The term indigenous people(s) is a subject of much debate within both academic and activist circles. There are scholars who question the usefulness of such a category (Kuper 2003) and caution the potential risks of subscribing to an essentialized identity (e.g. Conklin and Graham 1995, Conklin 1997, Li 2000). There are also studies that highlight the empowering aspects of this new rights discourse and how it has provided space for local rights struggles (Keck and Sikkink 1998, Wilson 1999). Many also discuss the double-bind that communities fall into when claiming rights based on indigeneity, and others highlight the political risk in privileging claims to being first to the land (Jackson 1999, Bowen 2000, Li 2000).

Within the Southeast Asian context, the suitability of the term indigenous peoples to this region has also been raised by legal scholars and social scientists (Kingsbury 1998, Li 2000, Bowen 2000). At the international level, the concept of “indigenous peoples rights” is largely shaped by the experiences of countries in the Americas in the context of European invasion and colonization. In these countries there is a defined (and for some continued) native-settler framework with the state tracing its roots to the colonizer.

In Southeast Asia, while the term indigenous within the international context has been mobilized more recently (much like Africa7), the politics of indigenous rights have been around for much longer and the term indigenous has varied meanings. States, partly based on a historically derived stance and partly in response to more recent demands on the international front, have rejected, questioned, or appropriated the term. For example, in Indonesia, the official governmental stance is that all Indonesians are indigenous. In Malaysia, the ethnic Malays who are the dominant ruling majority position themselves as indigenous (bumiputera or “sons of the soil”) with special rights. In Cambodia, Vietnam and Laos the term ethnic minority is preferred over indigenous by the state, and projects targeted for these groups tend to have a “civilizing” mission (Duncan 2008). The Philippines have the longest history of involvement on the international indigenous rights level and certain forms of indigenous rights (such as the Indigenous Peoples’ Rights Act 1997) have been officially acknowledged by the state.

At the ground level, in the last several decades, the importance of the global indigenous rights discourse for local level indigenous rights activism in Southeast Asia has been rising. Indigenous movements in this region, while initially having to struggle to fit within an international discourse and definition of indigenous concerns (Hodgson 2002), now play active roles at international meetings, even taking on important leadership roles.

---

1 See for example Adam Kuper’s provocative article The Return of the Native published in Current Anthropology in 2003 and the responses to it.

2 Dorothy Hodgson, in comparing indigenous movements in Africa and the Americas, points out, “In Africa… where the term indigenous has been adopted more recently as a tool for social and political mobilization, the contemporary lack of dominant colonial population converges with long histories of conquest, assimilation, migration, and movement to make the criteria for deciding who is ‘indigenous’ far murkier” (2002:1037).
Pan-regional indigenous identity and connections have also been fostered through regional networks and exchanges (e.g., Asian Indigenous Peoples Pact, UNPFII Regional Caucus). International forums and mechanisms such as the UN and the UNDRIP have provided space for indigenous rights activism otherwise limited in their own countries. Increasingly, the international indigenous rights discourse and identity is important for the indigenous movement in this region, even while the definition of “indigenous” continues to be debated. (Interestingly, almost all Southeast Asian countries adopted the United Nation Declaration for Indigenous Rights in 2007.)

Given the controversy and diversity of what “indigenous” may mean on the ground and the potential mismatch of the international discourse of indigenous rights to the local scene in Southeast Asian countries, how then do we as scholars study indigenous rights claims in this region? Is “indigenous” a useful term to define the experiences of the marginalized groups that many of us work with? Or should we (as some scholars such as Kuper have suggested) do away with this concept?

In my paper today, I examine indigenous rights claims in Malaysia where, on the one hand, you have the Orang Asli—the indigenous minority and marginalized group in Malaysia—and on the other hand, the Malays, the politically dominant and majority population who also claim to be indigenous. How can a dominant group like the Malays claim to be indigenous? And how can a group like the Orang Asli claim indigenous rights when the state also claims to be native? What happens when the international indigenous rights discourse is drawn upon by the Orang Asli to claim rights from the state? How do we study indigenous rights within this context of competing meanings?

My argument here is this: Given the importance of this term in practice, it is critical that we pay attention to the different articulations of indigeneity and the different meanings they take on and how they are reworked over time. Rather then taking the position of uncovering who is more authentically indigenous that the other, I focus on the different positionings. I explore the historical and political processes that shape these claims. Here I adopt Tania’s Li position that “a group’s self-identification as tribal or indigenous is not natural or inevitable, but neither is it simply invented, adopted, or imposed. It is, rather, a positioning which draws upon historically sedimented practices, landscapes, and repertoires of meaning, and emerges through particular patterns of engagement and struggle (2000:151).”

Additionally, given the history of this region, I move away from the native-settler framework which is dominant in much of the indigenous movement literature as it is mostly drawn from case studies from the Americas that fit this description. Some Orang Asli scholars describe the Orang Asli experience using the language of colonialism, with the Malays, who are the majority of the population, positioned as the colonizers (Dentan et al. 1996; Dentan 1997). However, this too does not accurately fit the description of the situation, as in Malaysia (and many countries in Asia and Africa), the postcolonial state is derived from the colonized and is ideologically set up as the guardian of native rights (Ho 2004:240).

International discourses have played an important role in Orang Asli claims to land rights. While it is tempting to celebrate the space that the international rights discourse have opened up for groups such as the Orang Asli in Malaysia, too narrow a focus on the global connections that are celebrated as new, obscures the layered histories of competing claims and embedded power relations that continue to shape contemporary struggles (D. Moore 1999:657, D. Moore 2005, Peters 1994).

My exploration here therefore examines the indigenous rights struggle within a historical perspective, examining the competing claims to indigenous rights over time in the Malaysian context, and how they intersect with the more recent positioning of “universally recognized” indigenous rights.
The case study:
First, how can Malays be indigenous with special privileges and the Orang Asli a marginalized minority in Malaysia?

The Orang Asli and the Malays have had a long history of connections. For example, Orang Asli played an important role in the establishment of the Malacca Empire in the 15th Century. During the precolonial period, alliances through marriage and trade with Orang Asli groups were much sought after by the Malay settlers. The British colonial rule starting in the 19th century marked a changing relationship between the two groups. The creation of a more distinct “Malay aristocracy,” the decrease in demand for forest products and the importation of racist ideology tipped the balance towards Malay majority dominance and the marginalization of the Orang Asli (Andaya 2002 and 2008; Hirschman 1987).

In the postcolonial era, the Malays positioned themselves as bumiputera or “sons of the soil”—a positioning that can be traced to the British “divide and rule” strategy. This positioning provided the Malays with claims to special privileges to protect their interest against the Chinese and Indians who were brought in by the British in the late 19th century (Hirschman 1987).

So, where did the Orang Asli, the “other native group” fit into this equation? In analyzing archival data and census categories, a pattern emerged. Orang Asli were, at different times, aggregated with the Malays as “sons of the soil,” and at other times, they were positioned as distinct from the Malay majority and denied the rights and entitlement that the Malays enjoy (Idrus, forthcoming).

In the years leading to independence and in the early post-independence era, the 1950s and 60s, the Orang Asli claim to be the “true sons of the soil” was conveniently made invisible by Malay leaders by publicly affirming Orang Asli rights to be treated with equality, but positioning them as “one of the ethnic minorities” rather than as the “sons of the soil.” (Refer to newspaper cuttings-slide)

I suggest this was because the Malays did not want to have their own claims to special privileges based on their positioning as indigenous questioned by the non-Malay citizens, an issue that was highly contested at the time. Demographically, however, the Orang Asli population added weight to the slim Malay majority (the population count for Orang Asli at this time is estimated at between 34,700 to 100,000), and censuses continue to include Orang Asli under the Malay category. This was critical at the time, as the Malays risked being a minority against the combined population of the Chinese and Indians. (show table)

In the later post-independence era, having secured privileges for Malays affirmed in the Federal Constitution and with their position not actively challenged, Malay leaders made sharper distinction between Orang Asli and Malays. The Orang Asli were affirmed as aboriginal peoples, but it was argued that as the first group that established an internationally recognized government and formed a majority, the Malays were the rightful indigenous people of the land. This is exemplified by this statement from Mahathir Mohamad, a former Prime Minister of Malaysia:

3 Malays have their special position as “bumiputera” or sons of the soil affirmed in the Federal Constitution. This includes special position of the Malay Sultans, rights to central leadership positions in the government, as well as privileges such as quotas for business licenses and jobs in the civil service. This claim to special entitlement and Malay supremacy (in Malay termed “ketuanan Melayu”), have been a constant source of ethnic tension in Malaysian politics and community relations.
In Malaya, the Malays without doubt formed the first effective government. The Malay states have been internationally recognized since the beginning of Malayan history…. The aborigines were never accorded any such recognition nor did they claim such recognition. There was no known aborigine government or aborigine state. Above all, at no time did they outnumber the Malays…. I content that the Malays are the original or indigenous peoples of Malaya.


The Orang Asli today stand at only 0.5 percent of the population with 76.9 percent of the Orang Asli population remaining below the poverty line. The majority of the Orang Asli community in Malaysia do not have secure land tenure. At best, Orang Asli are tenants-at-will on state land; this means whenever the government wants land for “development” projects, they are subject to eviction, often without proper consultation or compensation. Government development projects tend to be guided by an assimilation and Islamization policy. Orang Asli are governed by the Aboriginal Peoples Act which positions them as wards of the state with limited rights.

In recent years, Orang Asli leaders have been more vocal in championing their rights including by going to court. In a landmark Orang Asli land claims case (known as *Sagong Tasi and Ors vs. the State of Selangor and Ors.*) the defendants—the state and federal governments—argued that the Orang Asli plaintiffs could not claim customary rights because they were no longer practicing a traditional way of life. The defendants’ strategy was to suggest that the Orang Asli group had assimilated as Malays because they now speak Malay, wear clothes like the Malays and some have converted to Islam.

When Sagong Tasi, village elder and lead plaintiff in this case was on the witness stand, the state attorney continued this line of argument suggesting that the Orang Asli community was indistinguishable from the Malays and therefore cannot claim customary rights. Sagong felt so exasperated that he surprised everyone when he boldly responded to the ethnically Malay attorney representing the defendants: “You say we are the same, but put a monkey in front of us now,” he paused for effect, “and we will see who will eat it.”

Sagong’s cheeky remark caused the courtroom to erupt in laughter. It is a stereotype that Orang Asli eat monkeys, a taboo food item for Malays who are predominantly Muslims. Eating a monkey indexes someone who is less civilized, someone who lives in a very rural area, near the forest perhaps or even in the forest—another marker of someone “less civilized.” Doing so distinguishes a person from the dominant group, as the food item is out of the range of “normal things to eat.” Sagong very cleverly used this marker against the defendants in making a point that the Orang Asli are indeed different from the Malays.

Here the distinction between Malays and Orang Asli is important because of the different rights accorded to the different claims of indigeneity. The government had claimed that Orang Asli cannot claim customary rights because they have become Malay, yet it is only the Malays and not the Orang Asli that have access to special rights as indigenous in Malaysia.

In this same case, the Orang Asli plaintiffs drew upon international precedents in making an argument for the rights of the Orang Asli to customary land. Persuaded by the authority of cases from Australia, Canada, the United States, South Africa and Nigeria, the Malaysian High Court made history by awarding native title to the community. Justice Mohd Noor

---

4 This statement also highlighted and analyzed in Dentan 1997.

5 This is a common line of argument in attempts to debunk customary land claims the world over (those familiar with James Clifford’s work on the Mashpee will also recognize a similar cultural argument being played out in that case; see also Povinelli 2002).
concluded that, “in keeping with the worldwide recognition now being given to aboriginal rights, … the proprietary interest of the Orang Asli in their customary and ancestral lands is an interest in and to the land (MLJ 2:2002:615).”

This language of international indigenous rights is repeated throughout the written judgment of the High court and court of appeal decisions for Sagong Tasi vs. the State of Selangor emphasizing the importance and recognition of the international discourse of indigenous rights in the Malaysian courts.

One of the definitions for indigenous people which is often cited in international frameworks is the following from a 1986 United Nations report:

Indigenous communities…are those which, having a historical continuity with pre-invasion and precolonial societies,…consider themselves distinct from other sectors of the societies now prevailing in those territories, or part of them. They form at present non-dominant sectors of society…
– Martinez-Cobo, UN Special Rapporteur

Here indigenous peoples are defined as those “having a historical continuity with pre-invasion and precolonial societies,” “consider themselves distinct from other sectors of the societies” and “form at present non-dominant sectors of society.” This international definition, recognized in the Sagong Tasi case, starkly differs from the state’s earlier definition that positioned Malays as the indigenous people. Here, the new indigenous rights are layered over an indigenous slot already occupied by the Malays.

Thus, international discourse opened up space for the Orang Asli to draw upon a different form of indigenous rights. At the same time, this claim collides with existing discourse on indigenous rights in Malaysia that continues to shape and limit contemporary claims. This case study illustrates the complex history of indigenous rights in Malaysia, and the varied claims to indigeneity and the different forms of rights bundled with these different identities. The layered histories of the pre-colonial experience, colonial encounters, contemporary politics, nationalist discourse, international law and transnational processes all come together within this space and time, drawn over a new set of negotiations over indigenous rights in this court case.

In examining indigenous rights in Southeast Asia we need to examine the specific historical and political processes over time. In the Malaysian example, the discourses of indigenous rights have long been around in Malaysia but in different forms. Malay, Orang Asli, bumiputera, natives, pribumi, Orang Asal, aboriginal—these are all different terms that can be translated as “indigenous” and have overlapping and competing claims to certain forms of rights. The new international indigenous discourse is layered upon these existing discourses and becomes reworked as do the local forms of indigenous identity claims.

Most recently, these currents surfaced in a response to the formation of a new right-wing (ultra-Malay nationalist) organization—PERKASA, which stands for Pertubuhan Pribumi Perkasa Malaysia (which can be translated as the Malaysian Organisation for Mighty Natives). Orang Asli leaders declared that the use of the term pribumi to champion Malay rights was tantamount to identity theft. Their stance was that Orang Asli are the rightful “pribumi.” According to one leader, “But pribumi means orang asal (original people), they are the original owners of all the land in the peninsula. Perkasa members cannot call themselves pribumi. They can only call themselves Bumiputera.” 6 This example again illustrates the

6 From an interview in Malaysia Today, 24 July 2010, “Perkasa an identity theft, say Orang Asli.”
shifting discourses and the need to pay attention to the historical specificity and the different and at times competing articulations of indigenous rights in Malaysia.

**Conclusion**
The distinctive history of the region, which differs from the Euro invasion experiences of countries in the Americas, requires that we pay attention to the different meanings and formulation of indigenous rights at the local level. The international indigenous discourse has opened up space for indigenous groups in Malaysia to claim for rights using new language and frameworks. Yet, it cannot be examined separate from the existing and deeply embedded indigenous rights discourse and layered histories of indigenous rights claims. The histories of past connections are not just passive backdrop to the more contemporary struggles but effects that continue to be actively drawn upon, reinterpreted and reconfigured over new sets of negotiations.

**Literature Cited**


Kuper, A. 2003 The Return of the Native. *Current Anthropology* 44(3)389-395, 400-401


