

Reframing Indigenous water rights in ‘modern’ Taiwan: reflecting on *Tayal* experience of colonized common property

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Abstract: There is a widely accepted stereotype that Indigenous Taiwanese have lost their connection to country as a result of colonization and thus the Indigenous presence is often omitted in representations of ‘modern’ Taiwan. By asserting a modern/traditional binary that privileges the colonizer as modern these representations demean Indigenous cultures as ‘primitive’ or ‘traditional’. This paper challenges those biased dichotomies by exploring the experience of *Tayal* people in northern Taiwan, drawing on both field and archival research to demonstrate the resistant and persistent Indigenous presence in common property resource governance, specifically water governance. The research found that *Tayal* systems for common property governance persist in the management of water. It also demonstrates that in those governance systems, non-human agencies such as water have active agency in *Tayal* culture. By recognizing water as actively engaged in the common property governance, the paper argues that governing common property in the *Tayal* context is about contemporary and adaptive governance relations among non-human and human agencies in a more-than-human world, as well as communally sharing the custodianship. It is misguided to understand these governance systems as primitive, traditional or inauthentic – all common representations within dominant Taiwanese discourses. The paper also argues that recognizing and engaging *Tayal* people’s communal custodianship offers a

foundation for building culturally appropriate, just and resilient common property governance frameworks in Taiwan's contested cultural landscapes.

Keywords: Common property resource governance, customary water interest, Indigenous presence, more-than-human, Taiwan

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Baqun balay qwara Gaga, ini kbrus

(When someone knows customary law (*Gaga*) we know they will not lie)

(*Tayal* elder, Jianshi Township, Taiwan, Fieldwork Interview, 6th September 2016)

1. Introduction

In many settler societies, there is a common and dominant misconception that Aboriginal peoples have lost connection to their traditional territories and values as a result of colonization. In reality, Indigenous peoples, languages and cultures are a persistent and resistant presence in many places where the dominant culture asserts such loss and privileges ideas of the absence, erasure and denial of Indigenous peoples (Howitt 2012). Dominant discourses that privilege colonization as an unproblematic driver of modernization demean Indigenous cultures as 'primitive' or 'traditional' – creating a modern/traditional binary that this paper seeks to unsettle.

In Taiwan's 'modern' society, there is a widespread stereotype that Indigenous cultures must remain unchanged to be authorized as authentic and recognizable by the Taiwanese state. So, like many colonizing societies, Taiwan has, until recently at least, argued that Indigenous culture exists only as a past traditional society – unchanging and unchangeable; anywhere and any-when except the here and now.¹

On 1st August 2016, President Ing-wen Tsai delivered the National Apology to the Indigenous Taiwanese for historical injustices and proposed transitional justice in a national scheme.² This National Apology opens an opportunity for Taiwanese

¹ A good example to demonstrate this stereotype is an Indigenous hunter Guang-Lu Wang (王光祿) who was sentenced to three-and-a-half-year imprisonment because: (1) he used a rifle instead of a homemade gunpowder weapon; (2) he hunted without reporting to local authorities and 3) he did not hunt during the 'traditional' festival. The imprisonment was delayed as the Attorney General filed an appeal for the Indigenous hunter (February 2017) (For the verdict: <http://jirs.judicial.gov.tw/FJUD/HISTORYSELF.aspx?SwitchFrom=1&selectedOwner=H&selectedCrmyy=104&selectedCrmid=%E5%8F%B0%E4%B8%8A&selectedCrmno=003280&selectedCrtid=TPS>).

² For the full text please visit: <http://focustaiwan.tw/news/aip/201608010026.aspx> (last accessed:18/4/2017).

society to reconsider its recent colonial history and to re-narrate the contested cultural landscape by listening and responding to Indigenous narratives as always and already present in the nation's cultural landscapes. Understanding Indigenous cultures as adaptive, dynamic and evolving is an important step in recognizing Indigenous cultures as part of 'modern' Taiwan. Such recognition requires a reconsideration of the nature of common property and Indigenous property rights, including rights held in common under customary governance arrangements, and reframing of those rights. Failure to do this will recreate the conditions for continuing dispossession and displacement of Indigenous peoples and will fail to provide conceptual foundations for just and resilient commons governances.

The opening quotation from a *Tayal* elder in northern Taiwan proposes that 'When someone knows customary law (*Gaga*) we know they will not lie'. This proposition encompasses the ethics and integrity of the *Tayal* customary law system and reflects a persistent and contemporary customary governance framework about common property resources. This paper explores how this proposition plays out in contemporary water governance in *Naro* Community, Jianshi Township and considers its wider implications for Indigenous rights discourses in Taiwan.

Following Schmidt and Dowsley (2010), who demonstrate the importance of understanding common property as having active agency in customary governance systems, we acknowledge the active agency of water and re-examine the nature of its place in common property governance in the *Tayal* context – a shift which requires reconsideration of many aspects of common property governance. The paper explores the ways in which the agency of water in *Tayal* culture renders it not simply as a common pool resource to be governed, but as a key actor in a resource governance system with significant agency in the everyday affairs of *Tayal* people, influencing social, cultural and political domains as well as being part of the environmental context in which governance is disputed in contemporary Taiwan. The paper argues governing common property in the *Tayal* context of *Naro* Community, Jianshi Township is about governing relations among non-human and human agencies in a more-than-human world as well as communally sharing the responsibility rather than merely exercising (and constraining) self-interested control over the resource. In addition, this paper offers recognition of the persistent, adaptive and contemporary Indigenous presence in common property resource governance in 'modern' Taiwan. Finally, it offers some conclusions regarding how to deal better with the complexity of Indigenous claims to rights in property, resources and governance in the wake of President Tsai's National Apology.

2. Research methods

2.1. Methodology

Methodological approaches which embrace more-than-human worlds are increasingly acknowledged as framing the interface between human and natural systems

in the discipline of Human Geography (Whatmore 2002; Braun 2005; Panelli 2010; Suchet-Pearson et al. 2013; Wright 2014; Bawaka et al. 2015; Larsen and Johnson 2016). Among studies of more-than-human worlds, there is growing interest in how Indigenous philosophies perceive relations and connections with non-human agents, such as rivers, land and forests. For instance, Suchet-Pearson et al. (2013) demonstrate the co-constitution of human and non-human agencies in Yolŋu ontology in northeast Arnhem Land, Australia: they 'see humans as one small part of a broader cosmos populated by diverse beings and diverse ways of being, including animals, winds, dirt, sunsets, songs and troop carriers (Suchet-Pearson et al. 2013, 185)'. Acknowledging a more-than-human world opens the possibility to recognizing a non-anthropocentric worldview and its implication of common property governance (Bawaka et al. 2015). Similarly, Kwakwaka'wakw scholar Sarah Hunt asks how disciplines might more respectfully respond to Indigenous philosophies and knowledge "rooted in Indigenous worldviews" in ways that ensure researchers "avoid being agents of assimilation when it comes to Indigenous knowledge, people and communities?" (Hunt 2014, 30). Building on this approach, the research reported here engaged with the *Tayal* presence and more-than-human world in modern Taiwan. The research adopted Howitt's radical contextualist methodology (Howitt 2011). Howitt (2011, 132) uses the term 'radical contextualist' to advocate an approach to geographical knowledge that is 'responsive to and aware of the context(s) in which knowledge is formed, debated, and applied. It also advocates recognition of multiple contexts influencing the social geographies in which our knowledge is constructed, tested, and applied.' This methodology emphasizes that researchers need to be responsible for how knowledge is generated in a specific context. Especially in Indigenous geographies (Coombes et al. 2012, 2013, 2014), researchers are dealing with issues regarding people and culture, which both are dynamic and changeable. Hence, 'Context matters – the historical, geographical, social, and cultural context in which social geographers undertake research fundamentally shapes what we come to know and how we come to represent it to our various audiences' (Howitt 2011, 142).

Non-human agencies play an important role in *Tayal* people's understanding of the world (Kuan 2009, 2013, 2015; Berg 2013; Lin 2015). While in Eurocentric ontology, entities such as water, forest and land are treated as 'objects' rather than 'agents', they are critical elements of common property resource governance which are understood in *Tayal* governance as embodying cosmological agency. So, rather than being simply a natural resource basic to sustenance of human societies, water is motivated by cosmologically framed agency (Hsu et al. 2014). Water governance that is symbolic of a society's cosmology is not uncommon across the world (see also Singh 2006; Samakov and Berkes 2017). Taiwan's dominant resource governance schemes often reduce resources to consumable or tradeable commodities, and nature is binarized with culture so the 'natural' resources need to be managed to achieve the goals of human agents. The research reported here paid attention to *Tayal* views of the cosmological and ontological significance of water resources as an active agent in *Tayal* culture. The research

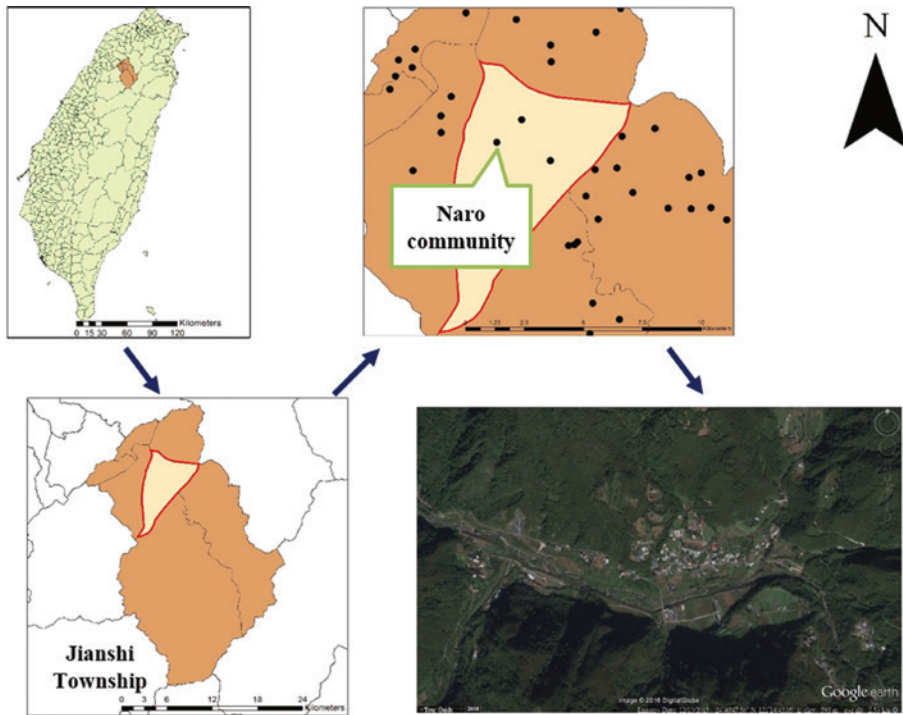


Figure 1: Research site in Naro Community, Jianshi Township, Taiwan.

demonstrates that ‘water’ in *Tayal* culture is not only a resource, but also an active agent that shapes people’s identity and nurtures social relations.

2.2. Research site and ethics

Drawing on co-author Chen’s existing engagement with the *Tayal* community in Jianshi Township and using participant observation and ethnographic research (Chen and Howitt 2017), the research reported here explores how *Tayal* governance and use of commons has evolved through colonial interferences. Jianshi Township (Mandarin: 尖石鄉; pinyin: Jiānshí Xiāng) (Figure 1), is a mountain Indigenous township in Hsinchu County in northern Taiwan. It had an estimated population of 9395 as of July 2017 (Jianshih Township Household Registration Office 2017). The main population is the *Tayal* people of the Taiwanese Indigenous people. The area is 527.5795 km².

Tayal economic activities in Jianshi Township continue to be predominantly agricultural, with strong reliance on locally managed water distribution to fields. The *Naro* Community within the Township (260 households and population 807 as of May 2017 (Council of Indigenous Peoples 2017)), provided an appropriate case study location because the community economy is primarily agricultural,

the landholders are a mixture of *Tayal* customary landholders and more recent ethnic Han and Taiwanese settlers, and customary *Tayal* governance remains common in how water is governed and managed. When approached, the community leaders supported the research, and cooperated by welcoming Chen into community meetings, activities and interviews. Informed consent was obtained from *Tayal* participants prior to commencing site visits, trail walks, participatory mapping, interviews or group discussions. The project is covered by a protocol approved under Australian requirements (Macquarie University Human Research Ethics Committee Approval # 5201600433). Under this protocol, and with their approval, participants are referred to using a pseudonym to protect their privacy.

2.3. Data collection and engaging with *Tayal* knowledge

The research was conducted from August 2016 to January 2017. The fieldwork involved 23 local residents with a mixture of 6 women and 17 men. The average age of informants is above 55 years old and most of them practice agriculture or access common property (e.g. water, hunting ground, forest...etc.) frequently. The informant selection was deliberate. Chen³ consciously recruited senior local residents who are involved in customary water resource governance and have long experiences over time of colonial interventions (for the list of informants see Appendix 1). The data comprises individual interviews and group discussions with research informants about the nature of *Tayal* knowledge and approaches to the use, management and governance of water. Table 1 lists group discussions that the researchers held during the fieldwork.

During the fieldwork, Chen became aware that *Tayal* informants were more actively engaged in interviews when their relatives also participated and when the interview was held in semi-public places. By employing a radical contextualist lens, Chen consciously sensed that *Tayal* knowledge is embedded in the *Qutux niqan*, a social-relational group sharing food, which can be interpreted as an extended family. *Tayal* knowledge is generated, maintained and regulated through/within their *Qutux niqan* (extended family) (Kuan 2013). *Tayal* knowledge is never singular, linear, and exclusive. Knowledge is debated, generated and a common property/common knowledge is reached in a localized relational web of kinship, community and senses of place. In order to access contextualized information in *Tayal* culture, Chen held 5 group discussions and recruited *Tayal* participants from the same *Qutux niqan* (extended family). We acknowledged that the relations among informants matter through data collection. Sharing knowledge within a relational web of kinship is paramount in *Tayal* culture. The research methodology applied to explore the dynamic of *Tayal* common property resource governance hence emerged in a specific-temporal-and-spatial scale and

³ The research fieldwork was mainly conducted by Chen under the supervision of Sandra Suchet-Pearson, Richard Howitt and adjunct supervisor Da-wei Kuan in National Chengchi University, Taiwan.

Table 1: Group discussion.

No.	Type of interview	Date	Participants component	Rationale of selection
1	Group discussion	2016/09/06	Behuy, Hana and Yulaw	Behuy and Hana were born during the Japanese colonial era and have run a local grocery store and agricultural business since they married. They are both prestigious local leaders and have witnessed colonial interventions in <i>Tayal</i> common property governance (e.g. forest, water, hunting ground... etc.) during various settler governments. Yulaw belongs to the same extended family. He currently is a farmer and subject to <i>Tayal</i> common property governance.
2	Group discussion	2016/09/22	Payal and Kumu	Kumu and Payal belong to the same extended family. Kumu is a local farmer and grows customary crops in her fields. Payal is a local resident. Both have the expertise of connecting and maintaining the local pipeline system and the allocation of water resources.
3	Group discussion	2016/10/01	Hetay and Apay	Hetay and Apay are a married couple and both are local farmers. They are familiar with evolving agricultural practices and accessibility to common property in the local context.
4	Group discussion	2016/12/07	Yuming, Kumay, Watan and Tapas	Yuming, Kumay and Watan belong to the same extended family. Yuming and Kumay are elders and leaders in their extended family and the community. They are both local farmers and are familiar with <i>Tayal</i> common property governance (e.g. hunting ground and trail, water source... etc.) Watan and Tapas were interpreters of this interview.
5	Group discussion	2016/12/12	Pasang and Yapit	Pasang has the expertise of connecting and maintaining the local pipeline system and the allocation of water resources. Yapit is Pasang's mother. She is a committed customary crops cultivator and preserves native species (including bean, cucumber... etc.).

cultural-and-geographical context and acknowledged the contextualized environment of *Tayal* knowledge generation.

2.4. Time scope and colonial Taiwanese history

Indigenous Taiwanese have experienced multiple colonial governments (Hsu 2016) since this island was initially spotted by Portuguese sailors and given the name 'Formosa', which means beautiful island, in the sixteenth century. The island was occupied by the Netherlands (1624–1662; mainly in southern Taiwan) and Spain (1626–1642; mainly in northern Taiwan) in the Age of Discovery. In 1661, a Ming Dynasty leftover loyalist Koxinga ousted the Netherlands and established a military base in Taiwan. Taiwan was annexed into the Qing Dynasty Empire in 1683, and then ceded to Japan after the First Sino-Japanese War in 1895. Until the Japanese occupation of Taiwan, *Tayal* customary governance of land and resources was basically unaffected by colonial interference. The Japanese

colonial government extended central control to the highlands of Taiwan, invested in significant new infrastructure, particularly hydraulic infrastructure for cultivation (Chen 1993), and encountered significant Indigenous resistance (Fujii 1997). This challenged *Tayal* sovereign control of local resources, and provided a major foundation for dispossession of *Tayal* territory that was amplified by later colonial governance. Under the United States oversight, following the defeat of the ruling Japanese colonial government in the 1945, Taiwanese sovereignty was unclear. In 1949 the Nationalist Kuomintang (KMT) government of the Republic of China (ROC), following their retreat from mainland China and establishment of the Peoples Republic of China (PRC), occupied Taiwan and claimed the island as an indivisible part of an imagined pre-1895 imperial domain (Leng 1996).

Although Japanese colonization challenged *Tayal* governance structures, the land policies imposed by the Japanese colonial government recognized communal land titles (Kuan 2014; Chen and Howitt 2017) and, as under the previous colonial interventions, Indigenous institutions were largely able to continue operating, particularly in more remote areas. However, the occupation of Taiwan by the ROC government resulted in the enforcement of an individual-registerable and private-owned freehold title system which is identified by the researchers as the main factor currently impacting Indigenous people's common property governance. As such, this paper focuses on the time period of 1945 to the present.⁴

3. *Tayal* water governance

3.1. River-based narrative and relational ontology

The case study presented here focuses on *Tayal* people's water resource governance. In *Tayal* culture, there is a way of chanting called *Lmuhuw*; it is the philosophy of flow or "through-ness" and informs *Tayal* people's cosmology. The term *Lmuhuw* means "flowing" and "going through" in *Tayal* language and literally refers to the way water moves as it flows in a river or through bamboo (Kuan 2009). *Lmuhuw* records the epic migrations led by three brothers: *Buta*, *Ayan* and *Yaboh*, along the different watersheds due to the densely populated origins. They migrated from the origins toward the north to find cultivable lands. *Lmuhuw* is chanted and inherited by male elders exclusively, and normally is chanted when proposing marriage or reconciliation after a dispute. The chanting of *Lmuhuw* clarifies the relations between parties involved (Zheng 2006). On the occasion of proposing marriage, it clarifies that there are no blood relations between the two families to avoid incest. During reconciliation processes, it reminds the stakeholders of their common ancestors, in order to smooth the peace-making process by strengthening their identity and connection.

In *Lmuhuw*, when *Buta* separated from *Ayan* and *Yaboh* for different migration paths, he exhorted them that: "No matter wherever you are going, you shall start your community alongside with different water sources (*mbuci lmuwu ginqwangan*

⁴ For the historical procedure through which the ROC government imposed freehold title in Taiwan from early-1946, see Chen and Howitt (2017, 37–38).

sbqiy) (Zheng 2006).” In *Tayal* culture, *Tayal* ancestors migrated along rivers, and established settlements along rivers. They founded communities and subgroups along rivers and various watersheds. Throughout *Tayal* migration, the rivers acted as guides rather than just convenient paths. Rivers also actively shaped and reshaped *Tayal* people’s identity. Their identity is watershed-based. In other words, *Tayal* people identify themselves with the watershed they come from rather than settlement (Kuan 2009; Mabuchi 2012 [1941]). Rivers play an active and significant role in *Tayal* ontology and cosmology. The traditional chanting *Lmuhuw* is an explanation of *Tayal* people’s **existence** over **time** and **space**. The migration paths recorded in *Lmuhuw* embed *Tayal* people’s identity simultaneously in past migration, current territory and commitment to future generations. *Tayal* people formed a watershed-based identity through the common ancestral migration, and they use the term *qutux llyung* (*qutux* means one; *llyung* means river in *Tayal* language) to refer to the fact that community members live within the same watershed and share the same identity.

Lmuhuw is also about social norms and ethics. The legendary leader *Buta* taught his younger brothers how to hold reconciliation once a conflict happened and other social norms that they and their decedents should obey (Zheng 2006). *Tayal* ontology and cosmology are entangled and mutually constructed in a relational web, in which social norms, explanation of existence, sense of belonging, ethics, sense of place, governance and identity are entangled, mutual-constructed and connected through the flow or through-ness of physical and/or symbolic rivers. Physical and symbolic rivers actively construct and connect *Tayal* people – practically, ontologically and cosmologically.

Relations with water construct *Tayal* people’s ontological and practical understandings. The flow or “through-ness” of rivers construct a relational web in which *Tayal* ontological and practical understandings are embedded. A relational ontology of connection means understanding all beings and things as inherently connected. Neither one’s identity, actions or ethics can be understood in isolation from other research partners, family members, other people, or the natural world. As in Yolŋu culture in Australia, humans, animals, plants, winds, rocks, spirits, songs, sunsets and water, indeed “all things, are connected together in a web of kinship and responsibility” (Lloyd et al. 2012, 1076). In the *Tayal* context, their relational ontology reflects a unique way of governing common property. By recognizing that all beings and things are connected, natural resources are not solely consumable and manageable resources; they also embody an active agency that connects, nurtures and maintains relations amongst all beings. In the group discussions it was clear that this relational way of seeing their world still matters in *Tayal* peoples’ water resource management while practices evolve over time.

3.2. Water as an active agent – a manageable resource or a commons relation?

When non-human agencies are understood as active agents, the scheme of common property governance requires significant revisions (Schmidt and Dowsley

2010). In *Tayal* culture, rivers, no matter whether they are symbolic or physical, are more than manageable resources for *Tayal* people. Rivers play an active role in *Tayal* customary governance. Rivers shape and engage *Tayal* people's identity, sense of belonging, sense of place, explanation of existence. Rivers also maintain and nurture social norms and ethics that are embedded in *Tayal* customary governance. Rivers and water commons are not reducible to a consumable commodity in *Tayal* ontology. They establish common relations that connect human and non-human agencies in more-than-human worlds. In this sense, *Tayal* governance of common property is not an anthropocentric utilization, but is about managing the social relations among various human and non-human stakeholders with an interest in a common pool resource. It is also implicated in the relations among various 'non-human' stakeholders in a more-than-human world. The following section provides three case studies that further illustrate how water, as a non-human agent in the scheme of common property governance, evolves along with colonial interferences; and how *Tayal* customary governance resists and persists in the 'modern' Taiwan landscape.

4. Case studies

4.1. Water interests in customary governance

With annual rainfall of around 2000 mm, water is not scarce in *Tayal* territory. Water sources, in springs and water courses, are used for domestic and agricultural purposes, with a complex system of pipes connecting water sources to a range of locations. In terms of *Tayal* customary law, sharing water sources implies being part of an extended family. The *Tayal* term for extended family, *Qutux niqan*, refers to a group who share foods, and also refers to a group that shares water sources. With increasing presence of non-*Tayal*⁵ people in *Tayal* territory, *Tayal* groups have adjusted their social norms to apply in current society. In *Tayal* language, the term *Pucing qsyá'* means the water source (*puçing* means roots; *qsya'* means water), and the term *Cinpuçinq qsyá'* refers to the priority user of a water source, normally a person who used that water source first and therefore has the priority interest. To connect to the pipeline system, the consent of *Cinpuçinq qsyá'* is essential in *Tayal* social norms, and other people are only allowed to connect pipelines below where the *Cinpuçinq qsyá'* is connected. Historically, approval to use the same water source implied being included into family. Nowadays, however, *Tayal* community members also give their permission and welcome to non-*Tayal* settlers to connect pipelines to their water sources. To comply with *Tayal*

⁵ The non-*Tayal* people moving into *Tayal* territory referred to here generally come from the dominant Han and Hakka ethnic groups or other Indigenous groups in Taiwan, whose ancestors immigrated from the continental China either around Qing Dynasty (A.D. 1644–A.D. 1912) or after World War II. According to 2014 Mayoral election data, there are 17 percent of local residents are non-*Tayal* people (Lo 2017, 132).

social norms, some non-*Tayal* settlers will hold a sharing pork ceremony with *Tayal* community members' assistance:

If a non-*Tayal* settlers came to our community to live and ask to connect his/her pipeline system from our water source, he/she needs to share a pig with whom sharing the same water source, not the whole community. This thing is called *qbalay* (deal with) *Gaga* (customary law), which means all relevant parties negotiated, agreed, so we will share a pig.

–*Kumu* and *Payal* from *Naro* community

Through killing a pig and sharing pork with the group sharing the same water source, the non-*Tayal* settlers acknowledge the custodianship of *Tayal* people and will be recognized as part of the social relations in the *Naro* community, and thus share the responsibility of water resource governance. While the sharing pork ceremony does not require explicit recognition of *Tayal* customary governance of the shared resource, it reflects *Tayal* custom and the customary governance relationships built on that customary law. Not all non-*Tayal* settlers were willing to hold the sharing pork ceremony. Some non-*Tayal* settlers paid the maintenance fee to the community without sharing pork with the community. In such cases, the maintenance fee paid to the *Cinpucinq qsyas'* or the head of household or through a community council body also reinforces the *Tayal* perception that customary governance of the resource is being reinforced and accepted rather than bypassed. But either way, holding the sharing pork ceremony or not, paying the maintenance fee to the community still indicates a customary governance system that is recognized and reinforced by non-*Tayal* settlers making financial contribution to the community.

Figure 2 illustrates the priority relations of customary water interests in *Tayal* society. *Tayal* customary governance system, in which common property interests are explicitly allocated to various members in a customary community, is well understood and lasts for multiple generations among *Tayal* people. In *Tayal* customary governance system, people have particular responsibilities that are accountable to a wider body politic. If a local *Tayal* person asks to connect her/his pipeline from the *Cinpucinq qsyas'*, she/he does not need to hold a sharing-pork ceremony with the group; only non-*Tayal* settlers need to do so. This is because the sharing-pork ceremony is an acknowledgement of being included in the relations, and thus, being responsible to govern the common water interest. For community members, there are clear priority water interests maintained by social norms. As in other customary law settings, common property resource governance is not about collective ownership of particular resources; it is about sharing the **responsibility** and **custodianship collectively** under customary law in a more-than human world rather than exercising anthropocentric utilitarianism over resources (see also Toussaint et al. 2005; Hoverman and Ayre 2012; Jackson et al. 2012; Ayre and Mackenzie 2013). In *Tayal* customary law settings, managing water commons is not solely about utilizing the resource. It is always directed towards maintaining, nurturing and governing the social relations embedded in the customary law and governance system.

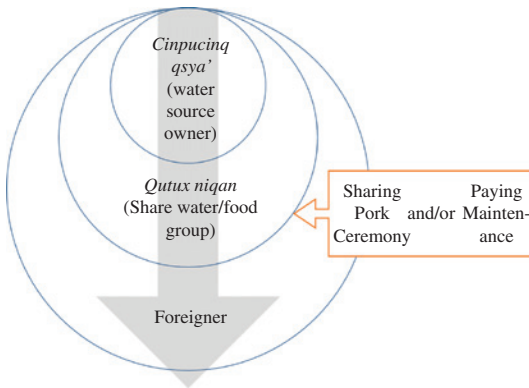


Figure 2: The priority relations of water interests.
 (The diagram visualizes the understanding of customary water interests' priority as concentric circles. The inner circle appears as the priority of water interests in customary law.)

4.2. Contemporary water commons governance

Even though water is not a scarce resource in *Tayal* territory, pipeline systems in its mountainous terrain are fragile and require a lot of maintenance, especially in response to major storms, typhoons and landslides. In such events, water and rivers play an active force in guiding *Tayal* people's mobility and migration patterns (Kuan 2015). In order to work with this active agent, *Tayal* people need to respond to the agency of water through timely maintenance of the pipeline systems. The responsibilities involved in maintaining the water commons is integrated in *Tayal* customary system. When maintaining the pipeline, *Tayal* are simultaneously maintaining their social relations. As illustrated in Figure 2, the relationships within this water governance system are multi-faceted, and well-illustrated both physically and metaphorically by the pipelines that carry water from the water sources to fields and houses. Figure 3 shows a pipeline connected across a five-storey-deep valley. The *Cinpucinq qsyɑ'* (water source owner) is responsible for maintaining their own pipeline system. If damage occurs, the *Cinpucinq qsyɑ'* (water source owner) either maintains it in person or hires someone to do so, and all households in the same pipeline system will split the costs. The left side of Figure 3 is the water source and the right side of Figure 3 extends to the left side of Figure 4. In Figure 4, two sub-pipelines connect from the main pipeline. The two sub-pipelines belong to different households. Each household is in charge of their own sub-pipelines. Again, the pipeline system illustrates a customary governance system, in which people have specific responsibility that are accountable to a wider community polity.

Water makes and reflects the connections between people as an active agent. At times of typhoons, floods and landslides, it can exercise an active threatening agent to well-being. People are literally connected by/with water. The connections are **visible** in the landscape through the pipelines which reflects certain social



Figure 3: An example of the pipeline system in Naro.



Figure 4: The pipeline reflects the social connections.

structures. All pipelines are literally the social connections constructed by/with *Tayal* customary governance. The pipelines clearly demonstrate the materiality of Indigenous **presence and water as an active agent** in local relationships of governing and using shared resources. The persistent and adaptive presence of customary governance structures and relationships with resources disrupts dualist representations of traditional/modern and articulates that *Tayal* social norms evolve over time. For instance, the *Naro* community acknowledges the non-*Tayal* settlers in their area and includes them into their relations through cultural processes. With the pressures that come from increasingly monetized economic relations and the challenges of rapid social changes, *Tayal* community members

reorganize and adjust their social norms in a dynamic manner, but in doing so, they create and maintain a modern and dynamic *Tayal* presence in the region, which subverts the dominant culture narratives of Indigenous absence, irrelevance or inauthentic cultural identity.

Clearly, then, *Tayal* customary common property governance is not simply a matter of managing the common resource itself. It is crucially also and always about governing relationships among human and non-human agencies in a more-than-human world, as well as managing relationships between *Tayal* and non-*Tayal* people in an increasingly complex Taiwanese setting. In *Tayal* ontology and practice *water* is an active agent that directly influences governance, appropriate behavior, and how custodians are rewarded and supported. In modern *Tayal* society, governing the common property resource indicates **commonly** sharing the **responsibility**, rather than merely sharing the resource. The next section examines the domination and invisibility of *Tayal* culture, values and identity through colonial interventions and government legislations in 'modern' Taiwanese settings, and its implication for Indigenous presence and the matter of common property governance.

4.3. Colonial interventions and government legislations

When President Ing-wen Tsai delivered the National Apology to Indigenous Taiwanese on August 1, 2016 for historical injustices and proposed transitional justice in a national scheme, an important moment emerged to reconcile, acknowledge and recognize Indigenous presences as an essential part of 'modern' Taiwan. Nevertheless, discourses of invisibility and ignorance towards Indigenous presences are still deeply rooted in the dominant culture and national government legislation. Taiwan's occupation by the ROC government essentially erased Indigenous water rights and interests with deficient legislative frameworks and policies (Chen and Howitt 2017). The main legislation dealing with water rights and interests is the *Water Act* 1942. Amendments made in 1963 declare the State's ownership of water resources and claim to virtually extinguish Indigenous customary water rights and interests at the national-legislative scale. The *Water Act* states:

(§2). Water resources, being part of the natural resources, are owned by the state, and the state ownership is not prejudiced by the land ownership of any persons.

The 1963 amendments also formalized the legal concept of water right:

The term "water right" as referred to herein shall mean the right acquired according to law to use or make profits from surface or ground waters (§15)'.

Furthermore:

'the acquisition, creation, transfer, alteration or extinguishments of water right shall be null and void unless duly registered pursuant to this Act (§27)' [and

to obtain water rights requires] ‘registration shall be filed with the authorities-in-charge at the municipal or country (city) level (§28)’.

A 2016 amendment of Article 42 recognized Indigenous Peoples’ water interests in a certain way. It stated:

‘In the Surface or ground water usage for the following purposes are exempt from water right registration: ...2. water consumption in accordance with Subparagraph 4, Paragraph 1, Article 19 of the Indigenous Peoples Basic Law’ (hereafter referred as IPBL).

The *IPBL* announced in 2005 is the main body of Indigenous rights and interests legislation in Taiwan. Article 19 aims to protect Indigenous Peoples’ accessibility toward natural resources:

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

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

These activities can only be conducted for traditional culture, ritual or self-consumption. While the *IPBL* means to protect Indigenous rights, the articles ironically only recognizes Indigenous Peoples’ accessibility to natural resources in a ‘traditional’ purpose. The *IPBL* effectively froze Indigenous cultures in a ‘traditional’ frame and failed to recognize contemporary Indigenous cultures. It formalized Indigenous water interests and rights in a way that ensures they are **only** recognized when the activities are conducted for ‘traditional culture, ritual or self-consumption’, which underpins the doctrine of ‘tradition’ and unchanging Indigenous cultures. Based on this token acknowledgement of Indigenous peoples and their water interests, the *Water Act* accordingly privileges the dominant discourse that Indigenous cultures are recognizable and acceptable only to the extent that they are unchanged, ancient and ‘traditional’ (see also Barclay 2010; Maddison 2013).

5. Discourses and practices of invisibility and dominance

The legislative framework in ‘modern’ Taiwan recognizes a limited scope for Indigenous water rights on the presumption that Indigenous culture is unchanging and part of ‘traditional’ society. The legislation fails to acknowledge Indigenous water interests in a dynamic manner and that Indigenous cultures are adaptive and modern, not limited to some arbitrary authentic moment in the past. Fieldwork with *Tayal* custodians and managers of water for agricultural and domestic use revealed their understanding of water as an active agent in *Tayal* ontology. This

significant feature has not been acknowledged in Taiwanese national legal frameworks. The dominant discourse deems water, along with other natural resources, as a passive object, subject to (state-authorized and controlled) human action to manage/control/intervene. This section examines how Indigenous presence at a local scale has been challenged by national policies and legislation and rapid social changes. This section also unpacks how *Tayal* customary was intruded by practices and discourses of invisibility and dominance.

With an increasing number of non-*Tayal* settlers moving into *Tayal* territory in recent decades, the customary allocation of water resources has been affected. Non-*Tayal* settlers tend to fence their lands as an assertion of their proprietary claim under tenancy or lease, so *Tayal* community members have to detour around the fence to connect their pipelines. With more and more non-*Tayal* settlers moving into the territory, most *Tayal* community members choose to avoid negotiating access arrangements with non-*Tayal* settlers by locating their pipeline to take advantage of recently provided government infrastructure, such as ditches and roads.⁶ By doing so, informants *Kumu* and *Payal* said: 'no one can argue with you'. This implies that the *Tayal* customary governance system has been influenced by non-*Tayal* actions. Pipeline connection used to be dependent on and reinforcing of local social relations even though it was increasingly framed as a private property from the dominant perspectives. The dominant practices and discourses excludes the *Tayal* collective water resource governance. The dominant discourses and practices claim that the state is the sole authority in the water resource scheme and infrastructure, the individuals only owns the pipeline as private property. As a result, individuals can connect their pipeline through infrastructure without reference to the *Tayal* customary governance, since the *Water Act* reserves exclusive authority over water source governance for the state and omits customary governance.

While *Tayal* common property governance renders a strong sense of communality, in the national legislation, recognition spaces⁷ for the communal and customary interests of Indigenous people are rendered all but impossible (Chen and Howitt 2017). Encountering oppression from arrogant settlers' discourses and practices, the *Tayal* customary water governance faces great pressure to maintain and regulate. The colonial interventions that authorize and reinforce the national governance of local water resources are profoundly carved into the landscape. Figure 5 shows a land boundary marker set up by the local land registry office to clarify the boundary between fields. *Tayal* residents in *Naro* community generally do not require land boundary markers to clarify boundaries between fields due to the fact that they lived here for generations and shared the communal custodianship. However, non-*Tayal* settlers brought dominant spatial discourses and

⁶ Pipeline systems generally cover quite long distances. In some sections, *Tayal* people chose to locate the pipeline in ditches or roads. If they really needed to pass a certain field, they buried the pipeline underground or detour around the edge of field.

⁷ This term is drawn from Pearson (1997).



Figure 5: Land boundary marker and a pipe attached on it in the edge of a field.

practices into *Tayal* territory. Through a discourse of invisibility, non-*Tayal* settlers omitted the *Tayal* conceptions of and approaches to water governance. They ignore the notion of communality in *Tayal* people common property governance, and aggressively claim their proprietary right under tenancy or lease through erecting land boundary markers. In response to the physical markers of state governance, *Tayal* community members place pipelines in the edge of fields or bury them under the ground. This literally marginalizes Indigenous presences in the landscape, and literally marginalizes *Tayal* perceptions of more-than-human worlds as well. The colonial intrusion into the *Tayal* landscape actually creates a spatial disciplining – the pipelines are disciplined by the colonial power to only traverse areas that are not ‘privately owned’ by non-*Tayal* settlers. The dominant discourses and practices perceive common resource as manageable, controllable and measurable, and they literally marginalize the *Tayal* water governance. However, there is actually an ongoing assertion and presence of *Tayal* governance system, as presented in Figures 3–5, which required careful interpretation.

The *Tayal* epic migrations along rivers, watershed-based identities and social relations all reveal a more-than-human cosmology and relational ontology. Here multi-layered and multi-dimensional knowledge is formed in relations that stretch between places and across temporal scales. Knowledge and the systems that govern its application to the stewardship of common property resources, are, therefore, entangled in the more-than-human settings in which they operate. The ROC's colonial interventions brought an arrogant settler discourse based on an assumed binary distinction between nature and culture, and a privileging of state power over customary practice and *Gaga* (customary law). The dominant discourse interprets subsequent patterns of common property management as disconnection of *Tayal* people from their culture. In *Tayal* discourses, however, the same patterns are understood as adaptive responses in which *Tayal* connections to nature, community and customary governance are reinforced against the colonizing assumptions of the invisibility and unimportance of Indigenous rights in contemporary resource management. Encountering the growing pressure from dominance and invisibility, nevertheless, *Tayal* water governance remains a presence in the landscape of an ostensibly 'modern', but still colonizing Taiwan.

6. Conclusion

Tayal governance of common property offers an alternative to colonial interventions. It challenges discourses and practices of dominance and invisibility by demonstrating its persistent and resistant presence. Through re-examining the nature of commons, this paper has illustrated that common property governance in the *Tayal* cultural context is maintained/nurtured by customary law which has accountability and moral obligations to a broader *Tayal* customary governance system. In *Tayal* water governance, water is an active agent which engages *Tayal* cultural dynamics rather than a consumable resource. *Tayal* customary governance offers a strategy for thinking relationally about governing the communal relations among non-human and human agencies in a more-than-human world, rather than consuming resources in anthropocentric ways.

This paper weaves together two threads of argument from fieldwork on water governance in the *Naro* communities of Jianshi Township in Taiwan. On the one hand, there is a theoretical thread; on the other is a contextual thread. First, the paper has shown that in common property governance, it is important to recognize that non-human agencies play an active role in *Tayal* culture. By recognizing water as actively engaged in common property governance, the approaches regarding common property governance needed to be re-examined. In the *Tayal* context, water is a vital agent that shapes identity, belonging and existence; water also connects a range of other human and non-human agencies. Governing the water resource for *Tayal* people is never merely about managing the resource itself, but about managing the relations among non-human and human agencies and sharing the **responsibility communally** in a more-than-human world. It is too simplified to presume that common property governance indicates communal ownership. In the *Tayal*

cultural context, it also indicates sharing the **custodianship** under customary law. Academic discourse typically represents scholarly knowledge as detached, objective and universal, yet the contested cultural landscapes of *Tayal* territory in Taiwan reflect a persistent ontological pluralism (Howitt and Suchet-Pearson 2003, 2006) that needs to be recognized. Recognizing *Tayal* people's communal custodianship of 'resources' is the foundation needed to propose more culturally appropriate, just and resilient common property governance frameworks in this contested cultural landscape.

Secondly, the paper critically considered the implications of a discourse about 'modern' Taiwanese society. In Taiwanese dominant discourses, Indigenous culture is deemed traditional and authentic only when it exists somewhere else or some-when else. Colonial interventions and government legislation have been complicit in creating the apparent invisibility of Indigenous Taiwanese in 'modern' Taiwan, and in underpinning the dominance on non-Indigenous culture in 'modern' Taiwan. However, in examining the case of *Tayal* water governance, the paper demonstrated the continuing Indigenous presence and identified the political challenge in 'modern' Taiwan, especially in a post-Apology political dynamic. The examples discussed reveal a contemporary *Tayal* ontology that consists of interdependent relations between human and non-human beings in particular places, which is not valued in a deep colonizing Taiwanese society. *Tayal* people's water resource governance is deeply integrated with their epic migrations and oral history that underlies their more-than-human ontology. *Tayal* customary governance framework is resilient and adaptive, evolving correspondingly to society dynamics. Through cultural ceremony, *Tayal* people recognize non-*Tayal* settlers as stakeholders of collective water interests and include them into the social relations. When down-scaling the discourse of Indigenous absence (or stereotyped presence) from national legislations to local landscapes, the research reported here revealed an inconsistency, as well as identified a political challenge in a post-Apology political dynamic in Taiwan. In the ostensibly 'modern' Taiwanese setting, the dominant discourse excludes Indigenous cultures as parts of the present society. However, a resilient local common property resource governance relies on the collective ability to engage rather than subvert diversity in knowledges⁸ and cultural experiences (see also Natcher et al. 2005; Chaudhary et al. 2015; Bunge-Vivier and Martínez-Ballesté 2017; Tadie and Fischer 2017). Just as custodianship of territory by Indigenous peoples was not seen or valued by non-Indigenous colonizers, Indigenous modes of governing the landscape to maintain vital resources were also mostly unperceived and unacknowledged (see also McLean 2010). The pipeline systems in *Naro* community governed by customary law literally show Indigenous governance embedded in an ever-present and everyday social-relational web (see Figure 4), and illustrate how Indigenous presences, while marginalized by colonial interventions and national legislation (see Figure 5), remain resilient and adaptive

⁸ We use the word knowledge in plural to refer intentionally the multiplicity of knowledge systems in contested cultural landscapes.

and reassert themselves through negotiation of the changing physical, social and regulatory landscape (see also Figures 3 and 4).

The National Apology provides a space to start re-narrating (and listening/attending to other narratives already present) the discourses of presence, existence, belonging and governance in Taiwanese contested cultural landscapes (Howitt 2012). Recognizing the historical injustices of colonization and national legislation that sought to erase the rights of Indigenous Taiwanese is an important step toward building a national society that acknowledges and recognizes Indigenous Taiwanese's presence as an essential part of 'modern' Taiwan. Only by acknowledging the failed extinguishment and the persistent and resistant Indigenous presence, can Taiwanese society start a process of reconciliation. Starting to identify and bridge the gap between the dominance and the messy reality is what this paper aimed for. Common property governance is about governing among relationships rather than merely governing the resource. Recognizing the inherent custodianship of Indigenous Taiwanese people does not hurt the legislatively protected water interests of individual citizens. Such recognition would benefit *Tayal* communities by acknowledging their importance of *Tayal* relational ontology in common property resource governance. Such reframing of common property resources such as water will be beneficial for Taiwanese society by reframing the historical, cultural, political, ecological narratives in ways that support the solidarity of Taiwanese society by including Taiwanese Indigenous peoples, including *Tayal* people, as part of 'modern' Taiwan, rather than romanticized relics.

Glossary of *Tayal* terms

Cinpuqing qsyá: the priority user of a water source or 'water owner'

Gaga: customary law

Pucing qsyá: means the water source (*puqing* means roots; *qsyá* means water),

Qutux niqan: extended family, refers to a group who share foods, and also refers to a group that shares water sources

Lmuhuw: traditional chanting records ancestral migration

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Appendix I

Informants list

No.	Informant (pseudonym)	Gender	Occupation	Approx. age	Ethnic group
1	Atung	Male	Farmer	60~	Tayal
2	Payal	Male	Local residents	50~	Tayal
3	Kumu	Female	Farmer	60~	Tayal
4	Hetay	Male	Farmer	60~	Tayal
5	Hayung	Male	Farmer and restaurant owner	50~	Tayal
6	Tali	Male	Elder and former farmer	80~	Tayal
7	Ataw	Male	Elder	60~	Tayal
8	Yuming	Male	Farmer	65~	Tayal
9	Kumay	Male	Farmer	65~	Tayal
10	Watan	Male	Local resident and retired teacher	50~	Tayal
11	Yulaw	Male	Farmer	65~	Tayal
12	Pasang	Male	Farmer	40~	Tayal
13	Icyh	Male	Farmer	60~	Tayal
14	Lahuy	Male	Farmer	55~	Tayal
15	Behuy	Male	Local business owner	75~	Tayal
16	Hana	Female	Local business owner	75~	Tayal
17	Apay	Female	Farmer	60~	Tayal
18	Mayan	Male	Farmer and hunter	55~	Tayal
19	Yukan	Male	Farmer	55~	Tayal
20	Piaty	Female	Farmer	55~	Han (married to Tayal)
21	Yaway	Female	Farmer	55~	Tayal
22	Yapit	Female	Farmer	60~	Tayal
23	Tapas	Female	Local resident	50~	Tayal