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Genealogies of the Political Forest and Customary Rights in Indonesia, Malaysia, and Thailand

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In Java a farmer's land, which is his means of existence, could not be taken away and given to a European. What the land is for Javanese, so is the primary forest and its products for the inhabitants of the Outer Possessions.

(B. Drijber 1912, cited in Potter 1988, 133)

In any country where shifting cultivation is the normal form of agriculture practiced by the native, the formation of [forest] reserves before irreparable damage is done to the primeval forest must be the first consideration.

(H. E. Desch 1931, 321)

Introduction

How have national and state governments the world over come to “own” huge expanses of territory under the rubric of “national forest,” “national parks,” or

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“wastelands”? The two contradictory statements in the above epigraph illustrate that not all colonial administrators agreed that forests should be taken away from local people and “protected” by the state. The assumption of state authority over forests is based on a relatively recent convergence of historical circumstances. These circumstances have enabled certain state authorities to supersede the rights, claims, and practices of people resident in what the world now calls “forests.”

The idea of state territorial sovereignty over a category of land cover called “forests” emerged in Southeast Asia in the nineteenth century. Powerful institutions of state forestry, however, were not established in many of these areas until after World War II. Nevertheless, the idea of state forests not only revolutionized people’s lives and livelihoods but created new, almost inescapable means of imagining land, resources, and people.

At the basis of this transformation is a particular discourse of state property that takes a unique form in “political forests,” that is to say, lands states declare as forests. Political forests are a critical part of colonial-era state-making both in terms of the territorialization and legal framing of forests and the institutionalization of forest management as a technology of state power (Meiggs 1982; Tucker and Richards 1983; Guha 1990; Vandergeest and Peluso 1995; Bryant 1997; Sivaramakrishnan 1999; Agrawal 2001). Political forests helped constitute and were constituted by related discourses on “Customary Rights.” We capitalize the term “Customary Rights” to indicate the much smaller subset of existing “customary practices” in and around these forests that was written into law and policy. Both colonial subjects and state officials debated the appropriate extents of political forests and the relation of Customary Rights to those forests. In this paper, we show how the outcomes of these debates came to be expressed within the law and how these outcomes varied in different locales.

We have used a comparative historical approach to investigate the specific genealogies of contemporary political forests and the creation of Customary Rights in selected regions of today’s Thailand, Malaysia, and Indonesia. The five regions we compare are Java, Dutch Borneo, the Malay States,¹ Sarawak, and Siam. We chose

five anonymous reviewers for the journal commented on earlier and more convoluted drafts of this paper. The Yale Program in Agrarian Studies and the School of Forestry and Environmental Studies provided us with the opportunity to initiate the collaborative research on which this paper is based. The University of California at Berkeley and York University provided both grant administration services and excellent library support in subsequent years. Denise Leto cheerfully retyped the paper after numerous editings and restructurings. Parts of this paper have previously been presented at two annual meetings of the AAS (in 1999 and 2001), at the 1996 meeting of the International Association for the Study of Common Property, and at the annual meetings of the American Sociological Association (2000). The generous support of National Science Foundation grant number SES-9896220 from the Program in Law and Social Sciences made the research possible. We are also grateful to Peter Riggs of the Rockefeller Brothers Fund and the Resource Tenure Network in Southeast Asia for continued support and camaraderie in political ecology research in Southeast Asia.

¹Because data on the peninsular states are not always available in the same units, we use the term “FMS” when referring to data taken from sources on such and refer to activities in all the states except the Straits Settlements as “the Malay States.” The Federated Malay States (FMS) included the western states of Perak, Pahang, Negri Sembilan, and Selangor. They were created as a federation in 1895 as the first four states to come under British control. British rule operated under a fiction similar to the constitutional monarchy of the British Empire; namely, the sultans remained formal rulers, advised by British Residents, who directed an

these regions for several reasons. First, we wanted areas where forests were important parts of the working and living landscape. Second, we wanted to compare Dutch and British colonial activities around forests in Southeast Asia in colonies that were intensively and less intensively ruled. Thus, we examined both the territorial and financial hearts of colonial forest power (Java's teak zones and the Federated Malay States' forests) as well as regions over which colonial control was desired but minimal, such as the Dutch Borneo territories. Kedah, an Unfederated Malay State, and Sarawak, a colony ruled by the Brooke family through the second world war, experienced political forestry somewhat later. Siam was not formally colonized, but the forest department was set up and run by British and British-trained foresters. Moreover, many of the actions of the Siamese kings and bureaucrats during the late colonial period had a colonial cast to them (Anderson 1979; 1991). Third, we chose regions with landed international boundaries—Sarawak and West Kalimantan; Southern Thailand and Kedah—primarily for comparison of contemporary practices (to be reported elsewhere). We used a variety of materials to construct the histories presented: archival materials and oral histories collected in the field, as well as the considerable secondary materials now available on the region's forests.²

Our "late colonial period" is actually a long century, to accommodate early territorial colonialism in Java and the extension of colonialism in the Malay States and Sarawak beyond World War II.³ Late colonial regimes transformed everyday life by transforming the conditions of existence; they established new conditions requiring "new forms of life" (D. Scott 1995, cited in Li, 1999a, 3). Many colonial foresters dreamed of taming the terrain, re-ordering the landscape into new categories of "forests," "agricultural enterprise," and "settlement." Their ability to realize these dreams varied across our study regions, but the notion of "forests" as a normalized category of thought, practice, and analysis was an important common legacy.

A number of Foucauldian notions help locate the processes we discuss. We use the term "genealogies" to indicate our intention to construct a "history of the present," tracking the events and ideas leading to the creation of political forests, systems of forest law, and "Customary Rights" in each region. In the late colonial era, particular forms of governmentality enabled the creation of political forests. These include the development of legal codes that attempted both to individualize and totalize power relations in the forest, thereby criminalizing many previously common practices (Foucault 1979), the exercise of specific types of power relationships initiated through controls on forest and land resources, and state efforts to "make legible" the resources contained within their territories (J. Scott 1998).

Colonial forestry played a key role in state cultural projects of legitimation as well as in the development of new forms of state power (Cohn and Dirks 1988, 229). These colonial-era states claimed land as forests through the territorialization of state rule,

extensive British civil service. The Unfederated Malay States, comprised of Kedah-Perlis, Kelantan, Trengganu, and Johor, accepted British advisors between 1909 and 1914. In these states the ruling elites retained more power than their counterparts in the FMS. Kedah was transferred from Siam to British control in 1909. (The Straits Settlements, Penang, Malacca, and Singapore, were administered separately.) This structure remained in place until after World War II when it was replaced by a single federation, British Malaya. In 1957, all the states were granted independence by Britain and were called the Federation of Malaya. In 1963 Sarawak and Sabah, the Borneo states, joined the Federation of Malaysia. See Steinberg (1987) and Andaya and Andaya (1982) for this history.

²Our ultimate goal is to see how national and regional policies helped constitute local practices and vice versa. This will be reported in future papers.

³However, most of our references to Sarawak in this paper are before World War II.

but the political forest also helped enable the formation and extension of the colonial state.⁴ State claims were effected through the establishment of both territorial and species controls over resources. While colonial-era states in Southeast Asia employed similar means of creating forests, critical differences in forest laws and management strategies resulted from the varied political-economic, ideological, and geographical contexts (cf. J. Scott 1998).

One part of Foucault's three-part definition of governmentality is particularly relevant to our analysis and bears repeating here: "[Governmentality is] the ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power, which has as its target *population*, as its principal form of knowledge *political economy*, and as its essential technical means *apparatuses of security* (emphasis ours)" (1991, 101). State forestry, or forest management by state governments, creates a unique opportunity to understand governmentality because of the special imbrications of forestry's primary targets of concern: people and forest products (Foucault's "men and things").⁵ We examine a particular imbrication here in tracing the concurrent creations of the political forest and Customary Rights. Both of these legal-political forms have important territorial dimensions. Forests take many years to grow and thus tie up large territories for their production or protection. Managing trees and other products in forests gave rise to specific types of government institutions or apparatuses for security and disciplining. Security apparatuses in this case protected the state's claims to trees and other forest products and services. States attempted forest security through various legal means, through the creation of forest police, and by the disciplining of the population to think about and act towards "the forest" in specific ways. By defining forests both scientifically as "natural" categories of land cover and politically as state territory, foresters redefined the basic terrain on which future struggles over the roles of states in managing and imagining nature would be played out. Disciplining people's actions vis-à-vis the forest required a particular definition of "forest" to emerge and gain recognition.

The most successful colonial forestry institutions were able to effect all three Foucauldian components of governmental power. We define the various strategies by which colonial states attempted to discipline populations and control forests as "colonial forest practices," focusing here on the states' various legal strategies for asserting control. These techniques of power and disciplining include territorial zoning and mapping, the enactment of land and forest laws delimiting legal and

⁴In an earlier paper in this journal, K. Sivaramakrishnan (1997, 78) argued that the concept of internal territorialization which we had developed through the case of Thailand (Vandergeest and Peluso 1995) needed elaboration. We show here and in other papers that variation in the application of territorial strategies results from the functions of forestry in colonial economies, the ways modalities of rule affected state capacities to enforce forest laws, relative accessibility and value of forests, and shifting ideologies of colonial rule.

⁵As we show below for specific cases, Foucault has shown that sovereignty, territory, and the submission of people to the authority of state law create the premise on which early or "princely" forms of state power are based (1991, 93). He does not abandon this triad in his definition of governmentality, pointing, rather, to the "connection between the spatialization of the forms of implantation, delimitation and demarcation of objects and domains" (1980, 70, cited in Slater 1989, 509). He goes on to say that modern forms of government (which would include "late colonial" government forms) were/are more concerned with the "imbrication of men and things" (Foucault 1991, 99), meaning that laws become less important for the disciplining of populations than the economy and the resulting new tactics of population control that become available to those who rule.

illegal forest uses, the constitution of state forestry institutions to implement these laws according to specified procedures, the constitution of forest police, and the creation of legal exemptions that became Customary Rights. The timing and capacities to implement various strategies were influenced by local and regional political-economic and ecological conditions, and resulted in different degrees of “successful management,” as forest control would be called by government foresters.

Overall, two colonial forest practices directly impinged on the intended use of forests even as they were defining what these were in the law. The first was the creation of specialized state institutions with authority over forest affairs, while the second was the codification or definition of people’s rights of access to political forests. Of course, these went together: the creation of political forests imposed immediate limitations on the possible forms of legal access to “forest” resources, which by definition belonged to the state. Legal strategies included territorial and species controls. *Territorial control* was the process by which governments demarcated specific territories as forest land, claimed all resources in these territories as state property under the jurisdiction of a forestry department or its institutional equivalent, and patrolled this territory with forest guards and regular police or military personnel. *Resource* or “*species*” control was the process by which the government monopolized, taxed, or otherwise limited the legal trade and transport of certain species. Access to forested lands or particular species was made contingent on government-issued permits or through various legal exemptions already mentioned as Customary Rights. At the same time, the creation of Customary Rights and reference to this political process as “discovery” or “recognition” allowed state actors (especially the foresters) to appear generous in conceding access.⁶ The discourse of Customary Rights thus contributed to states’ constant efforts to maintain some balance between rule by consent and coercion (Gramsci 1971).

We use three other terms that bear some explanation. By “legal pluralism,” we mean the use within a single political entity of multiple legal systems applied to racially based law groups within the political boundaries of a territory (Hooker 1978). Legal pluralism may be defined more broadly as “a situation in which two or more legal systems coexist in the same social field” (Tamanaha 1993, 193, citing Merry 1988, 870).⁷ Second, we have found Tania Li’s use of the notion “modalities of rule” particularly useful for our analysis. Li discusses rule—and the compromises of rule in practice or implementation—as both “enabled and constrained by the sedimented histories, contemporary forces, and international flows configuring a particular national arena” (1999b). Finally, we often use the term “state capacity,” which we define narrowly as the *ability* of the state to influence people’s use of forests intentionally, through the law or other colonial forest practices. State capacity needs to be understood in terms of modalities of rule, i.e., what is possible for various state institutions and actors to enforce in particular times and places. As Foucault noted, “the tactics of government. . . make possible the continual definition and redefinition of what is within the competence of the state and what is not” (1991,103). We attempt here to understand the specific origins, motives, and mechanisms of justification for the creation of political forests and Customary Rights.

⁶We are grateful to Tania Li for pointing this out.

⁷A considerable literature on the definition of legal pluralism exists in which legal and nonlegal forms of normative ordering are debated, but for our purposes here we are looking at the integration of nonlegal practices into colonial law. See, e.g., Merry (1988), Moore (1986). For a comprehensive review and critique, see Tamanaha (1993:192–217).

In the next (second) section we provide some information on the ways forests of the region have been described and differentiated from other vegetative or land-cover types, and we lay out the basic similarities and differences in colonial forest practices across the study region. In the third section, we introduce domain declarations and the creation of land laws as an initial set of technologies antedating the justification of state control of forestland and the creation of the political forest. Fourth, we examine the genealogies of forestry laws and how these created forest territories and species as state property categories. In the fifth section, we discuss the transformation of customary practices into Customary Rights and forest crimes.

We contend that “forests” were normalized as categories of both nature and state power by the end of the late colonial period.⁸ As a result, the very basis—the possible starting point—of debates about land use and customary practice was transformed and constrained.⁹ In order to understand the ways colonial and contemporary state rule shaped customary practices, we must first get at the origins of the idea, practices, and institutionalization of the political forest. It is through its constitution that customary practices were reinscribed as Customary Rights and criminal practices in huge chunks of the rural landscape. Thus, we need to understand the category “forest” as produced through normalizing discourses rather than simply as a biological or universal category. In other words, we need to “de-forest” our minds to recognize the contours of what political forests (and political Customary Rights) have caused history to forget.

A Partial Political Ecology of Colonial-Era Forestry¹⁰

Much of Peninsular Malaysia, the island of Borneo, and Thailand were largely covered in what ecologists, foresters, and other observers called “natural” or “biological” forests until well into the twentieth century (Brookfield, Potter, and Byron 1995). Even Java had considerable wood cover until the mid-nineteenth century (Pigeaud 1962, 494; Cordes 1881). The areas colonial authorities called forests, however, cannot be imagined as natural or pristine in the sense of being separate from human activity (Pendleton 1962; Spencer 1966; Bellwood 1997). Over thousands of years, shifting or swidden cultivation, tree planting, protection, or encouragement, landscape management by fire, hunting and gathering, and other human activities

⁸We address local forest practices here only insofar as they were taken into account by state foresters as “crime” or “custom.” We do not deny that the relationships between state and local practices were complex, uneven, and unpredictable. Nor are we unaware that colonial-era actors’ interpretations of local practices actually influenced the forest laws. We recognize that these influences came about not only because of the benevolence of state foresters but also because of the negotiations and power struggles between rulers and ruled over the extent and nature of these state enclosures. Nor does our view preclude a temporal sensitivity to the effects and control of these technologies of power. Indeed, many of the state practices discussed here—such as mapping—were appropriated and used later by colonial subjects for their own purposes, purposes the state neither intended nor foresaw.

⁹Given their scope, however, these complexities cannot all be untangled within a single comparative article. Hence the emphasis here is on state strategies and technologies of rule, rather than the specific local mechanisms through which specific forms of rule were constituted and realized.

¹⁰Parts of this section are summarized from Peluso, Vandergeest, and Potter (1995).

have transformed the vegetative cover of the landscape (Ruhle 1964; Wharton 1968; Padoch and Peluso 1996).

Prior to the colonial period discussed here, local people sold and exported valuable products taken from these forested areas—many of which functioned in practice as people's "backyards" or gardens. Cities and other settlements based on trade often depended on forest products for all or part of their revenues (Burkill 1935; Peluso 1983a, 1983b; Potter 1988; de Beer and McDermott 1989). Reid, for example, lists important Southeast Asian regional exports of the seventeenth century including items such as cinnamon (a tree bark), aromatic woods, resins, lacquer, and deerskins (1993, 23).

What explorers, scientists, and eventually government officials came to call "forests" in Southeast Asia were thus products of human activities in the long and short term—collection, production, protection, and cultivation. Forest-based agriculture, or swidden cultivation, can be seen as starting or ending with cutting "the forest." If we see it as starting with a forest cut, the forest itself gets naturalized. If we see it as the last in a series of stages starting from planting crops, the forest is a product of the process of fallowing after planting. It can also be a residual category after other forms of management or use.

Under colonialism, "forest" or "jungle" products remained important for revenues, employment, and use, including rattans, fruit, bamboos, natural latexes, gums, resins, birds nests, incense woods, camphor, meat, skins, animal organs, feathers, and living wildlife (see, e.g., Wallace 1869; Burkill 1935). The two most important exported timbers of the era were teak and ramin; teak was many times more valuable. Teak was produced both in plantations and from what were believed to be natural, near monocultural stands in Central and East Java (Peluso 1992), and from mixed forests in the areas known today as northern Thailand (Mekvichai 1988) and Myanmar (Bryant 1997). Ramin was extracted and exported from various parts of Borneo (Potter 1988; Brookfield, Potter, and Byron 1995). Borneo ironwood (*Eusideroxylon zwagerii*) was exported in small amounts from Borneo in the pre-colonial and colonial periods (Crawford 1967). *Large-scale* extraction of other timbers did not begin until after World War II, although some luxury woods like ebony and sandalwood were traded in small amounts.

With the rise of Dutch and British territorial colonial power came rapid and radical transformations in forest cover. Plantation agriculture—especially of rubber, pepper, gambier, tobacco, quinine, and of course coffee, sugar, and tea—as well as mines for tin, silver, gold, and coal, replaced much of the tropical forest (see, e.g., Allen and Donnithorne 1957; Jackson 1968, 1970; Elson 1984; Aiken and Leigh 1992; Fasseur 1992; Brookfield, Potter, and Byron 1995). Moreover, the establishment of government land-management institutions, the development of forest laws, scientific procedures for forest management, and the often violent enforcement of specific, government-adjudicated sanctions against those who broke the law, marked a turning point in approaches to controlling access to products of these forests.¹¹ These features of political forest administration emerged during this period of globalization of models for governance, political strategy, and sociolegal systems (Tucker and Richards 1983; Grove 1995; Tate and Vallinder 1995; Neumann 1996; Lynch and Talbott 1995).

¹¹This is true not only in the areas discussed here, but also in other parts of South and Southeast Asia (see, e.g., Sivaramakrishnan 1997; Saberwal 1999; Bryant 1997; Rajan 1997).

Forestry served the purposes of colonial-era administrations in some similar ways, providing both motives and means of claiming territory and expanding the state's jurisdiction, as well as providing revenue, exports, and raw materials for other economic activities and infrastructure. For the King of Siam, leasing out forestry concessions was explicitly a way to claim territorial sovereignty both vis-à-vis local rulers in the northern teak districts and the adjacent European colonial powers in all directions (Mekvichai 1988; Thongchai 1994; Vandergeest and Peluso 1995). In the Malay States and Java, colonial foresters claimed that upland forests protected lowland agriculture and regulated climate, thereby justifying extending reservation activities and the territorial power of the states (Departemen Kehutanan R.I. 1986, 80–81; Grove 1995).¹² Dutch Borneo did not actually experience the same kind of territorial political forestry until well after World War II (see discussion below). Other similarities in the motives for creating political forests included the intent to place spatial limits on farmers' cultivation, thus encouraging sedentarization and facilitating the monitoring of farming practices.¹³ Cultivation was not supposed to impinge on "permanent" political forests, although in practice it did more often than not.

To achieve these goals, governments in our study undertook a series of similar actions: They all declared that colonial (or national) states were the sovereign owners of all land and resources within their internationally recognized territorial boundaries. They all enacted laws enabling the demarcation of permanent state forests, causing forests to be defined subsequently in terms of state property regimes rather than ecologically, although in some cases these laws were enacted very late in the colonial period and had little effect until later. Finally, all the governments tried in some way to control the harvesting, trade, and use of specific forest species and products (e.g., teak, rattans) by declaring them to be state property under species reservation laws.

Eventually, but not always intentionally, these forest ideas, institutions, and procedures served larger political purposes, snaring political-economic power for expansionary rulers. Colonial authorities and other actors created new landscapes of exploitation, protected existing ones, and mobilized science in the service of the territorializing colonial-era states. Political forests were most successfully institutionalized in Java and the Malay States by World War II. They succeeded in different ways, but ultimately they succeeded because of the dependence of other forms of colonial enterprise on the productions of the political forest. Siam and Dutch Borneo had no operational political forest by World War II, and Sarawak had minimal territory committed.

As we show in subsequent sections, in Siam, Sarawak, and Dutch Borneo, the very notion of "state forest" remained strongly contested during the colonial period, both within the states' bureaucracies and by their intended subjects. In Siam, forest reservation laws were not passed until 1938, and demarcation started after the war. In Dutch Borneo, the very basis of colonial land control and the colonial state's ability to impose "forest" categories on the land was challenged in the 1930s. Finally, in Sarawak, both the financial costs of forest reservation and the political ideologies of native rights hindered the construction of a political forest. By 1942 only 5 percent of the colony was reserved as political forest.

We found other forms of variation across the study region. The timing of the adoption of specific colonial forest practices varied widely, with Java the earliest to

¹²See also period forestry journals such as *The Indian Forester*, *The Malayan Forester*, and *Tectona*.

¹³And later, to control the kinds of cultivation practices such as shifting cultivation.

establish a territorial political forest and Dutch Borneo effectively the latest. Uneven state capacity to implement forest laws resulted from extremely varied modalities of rule. As shown below, variation also emerged in the ways in which racial and ethnic categories were inscribed on the land and extended to areas of the political forest.

The various legal origins of colonial regimes had less impact on colonial forest practices than did some other circumstances. Some of these circumstances were the centrality or marginality of certain regions relative to the seats of colonial governance, the relative access to forests—including technological capacity and economic viability, as well as distance and density of cover—and differences in the intrastate motives for forestry. For example, in Sarawak and Dutch Borneo, economically valuable species were highly dispersed, and efficient technology for extracting timbers economically in difficult topography had not yet been developed. At the same time, colonial industries were nowhere near as developed in these two sites as in the Malay States and Java. These variations in local conditions thus created important variations in forestry institutions (Potter 1988; Aiken and Leigh 1992; Leigh 1998).

Forest products could also become “inaccessible” because other kinds of state claims overrode those of the foresters, and the jurisdictional categories changed. In Java, the uplands were the major sites of lucrative tea and coffee production and strategic tree crops such as quinine and rubber. Once produced by foresters on forest lands, coffee, quinine and rubber were defined as “agricultural,” and subsequently removed from the foresters’ jurisdiction. This change also altered how forest cutting or deforestation was framed. Though the differentiating terms were newly invented and the classification of these crops’ jurisdictions changed from forestry to agriculture, “forest cutting” was written about as partially a result of “agricultural production strategies” (see, e.g., Palte 1985; Fasseur 1992). How the political forest and its contents were being defined thus fluctuated throughout the late colonial period.

Differences in colonial forest practices also followed from significant differences in the ways that forestry functioned in the different colonial economies. In Sarawak and Dutch Borneo, taxes and trade permits (farms) on nontimber forest products provided an important source of revenue, as they did during the VOC (United East India Company) rule in Java. Siamese and Javanese forests, however, contained teak, a valuable timber species used in the international shipping industry. While much Java teak was used in domestic colonial industries and for construction, most teak in Siam was exported (Ingram 1971), providing an important supplement to rice export earnings (Mekvichai 1988). Siam never developed domestic teak markets. Moreover, while the Royal Forestry Department of Siam expended considerable effort monitoring teak extraction, both limited state revenues (due to the dependence of the economy on rice production) and conservative fiscal policies help explain government unwillingness to reinvest forestry revenue in the kinds of territorial forest management which began early in Java (Sompop 1989). The Food and Agriculture Organization’s (1948) figures for 1939 (just before Japan occupied much of the region) indicate that Siam at the end of the colonial era devoted only 20 to 25 percent of forestry revenues to forestry expenditures, compared to 84 percent and 56 percent reinvested in Java and the FMS,¹⁴ respectively.

In Java and the Malay States, strong forestry institutions can be linked to a greater level of commercialization and nascent industrialization. Both regions processed agricultural products such as rubber, sugar, coffee, tobacco, and indigo and established

¹⁴The FAO source does not define “Malaya”; we assume the report refers to the FMS, as the political region “Malaya” did not exist in 1939.

significant nonagrarian activities such as mining and shipbuilding. One function of forestry in the Malay States and Java was the provision of inputs (timber, fuelwood, resins, and other tree products used in industry) to the economic activities that provided the financial basis for these states. In the Malay States, tin mining and rubber industries depended on fuelwood and the construction of appropriate infrastructure, such as railways, administrative buildings and factories. The importance of forests to the colonial economies, combined with the relatively high revenues made possible by the high levels of commercialization, helps explain why governments were willing to invest in strong forest departments, even though the Malayan forests, like those in Borneo, lacked concentrated valuable species such as teak (Aiken 1992; Kaur 1998a).

In Java, teak constituted the backbone of both the shipbuilding industry and the state railroads by providing wood for masts, decks, hulls, and railroad ties. Teak was also an ideal engine fuel (Jordens 1858; Oever 1910; Kerbert 1914; Zwart 1938). Teakwood was also critical for factory and industrial infrastructure and provided fuel to process important tropical crops such as tobacco, sugar, rubber, and tea. (Harreveld 1915; Zwart 1923; Herweyer 1927; Wind Hzn 1928; Roosendael 1928; Spoon 1944). Indeed, the value of teak *fuelwood* (as opposed to timber) to industrial development in this period is rarely recognized: in 1918 its sale alone covered half the management and exploitation costs incurred in the teak forest districts (Zwart 1923). Industry elsewhere in the region was not as extensive as in Java, although forests were still significant sources of wood for the construction of railways and tin mines in Siam and the Malay States.¹⁵

Population also needs to be mentioned as a differentiating influence on the ways forestry could be practiced. In Java rural population densities higher than anywhere else in Southeast Asia—and subsequently larger labor pools in relation to available land¹⁶—had contradictory effects. Dense rural populations made certain types of colonial forestry practices possible and others more difficult for foresters. For example, mobilizing laborers to plant and maintain trees is much more difficult than mobilizing them to cut trees or tap resins. Thus only under conditions of high ratios of population to land, and large numbers of landless or near landless laborers and few other employment activities—conditions that characterized only some parts of Java—was it possible to create tree plantations that required a significant labor force at planting and cutting time.

Population factors of course had to be viewed in conjunction with other factors: the value of the trees to be planted and the relative opportunity costs for the use of state lands, and the willingness of other government agencies and individuals to permit long-term tying up of the land under forests. But it was only in Java and Burma that *extensive* widespread plantations were possible.¹⁷ There was a flip side of this benefit: dense, land-poor populations combined with high-value trees and a black market that had existed since the VOC had tried to monopolize the sale of teak forced

¹⁵Railway sleepers in the Malay States were made primarily of nontek woods (Kerbert 1914).

¹⁶We are here referring to what Blaikie and Brookfield call “pressure of population on land” (1987). On population in late nineteenth and early twentieth century Southeast Asia, see Hirschman (1994).

¹⁷Burma is actually outside the purview of this study but see Bryant (1997). Indeed, the *taungya* system of interplanting agricultural crops with teak seeds and saplings, to provide poor peasants with temporary access to some land (useful when it was taken from them for forestry), was “invented” in Burma and imitated by foresters in heavily populated districts of Java (Bryant 1997; Peluso 1992).

foresters to deal with a great deal of theft, attempted theft, and other kinds of plantation and natural stand sabotage (Peluso 1992; see below).

A final reason for variation in the implementation of state forestry across the region relates to the forest departments' relations with other land-management agencies and the civil administration. These relations and the ideologies underlying them varied across space as well as time. Everywhere, foresters were constrained to some degree in their push for exclusive control of forests by the concerns of some government officials that they "be fair" and recognize the prior rights to the land of those people they defined as native—ideas which were particularly strong in the early twentieth century when explicit welfare policies were implemented.¹⁸

Some notion of these differences can be gleaned from the data in Table 1, which compares the total staff of the forest departments to general population and area of demarcated and other forms of state-claimed forest. The table shows that in Sarawak and Dutch Borneo small forest departments had meager capacity to exert control over their vast forested territories. Sarawak, nevertheless, initiated territorial demarcation activities. In Siam, the low staff-to-forest ratio meant that the forest department was unable to exercise close control over forests outside the lucrative northern teak zones (Mekvichai 1988), and even in the teak zones the department's control was limited. The department's field staff was concerned primarily with marking trees for extraction and other local management tasks. The colonial forest department in Java, like the colony's population, dwarfed that of any other in Southeast Asia. Most staff were posted in the teak forests, where policing and planting supervision were labor intensive.¹⁹ Similarly, relatively strong forest departments in the FMS and Kedah were not only able to demarcate extensive reserve forests rapidly but also devoted considerable resources to research and silviculture. The table shows numbers of forestry staff at the agencies' strongest points, before the Depression. Again, these numbers are not intended to be "proof" of the effectiveness of government policy on the ground but must be seen as illustrations of the comparative circumstances of the forestry departments in the region.

In sum, the different states under consideration in this paper shared some important commonalities but equally important differences both in the environmental opportunities and constraints presented by what were construed as natural forests of the area and by the political-economic goals and institutional limits of the colonial and local governments claiming authority over these forests. These differences produced significant variations in the power of the discourse of the political forest. The next three sections lay out the ways colonial-era governments attempted to create political forests. In the process, many racialized the political forest in the ways that they treated the everyday practices of the people living there.

Creating the Political Forest I: Domain Declarations and Land Laws

The initial legal action justifying state control over forested land was the declaration of state sovereignty over all land within a particular territory (Vandergeest

¹⁸This theme is so important to the construction of state forestry institutions that it will be treated in detail in a separate paper. See Vandergeest and Peluso (n.d.).

¹⁹Even so, a great deal of "theft" was accomplished. See below.

Table 1. Forest Department Territorial Claims, Professional Staff, and Ratios to Population, from approximately 1929 to 1930s

	Java	FMS ²⁰	Kedah	Siam	Dutch Borneo	Sarawak
Total Area (km ²)	149,924 (1929) ²¹	72,459 (1929) ²²	9,447 (1933) ²³	513,520 (1930) ²⁴	539,500 (1938) ²⁵	119,600 (1929) ²⁶
Total Population (millions)	41.70 (1930) ²⁷	1.73 (1931) ²⁸	0.43 (1931) ²⁹	11.51 (1929) ³⁰	2.195 (1930) ³¹	0.55 (1930) ³²
Estimated area under "forest" cover, (square km) ³³	20% (1929) ³⁴	76% (1935) ³⁵	72% (1934) ³⁶	70% (1930) ³⁷	79% (1927) ³⁸	90% (1935) ³⁹
% Area of State Reserved Forest ⁴⁰	(17%) (1929) ⁴¹	(22%) (1929) ⁴²	(32%) (1931) ⁴³	0 (1930)	(0.007%) (1927) ⁴⁴	(0.84%) (1929) ⁴⁵
Forest Department Staff ⁴⁶	5969 (1929) ⁴⁷	580 (1930) ⁴⁸	60 (1929) ⁴⁹	618 (1928) ⁵⁰	18 (1929) ⁵¹	81 (1929) ⁵²
Ratio of Reserved Forest to staff (staff per km ²)	4.13	31.4	50.6	n.a.	200	11.3
Total "Forest" Area per staff member (km ²)	5.12	93.8	113	581	23,738	1,209
Population per staff member	6,986	2,988	7,162	18,618	121,919	6,139

²⁰Brookfield, Potter, and Byron (1995) state that the total area for the British part of the Malayan Peninsula is 131,600 km²; all other figures we found referred to the FMS.

²¹*Verslag van den Dienst van het Boschwezen in Nederlandsch-Indië* (Colonial Forest Service Annual Report or VDB) (1929).

²²Federated Malay States, Report on Forest Administration for the Year 1929. Note that Cubitt (1920) shows total area as 71,220 km² in 1919.

²³Annual Report on Kedah (1933–34).

²⁴Feeny (1988), calculating from Ministry of Commerce (1930).

²⁵Cite is from Boomgaard (1994). Note that if we calculated the total area of West and Southeast Borneo (the two residencies into which the Dutch Borneo possessions were divided), given by Wind (1929) as 147,211 for the West and Potter (1995), cited in Lindblad (1988), as approximately 400,000 for the Southeast, we get a figure of 535,638. These variations are due to imprecise estimates made by colonial administrators in the early 1900s. Upgraded measurements in 1941 increased the area of "Dutch Borneo" by another 25,000 km². See Boomgaard (1994 a and b).

²⁶Colonial Annual Reports for Sarawak (1929); Spurway (1937). Cleary and Eaton (1992) report total land area as 124,449 km².

²⁷1930 NEI Census; see also Hefner (1990, 48) who lists population statistics adapted from de Vries (1931).

²⁸Sundaram (1968).

²⁹Zaharah (1979).

³⁰Wilson (1983). Wilson notes that before 1960 the census is thought to have undercounted the population by five to ten percent.

³¹Leach (1948), using data from the Dept. van Landbouw, Nijverheid en Handel (1931). Census data from different parts of the island for this period are very difficult to compare.

³²Colonial Annual Reports, Sarawak (1947). Kaur (1998b) reports population of Sarawak at this time as 469,000.

³³According to foresters, these were "natural" forest tracts.

³⁴VDB (1929).

³⁵Troup (1940:382). Cubitt (1920) gives the same figure for 1919.

³⁶Annual Report on Kedah (1934–35).

³⁷Feeny (1988).

and Peluso 1995). Territorial sovereignty—or domain, as we call it here—was understood to include the state’s right and duty to create, recognize, document, adjudicate, and protect all land and natural resource rights. Most important for our purposes, state’s domain implicitly or explicitly meant that the ruler retained jurisdiction over unalienated land. The ruler specified or approved procedures for alienation and other types of allocation. At the same time, domain declarations were often qualified (except in Siam) by what colonial authorities understood as native customs or laws of land and resource tenure. Moreover, rulers generally sought historical justification for these assertions of their authority over disposal and reservation of land in their colonial or national territories (Anderson 1991; Lev 1985; Thongchai 1994).

Land laws were crucial for establishing state authority over forest resources, just as they facilitated the commercialization of land for agricultural production. Through land laws, colonial-era states attempted to put spatial limits on their subjects’ cultivation rights to land.⁵³ Land laws based on the presumption of default ownership by the state in the Malay States were modeled after British notions elaborated by Maxwell on the sovereign’s ownership of all land in his realm (see, e.g., Dixon 1995; Sihombing 1989). They were justified by European theories about “Oriental Despotism” (see, for example, Raffles 1817; Crawford 1820; Maxwell, 1884; Brascamp 1923; 1924a; 1924b; Ball 1982).

Ideas about domain and land law did not stand still; they traveled. The early nineteenth century writings and policies of Sir Thomas Raffles on Java and Singapore,

³⁸Boomgaard (1994a, 165) provides data allowing my calculation of an average of 79 percent forest cover. The VDB state that Southeast Borneo was covered in 89 percent forests, while West Borneo had only 56 percent forest cover in 1927.

³⁹Colonial Annual Forest Department Reports (1935); earlier reports do not estimate total forest cover.

⁴⁰Includes all forest area claimed by the government. Not all state forests were demarcated, especially in Java; in some cases forest departments had jurisdiction over residual land not held under land title or by other departments.

⁴¹VDB (1929); Peluso (1992). Boomgard (1994a, 140) gives a figure that includes Madura, which according to VDB (1908) was approximately 60.93 km².

⁴²FMS, Report on Forest Administration for the year 1929.

⁴³Annual Report on Kedah (1934–35).

⁴⁴Boomgaard (1994a, 165).

⁴⁵Colonial Forestry Department Annual Reports, Sarawak (1929).

⁴⁶Clerical staff not included for Java; if they were, Java would dwarf the figures for the other areas even more. Specific figures on clerical staff numbers were not available for FMS, Kedah, or Siam, so the figures here include clerical staff.

⁴⁷VDB (1929). This figure for Java includes “temporary” and permanent staff; it does not include clerical staff.

⁴⁸FMS Report on Forest Administration for the Year 1929. Includes clerical and “miscellaneous” staff.

⁴⁹FMS Report on Forest Administration for the Year 1929. Includes clerical and “miscellaneous” staff.

⁵⁰Bourke-Borrows (1928)

⁵¹VDB (1929). This figure for Dutch Borneo includes clerical staff.

⁵²Forest Department Annual Report (1929); does not include clerical staff. Including them would bring the number up to 102.

⁵³Space constraints prevent a fuller treatment of land laws. Importantly, however, where land rights were contingent on formal registration, land authorities transformed what had been largely local matters into systems in which the government’s documentation of occupancy, use, or enterprise rights became the final authority.

and the British approach to land law, were influential throughout the region. Dutch colonial ideas about legal pluralism also traveled. In colonial India the British developed notions of “native” Hindu and Muslim laws that could be codified and applied through British-controlled courts. They also developed a simplifying approach to land law in which complex land tenure and taxation relations were classified as land rents or land taxes (Cohn 1996, 61–2). Land laws were the mechanisms through which existing forms of personal taxation were changed into land rents. Land titles as security against loans became crucial as these governments formally eliminated personal servitude or slavery, which had been the predominant form of security through the late nineteenth century (Ball 1982; Hiscock and Allan 1982).

Despite its mobility, the notion of domain produced vociferous debates over the status of local property rights in land. For our purposes, these debates had two important dimensions. The first concerned the notion of wasteland or abandoned land and how such lands would revert to state jurisdiction. The second dimension of the domain debates concerned collective rights to land and whether or not these existed or would be recognized as existing at the local level.

The Dutch colonial authorities in Java made the earliest domain declaration in the region. The case of Java illustrates the debates and contradictions inherent in state claims to jurisdiction over apparently unused land (*woestland*). Early treaties in the seventeenth and eighteenth centuries between the VOC and Javanese rulers were worded to indicate that native rulers transferred to the VOC rights to timber and labor, not land rights (Peluso 1992). At the time, most rulers hardly interfered with local practices such as the allocation of land or cultivation rights (Pigeaud 1962, 381–90, 394–98; Hooker 1978, 9–11; Moertono 1981). They did, however, exact taxes in the form of labor (*corvée services*) and in percentages of goods produced or traded (tributes or tax farms). Nevertheless, by 1743 the VOC had assumed territorial control over some of the key teak-producing areas of Java’s north coast and its hinterland. Javanese kings and princes eventually transferred land to the VOC. Later, the Dutch colonial state governed these territories (Cordes 1881; Boomgaard 1988; Peluso 1992).

Daendels, during his tenure as Governor-General in Java (1808–1811), established both native and civil courts for each Prefecture (Hooker 1978). This was the first formal establishment of a state institution specifically for resolving native disputes. When Raffles came to Java during the brief period of British rule (1811–1816), he reduced the power of the middle-level village authorities so as to increase the power of the central colonial state. Further, to increase state revenue, he instituted a land “rent” to be calculated according to individual or household land holdings. Hooker explains, “To accomplish this, Raffles undertook an enquiry into land tenure and ‘discovered’ that all land was the property of the indigenous state” (1978, 12). This became the basis of the declaration of land as “state property” (*ibid*; see also Fasseur 1992, 30; Ball 1982, 173).

When the Dutch regained administrative control of Java at the end of the Napoleonic wars in Europe, they maintained Raffles’ ideas about land rents along with the associated claim that the Javanese rulers owned all the land. Unlike Raffles, however, they recognized the village as a middle-level native authority. They reinforced this authority through the practice of collecting land taxes at the village level. In addition, village heads were responsible for collecting the quotas produced under the “Cultivation Systems.”⁵⁴ The labor and produce deliveries demanded under

⁵⁴Even after the introduction of the various cultivation systems (1830–70) land rent col-

these systems in turn directly and indirectly created new forms of communal (then constituted as “village”) land rights. Directly, they legalized the formation of territorial institutions called “villages” (Breman 1980; 1997) and the notion of “village land” over which a village head had the authority (alone or with other villagers) to allocate use rights, to collect rents, and to organize deliveries and labor services. Only landholders were responsible for these services. Since quotas were determined by village, it was in the interests of existing village landholders to increase the number of people eligible to work. Indirectly, some new communal (village) land arrangements developed in response to this village-level quota system (Kano 1984; Breman 1980; Fasseur 1992).⁵⁵

It was in the *Domeinverklaring* (Domain Declaration) under the Agrarian Law of 1870, however, that the Dutch directly addressed the issues of domain and land rights comprehensively and in a more explicit manner than any of the other states in the region (Hooker 1978, 13–14). This law declared all land of Java and Madura to be state land—as Raffles had first done some sixty years earlier—qualifying this claim only by recognizing land previously alienated to private holders under the civil code (usually to private European entrepreneurs) (Hiscock and Allan 1982, 516).⁵⁶ All other land was regarded as state land. Within the category of “state land,” native land (called “unfree” land) was categorically differentiated from free land. Free land was unclaimed, uncultivated, virgin, no man’s, wasted land. Under the *Domeinverklaring*, this latter category came under the direct proprietary jurisdiction of the colonial state (Hooker 1978; Holleman 1981; Burns 1989; Fasseur 1992). The “unfree land” category provided the legal basis for native land and for recognizing that local people held rights to land that were independent of the native rulers’ claims.

Despite this declaration, however, colonial administrators continued to argue about whether central rulers had ever actually controlled or claimed to control village lands, or whether actual authority for the allocation of land rested with local village heads or local strongmen (Ball 1982; Holleman 1981). When the Dutch had drafted the Constitution of the Netherlands East Indies in 1848, they specified that the colonial government had two roles: to preserve native welfare and to collect land revenue. Thus at this early date, native welfare was already part of the colonial state’s ideology, however poorly they accomplished it. The constitution also legally defined “natives” (*inlanders*) and other legal identity categories, setting down the basis for racial discrimination in the law (Fasseur 1994).

Two schools of *adat* (custom or customary law) in the Netherlands developed around opposing views on the primacy of central state versus local or village territorial rights, each interpreting the *Domeinverklaring* in their own manner (but neither contesting the ultimate authority of the colonial state to rule). Van Vollenhoven, who led one of these schools, dedicated himself to proving wrong the proponents of the “sovereign ruler owns all the land” notion through a massive documentation project that resulted in the publication of some forty-five collections of “customary laws” in

lection continued (Ball 1982, 175; Hugenholz 1994, 151). The term “Cultivation System” has been used to describe the system of forced deliveries of agricultural and forest products to the colonial state on Java during this period. On some of its iterations in different regions of Java, see, e.g., Fasseur (1992); Elson (1984); Breman (1980); and Furnivall (1944). In the major teak forest areas in what are now Central and Eastern Java, the deliveries of teak and the labor system used to produce it (*blandongdiensten*) continued until much later in the nineteenth century. See Cordes (1881); Peluso (1992).

⁵⁵These labor pools for state production were a clever way for the colonial government to profit from lands held under the category of “unfree land” (Fasseur 1992; Boomgaard 1988).

⁵⁶These were the so-called *Landen Particulier*, held by Europeans, not natives.

nineteen “*adat* law territories” he constructed for the whole of the Indies. His ideas convinced some colonial administrators to support so-called *adat* law institutions and helped temper the kinds of colonial policies (including forestry) that led to more comprehensive state control of land (Hooker 1978, 14–16). Despite these efforts, other laws in the Indies frequently limited the scope of customary law, particularly above village level (*ibid.*, 19–21; see also Burns 1989).⁵⁷ Native courts, after all, were a colonial state institution, intended to facilitate rule.

A key question in Java—and later in Dutch Borneo and Sarawak—concerned the determination of village boundaries—where native territory stopped and “free” (unclaimed) land began (Van Vollenhoven 1909). Village boundaries were generally not surveyed before maps were drawn, though natural boundaries were recognized. A notion of collective (village or longhouse) territorial rights qualified state ownership of land not held by households; it also facilitated governance by indirect rule (see, e.g., Breman 1997, 17). Yet, in Java there was no clear policy on whether “village territory” included forestland between villages that villagers used for fuelwood and other products (Burns 1989). Burns, who did an exhaustive survey of Dutch sources, writes that he *never* came across any maps showing “just how far the contending parties in the nineteen-twenties thought the *dorpsbeschikkingskring* (the village domain) should extend or be curtailed. No writer has suggested that such maps exist” (*ibid.*, 30). Even though village boundaries were not “scientifically” surveyed, the Topographical Service created village maps to show in detail where taxable fields were located, after the land rent surveys were carried out between 1907 and 1920 (Hugenholtz 1994, 142).

Foresters in Java became intimately involved with this question as they began to map forest districts in the late nineteenth century, carving them out of as-yet-unmapped territory called “state land.” In doing so, they indicated the potential extents of village territories by default: village territory was what was left after the maps of either forestland or agricultural enterprises were made. These territorial residuals were also subject to the other limits imposed by the state’s recognition of only that native land under continuous cultivation, leaving plenty of room for debate about the actual boundaries of village territories. Moreover, people and their native claims were moved around during forest demarcation to eliminate dispersed villages and enclaves of cultivated land in the middle of forested tracts, as these were seen as detrimental to both scientific forest management and forest protection as well as village administration (cum tax collection) (Breman 1980; Peluso 1992). Thus, territorial control was not simply a matter of demarcating state forest as opposed to “village” land, it was also about creating territorially contiguous “native settlements.” This calls into question, therefore, the notion that such villages were “traditional” or “customary” (Breman 1980; Pigeaud 1962, 469).

As the Dutch expanded their authority to Borneo territories, debates over domain and native rights continued on new grounds. The Netherlands Indies courts decided that the government’s sovereign authority (domain) in Borneo and other islands outside of Java was not sufficiently sanctioned in the law to enable foresters to establish the extensive territorial controls they had in Java. This decision caused a flurry of new debate, policy discussion, and legislative strategizing. The Department of Interior (Binnenlands Bestuur) and the Forest Service were at odds on this issue as late as 1936. Subsequent legislation was intentionally vague in order to avoid further public

⁵⁷As Burns (1989; 1999), Kahn (1999), and others describe, Van Vollenhoven and his followers often created as much customary law as they discovered.

debate on the issue of "domain" or the degree and nature of state sovereignty over the lands and forests outside of Java (Departemen Kehutanan R. I. 1986, 84–86; Potter 1988, 138–40). It was also unclear who would pay for the mapping and demarcation of forests in Borneo: the civil administrators on site wanted the Forest Service of Java and Madura to pay for it, while the Java foresters wanted the regional civil administrations to foot the bill (Potter 1988). These debates were partially responsible for the failure of the colonial foresters to establish a centralized political forest in Dutch Borneo under colonialism.

In the Malay States, British administrators created no legal tradition of collective rights, nor did they empower village authorities to the same degree (Furnivall 1944). The government introduced sweeping domain assumptions through land laws. The debates surrounding land laws involved only the status of land rights allocated to peasant households; to our knowledge the British in the Malay States never considered qualifying domain through recognition of "village" territories. The government did demarcate "Malay Reservation" land where only Malays could own land but this came late in the period and did not alter the government's domain assumptions under land law (Meek 1939; Hiscock and Allen 1982, 519). The only exceptions were the reserves they considered creating for the Orang Asli, groups of people the British implicitly defined as non-Muslim, non-Buddhist peoples living in the upper watersheds (Lim Teck Ghee, pers. comm., 1994).

The debate that effectively settled the issue of local property rights took place prior to the formation of a forestry department; thus the key protagonists did not include foresters as in India, but the chief colonial administrators in charge of different states. On one side, Frank Swettenham, then British Resident of Perak, argued that Malayan rulers had no tenure at all: "the people occupied and cultivated such lands as they chose, and paid nothing for them, but the authorities . . . dispossessed the occupants at pleasure, or helped themselves to any produce that they thought worth having whenever they felt able and inclined" (quoted in Wong 1975, 18).

On the other hand, W. E. Maxwell, then British Resident of Selangor, drew on Indian sources of various kinds combined with old Malay textual references to the introduction of Hindu and Muslim law from India into the Malay States for his famous statement on "Malay Land Tenure" (1884). He also cited Raffles' "discovery" of principles of the sovereign's land tenure in Java (1884, 90–4) to argue that "property in the soil is vested in the Raja of the country" and that "the occupier has only the usufruct (*usaba* in Malay, *hak ulayat* in Javanese) or the right of possession as long as the land is kept under cultivation, the usual taxes paid, and the usual [corvée] services rendered" (quoted in Kratoska 1985, 133). His tour-de-force was his use of the colonial foresters' argument about shifting cultivation. Maxwell was not a forester but drew on Indian colonial forester Baden-Powell. Citing the ideas of this proponent of strong colonial state controls on land rights, Maxwell described extensively the destructive effects of "primitive" shifting agriculture in various Asian countries, making an argument to control its spread in the Malay States. Maxwell's position won over that of Swettenham, in turn providing the basis for the forestry department's strong claims on forest territory and products.

Such disjunctures among colonial officers' interpretations of local history to justify their governance strategies indicate the degree to which territorial domain assumptions were as much or more inventions of the colonial authorities as applications of specific local histories. Wong argues that the sultans at the time of British intervention were little more than symbolic heads or local chiefs with some claim on the labor of people living in settled portions of their limited realms (1975,

14–16). They had no notion of either paramount ownership of these lands or the authority to control access to the peninsula's extensive forested lands. Despite these weak historical precedents, the British in the Malay States made their domain claims strong through land laws. Compromises made to local people's practices occurred locally, in an ad hoc manner, and were case-specific.

In indirectly ruled states such as Kedah prior to its transfer to British authority in 1909, the sultans adopted theories and practices similar to those of British rulers in the Federated Malay States, using British notions of state rights to land. For example, in 1883 the Sultan of Kedah issued proclamations imposing land taxes and requiring permits for clearing forest land (Wong 1975, 20; Zahir 1989). In 1906, while the region was still formally part of Siam, the Sultan of Kedah introduced the more comprehensive Land Enactment in consultation with the British Financial Advisor to Kedah. He used the language of land "rents" rather than "taxes," further implying that all land was owned by the Sultan. The enactment also specified that land abandoned for seven years "reverted back" to the government—as if it had always been the Sultan's to give (Ahmat 1984; Zahir 1989, 50). These policies were meant to establish territorial claims against the King of Siam as well.

In other parts of Siam, the Bangkok government claimed domain in two ways resonant with the patterns that we have identified. H. A. Slade, the first head of the Forestry Department, claimed ownership of otherwise unoccupied and unclaimed land in the north for the Bangkok king and the Forestry Department in 1899 (Chalermrath 1971, 75; Mekvichai 1988). For the king, this declaration was primarily intended to claim valuable stands of teak for the central (royal) government, while for Slade it was also a prerequisite for scientific forest management of these stands.⁵⁸ In addition, the government introduced land laws during the late 1800s based on the presumption of the king's rights to ownership of all land not held by individuals under the land code.⁵⁹ However, unlike the Malay States, Siamese discourse framed new land laws as the king's decision to relinquish his "ancient territorial rights," passing these rights to the legal holders of land rights under Siam's new land laws, and thus creating private property in land. This interpretation has been accepted even by scholars who are otherwise critical of the standard account of Thai history (e.g., Nartsupha and Prasartset 1981, 191). Most important for our argument, this standard account accepts that the king continued to own all other land in the kingdom. In the absence of any notion of a "native" law different from Siamese law, domain in Siam was not qualified by provisions for collectively held "native" rights.

Although domain assumptions also entered into legal practice in Sarawak, the Brookes went furthest of all the rulers in the study region in creating territorial native rights as qualifications on domain. James Brooke believed that the suzerainty of the Sultan of Brunei to the territories of Sarawak, Sabah, and Brunei "did not consist in rights of ownership or other rights in the land itself." Land is not mentioned in the deeds of transfer of Sarawak territory from the Sultan of Brunei to James Brooke, and even the cession payments are not related to the area of the land ceded in 1841 (Mooney 1989, 240). Indeed, even before the transfer, James Brooke recognized and noted in his journal that local people had preexisting rights in land and trees. The Code of Laws introduced in 1842 forbade interference with native customary law;

⁵⁸National Archives of Thailand MR 5 M/41/1 (Report of the Royal Forest Department for RS 119 [AD 1900–1901], 6–8).

⁵⁹Siam eventually imported the Australian Torrens system of land registration, following the British in the Malay States.

“immigrant races” could only settle on unoccupied land. Brooke’s later policies were heavily influenced by the Dutch legal pluralist position on native rights and plural communities (Hooker 1978). After this, attempts at government control became more strident, and they eventually tried to set spatial limits on native land use by limiting rights.

Even in Sarawak, the Land Order of 1863 established domain by formally claiming government rights to “all unoccupied and waste lands” (Hong 1986, 39–40), defined as those lands outside of territories where natives could hold land as the “customary land rights of natives.”⁶⁰ This allowed the government to allocate any land not classified as customary land and not already held under the land orders to plantations or other private users. The ambiguous implications of the 1863 Land Order have since become the object of widely varying interpretations, ranging from those who see it as a clear concession by the Brookes to the native system of customary rights (Richards 1962; Porter 1967; Mooney 1981) to others who frame it as the first step in a “progressive restriction of Dayak autonomy in land matters” (Hong 1986; see also Cramb 1992, 6; Kaur 1998b, 32). These interpretations are not mutually exclusive, however.

To conclude, colonial legal assumptions of state domain and jurisdiction were not consistent with precolonial local practices and power relations, particularly in the areas colonial authorities identified as natural forests. To our knowledge precolonial rulers generally did not try to exercise permanent, absolute, or direct control over land in their realms, especially in distant forest areas (Pigeaud 1962, 472; Moertono 1981; Dove 1985; Peluso 1992; Thongchai 1994; Vandergeest 1996; cf. Reid 1988). Their capacity to extract surplus in many forested areas was typically weak and limited to rights to tax the trade of certain commercial “forest” products (e.g., Lowe 1848; Wolters 1970; Hall 1985) or at most, to tax labor. Even collecting percentages of the forest people’s productions was an onerous task much of the time (Onghokham 1975; Scott 1976; Benda and Castles 1969; Cordes 1881; Boomgaard 1988; Peluso 1992).

Local property rights had been more often based in people (labor), resources, or products (trees, crops) rather than in the land itself. Land unclaimed or unused by individuals, families, or other groups might be considered either open access or community (village or longhouse) land but was rarely, if ever, “owned by” distant rulers. Local people did not automatically consider long-fallowed land to be abandoned, although some may have (see, e.g., Bergsma 1880). Peasants often moved from agricultural areas to forested areas or moved to another ruler’s domain to escape excessive demands of local or regional rulers, as has been well documented for all of Southeast Asia (Pigeaud 1962, 471; Moertono 1981; Scott 1976; Dove 1985).

Domain declarations prepared the legal grounds for state claims on forest products and forest land, despite the tenuous nature of their historical justifications and the difficulties of implementing the states’ intentions in the years immediately following them. In some cases it was many decades before colonial or postcolonial state institutions could implement these claims. By putting domain principles and land laws in place, however, colonial authorities attempted to justify colonial state rule and established mechanisms intended to discipline both the native populations and the states’ own agents and agencies.

⁶⁰The 1863 Land Order also reserved all mineral rights to Rajah Brooke.

Creating the Political Forest II: Making Forest Territories and Forest Species in the Law

Political forests emerged at different times in different parts of the region we examine. In the previous section we described how, through domain declarations and land law, colonial governments in Southeast Asia separated peasant or native land from state land and how the specifics of these processes established legal foundations for state property in forests. Much state land was subsequently leased to commercial interests such as plantations and mines. Our focus here is on other state land that was allocated to government forestry agencies and the creation of the political forest in law. The colonial model of a political forest separate from other land uses did not necessarily fit the view of the landscape held by rural people and rulers prior to the colonial era. We see the political forest as a specific and crucial type of colonial forest practice.

Land law and forest law were designed to occupy separate realms of colonial disciplinary practice. They remained connected, however, by their mutual origins in domain declarations and their very definition as separate realms of power, political practice, and life. Permanent political forests reserved, mapped, and demarcated as such by the state could not be alienated to individuals or households.⁶¹

Our comparative research has shown that territorial approaches to establishing the political forest were not immediately or inevitably possible in all the regions we examined. The tremendous task of demarcating forests reserved for the state approached completion only in Java and the Malay States before the Second World War. Physical, technological, and political-economic obstacles precluded this result in Sarawak, Siam, and Dutch Borneo. The forest departments in all three of these regions lacked the capacity to demarcate and control large expanses of reserved forests.

Despite their inability to territorialize their political forests, however, proforestry colonial-era authorities in Siam, Sarawak, and Dutch Borneo were able to achieve three things that served as the foundation for postwar legal and institutional efforts to do just that. First, they began to normalize the idea of “forests” as separate biological entities that required or deserved separate forms of management from other forms of agriculture. Second, they established differences (which also varied by place) in the kinds of species that were considered “forest” species, as opposed to “agricultural species.” This mirrored the territorializing process in that alienated state land was opposed to “free” state land, eventually to become agricultural (or native or household) land and (state) forest land. Third, just as forests were to become political territories in the wake of (or concurrently with) their scientific “discovery,” definition, and categorization, forest species were politically defined and managed through species laws, policies, and controls. This section examines the political forest in its territorial and species dimensions, showing how various actors across the region worked specifically to create political forests, while the idea of them became normalized.

State Territories: Reservation

By forest reservation is meant the setting aside of areas for permanent maintenance under forest. Nothing short of permanency of tenure will secure the necessary

⁶¹The category of land/forests in the Malay States called “state forests” could be alienated, however, as could equivalent categories of state-claimed forests in Sarawak and even Java that were not as yet formally gazetted. The property rights of the state forestry institutions were much weaker in these areas than in their state-reserved forests. This specific use of the term “state forests” should not be confused with our more general use of the term state forests.

continuity of management over long periods of time or justify expenditure on the demarcation, protection, and management of a forest.

(Troup 1940, 117)

Troup's comment crystallizes the reasoning behind the creation of the political forest. Cloaked in the language of "long-term management," scientific forestry requires the assurance of territorial integrity controlled and controllable by professional foresters. When professional foresters are employees and agents of the state, the state maintains a stake in the integrity of those forests as well. Through state forestry, the science and the politics of territorial control go hand in hand.

The initial mechanism of state territorial forest control is the gazetting or formal reservation of forests through a permanent excision of substantial areas from the broad category of state land. A particular state agency (a forest department, service, or ministry) assumes jurisdiction—a form of property rights—to these enclosed forest territories. Demarcation during the colonial period was often preceded by official investigations of local uses, formal procedures for "settlements," and field mapping of the area to be (or already) demarcated.⁶² Territorial control requires strong state commitment after demarcation, including maintenance of boundaries, ground patrols, and the arrest, prosecution, and punishment of violators. To establish and maintain such territorial controls requires a forest department powerful relative to other state agencies or the continued cooperation of the civil administration, since demarcation and protection imply significant policing and curtailment of access (Bryant 1997; Guha 1990).

The Dutch in Java took their initial approach to forest territorialization directly from the tenets of German forestry (Cordes 1881). The Malay States, Sarawak, and Siam, however, followed the rest of the British Empire in modeling forest demarcation laws on those in India and Burma (Troup 1940, 117–36). Debates in India and Burma over the status of local rights had produced three outcomes: the Indian, Madras, and Burma Forest Acts. The Indian Forest Act of 1878 provided for three categories of forest: (1) reserve forests, where both entry and all local uses without a permit were prohibited; (2) protected forests, where clearing and agriculture was prohibited, but other uses subject to species laws were allowed; and (3) village forests, where villages exercised jurisdiction. In Burma, where the debate focused on the protection of valuable teak, and where the forest department was relatively strong, the 1881 Burma Forest Act kept only the most restrictive "Reserved Forest" category and dropped the Indian provisions for the less restrictive "Protected Forest" as well as "Village Forest" categories. The Madras Forest Act, passed in a state where there was a long tradition of communal forest management and strong civil opposition to restrictive forest laws, was much more lenient (Bryant 1997, 58); this act was not influential in Southeast Asia.

Java, the Federated Malay States, and Kedah, all of which had relatively well-staffed forest departments and considerable political-economic dependence on forests (albeit each for different reasons) pursued forest reservation most vigorously. The victory of the strong state position in Malayan land law debates (discussed above) plus the region's political economy, may have facilitated the adoption of the harsh forest laws based on the Burma Forest Act.⁶³ Each of the four Federated Malay States passed

⁶²Toward the end of the colonial era, aerial photography was frequently used to make maps (Sarawak Forestry Dept. Reports 1930s; Departemen Kehutanan R.I. 1986).

⁶³And later, during the Emergency, caused the eviction of cultivators.

identical forest enactments around 1907, which were later combined into a federal enactment, revised in 1918 (Cubitt 1920, 10). Kedah enacted a shorter version of the FMS Enactment in 1918, revised in 1926/7. These enactments provided only for the most restrictive category of reserve forest, in which no person could “trespass, or pasture cattle, or permit cattle to trespass; or fell, cut, ring, mark, lop, or tap any tree, or injure by fire or otherwise any tree or timber” (Voules 1921, 608).

In Java, territorial policies were first carried out in forests being managed for teak, a species which was particularly amenable to single-crop, long-term plantation production in the low limestone hills of the central-eastern parts of the island. This was where state forestry began in the Netherlands East Indies. As the Forest Service grew and concerns about the conservation of the uplands spread for reasons of climatic control, erosion control, and the protection of lowland agriculture, the Service sought to find ways to pay for its conservation activities in the nonteak forests in the uplands. The plantation production of nontimber products in the nonteak districts, including pine resin, copal, quinine, rattan, rubber, and coffee—at least until the legal redefinition of some tree crops from “forest products” to “agricultural products”—was intended to finance conservation and production activities, but had limited success. Territorial control and increased production in the teak districts became even more important, therefore, as a means of funding all forest-management activities, even in districts without teak. By 1932 all of Java’s approximate 800,000 hectares of teak forest had been mapped, and each of the thirty-two forest districts had its own management plan. Several hundred hectares of nonteak forest were also mapped and boasted management plans. An additional 1,700,000 hectares more had been designated as State Reserved Forest (*Verslagen van den Dienst van het Boschwezen* 1933; Peluso 1992).

Territorial approaches to controlling local people’s access to the dispersed, highly seasonal products found in the vast rainforest tracts of Sarawak and Dutch Borneo were difficult to legislate and enforce (see, e.g., Jessup and Peluso 1986; Potter 1988; de Beer and McDermott 1993). The territorialization of resource control was both expensive and difficult, particularly prior to the technological innovations facilitating physical access to forests in the post-World War II period (Leigh 1998). In the case of the Netherlands East Indies, an ordinance was enacted in 1924 that enabled the establishment of forest reserves in the Outer Islands, including the Borneo territories, differentiating “reserved” forests from “unclassified” ones. Actual reservation and demarcation was nominal in South and East Borneo. Political-economic factors such as inter- and intra-agency conflicts over the financing of reservation, the world depression, and debates over state domain in the Outer Provinces slowed reservation attempts (Potter 1988, 138–141; Departemen Kehutanan R. I. 1986). Reservation of forests began in West Borneo in 1931 but did not get well underway until 1937, held up for similar reasons as in South and East Borneo. Nevertheless, the Forest Service began exploration and inventory in both West Borneo and South and East Borneo in 1924 (Potter 1986, 136; 1988, 136; Oberman 1938, 59). Results were recorded on vegetation maps that indicated primary and secondary forest areas, as well as grasslands and agricultural land.⁶⁴

Forest boundary mapping as a disciplinary, territorializing form remained merely an idea in colonial Dutch Borneo; it was tempered by the greater degree of control granted local “rulers,” even those appointed by Dutch authorities. A territorial

⁶⁴These forest vegetation maps were used by the Indonesian Department of Forestry to allocate concessions as late as the 1970s (Potter 1988, 136–37).

political forest in Dutch Borneo was therefore almost nonexistent. While district maps were not completed, and the idea of “forest management” in Borneo was extremely contentious during this period, it is noteworthy that vegetation maps even existed. Such maps contributed to later Indonesian government claims of sovereign rights over those “forests.” In other words, it was not the type of map information that mattered (i.e., vegetation versus forest use zones). Rather, the claim to state sovereignty over forests later was based partially on the *intent* to map and control the territory, implied through state sanctioning of “scientific” mapping.⁶⁵

Besides some game reserves (see next section) the only other types of territorial conservation strategies under the Dutch were the nature monuments (*natuurmonumenten*) and biologically rich areas set aside for research. The nature monuments tended to be small and were set aside as tourist attractions—a kind of early commodification of landscapes for viewing. Although they provided very limited protection (Cribb 1997, 343), they did make another kind of early ideological connection to territorial protection of a fragile, unique, and separate nature, represented by these rainforests.

Forest demarcation in Sarawak prior to World War II was based on the Forest Rules of 1919, passed the same year the Forest Department was formed. Similarly to Dutch Borneo and Siam, the Brooke government in Sarawak lacked both financial incentives and the political means to implement a widespread territorialized forest regime. Although Sarawak began gazetting government forests in the 1920s, greater profits could be made by controlling the trade in forest products (see below). By 1927 only 252,531 acres, or about 114,605 hectares, had been demarcated as reserves. A new Forestry Order issued in 1934 differentiated the categories of Reserve (permanent) and Protected forests. Protected forests, as in India, permitted a great deal more access to indigenous people than Reserve forests. In 1940 “Communal Forests” were added as a category of state forest, again to alleviate some of the dissatisfaction of local people with the government’s reservation activities. Nevertheless, by the end of 1940 only 5.5 percent of Sarawak’s land had been demarcated as forest (Smythies 1961; Kaur 1998b, 64).

Most forest policy language in Sarawak under the Brookes acknowledged some territorial claims of native peoples. To be sure, forestry reports and documents prior to World War II are peppered—albeit relatively lightly—with foresters’ comments about the “wasteful” nature of shifting cultivation. However, when compared to the legal and ideological apparatus constructed against swidden in other parts of the region—and in Sarawak itself in the later decades of the twentieth century—these protestations appear mild (cf. Hong 1986; Kaur 1998b). Moreover, the legislation of protection forests as state forests where certain people (“natives”) could hunt and gather some subsistence products, and later of communal forests, suggests the intense negotiations around forests and their excision from the agricultural landscape as it existed and was perceived at the time. Of course protection and communal forest categories constituted a compromise on both sides in that these forests were ultimately the state’s jurisdiction.

In comparison to the extractive regimes set in place by neighboring Dutch and British colonial administrations, Sarawak’s Brookes certainly appeared more benevolent. The Brookes’ long-touted commitment to the people’s welfare, however, may simply have covered up their shortcomings in administrative and extractive capacity. Nevertheless, in “looking back” at the ways these policies and practices are

⁶⁵We are grateful to Tania Li for discussing this point (Li, pers. comm., 1999).

discussed in the *Sarawak Gazette* and other contemporary sources, it seems that Sarawak's administrators had not yet made the shift to thinking about forests as entirely separate from agriculture.

After Sarawak became a Crown colony under British rule in 1946, it retained much of its legacy of native rights. Some aspects of colonial rule, however—including forest management—were targeted for immediate transformation. This set in motion a more territorialized approach to forest control. The postwar Annual Forest Reports of Sarawak practically explode with foresters' anxieties about native practices such as shifting cultivation; there is then a frenzy of writing, legislation, debate, and territorial demarcation (*Sarawak Forest Reports*, 1950s). Capital investment in the timber trade also accelerated at this time, driving the institutional and ideological changes (Leigh 1998). As part of the British Crown Colony's approach to forestry, the government adopted Indian-based reservation laws in its first Forest Code of 1953. In a manner consistent with the Brookes' relatively lighter tread on the natives, they also adopted all three of the Indian Forest Act categories: "permanent" (both reserve and protection), "stateland," and "communal" forests (Hong 1986).⁶⁶ Moreover, native advocates within the new colonial bureaucracy saw the potential for future erosion of these rights with the implementation of the Forest Code and the passing of the Sarawak Land Code in 1958.⁶⁷

In Siam, the colonial view of forests as separate from agriculture, with people kept outside, also had not yet taken full hold. Until the 1930s, the bureaucrats in Siam resisted pressure from the Royal Forestry Department to make laws enabling the reservation and demarcation of state forests. A key reason was that the powerful Ministry of Interior was concerned about restrictions on local people's forest access. Thus it wasn't only that the Siamese king had few political-economic resources to create political forests; he did not have the inclination to establish them. Instead, like the Dutch in Borneo and the Brookes in Sarawak, the Siamese issued concessions to regulate teak extraction by British companies and used species laws to tax the extraction of nontimber forest products.

The Thai bureaucrats who took over the government from the Siamese monarchy in 1932 were more interested in adopting "modern" forms of forestry, enacting laws in 1938 to enable forest demarcation. This law was lenient relative to other British-influenced colonies: like Sarawak, it allowed for both protected and reserved forests, and the regulations accompanying the law permitted certain forms of low-impact use even in reserve forests (Vandergeest 1996). Again, this shows how timing of bureaucratic territorial controls put something of a damper on foresters' ability to assert strong property rights. The Siamese law did not provide for communal territorial authority through a category of village or customary forest, however, or make provisions for village administrative territories.

The Special Case of Wildlife

Territorialization of forests was complicated by the emergence of wildlife or nature preservation movements during the late nineteenth and early twentieth centuries in parts of the British and Dutch empires. Consistent with other ways in which Java

⁶⁶In practice, however, very little territory was ever zoned as communal forest.

⁶⁷Anthony Richards, a former District Officer, was hired to analyze this situation and produced an important discussion of the relations between land law and *adat* in Sarawak at the very end of the period of British colonial rule (Richards 1962).

and the Malay States were differentiated from Sarawak and Siam, wildlife protection became a legal concern only for the stronger states in our study—neither the Siamese nor the Brookes in Sarawak showed much interest in restricting local access to forest-based fauna during the early part of this period. With pressure from the British and budding non-government conservation organizations, wildlife laws spread outside Java into other parts of the Netherlands East Indies. Those areas contained many exotic wildlife and possibilities for commercial hunting—especially for the fantastically rich bird species (Cribb 1997).

As in India, most early wildlife protection laws took the form of species controls. As in India, territorialized wildlife protection eventually came into being as habitat protection (MacKenzie 1990; Cribb 1997). The first stages of territorialization were typically game reserves, in which access was allowed for hunting certain animal species and nothing else. Subsequently, wildlife sanctuaries and national parks were created out of some game reserves. In these territories, any habitat disturbance was criminalized. Laws barred all human entry other than that regulated by park or reserve authorities.

These restrictions were as difficult to enforce in Southeast Asia as they were in India and Africa (see Mackenzie 1990; Neumann 1998; Sivaramakrishnan 1999). Wild meat had always provided an important source of protein throughout the area, and some species such as wild boar, monkeys, and deer posed threats to people's crops (these animals were often called vermin, as in India) (Cribb 1997; Sivaramakrishnan 1997). Both farmers and, more importantly, plantation owners opposed and violated laws protecting wildlife that destroyed crops (Aiken 1994). To account for these problems, some laws protected local people's rights to hunt for subsistence. The hunting of "noxious species" (including, in the Netherlands Indies, orangutans, tigers, pigeons, kingfishers, ricebirds, and barbets) was often permitted by law as well (Cribb 1997, 396).

Although the Indian model was to place game and wildlife protection under forest department jurisdiction, here other agencies controlled territories carved out of state land as national parks. For example, the British in the FMS demarcated ten game reserves during the 1920s and put these under the jurisdiction of State Game Wardens. The reserves were constituted by reluctant state governments in response to lobbying by former big-game hunter Hubback (1924, 1926) through the London-based Society for the Preservation of Wild Fauna of the Empire (SPWFE). Even though the wardens had no enforcement staff, opposition to the reserves from rubber planters caused the government to degazette several of them within a few years (Jacobson 1990; Aiken et al. 1982). In 1930 the FMS government set up a Wildlife Commission. The result of their three-volume report in 1932 was the creation of a Game Department outside of the Forest Department and the constitution of two national parks in the late 1930s. Territorial controls for wildlife remained unpopular, however: by 1963 the total territory under wildlife protection by the end of the colonial era in what was by then West Malaysia was about 5 percent (Aiken 1994, 51).

In Java, most game reserves were under the Forest Service, though a hunting association ran one in West Java (Cribb 1988a, 342). Territorial controls for wildlife protection or other conservation efforts were minor, compared to the emphasis on species protection laws. Birds attracted much of the international attention, and the Dutch Indies had their own Society for the Protection of Animals (*Nederlandsche Vereeniging tot Bescherming van Dieren*). The Dutch were also pressured by Britain to sign an international convention banning the trade in the plumage or skins of wild birds (Cribb 1997, 394–95). The convention was unsuccessful, but the Dutch soon

passed protective legislation. Wildlife protection was also hampered in the 1930s by the opposition of Indonesian nationalists who were increasingly affecting colonial policy and practice. For these nationalists, conservation efforts to prevent locals' hunting and wood-cutting were largely regarded as yet another expression of colonial oppression (*ibid.*, 343).

To sum up about forest laws based on territorialization, colonial-era states in our study pursued the territorialization of legal access to political forests in three ways, each of which involved allocating state land to specific agencies or people. First, the stronger states embarked on ambitious programs of state forest demarcation under the jurisdiction of forest departments. Native lands were consolidated into contiguous village or settlement territories where possible, though forest enclaves inevitably remained. Second, the strong states also began to demarcate game reserves, national parks, and other protected areas, which were placed under the same or separate government agencies as forests. While laws for reservation were passed for Dutch Borneo, Siam, and Sarawak, they all embarked on reservation quite late in this period, and accomplished much less in the area of territorial forest management than Java or the Malay states. Finally, Sarawak allocated territories (communal or village forests as well as native customary lands and reserves for swidden and forest product collection) to local villagers and longhouses for forest-based cultivation. Sarawak can thus be seen in some ways to be somewhere in the "middle" of the stronger and weaker territorial forest modalities. Territorial strategies were only one part of the political forest, however. The next section addresses species-based controls.

Species Controls as Precedent and Alternative to Forest Territories

Species controls on forest access had two components, which were sometimes consecutively enforced and in other cases concurrently enforced: (1) taxes on trade of forest products and (2) laws "reserving" certain species or products as state property and making the extraction, transport, and sale of that product subject to permits, fees, and various regulations. Once forest departments or bureaus were set up with different jurisdictions from other agricultural divisions or departments, it became increasingly important to define certain species as "forest species" as opposed to "agricultural species." Forest species were at first defined as those which were deemed "wild" and "uncultivated." "Woody" species were also in the purview of forest departments. In some locales, all tree crops were initially under the jurisdiction of the forest service, but as cultivation practices changed—especially the plantation production of economically important tree crops like cinchona, rubber, and coffee—they became the domain of agricultural services. These differences in definition also helped to constitute concurrently the separate spheres of "forest" and "agricultural" jurisdiction: foresters would not plant cinchona trees on state forest lands in Java. To do so would risk those lands' excision from the jurisdiction of the Forest Service and a reduction in its territorial power.

Throughout the late colonial era, both trade taxes and species reservation laws were crucial where forest departments were relatively weak and where territorial controls by even strong forestry departments were difficult to enforce. Species controls were most important in Dutch Borneo, Sarawak, and Siam until the end of the second world war. In Java and the FMS, they remained important throughout the colonial period, but the nature of their importance changed as territorialization proceeded. This was particularly so on state lands that were not yet demarcated as reserved forest

but were claimed by the government. The species laws allowed the forest departments some jurisdiction over the practices on these lands.

Just like territorial policies, species laws in the British-influenced states were often copied from nineteenth-century species reservation policies in British India and Burma (Haeuber 1993). Yet the practice of claiming/reserving species for the state (or a king or other ruler/strongman) had strong historical roots in Southeast Asia, like royal monopolies on elephants in Siam or particular stands of teak in Java (Cordes 1881; Mekchivai 1988). As mentioned above, the initial pattern of colonial extraction had been to gain control over trade monopolies and tax farms for the extraction of forest products which were an important source of state revenue from forest products in nineteenth-century Siam, Java, Dutch Borneo, the Malay States and Sarawak (Wolters 1970; Steinberg 1987; Lysa 1984; Rush 1990; Hall 1985; Reid 1993; Vandergeest 1996).

Species-control laws were more consistent both with preexisting forms of state taxation and local tenure practices than were territorial controls. Local strongmen often taxed the extraction of forest products from a territory within their control. Rights to many resources, including tree products, did not necessarily follow from rights to land (Dove 1986). A common pattern was the 1 in 10 or 2 in 10 harvest tax: for every ten units of a product taken, one or two units would be paid to the local authority who granted the collector access. Very often the person who planted a tree and his/her descendants retained rights to these trees and their fruit or other products, even after the tree holders no longer held the land. For durian trees, this practice could prevail through a tree's productive life—often over one hundred years. In the case of self-sown, valuable trees on unswiddened land, the finder and protector of the tree often had property rights.⁶⁸ Rights to such trees were usually inheritable, because their protection involved some management; and labor invested in management served as a means of communicating one's claims to trees and other resources (see Rose 1994).

In 1890 Maxwell instructed the Penghulus (local Malayan officials) in Selangor to register land and fruit trees separately (Kratoska 1985, 26). The registering of fruit trees was abandoned, however, in later versions of land laws in the Malay States. The colonial government also recognized fruit-tree rights in Java, mostly as a premise to tax coconut trees but also, presumably, to tax other types of productive trees. In Sarawak and Dutch Borneo, rights to some species of forest trees were and are still recognized in the law, but not always enforced. Tax farms for birds' nests were auctioned off by the Residents of Dutch Borneo and District Officers in Sarawak (Medway 1958, 468; Peluso 1983a; Earl of Cranbrook 1988, 156).⁶⁹ In Siam, species controls were similar to nineteenth-century tax farms on the extraction of commercial products. They included annual taxes on trees tapped for resin or sugar and continued to be collected into the 1930s (Lysa 1984; Vandergeest 1991).

Although some species-control laws made legal extraction of reserved products contingent on permits or permission, the enforcement of harvesting regulations was often impossible from afar, forcing many state authorities to be satisfied with taxes on trade. In Siam, the government relied almost entirely on species controls to regulate forest access during the colonial era. The Royal Forestry Department was set up in 1896 to enable Bangkok to take control of teak extraction from the northern rulers. The first forest laws were concerned exclusively with teak, as they had been in Java.

⁶⁸For examples, see Appell n.d.; Gomes, 1990; Sather 1993; Brosius 1977; Padoch and Peluso 1996; Van Vollenhoven 1917 in Holleman 1981; authors' fieldwork, 1993–95.

⁶⁹The Earl of Cranbrook and Lord Medway are one and the same person.

But by the late nineteenth century, Java's forest laws were highly territorial. Siam's laws remained oriented toward the trees, though its own colonial forest practices (the establishment of the forest department) engaged territorial forest politics.

In 1897, the Forest Preservation Act and Teak Trees Preservation Act (Siam) made it illegal to cut teak trees smaller than 2.1 meters in girth, while the logging of any teak trees larger than that was contingent on permits from the forestry department. This approach was extended to many other species after the enactment of the 1913 Forest Conservation Law, which enabled the government to reserve species under one of two categories: Category 1, species useful for domestic trade and consumption, and Category 2, rare and important species (Thirawat 1955, 36). In the absence of forest demarcation, the 1913 law became the basis of forest control in Thailand during the late colonial era. The government placed many species on the reserve list and continued to add species that became commercially valuable. By 1955 hundreds of forest products were reserved under ministerial regulations that frequently detailed required extraction procedures (*ibid.*, 39–49). The forest department, however, continued to focus most of its attention on teak extraction and trade and had little hope of actually enforcing most of these regulations and controls (Vandergeest 1996).

Sarawak also relied more on species controls than on territorial strategies. Changes in the Sarawak situation say a great deal about the increasing influence of the world market and other globalizing forces on political forests and state forestry. Until the first decade of the twentieth century, much of the produce exported from Sarawak consisted of forest products other than timber (Hong 1986; Kaur 1998b). Initially the Brookes ruled as the Malay rajahs and sultans in the region ruled: taxing trade, collecting some tributes. Charles, the second Rajah Brooke, began to expand his power at the same time that world markets in forest products such as tree latexes and resins expanded in response to increasing industrialization. He and his successor allocated harvest and trade monopolies—to the Borneo Company (1886–1930s) and the Sarawak Oilfields Company (in the 1930s)—and imposed export duties (10 percent) on timber (supplement to *Sarawak Gazette* 1927; Kaur 1998a, 128). Charles' farming out these monopolies turned the natives in some areas into wage laborers (Kaur 1998a, 57–58). With the establishment of the Forest Department and the Forest Rules in Sarawak in 1919, Sarawak land could be reserved as forest and managed by professional foresters. The government had little capacity to demarcate a great deal of land as political forest, but entrepreneurs remained interested in forest exploitation. The limitations of the terrain and available technology dissuaded these entrepreneurs from investing in forest plantation development or timber extraction from the interior. Local circumstances thus constrained—but did not keep out—global market forces.

The British in the Malay States used species controls to give the forest departments greater jurisdiction over the as-yet-undemarcated State Forests and particular forest products growing on alienated (private) land. State Forests were those areas that were not (yet) under land title nor demarcated as Reserve Forest.⁷⁰ Whereas in Siam and Java, the forest departments claimed only those species on the reserved species lists, governments in the FMS and Kedah reversed this approach: they claimed *all* forest products *except* those specified through exceptions.

In the Malay States, "forest produce" was not defined by its location on state forest land. For example, the 1918 Forest Enactment reserved for the FMS all forest

⁷⁰Peasants or planters could apply for permission to clear and cultivate such state land according to land laws.

produce on state land including trees and tree products, all plants, tusks, horns, silk cocoons, honey and wax, and edible birds' nests; it also reserved "timber, firewood, charcoal, latexes, getah taban leaves, wood-oil, bark, extracts of bark, damar, and thatch" as forest produce whether they grew on private or state land (Voules 1921, 603). The Forest Rules also specified that no forest produce could be removed from alienated land without a license (Allen 1938, 1680). The British Resident of each state was given the power to regulate the collection and removal of forest produce by licensing; to regulate commercial transactions in forest produce, to prohibit possession of specified kinds of forest produce, to prescribe fees and royalties, to establish procedures for the extraction or movement of forest produce, and to prescribe penalties for failures to observe these regulations (Voules 1921, 608–09).

From 1918 onwards, Kedah and other Unfederated States enacted laws and Forest Rules based on the FMS laws. The law in Kedah was somewhat more lenient than that in the FMS: people could remove *cultivated* forest produce from alienated land; however, produce defined as *uncultivated* could be removed from alienated land only if the forest department granted the collector a permit (Kellagher 1934, 73). Forest Rules enacted later filled in the details of how the extraction, movement, and sale of forest products from state or private land were to be regulated, including long schedules specifying royalties on specified species (see, e.g., Kellagher 1934, 78–89, on Kedah). Overall, species laws in the Malay States demonstrate that these British colonial authorities took a rather extreme position with respect to the state's resource rights.⁷¹

The Dutch teak monopoly in Java did not preclude people from growing teak on their own land, but it formally forbade their selling or transporting it without a purchased government permit (Peluso 1992). Unlike in the Malay States, however, the presence of strong proponents of native rights made it difficult to extend monopolistic species controls beyond teak or to forest products on alienated land. The question of species controls was thus subject to long debates and changing government policies. The Regerings Reglement of 1854, for example, recognized and aimed to safeguard customary rights over "virgin" land/forest products; these rights were supported by later regulations such as *Staatsblad* 64/1856 and *Bijbladen* 377 and 2001 (Holleman 1981, 182; Burns 1999). Van Vollenhoven and his followers pressed for greater recognition of customary rights over the forest resources being mapped out of legal reach every day (*ibid.*, van Vollenhoven 1925). By the late nineteenth century, however, the forest department had prevailed (in the law at least) in curbing customary rights to cut wood or farm on gazetted and soon-to-be demarcated forest lands. Restrictive laws such as the *Staatsblad* and the Reclamation Ordinances (Forest Laws) of 1874 and 1896 and the Agrarian Law of 1870 had virtually negated any assumption of villagers' free rights of access to the forest products in forests claimed by the state (Peluso 1992).

The Ethical Period witnessed strong pleas in favor of villagers' claims.⁷² The creation of limited native representation in the Volksraad (People's Council) also lent

⁷¹Michael Dove's (1996) claim that everything of value belongs to the state while the locals get the leftovers or "minor" forest produce for "subsistence" clearly applied to these colonies.

⁷²At the turn of the century, the NEI government began a series of policies ostensibly aimed at improving the welfare of the rural populace of Java. Shocking reports on the declining welfare of the populace led the government to try to develop programs for improving nutrition, health, education, etc. Thus this period is known as the Ethical Period (Tjondronegoro 1984, xii).

some support to the village cause, though the Council was scoffed at by some nationalists as being coopted (McVey 1965). At the same time, pressures from Dutch settlers, the teak industry, and the foresters themselves, mitigated by fears of the nascent communist and socialist movements of the period (McVey 1965), created circumstances that favored the foresters. Despite these political debates and changes in the law, of course, people continued to collect fuelwood, medicinal plants, and wild tubers, and to “steal” teak even in the heavily patrolled teak forests of Java.

In some cases, colonial governments found it expedient to allow the extraction of forest products without permits. This was true, for example, of illipe nuts in Sarawak and Dutch Borneo.⁷³ The annual yields of illipe are unpredictable, as they follow irregular masting patterns in the forest; the trees are subject to complicated inheritance patterns involving hundreds of potential claimants per tree. The nuts are highly perishable, and irregular transport by river made them risky. In Sarawak, the colonial government recognized illipe nut trees as cultivated by local people, labeling them “agricultural” species. Other examples of unregulated products include bezoar stones and animal skins. Taxing their production or collection was difficult and unprofitable; it was simpler to tax the trade. Formal property rights and “tolerated” local access mechanisms were tied up with native subsistence rights and the relative value of a products’ trade.

The legal protection of wild animals was a more specific form of species controls on “forest products,” but not a very effective one. In the Malay States, as in the NEI, the first such laws were passed in the Straits Settlements as a response to European bird protection movements and were intended to protect wild birds hunted for their plumage (Jacobson 1990). In 1902–3, the Federated Malay States took four further steps to protect wild animals: they (1) enacted a more comprehensive Protection of Wild Animals and Birds Act, which enabled Residents to declare closed seasons; (2) prohibited the unlicensed killing of wild animals and birds listed in attached schedules; (3) provided other protections for rare birds; and (4) prohibited the killing of female elephants and immature big game (Hislop 1961, 136; Voules 1921, 56–67). Top British officials and other persons specified by the Residents were exempted from these regulations (Voules 1921, 56–67), thus enabling them to hunt at their pleasure. However, planters’ opposition to these wildlife protections and official ambivalence resulted in minimal funding for game wardens, the provision of various exemptions, and weak enforcement procedures for these laws (Aiken et al. 1982, 128–9). In particular, the laws did not provide for direct enforcement by game wardens and were thus dependent on enforcement by the police and forest officers.⁷⁴

In the NEI, a law was passed in 1905 to prevent the hunting of tropical birds and was extended in 1908 to protect all mammals and birds in the wild, except those required for research (*Staatsblad* 1909, 497). Penalty provisions for this ordinance were not established until 1924 (*Staatsblad* 1924, 234). The Game Ordinance of 1931 provided detailed procedures and categorization of hunting technologies and types of game, and established hunting seasons and licenses. While game laws were originally enforced by the Director of Agriculture, Industry, and Trade, hunting permits were put under the authority of the Forest Service in 1940 (*Staatsblad* 1940, 248). Restrictions on the trade in some animal body parts were also set down. As elsewhere, wildlife were difficult to protect, given their subsistence, cultural, and export value.

⁷³Illipe is the nut of various species of *Shorea*; it is one of the products classed under the trade name of “cocoa butter.”

⁷⁴Interviews in Kedah and elsewhere show that rural people continue to break these laws through hunting protected species and in reserve forests with little fear of state sanctions.

Over the long term, colonial legislation in Java, the Malay States, and Sarawak increasingly tied forest product rights to land classification, even to the extent of territorializing some wildlife habitats as parks and nature reserves. As the political forest took over, local people's rights to the products of state forestlands would be slowly curtailed. The area of *undemarcated* state land slowly decreased (less so in Sarawak) due to both increased forest reservation and the expansion of land alienated for plantation or smallholder agriculture. These laws and colonial forest practices normalized not only the notion of the territorial political forest but also influenced the conceptualization of local resource rights in territorial terms.

Creating the Political Forest III: Customary Rights and Criminalized Practices

The codification or other means of creating and reifying "Customary Rights," frequently based on racial or ethnic categories, is inextricably intertwined with the discourse of the political forest. Although forest laws aimed to extend and specify state claims on forest resources, pressures from civil and other officials, as well as the practical politics of implementing these forest laws, led to the creation of Customary Rights. These were, in effect, qualifications to state foresters' claims. Importantly, colonial-era states justified their policies not only by claiming historical precedents in the practices of precolonial rulers but also by making provisions for their subjects' access to resources. But Customary Rights were set down in the foresters' laws, shifting the terms of future debates to the foresters' discursive and conceptual realm—i.e., the realm of the political forest. This intertwined production of forest laws and Customary Rights produced multiple new illegalities, which became—in the new language of forest governmentality—"forest crimes." Colonial forest law and its provisions for Customary Rights thus left important legacies for the territorialization of resource claims by future nation-states and their future citizens.

These laws also racialized access to forest products and land in ways that left powerful postcolonial legacies. In Southeast Asia, this dimension of colonial racism has yet to be extensively explored.⁷⁵ Such racialization can occur under various conditions. It is exclusionary when whole racial or ethnic groups are denied land ownership rights by law (as Chinese were in the Netherlands Indies) or in practice (as Penan/Punan were in Borneo); it is inclusionary when ownership and use rights of certain lands are granted based on race and ethnicity or "native-ness" (what today would be called indigeneity), as with the use of categories such as Siamese, Dayaks,

⁷⁵Some of the African literature has begun to do this, however; see Mamdani (1997) and Berry (forthcoming), for example. One reason for this might be the alienation of the two key literatures dealing with "difference" and "othering" under colonialism. Immediately following the general postmodern turn in US social science studies of power (which came after the European turn), the work of Stoler and Cooper (1997) and Stoler (1995, 1997) provided an excellent re-analysis of the racial dimensions of colonial policy, depending in large part on Foucauldian ideas. Their emphasis is on personhood and subjectivity, hardly (if at all) touching on territory or the racialization of land rights, not to mention the political forest. The other literature is that on legal pluralism, dominated by Africanists and scholars of the Pacific Islands. This literature speaks predominantly to a community of legal anthropologists and lawyers-turned anthropologists (Tamanaha 1993). M. B. Hooker's studies of legal pluralism in colonial Indonesia and Malaysia illustrate the racial basis of "native" land laws (e.g., Hooker 1978), following, in a sense, the work of the Leiden school.

Pribumi, and Malays.⁷⁶ Racialization can also occur when whole categories of land use are created—in this case, the category “forest”—in a process which entails the progressive elimination of people from the parts of that landscape that are called forests. When the eliminators are one race (white Europeans) and the eliminated are another (Asian subjects), a *de facto* racialization occurs, even if it is not intended. Political forests thus become landscapes of racialization, riddled with rules and exceptions to those rules. Some exceptions are based explicitly on racial or ethnic status. The ways Customary Rights are constituted “within” and “outside” these forests thus becomes important to the remaking of the environmental imaginary.

People’s access to the political forest needs to be understood in the two forms we use heuristically here: “customary practices” and “Customary Rights.” There are three arenas of tension within and between these categories. First, there is the tension between customary practices and Customary Rights. The term “customary practices” refers to a universe, as it were, a multitude of local practices by which people organized (or simply assumed) access to land and resources for swidden agriculture and the collection or production of “forest products.” Prior to the creation of the political forest, many customary practices existed in these working agrarian landscapes. A more limited set of these customary practices would be those operative at the moments when restrictive colonial policies and state counter-claims were being established or enforced. Customary Rights make up the most limited subset of these practices or uses: comprising only those recognized, defined, and codified by colonial authorities and their collaborators—government anthropologists, surveyors, settlement officers, and “native rulers.”

Customary Rights were regulated under terms and with objectives set by the state, implemented at the discretion of the state and its agents. As part of the negotiation processes over legal access, some local people were able to make knowledge and proprietary claims about custom, which were expressed to colonial authorities. Not all of these preexisting practices were acceptable to or accepted by colonial lawmakers; thus Customary Rights need to be understood as a constructed discourse.

The second arena of tension comes within the state itself, reflecting the concerns of the domain debates. Some state authorities wanted to acknowledge some customary practices as Customary Rights, while others were opposed to this. When and if the Customary Rights advocates prevailed in some of the internal state struggles (as they did in Sarawak and the two parts of the Netherlands East Indies studied here—Java and Dutch Borneo), Customary Rights started to be regarded as a kind of a “social fact.” Further, colonial authorities favoring Customary Rights promoted the idea that through anthropological study and sympathetic political choices, the appropriate Customary Rights could be “discovered” or existing categories “proven,” or “improved,” and fixed in the law. Once certain customary practices became represented in the law as Customary Rights, residual customary practices become “crimes” when carried out in political forests. This point alone demonstrates that Customary Rights are a secondary realm of struggle between people and the state—one first has to understand the transformation of customary practices to crimes when they are performed in territories known as political forests. When our concepts are “forested,” the very possibilities for thinking about Customary Rights are constrained.

The third arena of tension emerges in cases where Customary Rights did not reflect local customary practices. This could occur when customary practices were identified in one or more locales and then applied across a broader area—i.e., after

⁷⁶On inclusion and exclusion, see Menzies (1992).

they were codified or otherwise legally recognized as Customary Rights. The best example of this was the establishment of three-year fallow periods in swidden cultivation areas before considering such plots as abandoned land and claiming them as state property (Dove 1983).⁷⁷

In our study, those colonial states that pushed territorialization of political forests the furthest (Java and the Malay States) were also the most successful in criminalizing customary forest access and coded fewer customary practices as Customary Rights. Where numerous customary practices became Customary Rights—as in Dutch Borneo and Sarawak—relatively less “forest crime” was recorded. In Siam, no Customary Rights were recognized, but there was also no territorial political forest by the end of the colonial era. By replacing customary practices with Customary Rights and criminal practices, colonial lawmakers created “traditional” and “modern” spheres of resource management, over which they were the supreme authority. Moreover, in all our cases, the categories of “forest,” “Customary Rights,” and “forest crimes” were normalized. The fields of power were shifting.

We have identified five colonial forest practices that colonial forest authorities used to create territorialized and deterritorialized Customary Rights and through which they continued to define and extend the boundaries of their authority. These were:

- (1) the creation of territorial zones of what were viewed as semi-autonomous native authority over land, inside of which customary practices were permitted under the control of newly constructed state institutions;
- (2) the characterization of certain racially defined groups as incapable of sedentary or commercial agriculture. This characterization exempted them from forest laws but also ignored their territorial claims;
- (3) the inclusion of procedures for settlement processes in forest reservation laws. These settlements could result in certain groups or individuals being granted rights to collect specific forest products from reserved forests;
- (4) the enactment of laws within the forest codes themselves that provided natives access to forest products for subsistence uses;
- (5) the exclusion of whole racial or ethnic categories of people from these negotiations over identity and the political forest by defining them as “aliens” or “foreigners,” i.e., not as “subjects.”

The first two sets of these colonial forest practices defined a set of cultivators who could engage both in forest-based agriculture (as swidden was conceived), more settled agriculture, and forest product collection. The two mechanisms were different in their assumptions of native capacities and rights and in the degrees of negotiating power held by their subjects.

The first type of strategy was most important in Sarawak, where “native customary lands” in some way or another had been written into the earliest land orders and zoned through the colonial period (and afterward). This strategy had some purchase in Java and Dutch Borneo as well, where legal or practical mechanisms allocated resource

⁷⁷As Doolittle (1999) shows for Sabah, agribusinesses were not held to such stringent restrictions. Moreover, while long-abandoned fields might revert to village authorities or become open access after a period of abandonment, three years would have hardly been a likely customary practice in tropical forest areas characterized by nutrient-poor soils and swidden cultivation. Cf. Sioh (1998) who claims the three-year fallow was a Malay definition of “dead land.”

authority over land to territorial collectivities such as longhouses or villages (Richards 1962; Porter 1967; Holleman 1981; Burns 1989). Creating a legal category of “native customary lands” was a way of acknowledging, while attempting to set territorial limits on, swidden cultivation. The demarcation or allocation of what colonial authorities regarded as forest for local use—whether as communal forest or native customary reserves, or even as part of village and longhouse territories encompassing some of this forest—needs to be seen as part of the territorializing state strategy. The intent of such customary territories was to restrict local people’s access to the political forest for purposes other than those specified through settlements and laws acceding access for subsistence (see below).

In these cases of native territorial authority, “native leaders” had jurisdiction to allocate access to village or longhouse lands and to negotiate disputes. These leaders were also given formal judiciary power to resolve local disputes according to “native law.” When necessary, they referred irreconcilable disputes to higher levels of judicial authority through colonial institutions of Native Courts. Other laws restricted the actual territorial extent to which this native authority applied.

This approach explicitly recognized local people’s forest and agricultural practices, including Customary Rights to practice swidden cultivation, inside these “native” territorial zones. Other laws restricted the actual territorial extent to which native authority applied. “Shifting,” in particular, was irksome to both foresters and civil administrators, in Sarawak as elsewhere (see, e.g., Kratoska 1985; Bryant 1997). In 1875 the Brooke government attempted to partially check shifting cultivation by establishing a fine for lands cleared and abandoned.⁷⁸ The government also attempted to set limits both on who could clear forest for cultivation and where. The 1899 Fruit Trees Order restricted native movement from one watershed to another. The same law provided for state land grants and ninety-nine year leases—incentives for European and Chinese agricultural enterprise in other (legally defined as non-native) areas. Racially defined limits on access to customary land were also defined in Sarawak law to prevent people of Chinese, European, Indian, or Arab origins from acquiring native land.⁷⁹ To keep people even more securely in place, in 1920 Land Orders 8 and 9 classified land into zones, including a zone restricted to native holdings. In 1931 Land Order L-2 redefined “native,” changing it from its formerly more inclusive definition of “any natural-born subject of his Highness the Rajah’s,” to “members of the indigenous races”—with a list of bona fide “native races” attached (Porter 1967; Hong 1986, 41–42).

The 1931 and 1933 Land Orders in Sarawak provided for actual boundaries to be drawn around longhouses and their territories. Boundaries were generally written up in the District Offices or in forest reservation announcements in the Government Gazettes, using natural features—ridges and rivers—as indicators of territorial extents.⁸⁰ People defined as “native” could create new customary land legally by clearing biological forest for swidden cultivation and occupation until the passing of the Land Code of 1958 (Hong 1986, 43–45), i.e., well after Sarawak became a British

⁷⁸As Kaur (1998b, 33) points out, this was to preserve the land for future commercial uses. Kaur’s use of the term “deforestation,” however, is misleading.

⁷⁹The list of native races, besides “Malays,” included Land Dayaks, Sea Dayaks, Muluts, Melanaus, Orang Bukit, Kayans, Kenyahs and others.

⁸⁰The Baram District had its own “Boundary book” still in use today. In other parts of the colony, boundaries between villages tended to be recorded only in the District Offices, and village boundaries were never systematically surveyed unless some kind of development was to take place in the vicinity.

Crown Colony.⁸¹ Colonial-era Sarawak was thus an outlier among the states in the study area, providing some local people with legally sanctioned and enforced collective territorial rights that permitted swidden agriculture within proscribed areas.

In the other regions we are considering, formal government recognition of local people's territorial rights to practice swidden cultivation *anywhere* was virtually unthinkable, although the degree of legal restriction and the enforcement of these restrictions varied widely. In the Netherlands Indies, recognition of *adat* or indigenous territories was not formalized, in that the government never constructed village maps; but extensive investigations of native customs and "customary laws" were carried out as mentioned above (see Burns 1999, 1989). The relative strength of the foresters in Java, plus the sheer burden of carrying out such a task in Java's thousands of villages, also hindered the formalization of village boundaries beyond the land under cultivation.

As we wrote above, in Dutch Borneo, the distances, expense, and political debates between the foresters and the civil administration, as well as the constrained Dutch power, precluded mapping of either village areas, *adat* territories, or political forests. In the absence of mapping, debates over what constituted "waste land" continued up to World War II (Potter 1988; Oberman 1938). While customary practices were not affected much, the idea of Customary Rights and native land had taken a firm hold. The interior of Borneo was viewed as one of Van Vollenhoven's nineteen *adatrecht* territories, i.e. Dayak territory. Some civil administrators in Dutch Borneo, such as Drijber, cited in the first epigraph of this article, supported local people's rights to "the forest," although they were not able to establish formal native customary reserves as in Sarawak. In the Malay States and Siam, the household (usually represented by a male "household head") was established as the property-owning unit, and there were few provisions for collective or village-based property rights, particularly in nonagricultural land (Meek 1938; Wong 1975; Vandergeest and Peluso 1995).

In the second territorial colonial forest practice regarding Customary Rights, colonial administrators allowed small, racially defined groups of people to continue living in reserved forests subject to certain restrictions (Harper 1997, 9). These exemptions were motivated by a number of perceived problems with applying forestry laws to these groups. Probably most important, these groups often lived in inaccessible forests, making it virtually impossible to enforce forestry laws (Strong 1932). These forests would have been relatively less valuable/more costly for the extraction of timber in any case. The groups covered were considered incapable of either sedentary agriculture or political self-regulation through the kinds of institutions the colonial authorities wished to impose. In other words, they were assumed to be lower on a social Darwinist or romantic Orientalist scale, and they were treated discursively (and institutionally) as forest savages and prehistoric tribes. These ideas were typically not codified into law but became a part of the discursive fields and everyday practices of colonial foresters.

Such groups as the Penan or Punan hunter-gatherers in Borneo and the Orang Asli on the peninsula were exempted on these bases. In the Malay States, the boundaries of these classifications were based initially on religion: "animist" non-Muslims, non-Buddhists, such as the various people called "Sakai," who also cultivated

⁸¹The Land Code stated that only land cleared before 1955 would be recognized as customary territory. While some noise might be made about getting permits from the D.O. before moving to a place to clear and so on, in practice such permission might not matter in the long term—unless disputes with other longhouses arose.

fruit trees and practiced swidden, were collectively classified as Orang Asli. They were permitted to continue living in forest reserves during this period. Muslims and Buddhists living in small hamlets in the upper watershed of Kedah were classified as Malays and Siamese, respectively, and not exempted from forest laws, although their agricultural and forest practices were not substantially different from those of many Orang Asli. Orang Asli were themselves classified by “evolutionary stages,” which were (and continue to be) linked to both racialized biological characteristics and the ways they used the forest (Rambo 1988, 275). The government did make attempts to contain swiddening by the Orang Asli (Strong 1932), but they were generally not removed from reserve forests until the Emergency (Leary 1995).⁸²

In the Malay States, the 1939 “Aboriginal Tribes Enactment” contained provisions enabling the governments to declare aboriginal reserves (Rachagan 1990, 106–07). This policy—late for the region—had been proposed by government anthropologist Pat Noone, who argued that some Orang Asli were “territorial” and recognized a kind of collective property in land (Harper 1997). The government of Perak was prepared to enact a few Orang Asli reserves prior to World War II, but the war cut off many of these efforts (Lim Teck Ghee, pers. comm., 1994). In the immediate postwar years and during the Emergency, the government constituted some Orang Asli reserves, primarily as an incentive to prevent their aiding insurgents (Denton et al. 1997, 61–66). Most of these reserves were small. In Perak, for example, such reserves typically ranged from 200 to 1500 hectares in size, and most were never formally reserved/gazetted (Gomes 1990, 24; Lim Teck Ghee, pers. comm., 1994). The rights provided by the reserves remained weak around the Malay States’ strong political forests and were ultimately easily expropriated (Denton et al. 1997; Zawawi 1995).

In addition, these racial/ethnic characterizations facilitated Orang Asli exclusion from laws that otherwise recognized “native” private property claims (Zawawi 1995). Because Orang Asli were prohibited in land laws from making formal claims on land or fruit trees, their resource claims were (and continue to be) particularly vulnerable. For example, their fruit holdings were sometimes declared state property and auctioned off under forest product laws reserving forest products for the state (Harper 1997). Similarly, while the practices and de facto rights of the Penan were protected under the Brookes, the Sarawak government never extended territorial recognition to the Penan hunter-gatherers.⁸³ Since land rights flowed from the act of clearing and cultivating land or from planting trees, the practices of hunters and gatherers were viewed as not covered by the legal mechanisms that turned customary practices into Customary Rights (Hong 1986, 41).⁸⁴

Although Siam was like Sarawak and Dutch Borneo in that it had a relatively small forest department subordinated to a more powerful civil administration, and its officials had to deal with vast territories over which they exerted tenuous control, the

⁸²The Emergency in Malaya lasted from 1948 until 1960. Leary, citing Komer (1972, 8), defines it as “a long haul, low cost, counter insurgency response [to insurgency by the Malayan Communist Party and the Malayan Races Liberation Army] controlled by the civilian government” (1995, 12–13). It started under British colonialism and carried over, with continued British assistance, into the period after Malayan independence (1957–1960).

⁸³In contemporary Sarawak their lack of legally recognized territorial rights has significantly constrained their lifestyles and forest practices (Sellato 1994; Brosius 1997).

⁸⁴Recently, however, some efforts are being made to grant Penan territorial rights based on a tenet of the Land Code defining native “customary rights” to include “land claimed by other customary means.”

Siamese government never considered territorial zones of autonomy based on racial or ethnic classifications. This was not for a lack of groups who—on the other side of the border in the Malay States—would have been treated as racial groups with specific legal designations. These include the many upland groups in the north, the Lao-speaking people in the Northeast, and the Malay-speaking Muslims in the South. But the official stance was that most of these people were “Siamese,” or subjects of the King of Siam, and all laws were in effect a codification of existing “Siamese” laws, so that it was not necessary to recognize separate, non-European “native” customs. Upland peoples in the north were not considered Siamese. As they were simply “not-Siamese,” the idea of mapping territories for them was hardly an issue. Rather than being incorporated as a racially defined group of Siamese subjects exempted from forest laws, they were simply excluded from the national imagination of a citizenry (Sturgeon 2000).

In Java, significant territorial concessions were made to “protect” only one “non-Javanese” or Sundanese forest-dependent group based on religion/ethnicity—the Badui. This group of Sufi Muslims occupied an area in western Java that was territorially circumscribed and formally reserved for them. Java’s extensive and relatively strong political forest stopped there.

Under these first two territorializing mechanisms for using customary practices and Customary Rights to constrain the political forest, a certain racially defined set of cultivators could engage in both forest-based agriculture (as swidden was conceived) and forest product collection. The two mechanisms were different in the degrees to which they were subject to interactive negotiation with local people. Yet even where the colonial officers had the least interaction with “the locals,” for example with Penan or Punan, the very classification of their “remote” locations in “distant” “forests” represented new, territorialized ways of thinking about positionality and subjectivity.

The third and fourth colonial forest practices used to create Customary Rights were more restrictive because they were species-based. The process entailed a finalizing “settlement” of disputes or counter-claims to political forests as they were being gazetted, in such a way that further claims would not be recognized after a legal, written settlement had been made. As a result of settlements, certain groups or individuals could be granted rights to collect specific forest products from reserved forests, especially if it were recognized that they had done so for a long time.

Settlements were explicitly part of the forest laws of Siam, the Malay States, and Sarawak for both reserved and protected political forest types. Settlement provisions mandated local investigations into customary uses of the forests about to be reserved. Customary claims were settled either through compensation or by qualifications published in government gazettes when the reserve forest was gazetted. These qualifications gave specific groups of people, usually residents of specific villages, the rights or “privileges” to continue gathering specified forest products, such as rattan, nipa palm, or firewood in the newly reserved forest.⁸⁵ All other customary claims were extinguished upon publication of the reserve notice. In some cases, these settlements were for the collection of what were by that time defined as “agricultural” products such as fruit or rubber.

Theoretically, settlements permitted only those activities that authorities believed would not damage the forest or hinder scientific management (Troup 1940, 130). In practice, as a variety of entries in the *Sarawak Government Gazette* attest, it was common for some villagers to be given rights to farm secondary forest fallows (*temuda*) within

⁸⁵See, e.g., Voules (1921, 605); also, *Sarawak Government Gazettes* (1920s through present).

Protected Forests, or to collect timber for building small boats. Again, these concessions illustrate the negotiations over definitions of "agricultural" and "forest" products that had a critical impact on the way ruler and ruled viewed the landscape. They also imply that the notion of forest and agriculture as separate domains of landscape activity and perception was foreign to the local context and contested enough that the law had to take account of alternative views.

Overall in Southeast Asia, settlements allowing specific people to harvest specific products in reserve forests have been much less important than they were in India. In Siam, settlement provisions were included in the 1938 laws, although they were eliminated when the laws were revised in the early 1960s. Moreover, they were not followed when the government began demarcating forests after the Second World War. In Kedah, forests reserved prior to World War II often included settlements, but they were no longer included when the British government accelerated demarcation in this state after the war. Contemporary interviews in Kedah villages mentioned in prewar settlement documents revealed that specific settlements were no longer locally meaningful. Older people could not separate specific arrangements (as published in the government gazette) from the tenuous informal access "permitted" them by local forest guards. In Sarawak, settlement provisions were included in Sarawak's 1933 Land Settlement Order (Hong 1987, 44; Sarawak Land and Survey 1933). Contemporary research in the First Division revealed that many villagers in Sarawak were aware of their customary rights in adjacent forests and of the dates of gazettement. As in Kedah, they did not know all the specific terms of the settlements.

Although specific, remembered impacts of settlements are small, their inclusion in the laws on reservation illustrate another attempt by local people to contest the political forest's hegemony. However, the language of settlements assumed knowledge of and recognition of territories called "forests." By becoming party to such settlements, local people bought into these definitions and the restrictions about to be placed on their own uses of the soon-to-be-gazetted political forests.

The fourth means of handling customary practices was by provisions in the forest laws for natives' subsistence rights. Typically, local people in the Malay States and Sarawak had extremely limited subsistence rights in "Reserve Forests." Reserve forests were intended by the state for silvicultural treatments and plantation production. To address their subjects' extreme dissatisfaction with these restrictions, however, whole new categories of forest were designed. In the Malay States, ethnic "Malays" could gather subsistence forest products from as-yet-undemarcated "State Forests." Annual reports of the Malayan Forestry Department suggest that local people took significant advantage of these provisions, although foresters viewed the policy as the free provision of state property (Meade 1940, 13). "Protected Forests" served a similar function in Siam and Sarawak. In Sarawak, local people were granted subsistence hunting and gathering rights in Protected Forests after that category was legislated in 1934. In Siam, regulations accompanying the 1938 forest reservation legislation allowed local people to gather subsistence products in reserve forests, literally contradicting provisions in the original law (Vandergeest 1996).

In Java, local people's subsistence rights in reserved forests, particularly teak forests, were progressively curtailed from the mid-nineteenth through the mid-twentieth centuries. By the mid-twentieth century it was legal for a villager to own a teak house but not to build one (Peluso 1992). Other subsistence rights had been written into the early forest codes (1865, 1875) for purposes as diverse as the construction of carts and small boats, fences, and fuelwood. By the time the last forest laws were enacted (1928, 1933), the only subsistence rights remaining were for the

collection of deadwood, tubers, roots, forest fruits and nuts, and some kinds of leaves and vines. In addition, foresters had to grant local permission, which was given only to “Indonesian Natives.” Cattle grazing in the forest and collection of non-timber products for sale required written permits from either the Residents⁸⁶ or the Head of the Forest Service District (*Bos Ordinansi* 1927, 10–11; *Bosverordening Jawa-Madura* 1932). Forest clearing or cultivation was strictly forbidden and was punishable by jail (*Bos Ordinansi* 1927, 13).

In Dutch Borneo, many civil authorities debated and defended subsistence rights, but they were not written specifically into the forest regulations for the Outer Islands (Departemen Kehutanan R.I. 1986). Without a political forest of any substance in Dutch Borneo, however, forest laws were paper tigers.

What it meant to have settlements and subsistence rights written into the forest codes was that people would have to deal subsequently with foresters to negotiate their access to the political forest. Foresters, not agricultural officers or civil authorities, had jurisdiction over these territories and the rights and privileges granted in the forest codes. Rights of access were negotiated in the field as often as not: hence local people’s uncertainty surrounding their existence, validity, or strength.

Moreover, when changes in colonial forest practices for production of certain species—and not just changes in the laws—directly affected local peoples’ access, foresters tended to be less systematically attentive to local people’s needs. Teak in Java was first sawn at breast height. The stump and roots were the customary property of the cutter(s). As time went on, however, these cuts were made closer and closer to ground level, reducing the amount of wood the logger could legally take home (Peluso 1992). Changes in practices as well as laws thus illustrate the changing power balances between the state foresters and other claimants on the lands and resources therein.

The fifth colonial practice that may not seem to be a forest practice was the preclusion of people from claiming Customary Rights based entirely on their racial or ethnic category. These included all legally defined non-natives, such as Chinese (in the NEI and Sarawak), Indians (in the Malay States and Sarawak), and Europeans and Eurasians everywhere. Though we do not go into this in detail, this wholesale exclusion based on race—an exclusion that held in regard to land rights as well—was extremely important in shaping social and political landscapes and the distribution of people during the colonial era and afterwards.

The formalization of Customary Rights also helped differentiate forest law from land law. The codes established separate zones of authority or jurisdiction over land, with the intent of avoiding overlap and preventing conflict. They also created different jurisdictions within which different sorts of Customary Rights could be recognized. Thus Forest Law in Sarawak does not apply on the lands defined as Native Customary Lands: these zones are covered by the Land Code. This practice then differentiates the first and fifth colonial forest practices that colonial forest authorities used to create Customary Rights from the other three.

The flip side of Customary Rights was that their creation immediately criminalized all other customary practices that did not conform to the colonial-era forest laws. Figures on forest crime, however, tell us more about how colonial foresters were trying to reconstruct the discourses of a state-regulated nature than about any kind of disrespect for nature on the parts of local people (Table 2). Thus it is not

⁸⁶Residents were the civil service heads of residencies, the territorial administrative areas into which areas of the Netherlands East Indies were divided. They were roughly equivalent in size to today’s *kabupaten*.

Table 2. Number of Forest Offenses on State Forest Land by Locality, 1910–1941

Year	1910	1916	1920	1925	1930	1935	1937	1940
Java: teak reserves	21,192	19,518	24,487	20,777	20,249	45,709	39,626	57,384
Java: non-teak reserves	—	4,333	5,877	7,876	10,533	14,121	14,843	—
FMS	—	665	877	1002	1403	903	945	1042
Kedah	45	104	88	99	136	205	173	68
Siam	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Sarawak	—	—	115	493	469	159	214	140

Sources: Forest Department Annual Reports for Sarawak, FMS, and Kedah

For Java: Peluso (1992); Boomgaard (1994a, 163).

The figures for Java for 1940 do not disaggregate teak and non-teak reserves.

surprising that more forest crimes per capita were reported in the Malay States and Java than any other part of the region. The figures tell us much more about the capacities of those government forest services to establish surveillance procedures and document forest crimes.

In Siam, Sarawak, and Dutch Borneo, the very notion of “forest” was still being contested both within the states’ apparatus and by its intended subjects, thus “crimes” appear low, or, as for Siam, records are non-existent. In these three areas, the foresters seemed to fight consistently a losing battle over forest control and never had adequate means of prosecuting or even catching those they would like to define as forest criminals. The smuggling of wildlife, especially birds and their plumage (birds of paradise and parrots in particular), snake, crocodile, and lizard skins, as well as bear teeth and bile, bezoar stones from various animals, and, of course, rhinoceros horn, was rampant. Policing was nigh impossible at all the hidden places along Borneo’s coasts where small craft could land or embark (author’s fieldwork 1979–80).

In sum, just as the political forest was a fictitious construct based loosely on the foreign categorical notion of natural biological forests, legal notions of Customary Rights were constructed from the recognition of some customary practices and forest crimes, from the nonrecognition of others. The ways colonial-era states treated local people’s customary forest practices as legal Customary Rights varied widely but reflected and influenced other domains of colonial-era rule. The ways colonial governments resolved the question of native or “minority” rights to land and forest resources contributed to the creation of racialized colonial categories for people (as “natives,” “Foreign Orientals,” “primitives,” or “minorities”) and frequently territorialized these identities as well as patterns of resource access. Siam provides a notable exception to this but manipulated racial/ethnic identities in other ways in order to claim and control resources.

Whatever their specific origins, the racialization implicit in most Customary Rights remains at best an ambiguous legacy. Moreover, the degree to which states were willing to recognize territorial claims by their subjects was an indication not only of the state’s capacity to rule its subjects and territory but of the strength of forest department within the whole state apparatus. Territorial customary rights were recognized in significant ways in Sarawak and Dutch Borneo, in less significant ways in Java, and minimally or not at all in the Malay States and Siam. Whatever the

practical aspect of their power, the legal, institutional, and discursive realm of territorialized and racialized Customary Rights antedated what would later become an explosive domain of postindependence identity politics.

Conclusion

All over the region we address, a repertoire of colonial forest practices constituted new forms of discipline and reshaped the general view of the region's land and resources. The key elements of this repertoire included domain declarations, land laws, forest laws establishing state ownership of forest territories and products, and often racially based Customary Rights "exceptions." While different state agencies clearly drew on that repertoire in different ways, we identified some patterns by which colonial forest practices were mobilized depending on state capacities within particular modalities of rule. We also identified a repertoire of ways colonial-era foresters treated local forest practices they called "customary." By constructing genealogies of politicized notions of "forests" and "Customary Rights," we have tried to illustrate that these are not natural or universal categories of knowing but constructions. Though informed by their observations and the interventions of native informants, and thus based to a certain degree on what they "found," they nevertheless put their own institutional and conceptual mark on these discursive categories. Though the institutional dimensions of these new discourses of "scientific management" and landscape differentiation were not realized equally in all the areas under discussion here, the ideas had taken a giant step and a solid hold.

Two crucial legal inventions were common to all the areas we studied and must be attributed to these colonial forest practices. They also need to be understood as mutually constitutive. The first is the political forest. "Forest land" became that land that was either demarcated by the state for permanent reservation or that land that was claimed by the state. Not all forest cover was included in the area allocated for state forestry, nor was all state forest land actually forested. The second critical legacy of this era is the creation of a legal category of Customary Rights, which in many cases led to a racialization of the landscape. Both the political forest and the creation of Customary Rights followed on the presumption of the arriving Europeans' views of the landscapes they found. This did not fit easily with prevailing local ideas about nature, although some overlaps may have existed (or been "discovered" like customary practices were).

Indeed, the strain between this notion of a differentiated forest and its consequences for local people's future access to it underlies the struggle to establish territorial political forests. We showed that such forests were realized effectively only in Java and the Malay States by World War II. By the end of the colonial era, forest laws in these areas largely governed the acts of individuals on state forest lands (or in the political forest), while collective local jurisdiction over forest-related activities was rendered exceptional. As Sivaramakrishnan has shown for West Bengal, differences in regional patterns can be attributed also to the relative hegemonic power of various forestry departments, as well as to the potential value of the forest to the regional political economy and to the power of discourses of native rights (1997, 1999). Nevertheless, the strength of the idea of the differentiated, territorial political forest in the discourses of rule played a major role in its institutionalization. Siam did not even pass legislation enabling forest demarcation until 1938, while little progress was made in forest demarcation in Sarawak until the British took it over as a Crown Colony

in 1946. In Dutch Borneo, demarcation was held up by both political debates over the nature of the state's domain and the costliness of the forest-making process in its vast interior regions.

Customary Rights can be seen as a panoply of exceptions to the whole repertoire of customary practices that existed before legislation of the political forest by colonial-era governments. By reducing customary practices to circumscribed—and often individualized—sets of Customary Rights, foresters and other government authorities attempted to totalize control of resources and land. By doing so, they produced “truths” (and confusions) about political and biological forests and Customary Rights that have continued to hold sway into the present.

Race played a large part in the construction of differential access to the political forest. Racially based land laws, “exceptions” based on practices associated with particular racial or ethnic groups, characterized many colonial-era policies, most obviously where systems of legal pluralism based on race were imposed. With or without pluralism, notions of racial and ethnic difference informed law and policy and influenced policy makers, though these notions may not have been made explicit in writing forest law. By the time forest laws were written, other structural factors of governance made some explicit racism unnecessary. Moreover, many officials and other observers thought that racial policies were in the interests of their subjects. These colonial-era governmentalities were strategies of rule, after all, and rule involved creating categories of discipline. The degree to which specific forest governmentalities have shaped the lives and livelihoods of millions of people in these areas (and much more of Southeast Asia) is still poorly understood. Our goal has been to begin to unpack the assumptions underlying the growing body of “forest” history for Southeast Asia. For this reason, we began with the notion of the forest itself and the ways in which rights adhering to it have been construed.

Varied though they might have been, the discourses of colonial rule (and in Siam of “modern” rule by its European-influenced king) were constituted of concerns with law and order: they were practiced through the bureaucratization of rule, and they were regularized in written law. In state forestry, regularization and normalization were intended to facilitate extraction and production of valuable forest products and facilitate the practice of scientific forestry. Ultimately, state forestry extended the broader power of the entire colonial state as well as that of the state forest institutions by changing the landscape, claiming forests as state property, and establishing new mechanisms of seeing and gaining access to it.

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