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PART I

History
LeGendre’s idea of international law included that the territories out of the Qing Dynasty administration were terra nullius. The above map, from his book, “Is aboriginal Formosa a part of the Chinese empire,” shows terra nullius under the dotted line.
2 From ‘State of Nature’ to ‘State of the Nature’: The Taroko Area in Japanese Colonial Times

2.1 Debates on whether the indigenous people were citizens or barbarians

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

\(^4\) The Treaty of Shimonoseki (Japanese:下関条約, ‘Shimonoseki Jōyaku’), known as the Treaty of Maguan (simplified Chinese: 马关条约; traditional Chinese: 馬關條約; pinyin: M guān tiáoyuē) in China, was signed at the Shunpanrō Hall on 17 April 1895 between the Empire of Japan and the Qing Empire of China, ending the First Sino-Japanese War. The peace conference took place from 20 March to 17 April 1895. In this treaty, China cedes to Japan in perpetuity and full sovereignty of the Penghu group, Taiwan and the eastern portion of the bay of Liaodong Peninsula together with all fortifications, arsenals and public property.
Qing sovereign area, so they were not Qing citizens. Later, when these areas were ceded to Japan, but were not yet governed by Japanese rules, these people were not considered Japanese citizens either. As article 5 of the Treaty of Shimonoseki states, only those who obey Japanese rules can be seen as citizens. Thus, at this time, the mountain people of Taiwan were viewed as people without nationality or citizen status, but their existence could not be denied (Fujii 1992). Responding to this idea of an individual without nationality, Yasui Katsuji, president of a local court, took the view that, legally, barbarians had the equivalent status of animals (Katsuji 1993). That is to say, barbarians had no status under Japanese law. Katsuji emphasized that though the Qing Dynasty had paid compensation to Japan for the Mutan Village Incident (牡丹社事件) he did not believe that this compensation could be seen as proof that barbarian areas came under the sovereignty of the Qing Dynasty. He also pointed to articles 2 and 3 of the Treaty of Shimonoseki, which say that ‘territories including Taiwan ceded to Japan and the inhabitants included referred only to Han and cooked barbarians but not raw barbarians.’ Whether raw barbarians were to be seen as citizens or not depended on the ideas of the Japanese government regarding barbarians obeying Japanese rules. The extent to which Japanese rules were obeyed would determine whether barbarians were treated as human beings or like animals.

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

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5 In 1874, 66 seamen from Miyako Island (宮谷島) in the Ryukyu Archipelago, or Okinawa, were shipwrecked at Payao Bay (八瑤灣) near the southern tip of Taiwan. Fifty-four of them were subsequently killed by local aborigines after stumbling into Mutan Village (牡丹社).
2.2 Debates on criminal law for raw barbarians: ‘state of nature’

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

The indigenous people consisted of three groups, based roughly on their acculturation to the settlers’ culture and their relationship to the state. The ‘cooked savages’ (shoufan/jukuban) or plains aborigines (pingpuzu/beibozoku), who practice settled agriculture, pay taxes in kind, and perform military duties
for the state. The ‘transformed savages’ (huafan/kaban) were an ephemeral, transitional category applied to indigenes people who were in the process of being ‘cooked.’ The ‘raw savages’ (shengfan/seiban), or mountain aborigines (gaoshanzu/kauzanokazu), lived on or beyond the savage border and had minimal contact with the settler society or the imperial state. While the two categories of cooked and raw savages came to form the larger subdivisions of an ossified ethnological classification during the Japanese colonial period, such categories during Qing rule were cultural-political and quite permeable (Tavares 2005:364).

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

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

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

This ‘state of nature’ theory was not implemented by the authorities ruling different colonial contexts or areas. In practice, the differentiation between citi-
zen and barbarian was the result of a fuzzy process in which barbarians and authorities were applying policy on a trial and error basis, especially in relation to land rights. Later, I will illustrate these processes of trial and error undertaken by both the barbarians and the Japanese authorities in order to see how the ‘state of nature’ of the barbarians was conceptualized and implemented by the Japanese authorities who used methods of both ‘cruelty’ and ‘civilization’ in their dealings with the area of Taroko.

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

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

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

The formation of the area of Taroko was contingent with the historic events that occurred from the late Qing Dynasty to the rule by the Japanese authorities based on the aforementioned different theories of ‘state of nature’ (Pan 1999; 2008; Mona 1984, 1997; Qiu 2004: 23-24). Taroko was a place name that indicated an area of raw barbarians who were hard to access. Lo Da-Chu, a military
general sent by the Qing Dynasty to control the east of Taiwan, used the term Taroko to indicate the area of ‘special treatment’ between the Da-Chou-Suei River and the village of Pratan (Lo, Da-chun 1997: 47). The Taroko area was perceived as a bad area of ‘savage pests’ (番害), a term that suggested the need for ‘pesticides’. The indigenous people living in the Taroko area, who had previously been under Qing rule, were categorized as raw barbarians by the Japanese. They were infamous for their head-hunting and disobedience. When the Japanese arrived to the east of their territory, they worried that they would face many difficulties and they hoped to find convenient ways to access the area and negotiate with the indigenous people.

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

One incident in particular upset the Japanese authorities very much. It happened in 1896, the second year following their arrival in the east of Taiwan. What has become known as the Shin-Chen incident (新城事件) centered around a group of soldiers who were killed by the Taroko people. The group of soldiers was trading weapons and daily necessities with the indigenous people in order to encourage good relationships with the tribes, just as Li had done. The incident
was triggered when a number of Taroko people believed that some Japanese soldiers had humiliated a Taroko woman by using sexual language; there were even rumors that she had been raped. The Japanese authorities were shocked that the top officer in this district appeared to have shifted from a policy of insisting on peaceful negotiation (Wang, Xue-xin 1998). To control the incident, the Japanese authorities sent in troops made up of other indigenous people and the Japanese army in order to attack the tribes and villages involved. They even summoned battle ships to bombard the area from the sea. Even this show of force did not result in the surrender of any Truku tribes. In fact, the Japanese troops suffered a heavy defeat and the Taroko indigenous people lost all respect for them. The weapons the indigenous people were using were better than the ones the Japanese had (Ibid.).

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

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

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6 In 1931, the Bureau of Barbarian Management stipulated a Handbook for the Standard of Business for Policemen in Barbarian Areas, which stressed (in article 3) the need for a ‘soft’ approach to the indigenous people. In article 6, the need to be sincere and honest with the barbarians was emphasised, and in fact, ‘sincere’ indigenous people were encouraged to work as policemen in the barbarian areas.
not always result in this much sought after sincerity in the relations with indigenous people and the Japanese authorities were often confronted with cruelty by the barbarians. As a number of later documents reveal, the decision to trade or to cooperate with the Japanese varied between indigenous tribes or communities. Different tribes or communities had different strategies used to strengthen some groups and weaken others. There were intense struggles and competition amongst indigenous people, even though they belonged to the same ethnic group (Toyota 1896). A decision to access (or not) Japanese resources depended largely on whether the indigenous people thought the Japanese were strong enough to rely on in relation to their own internal struggles. This was at a time when the Taroko were powerful because of their weapons, which they exchanged with and imported from foreign areas through brokers such as the infamous Li. The Shin-Cheng incident occurred following the humiliation on Taroko women by Japanese soldiers. The traditional way of avenging an insulted woman was to hunt human heads, and many Japanese soldiers’ heads were hunted by Taroko people and subsequently taken to various tribal villages. These acts were humiliating for the Japanese who, until then, had felt that they were treating the indigenous people sincerely.

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

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

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

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

The reasons why problems like head-hunting and robbery occurred frequently were, on the one hand, because indigenous people in the Taroko area were eager to conquer the plains area and to fight with neighboring ethnic groups. On the other hand, the Japanese hoped to develop the neighboring areas where many valuable natural resources, like gold, camphor trees and many minerals, were to
be found. Inevitably, this resulted in conflicts between the Japanese government and the Taroko people or neighboring ethnic groups. In the first few years of occupation, the Japanese were not familiar with this *terra incognita* (Mori 1900), and they hoped that the eastern part of the country, where there were no serious influences from the Han people, would be easier in terms of establishing a colonial area for future Japanese immigration. After a number of defeats at the hands of the Taroko people, the Japanese considered the situation to be a national problem. They needed a solid plan to suppress the conflict. The then Taiwan Governor wrote a ‘Report on the Control of the Aborigines in Formosa (Bureau of Aboriginal Affairs 1911)’ in which he expressed a serious need to deal with the problems of the Taroko barbarians. The report stated that:

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

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

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

We can see that in order to deal with the Taroko, the Japanese were using national resources to prepare for the ‘taming of the raw barbarians’. This project was initiated by Governor Sakuma, a man with military experience, and went under the name of the Five Year Taming Project. The operation involved bribing local indigenous people or sending officers or merchants to investigate the manpower and weapons in the area. It was a common tactic to bribe indigenous people within the communities to work as spies and to incite disharmony. On the surface it appeared that Sakuma and his men were sending exploration teams to record the natural resources, landscapes and physical environments in order to make maps for future use. In fact, the Japanese were doing their best to build electric guard lines, not only in the east but also on the north and west sides of the Taroko area, in order to prevent other ethnic groups from joining or helping the Taroko. Clearly, the aim was to isolate the Taroko and to cut them off from
the supplies of daily life and information. A map drawn by the Japanese government in 1906 already shows the Taroko area blocked off and awaiting occupation. Certainly, the Japanese used every opportunity to surround the inaccessible area where the Truku people lived (The Geographical Society of China located in Taipei 2003).

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

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

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

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

The Taroko people made a sudden attack in July 1906 and killed the police chief of the Karenko District along with thirty camphor workers. Subsequently, plans for a punitive campaign were carefully mapped out. However, the territory in question was so steep and precipitous that it was impossible to conduct a campaign from the plains. Accordingly, it was decided to blockade the indigenous territory by installing yet another guard line, which extended 7.5 miles (see map
Map 2.2
Taroko Area surrounded by electrical guard lines and dynamite until 1911 (Mochiji 1912)
This boundary fence was constructed in May 1907. At the same time, a bombardment of the villages from the sea was executed.

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

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

Before we discuss how the Japanese authorities implemented land and property law, I will describe some of the claims and complaints made by indigenous people from the Taroko area. This will demonstrate how, in the first decade of Japanese rule, indigenous people felt about the administration that was shifting between different ideas about the nature and characteristics of barbarian societies.
One precious historical document expresses the barbarian’s views of life inside the North Barbarians Area. The author, Iijima Motoi (飯島幹), appears to have been a Japanese clerk working as a surveyor or reporter, liaising between the Japanese authorities and indigenous villages. In the next section, I will discuss the issues he reported in order to analyze the gaps between policy and practice in relation to the authorities and the indigenous people.

2.4 Iijima Motoi’s reports of complaints

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

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

This section of a petition was recorded in an academic journal, ‘Reports on Taiwan Customs’ (台灣慣習記事), with the support of the Japanese authorities, in order to depict indigenous customs and aid the management of savages. Later, some scholars described the majority of the reports in this journal as being too academic for policy application (Chiang 2002: 205). It is interesting that in this petition, we see a mirroring of complaints; this time it is the indigenous people accusing the Japanese of being irrational or ‘uncivilized’ (ユミガト). Furthermore, the indigenous people claim that there are actually rules and customs
for property relations inside their indigenous territories. The indigenous people thought the Japanese authorities were being cruel to them. The idea of ‘cruelty for cruelty’ appears to be emerging as a result of feeling repeatedly cheated by the Japanese. As Iijima Motoi later quoted, ‘Concerning the ordinances from the Japanese authorities, are the Japanese authorities qualified to order us indigenous peoples? Ordinances are intended to make us obey what the Japanese ordered, but should we do this? We couldn’t find any reasons to do so.’ In this paragraph, it is clear that indigenous people believe that they should be independent and free of interference from outside. Indeed, this kind of independence is often mentioned as a particular social characteristic of the Atayal society, where people were independent and united in very small groups of families or extended families who occupied a particular area (Wang, S. H 1986; Wang S. S 2001; Wei, 1963; Li, et al. 1964). Iijima Motoi (飯島幹) emphasizes this: ‘In our indigenous societies, orders or ordinances only happened between fathers and sons or husbands and wives; we don’t accept any orders from other ethnic groups, and there are no reasons to obey other’s orders.’ This idea of family or tribal sovereignty supports the indigenous peoples’ belief that they should be outside of Japanese rules. It is also a reason why the Japanese encountered so much resistance from the Taroko.

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

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

However, the petition is a rebuttal from the indigenous people and accuses the Japanese authorities of practicing cruelty at the same time as the Japanese were complaining that the indigenous people were too cruel to know the meaning of law or civilization. The indigenous people could also adopt a theory of
'state of nature' in relation to the Japanese authorities, whom they saw as barbarians who disobeyed their *gaya* or rules. It is certainly possible that the Japanese intended to ignore the customs or rules that were practiced inside indigenous areas. Indeed, later policies and developments appear to support such a hypothesis.

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

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


Different from the Qing Dynasty, which actually, ‘fully acknowledged customary practices that gave indigenous people a large degree of autonomy over the forests that they inhabited (Ibid: 370); the Japanese adopted the principle of denying the land rights of the indigenous peoples in Taiwan. Based on the logic that considered indigenous people as barbarian or as animals, rules were
derived to treat indigenous property in a way that was consistent with the theory of social Darwinism. The Japanese laws issued by the Foreign Affairs office of the Japanese Imperial Government stated that indigenous peoples were outside of regular Japanese laws and, as a result of their different conditions, required special treatment:

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

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

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

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

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

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

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

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

2.6 The Nan-zhuang Incident

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

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

It is recognition of the land rights of the cooked indigenous people that they could make profits through leases or rents of the rights to non-indigenous people for the cultivation or use of natural resources like trees. These were rights based on land rights already recognized during the Qing period. So the leaders of the Nan-zhuang tribe also believed that the lease contracts they had signed with the Japanese capitalists to produce camphor were simply that – only the rights to make camphor – and not the rights to cultivate the land. In 1902, the indigenous headman Ri A-guai was adamant that his land should not be invaded, and he was very concerned that the marking of land borders by the Japanese camphor companies would result in the confiscation of his lands. He was so angry that he planned to attack the Japanese authorities (Ibid). This incident became known as the Nan-zhuang incident, and it showed that the Japanese authorities’ intention to gain yet more control over the indigenous lands that were full of natural resources. Tavares’ observation has showed a similar tendency in the late Qing imperial state, which was also interested in regulating and controlling the camphor trade, to the extent that it imposed taxes to pay for frontier defense and maintaining security of the savage territory. In addition to these concerns, the
Japanese colonial state was also interested in protecting its monopoly of profits by managing the output of camphor by individual producers, and by controlling the total output of the island in order to maintain steady high prices on the world market (Tavares 2004: 373). The Nan-zhuang incident taught the Japanese authorities that the theory of *terra nullius* would be challenged by the people who were actually living inside the area and who would claim their rights to the land. The recognition of indigenous status was a way to prevent further confrontation and avoid further conflicts. Mochiji Rokusaburou, a policy consultant to the Japanese authorities on Taiwan governance, was put in charge of investigating the incident. He suggested that, ‘these indigenous people were so sinicized that they could speak the Han language. They owned lands and leased lands to Han people as land lords. They are cooked indigenous people who deserve land rights to the standard of ownership’ (Lin, Xiu-Che 2004: 157-166; Sun et al. 1997). The theory of *terra nullius* was challenged by the existence of the cooked indigenous people who demonstrated that they were qualified enough to own land and forest (Taiwan Zongdufu 1997). In order to quell the resistance, the Japanese authority was looking for convenient ways to meet the needs of both sides. The theory of the evolution of indigenous people from ‘raw’ to ‘cooked’ helped the authority to acknowledge the citizen status of cooked indigenous people, on the condition that the area the cooked indigenous people owned would be treated as a normal administrative area where citizens were expected to obey laws and pay taxes. Later, the Japanese authority decided to have a clear policy on the separa-
tion of indigenous areas and ‘normal’ areas, in order to distinguish the status of the people in these areas and their rights to property. If the raw barbarians were not willing to move to a higher level of evolution, and to submit to Japanese rule, then their rights as human beings, and their rights to things, would be outside of the eyes of the administration and the law.

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

### 2.7 The land and people after conquest

Those people who did not submit to Japanese rule or who refused to obey administrative orders were considered to be rebels by the Japanese authority. In the eyes of the Japanese, it was their right to conquer these rebels (Taiwan Zongdufu 1997: 153; Fu 2001). The people in the Taroko area were finally conquered by
the Japanese army in 1914. The act of conquest strengthened the theory of *terra nullius* because the Japanese authorities were the conquerors who demonstrated total sovereignty over the land and territory. No private rights existed in Taroko after conquest. The view was that people in the Taroko area deserved no land rights in an occupied area. The Japanese authorities appeared to feel that they could appropriate the lands for any purpose. Any property rights that existed were those granted by the state.

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

The Japanese authorities hoped to control the land and change the living practices of the indigenous people, who had been practicing slash and burn since time immemorial. This habit was considered to be bad and the cause of environmental damage and economic inefficiencies. In simple terms, under these rules, the indigenous people would not have any legal land to live on, but the fact that there were indigenous people living in these areas of *terra nullius* could not be ignored. In response to these rules, indigenous people resisted the rulings by the Japanese authorities. Indeed, a lot of resistance occurred during this period, despite the fact that the Japanese military forces were strong. Their legal provisions,
however, were not so strong and so, in 1928, the Japanese government began to consider the idea of lands reserved for indigenous people.

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

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

The reservation land system was designed and appropriated by the population of an indigenous area. For example, a place with a population of 1000 people will be appropriated with 3000 hectares of land as reservation land. This appropriation should satisfy what the indigenous people actually need; there should be no complaints from the indigenous people. But actually if we look into the way the lands were appropriated, we could find most of the lands appropriated were bad for cultivation. Indigenous people would rather cultivate outside indigenous reservation land, because the appropriations the Japanese surveyors had done just disregarded the land indigenous people had been using, or they just made a crude line to differentiate lands for the indigenous people or lands for the state, when there were still lands actually used by indigenous
people who had sweet potatoes fields, dry rice or millet fields or even house constructions (Kamehiko 1936).

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

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

Subsequent to the Sino-Japanese war in 1937, the Japanese adopted different policies to educate indigenous people, especially the young, as subjects of the Japanese Emperor, who would fight for Japan's holy war against China. With regards to land tenures at this time, we can see from the table below that most of the lands in Taiwan were owned by Japanese authorities. In relation to the indigenous area, I would adopt the framework used by the Japanese officer Iwaki Kamehiko, who was in charge of indigenous land management, and who described
indigenous lands in terms of three categories: (1) in 1934, some 51% of the total indigenous population of 84,000 lived in indigenous villages, which could remain on the original spot; (2) some 24% would be combined in larger settlements; and (3) some 25% would be moved to new areas (Kamehiko 1936). In other words, at least half of the indigenous area would experience migrations to some extent. In my field area in Taroko, almost all of the inhabitants experienced this kind of mobility. Their different experiences of migration can be described in three categories: (1) diaspora, in which people were unplugged from their relations with their original lands almost entirely, because of forced or semi-forced migrations; (2) hybrid, in which communities were mixed up with people of different origins, tribes or villages, which all had different customs or gaya; (3) in situ communities, where people still lived on the original spot, but where they were controlled by new political regimes.

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

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

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

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

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

One Japanese law scholar, in charge of the project of the ‘Reports on Barbarian Customs and Habits’, found that there should be a differentiation between the actions of ‘head-hunting’, ‘war’ and ‘crimes of killing people’ (Okamatsu 339-354). He thought that head-hunting in indigenous culture was not a crime of killing people.
someone, even though you have to kill to obtain the head (Ibid). According to my informants, head-hunting was an exchange of substance, of spirits or energies, or forces and powers. I agree with Okamatsu that it is important to differentiate this deed from a criminal act, because in indigenous customs, especially in Truku cultures, if one of your group loses a head, it is not necessary to take revenge on the head-hunter responsible. That is to say, indigenous people do not believe it is a crime, unlike the Japanese whose criminal laws would require punishment or revenge. Okamatsu also thought that ‘wars’ happened in indigenous cultures and the specific targets were enemies with whom they had bad relations as a result of spoiled gaya or customs. So wars happened inter groups or with other ethnic groups. In Okamatsu’s interpretation, ‘wars’ had their reasons and their purpose was to return the balance of justice. Okamatsu believed that the indigenous people always prepared wars in public and fought with public methods. At the same time, he found that indigenous people always practiced head-hunting in secret, and that head-hunting could not be seen as a crime because the indigenous people believed it to be a custom (Okamatsu 1919).

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

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

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

Photo 2.5
Similar land cultivation in Skadang Tribe, Taroko
However, it was not entirely peaceful. Indeed, things changed when tribes came closer to the edge of the vacant lands in the very east of the island. Competition and conflict occurred often. For this reason, the first settlements in the east were mainly those established by descendants of the first cultivators or pioneers (Sayama 1923; Huang, Zhang-Xing 2000; 2001:13-14; Xiu-lin Township 2006). And on the very eastern edges of this territory, there are more hybrid communities. In Pei’s study, he found that every second generation migrated in order to find new territories for hunting and cultivation. In other words, the first generation would leave the place where they were living and move jointly to new territories. And when the third generation achieved prosperity in the new land, the first generation would return to the original lands to cultivate them again (Yu 1980; Pei 2002: 7). This is seen as an ideal type of settlement that was originally maintained by the same initiators and their descendants. The land that was cultivated by the first settlers was usually owned by them, even when it had been left fallow. As the study of the history of settlement movements by Truku scholars has shown, the initial founding families were the main occupiers who used the land for cultivation and hunting. It was an ideal to have one family on a territory, as Kaji said, ‘In traditional times, a family is with a territory’ (Kaji 2003).

This acknowledgement of the lasting impacts of the original or first explorers is an important gaya (customary) practice. For example, even today, people will always take a sip of wine for the ancestors or first explorers. Gayas such as this is particularly important in relation to cultivation when exploring a new territory. As many Taroko people have described, in the ceremony that takes place before crops are sown, a tree branch or a straw cross is planted in the soil and then the people return home to wait for dreams in which utux (ancestors spirits) will tell them whether the land is suitable for cultivation (Wang, M.H. 2006:95). These dreams are interpreted by family elders (Chien 2011). If the dream is interpreted as ‘clean’, then you can cultivate the land. The straw cross or the tree branch in the soil is interpreted as a sign of first occupation. However, indigenous people also believe that there are limitations to using gaya to explore new lands. So they also choose their lands by asking elders or neighbors, who know more about the history of an area, which are the ‘clean’ lands. This is a more ‘empirical’ way to make sure that you are not occupying land belonging to others. There is a supplementary way to indicate whether a new land is free for exploration. That is to set fire to the vegetation and to let the smoke rise into the sky to show and inform other people that you are demanding the land. In addition to these empirical ways, there are important gaya rules that have a religious function and remind people not to invade a place where there are ghosts (utux). It is gaya that allows new cultivation or first occupation. You may occupy a land that is empirically and religiously ‘clean’, or you may renew a first occupation by informing the ghosts there that you plan to occupy the land. As previously mentioned, first occupiers are respected by the people who come after them. In Truku, the doctrine of first occupation is called ‘oetelinay’ and it indicates one of the most important gaya. It has magico-religious-economic connotations as well as a political meaning in terms of the relationships between humans and lands (Liao 1998:189).
When there are no vacant lands to migrate to, then what I will term the ‘scarcity scenario’ comes into play. Faced with such a scenario, rather than extending their territory through war, the Truku people would join other’s territories in order to survive. This was practiced in different ways and can be differentiated using different terms. For example, the term ‘tumumun’ means to join another settlement, but it can be differentiated further as ‘tbalah’, which means to be immersed or assimilated into the host community, or ‘buliuh’, which means to exchange one part of your land with the host in order to make space for your own survival. In addition, you may practice ‘temai’, which means to curse a land during a conflict. This would mean that people had to leave the land or subsequent generations would face living on cursed lands and suffer from bad luck. Clearly, the people in Taroko adopted more peaceful ways to solve the problem of the scarcity of lands.

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

### 2.9 Conclusion

In this chapter I have described the formation of the area of Taroko and the framework of state laws introduced into the indigenous territories. We have seen that the Japanese authorities believed that the indigenous people’s ways of living, their personalities and characteristics could be lumped together into what I call a ‘state of nature’ perspective. I use this term to describe the methods and ideologies that the Japanese authorities adopted to view and deal with the indigenous
people. The term ‘state of nature’ had previously been used by Western political philosophers to describe the conditions or characters of those ‘others’ that were situated in pre-state conditions (Wolff 2002). Different philosophers had different premises to conceptualize these characters. Indigenous people were barbarians, uncivilized, wild or noble savages with different levels of rational ability. Here, I have demonstrated how the Japanese colonialists introduced a theory of ‘state of nature’ to accomplish their ideas and ambitions in terms of incorporating indigenous areas and peoples into a state (of the nature).

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

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

In this period, we see many other ‘colonial powers have treated these mini-nations in different ways. When the English went to Canada and New Zealand, they recognized that the indigenous peoples in those territories were nations. They thus signed international treaties with them. Those treaties became the basis for later legal claims’ (Yen and Yang 2004: 241). The ‘raw’ indigenous people of Taiwan were not treated like those in other colonial situations. As Yen and Yang found, ‘the Japanese, however, did not recognize that Taiwan’s indigenous
peoples were nations. They did not sign treaties with them. They treated them as if they were animals’ (Yen and Yang 2004: 241; Vickers 2008). The view taken was that if the animals were cruel to the Japanese authorities then only cruelty could be considered an appropriate answer. The indigenous people in Taroko, then, were animals that needed to be conquered.

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