to carry more than one or two such harvests under such primitive methods of agriculture as only known to natives'.

Despite the Company's alarm at the native practice of shifting cultivation, they recognised the similarities between tobacco plantations and rice swiddens, and made no effort to try and conceal these similarities. District Officer Davies, mentioned above, reported that the native 'people of Marudu Bay like the tobacco planters, use the land and then leave it for ten years before returning to it again'. Treacher confirms this for another region of North Borneo, stating that 'so long as there remains any untouched land on his estate, the [European] planter rarely makes use of land off which a crop has been taken'.

Perhaps the most telling comment was made by Treacher, who, in a letter to the Chairman of the Company stated: 'Fears have been expressed as to the bad effects tobacco planting would have in using up the country, as only one crop is taken from the land, and fresh land is therefore opened every year.' Despite the obvious similarities between tobacco plantations and native shifting cultivation, the Company did not view the former as a commercial variant on the latter, but instead as a distinctive type of plantation agriculture.

The difference lay in the fact that tobacco planters paid land taxes and contributed to state revenue through export taxes. Furthermore, plantations were based on European principles of ownership, labour and production of a commodity for export. Native shifting cultivation was viewed as the quintessential opposite of European plantation agriculture.

---

66 In this analysis I am taking my cue from Dove, 'Theories of swidden agriculture'.
68 Letter from Resident Davies to the Government Secretary, 9 July 1889, CO 974/248; emphasis added.
69 John and Jackson, 'Tobacco industry', p. 88. Quotation from letter from Governor Treacher to Chairman, 18 Jan. 1883, CO 874/233; emphasis added.
In 1913 the Company introduced legislation known as the Ladang Ordinance, whose primary aim was to restrict the destruction of forests by felling them for temporary cultivation only. (Ladang is the Malay word for dry-field agriculture.) But the Ordinance was aimed at controlling only native forms of agriculture, not European shifting cultivation. It defined ladang cultivation as 'the successive occupation of different pieces of land in such a manner that any one piece is not cultivated for more than two consecutive years and is then abandoned'. Recognising that this definition would include estate tobacco, the ordinance specifically provides 'that the use of land for the cultivation of “Wrapper Leaf” tobacco shall not be deemed to be “ladang cultivation”'.

The Ordinance illustrates that the Company recognised the similarities between the methods of land use of the tobacco plantations and those of shifting cultivation. They even recognised that tobacco estates would exhaust land as quickly as native practices. Both methods required the clearing of forest, but the Company chose to target native shifting cultivators as the scapegoats for forest destruction. Tobacco plantations were fostered and protected since they created a significant source of revenue and were considered to be 'undoubtedly the most scientific form of planting in the East'.

In Company ideology, the destruction of forests for commercial agriculture was glorified, whereas if done for subsistence agriculture, it was vilified. A 1913 Memo stated that 'The Forestry Department here, as everywhere, rightly hate shifting cultivation and continuously storm about it, but they offer no suggestion for a remedy ... other than one akin to murder.' In 1914 another report made the following assessment:

The practice of shifting cultivation ... is the origin of the greatest annual loss to the timber supply. It is the greatest evil with which a Forest Officer has to contend, and the less civilised and developed the country is, the harder it becomes to keep the annual destruction within bounds ... The property is ruined by shifting cultivation, inasmuch as the land is almost invariably subjected to fire which extends beyond the area designed for cultivation, and effectively kills all seeds and seedlings which may be in its range. When cultivation is abandoned 'lalang' or swordgrass appears and the land is practically valueless.

In Owen Rutter's description of a European planter clearing the jungle, the planter and fire are depicted as heroes of progress. (Rutter was both a District Officer and a plantation owner, which gave him an interesting dual perspective.) In his words:

In North Borneo new cessions are either under virgin jungle or secondary jungle and the preliminary work of clearing the land is usually given out to the native contractors who thoroughly understand it. There is only one sight more inspiring than a great jungle giant crashing to the ground, and that is a block of jungle burning when it has

---

70 Ordinances and rules of the State of North Borneo 1887-1936, p. 74. The quotation on the aims of the Ladang Ordinance is from Circular 95, 1 Aug. 1914, NBCA #284.
71 Rutter, British North Borneo, p. 251.
72 'Memo on shifting cultivation', n.d. (1913), NBCA #84; emphasis added.
73 A. C. Pearson, 'Memorandum on forestry in the Philippines, 1914', CO 874/711. This memo was written prior to the establishment of the Forestry Department in North Borneo. Governor Pearson travelled to the Philippines to study their Forestry Department and consider the best way to establish one in North Borneo. The paragraph on shifting cultivation refers to Borneo.
been felled and stacked. The day for the fire is a most momentous question, for a good clean burn will save the planter thousands and a bad one will leave the estate strewn with useless timber. A burn on a fine day is well worth waiting for. The coolies are in the highest spirits, whooping with glee as they see the long tongues of fire leaping up, crimson as tulips; soon the whole hill-side is ablaze, rising and falling, a sea of flame. The smoke curling heaven-high, veils the rising sun and makes it glow a rich dull red as in London on a foggy November morning. When it is over ... [The planter surveys the scene and feels content, for all has gone according to plan; he has tamed the untameable.]

It should be pointed out that the notion that native shifting cultivation was destroying the territory’s forests was in fact not documented in any scientific or systematic fashion by the Company. The District Officers voiced some disagreement over the extent of damage caused by shifting cultivation. In 1930, the Conservator of Forests (Keith) undertook an exploratory trip across North Borneo from Sandakan to Keningau via the Kinabatangan River. According to a subsequent report, ‘Mr. Keith found that ... the stand of timber in the region traversed was very poor, and confirmed his opinion that the timber supplies of the Territory have been greatly overestimated. He regards the “inexhaustible supplies of the interior” as non-existent owing to damage caused by shifting cultivation.’ In response to this report, the Resident of the Interior (Smith) wrote:

The Conservator of Forests states that ‘considerable tracts of valuable forest are annually being destroyed... but no indication is given as to where these ‘considerable tracts’ are situated. Possibly these ‘tracts’ are situated on the East Coast, but it is difficult to visualise heavy destruction by the scanty population there. My experience is that very little damage is now being done to virgin forest by shifting cultivation in this country.’

The discrepancy between the two men’s accounts demonstrates tensions within Company rule. District Officers and the Conservator of the Forest saw their mandates in sharp contrast. The latter was most concerned with the state of the forest, while the Interior Resident came to the defence of the local people.

It was not until after World War Two that the effects of native shifting cultivation in North Borneo were examined in any systematic manner. In 1948 the Committee on Shifting Cultivation determined that ‘25,000 natives practice shifting cultivation and from air photos it was estimated that not more than 0.315% of the colony was under shifting cultivation. It was agreed that the primary forest destroyed was relatively small.’

Unfortunately it is not possible to get adequate figures on the extent of shifting cultivation during the height of the boom in land grants for tobacco estates in the late 1880s. But by comparing the amount of land estimated to be under shifting cultivation

Rutter, British North Borneo, p. 246; emphasis added.
76 Letter from Smith to General Secretary, 12 Apr. 1931, NBCA #284.
77 'Forestry Department Annual Report, 1951', p. 13. It is unclear whether the report is referring to the overall swidden cycle or to current swiddens, but I believe that given the nature of aerial photography, it is discussing only the latter.
In 1948 with the amount of land alienated for tobacco plantations by 1889, we can get a sense of the scale of forest clearance caused by the two forms of agriculture. According to the Forestry Department figure for 1948, native shifting cultivation was responsible for the clearing of 0.315 per cent of the territory, or 40,320 acres of forest out of a total acreage of 12,800,000. By mid-1889, 557,080 acres of land (4.4 per cent of the total) had been alienated for tobacco estates alone (see Appendix 3). Clearly there is no comparison between the extent of forest destruction caused by native agriculture and that caused by European tobacco plantation agriculture, even without considering the impact of rubber, coffee and tea plantations.

Elsewhere in South and Southeast Asia it has been shown that one of the dominant myths about shifting cultivation is that it is destructive and wasteful of forests. Implicit in the state's criticism of shifting cultivation is the contention that other uses of the forest, for either timber or plantation cultivation, are less wasteful. Furthermore, other uses of the land and forest are more desirable than shifting cultivation because they yield more revenue for the state and are touted as being more 'scientific'. Often these claims are made despite the fact that there is no empirical evidence that shifting cultivation is any more wasteful or destructive of forest than other potential usages of the land. The example of how the Company pitted native shifting cultivation against European 'rotational' agriculture supports this argument.

In the final analysis it is undeniable that the Company in North Borneo was privileging Western use of the land over the native systems, despite recognition that both systems had similar impacts on forest resources. The primary difference was that the commercial nature of European plantation agriculture was considered superior to the perceived 'non-economic' nature of native cultivation - tobacco plantations produced revenue, shifting cultivation did not. While the latter was targeted as destructive to the forests, the evidence of the amount of land cleared for shifting cultivation shows that it was causing no more destruction than tobacco plantations.

Conclusion

This article has argued that while in theory the land laws introduced by the Company administrators attempted to recognise native customary tenure over land and resources, in practice native rights to land were systematically diminished while European rights to land were privileged. There are several reasons why this happened. First, native rights appeared to be too difficult to simplify into a land code based on a Western legal tradition. In order to make native customary tenure a more manageable system for codification, the complex fabric of native tenure systems was reduced and simplified by the Company administration. Formal recognition of native rights to land was limited to land under permanent cultivation only.

Second, and perhaps most importantly, native tenure practices seemed to preclude the more efficient economic utilisation of available land, since land held by natives could not be alienated to investors. A new legal system had to be superimposed on native customary laws in order to support a commercial economic system. The resulting legal system was based on relations of unequal power as native rights were increasingly diminished in attempts to facilitate the growth of plantation agriculture.

78 See the discussion in Pouchepadaas, 'British attitudes' and Dove, 'Theories of swidden agriculture'.
In this brief history of North Borneo, we see occasional struggles between the upper echelon or 'commanding heights' of the Company, usually represented by the Governors, on the one hand, and the District Officers who worked closer to the native population and were responsible for executing state directives, on the other. The Governors, who had to report to the Court of Directors in London, felt directly responsible to the shareholders. As a result they often focused their attention on the production of revenue. The District Officers at times objected to the Governors' actions when they felt that native rights or livelihoods were being threatened or when they faced strong societal resistance to the Company's policies. While we see whispers of these dissenting voices, for the most part the Governors' policies aimed at creating a modern territory overruled the protests raised by the District Officers. Thus, while it is important to look at the tensions within Company administration, it is equally important not to diminish the general trend of domination of local people, particularly in respect to land rights and control over natural resources that resulted from the processes of statemaking.80

A third issue is the impact of competing legal systems — native customary law and Western legal practices. The goal of the Company's administrators was the creation of a modern capitalist state that regularly and reliably produced revenue. This mode of production relied on Western land laws. But in an effort to uphold their obligation to natives and their customary laws (as stipulated in the Royal Charter of 1881), these administrators incorporated elements of local customary law into their imposed Western legal tradition. During the early stages of state-building, the Company's recognition of local leaders such as Native Chiefs and Headmen came from a need to rule the territory indirectly, rather than from a commitment to native legal systems and social structures. Adopting local social institutions served as a way to increase Company domination across the territory. Yet as the Company became more involved in the economic and agricultural development of the state, native customary law became an obstacle to its rule. As a result, the Company attempted to move away from recognition of native customary law towards fully replacing indigenous legal systems with colonial statutory law. This pattern of diminished recognition of customary laws and an increased emphasis on 'rational' Western law has been documented here through the cases of land settlement of native claims, Governor Pearson's attempt to abolish Native Title, Governor Humphreys' termination of the Native Reserve in Tenom, and the introduction of the Ladang Ordinance all aimed at restricting native shifting cultivation while protecting European tobacco estates.

The imposition of state control over native rights to land and local systems of production is not surprising in the context of colonial rule. States and their representatives are rarely inclined to place valuable resources in the hands of native people.91 To do so would have required a fundamental change in the political and

79 'This phrase is borrowed from Joel Migdal, 'The state in society: An approach to struggles for domination', in Migdal et al., ed., State power and social forces, p. 16. Migdal argues that the colonial state as an object of study must be disaggregated. Instead of treating the colonial state as a hegemonic, monolithic force of change, emphasis is placed on the internal contradictions within the state's institutions. This perspective is extremely useful in that it emphasises the limits on state's power and draws attention to the rich social drama that also influences the direction of social change.
80 For a similar perspective see Comaroff, 'Images of empire'.
81 Discussions of states' reluctance to allow local control over resources include Michael Dove, 'A revisionist
economic objectives of the colonial state, namely economic growth and progress for the colonial elite in particular and the British Empire in general.

Finally, this article has explored the growth of colonial knowledge regarding indigenous people and their property rights, and reflects on the impact of this form of rule on local society. The rise of the modern state in North Borneo transformed the relationship between natives and Company administrators into a lopsided union. The Company's discourse of rational law, scientific agriculture and commercialisation provided the tools of power that pushed the native people and their customary laws into an increasingly peripheral position in relationship to the centralising state.

Appendix 1: Key land laws in North Borneo, 1881-1913

1885 Land Proclamation, introduced by Governor William Treacher:

26. All dealings in land between Europeans and Chinese and other foreigners on the one hand, and the natives of the country on the other hand are hereby expressly forbidden, and no such dealings shall be valid or shall be recognised in any Court of Law unless the dealings shall have been entered into and concluded before the 16th day of January, 1883.

27. A foreigner desirous of purchasing land from a native shall address his application to the Governor through the Commissioner of Lands, and the Governor, if he sees fit to sanction such purchase, shall, if the native owner consent [sic], acquire the land on the behalf of the Government, and shall fix the premium at which the same shall be leased by the Governor to the applicant...

('Land regulations, North Borneo' pp. 158-63)

Excerpt from 1889 Proclamation III, ‘Native Rights to Land’, introduced by Governor Charles Creagh. Under Section 5 natives could claim rights to these types of land:

(1) land under cultivation or land being used for housing; (2) land planted with fruit trees at the rate of twenty 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.

It was the duty of the District Officer and the Native Chief to determine all native rights on land earmarked for foreign concession. Native lands were either ‘reserved’ from the foreign concession, or natives were given a cash settlement.

Excerpt from 1913 Land Laws, introduced by Governor Cecil Parr. Three main changes were made to Proclamation III of 1889:

1. The settlement of native claims to land was compulsory.

2. Once native rights were settled they could receive a Native Title. This was a permanent, heritable title, with a reduced annual rent of 50 cents an acre. Natives were forbidden to sell their lands to non-natives.

3. Foreigners could lease state land under a Country Lease. Country Leases had a one-time premium of $42.00 per acre and an annual rent of $2.50 an acre. The leases lasted for 99-999 years.
Appendix 2: Governors of North Borneo, 1881-1930

1. William Hood Treacher 1881-1887
2. W. M. Crocker 1887-1888
3. Charles Vandelleur Creagh 1888-1895
4. Leicester Paul Beaufort 1895-1900
5. Hugh Charles Clifford 1900-1901
6. Ernest Woodford Birch 1901-1903
7. Edward Peregrine Guertiz 1904-1911
8. Francis Robert Ellis 1911-1912
9. James Scott Mason 1912
10. Cecil William Chase Parr 1913-1915
11. Aylmer Cavendish Pearson 1915-1922
12. Sir William Henry Rycroft 1922-1925
13. John Lysseter Humphreys 1926-1929
Appendix 3: Distribution of land alienated for tobacco cultivation, mid-1889

<table>
<thead>
<tr>
<th>Province</th>
<th>Number of areas alienated</th>
<th>Total acreage alienated</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcock</td>
<td>2</td>
<td>14,969</td>
<td>Banggi Island</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>23,170</td>
<td>Benkoka River</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>38,844</td>
<td>Marudu Bay</td>
</tr>
<tr>
<td></td>
<td><strong>subtotal</strong></td>
<td><strong>76,983</strong></td>
<td></td>
</tr>
<tr>
<td>Dewhurst</td>
<td>7</td>
<td>79,000</td>
<td>Sugut River</td>
</tr>
<tr>
<td>Martin</td>
<td>4</td>
<td>80,000</td>
<td>Labuk River</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>20,000</td>
<td>Lokan River</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>15,000</td>
<td>Tungud River</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>8,000</td>
<td>Lamag/Segama River</td>
</tr>
<tr>
<td></td>
<td><strong>subtotal</strong></td>
<td><strong>123,000</strong></td>
<td></td>
</tr>
<tr>
<td>Myburgh</td>
<td>2</td>
<td>34,000</td>
<td>Sandakan Bay</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>19,878</td>
<td>Segaliud River</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>14,451</td>
<td>Suanlamba River</td>
</tr>
<tr>
<td></td>
<td>17</td>
<td>152,000</td>
<td>Kinabatangan River</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>10,000</td>
<td>Segama River</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>3,768</td>
<td>Sepagaya River</td>
</tr>
<tr>
<td></td>
<td><strong>subtotal</strong></td>
<td><strong>234,097</strong></td>
<td></td>
</tr>
<tr>
<td>Mayne</td>
<td>3</td>
<td>33,000</td>
<td>Segama River</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>9,000</td>
<td>Darvel Bay</td>
</tr>
<tr>
<td></td>
<td><strong>subtotal</strong></td>
<td><strong>42,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>56</strong></td>
<td><strong>557,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

*Source:* ‘Memorandum on tobacco planting’, *Handbook of British North Borneo*, John and Jackson, ‘Tobacco industry of North Borneo’.