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Trends in Pacific Land Tenures

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Of course every Pacific country is different, but I will focus on some similarities. And though each situation is complicated by an infinite range of forces, I will refer only to a **few**. There are obvious dangers in this approach, but our time is short, and it may be better to highlight some crucial forces than to get bogged down on details and lose sight of the bigger picture.

Degrees of dependence and independence.

The Pacific has two main roads to "development" - if we use that term roughly as it is used in Pacific development plans, to mean more goods and services, more choices, more personal achievement and so on.

The first road is to use one's own resources, the main ones of which are the existing land, minerals and labour. The second is to use other people's resources, especially in the form of foreign aid and foreign investment. To the extent that it uses its own resources effectively, the advantages to the country and its people are many and the disadvantages few. To the extent that it uses foreign aid and foreign investment, the advantages are in many cases less certain and the disadvantages greater. Obviously, it is not only a question of either/or, but also of how much of each, and in what relationship.

Whether or not the Pacific is becoming over-dependent on foreign aid and foreign investment is not the direct concern of this meeting. But there is no doubt that land and labour are seriously under-used by almost any criterion, and particularly by the criteria Pacific governments have laid down for themselves in their development plans.

The feast that's believed to be a famine.

Our concern at this meeting is with land, so let's focus on that. There is a myth of land shortage throughout the Pacific but a reality of land surplus in most of it. Indeed, land resources are exceedingly limited both in area and potential in some of the atolls, but only about 2 per cent of Pacific people live on atolls. Most Pacific countries, by world standards, contain a great deal of land which is unused or underused. This is because of psychological, social,

cultural and political problems, much more than agronomic, fertility, marketing or transport problems.

The traditional heritage : more preached than practiced.

Reference to traditional principles, requirements or constraints is constant but usually based on either misunderstanding or intentional misrepresentation.

Let us look at a few key features which applied in most pre-industrial Pacific tenure systems.

The first was that there was a limit of about three miles to the distance which Pacific people could maintain effective land rights from their place of residence. There were some exceptions, particularly in the case of high ranking individuals holding limited rights usually of a political kind at longer distances, but what was much more common was the opposite - for most people the range was much smaller than three miles. This was reinforced by lack of transport, fear of warfare, and sorcery.

The forced self-sufficiency of pure subsistence living in pre-contact times necessitated every individual or family having land rights spread over the different available soil types. Each person or group generally needed access to some taro swamp, some gardening land, some bush land for foraging, some coconut land, some source of stone for tools, and usually access to the sea. This need for a variety of soil and water types led to persons and groups holding scattered rights in different parts of the territories over which their clan and/or tribe held more general rights. The need for that kind of allocation has long since gone in most of the Pacific. In a situation of pure subsistence it is a very sensible pattern of allocation and relatively economical. In the present day situation of a high degree of specialization and importation of specialized products, it is in most situations very inefficient. The fully subsistence economy disappeared for most Pacific islanders generations ago.

The absence of central government had a number of consequences. One is that the separate smaller groups had to settle their own disputes. Settling disputes was at two levels. For settling internal disputes, the village or district constituted a government under its structure of chiefs or other leaders. But between districts, since there was no centralised government, this led to fairly constant competition and frequent small-scale warfare. When people know that war is probable if they don't settle their disputes, they usually negotiate to avoid war.

In pre-contact societies there was no independent arbitrator, and all decisions had a political component. Decisions were based not only on customary land principles, but also on who supported whom and who was in a position of strength. Those who did not pull their weight in the society would not be rewarded with extensive land rights. This process led to the pattern of rights to land being to a large extent a reflection of the structure of political power in the community.

The absence of writing meant that people had to use other records, the main one being human memory. Whoever's memory is being relied on reflects that person's self-interest, for it is a simple fact of human psychology that memory is selective and tends to remember more of what is in our own self-interest than of what is in the interests of others.

In many Pacific societies it was, and often still is, rude or impolite to ask about land rights or genealogies because these were regarded as private or confidential. Thus it is usually because there are likely to be differences of opinion about what is the correct version.

Every one of the above features of the traditional systems is now greatly changed. A return to a totally traditional system would do away with central governments, reintroduce internal warfare, stop motor transport and use of metal, do away with imports and trade, writing, independent arbitration and so on. This is not to suggest that no traditional features can be retained, but that many cannot, desired or not. Many of the features referred to today as 'traditional' tenure are not pre-contact in origin, but colonial.

The myth of "communal ownership".

One of the problems in discussing land tenure is the inadequacies of the English language. One of the greatest inadequacies is that in general English parlance the word "communal" is used to describe such radically different systems as the pre-industrial Pacific system and the systems of the Soviet Union or of Israel or other places today which are of a totally different order.

The widespread myth among both Europeans and many islanders, that Pacific islanders traditionally did their farming "communally" is simply untrue for the vast majority of islanders. Many of them did their agriculture on a more individual basis than most farmers of Europe or Australia do even today. Most individual Australian farmers get help from contractors, neighbours, relatives or employees to clear bush, erect fences, and buildings, or to harvest major crops. They don't think of themselves and nobody else thinks of them, as "communal" farmers. Most Pacific islanders also got some help traditionally from some selected others (seldom from a whole community and never from a commune) when they cleared bush or erected buildings. Principles of selection of others to help varied. And most islanders have always done all of their own planting and harvesting on an individual or household basis. For the majority of islanders the household was not the agricultural unit, it was smaller than that. Polygamy was widespread, but in most societies each wife tended her own gardens, and in many societies each young unmarried man or woman also.

How then did the myth of "communal" islanders emerge? It is partly a European myth, but partly also a local one. All islanders (like all other humans incidentally) used reciprocal help for construction and major projects, whether for use by individuals, households or larger communities. There were some cases of community agriculture for some crops (e.g. taro in some cases in Samoa and Hawaii but not for most taro in most places) for some purposes (especially for special feasts). But what were often thought to be "communal" gardens were in practice numbers of individuals working at the same time in adjacent individual gardens. Another factor was that most islands societies

emphasised the "goodness" of contributing one's share to community needs, and used tough sanctions to enforce it, as tax-collecting agencies anywhere must (for community labour and taxation are only slightly different approaches to the same problem). And finally, some colonial governments (Fiji being the most marked case) greatly strengthened the traditional power of chiefs in order to govern through them, and accorded them powers which were only partly based on traditional precedent but were legitimated by being called "communal".

A word needs to be said about corporate land holding. Because of a feeling that joint land-holding and land working may suit island people better, literally thousands of experiments have been carried out in various islands with land being held collectively for cooperative farming; corporate farms; tribal, clan and lineage enterprises; communal farms and even state farms (the biggest state farming enterprise is WESTEC in Western Samoa which employs over 3,000 workers). Their story is a long one, and some of it has been described elsewhere. The vast majority have been complete failures within 5 to 10 years of commencement, a few have had moderate success. None that I know of has been highly successful. Indeed, a new formula or new circumstances might make such systems workable and effective, but anyone planning them needs to do so with caution, and with a clear understanding of the many many others of various kinds which began with great goodwill and enthusiasm, only to end in disillusionment and despair.

Forced fragmentation.

Traditional means of acquiring multiple land rights remain, in many Pacific countries, but the processes whereby most of them lapsed over time have fallen into abeyance, by making much fuller provision for acquisition of land rights (particularly by inheritance) than for the loss of them. Full bilateral inheritance (obtaining and retaining full and equal rights in all the property of all one's ancestors) cannot exist for long in any society. Traditionally it did not exist anywhere in the Pacific and where it has been introduced by law (especially in French Polynesia, the Cook Islands and in New Zealand Maori lands) the results are chaotic even after a generation or two. The misunderstanding in these cases

was due to the fact that people did inherit potential rights in all lands of both parents, but the rights they exercised and passed on to their children were limited by allocation within the family, the place of residence, gift, adoption and other considerations.

When colonial governments introduced new systems of land transfer they limited the processes by which rights can be inherited, often allowing land to be acquired only from one's parents. This often (though not necessarily) reduced dispute in the short-term, but resulted in a loss of flexibility and a new class of problems in the next generation. The colonial government grasped the ideal pattern, but did not fully understand (or in some instances understood but did not fully recognise or provide substitutes for) all the subsidiary processes which were at work in the traditional system.

Where the introduced legal system of inheritance did not accord with custom, certain new problems are created. Nayacakalou (1961 : 5) points out that the Fijian yavusa, mataqali and itokatoka "are not the neat descent-groups drawn for us...might I whisper, even by the Native Lands Commission ... The people of a village cannot be bothered with neat pigeonholes What they are concerned about is the exigencies of their daily lives" The fact that the Lands Commission used the principle of patrilineal descent to the exclusion of almost all other principles "robbed the system of much of its flexibility".

Absentee landlords in the Pacific Way.

Today Pacific islanders are moving constantly from island to island as well as to metropolitan countries. This movement is increasing.

In New Zealand alone there are about 60,000 Pacific islanders (mainly Samoans, Cook Islanders, Niueans and Tokelauans) and most of them will probably remain there all their lives. There must be nearly 100,000 in U.S.A. Most retain some land rights in their home islands. This reduces the living standards of those left back home. Some want to plant tree crops but dare not because relatives with joint rights in the land may return and object, or expect a

share of the proceeds. Some want to lease the land, but this requires approval of all other rightholders - sometimes a hundred or more. To get the approval of those living overseas is so costly and time-consuming that usually nothing is done. More common are absentee landlords within the nation, usually in the capital city and holding underused land elsewhere. This is now a Pacific-wide problem.

New powers for the old.

Too much land is now controlled by old people: much more than it used to be. Inheritance of land takes place too late in life. Most land does not change hands except at death. As medical standards improve, men who live to adulthood probably survive until they are sixty to seventy years old in most Pacific islands. By this time their sons, when they take over land rights from their fathers, are in their forties. This is far too late. It is when men are in their twenties and thirties that they need maximum control over the land they use. Many people will say this is nonsense, that the young men are allowed and encouraged to use the land, but that is not the point. They do not have full control over the use of it or of the income that comes from it. And if that control is held by their elders, they will be discouraged from working it as fully as they otherwise would.

This is not a traditional problem handed down from the past. It is a new problem. It results from three changes: firstly with no internal warfare and with better medical care people live much longer; second, land registration systems are almost always in the name of the old people whereas before land registration took place the aged usually had much less power over land; and third, land is now being used to produce money as well as subsistence.

"Accident of birth" is not the best principle for allocating land rights.

The tying of land to social groups is worsened when the only way one can become a member of the group is by accident of birth. In a situation of pure subsistence, minimal mobility, and local government on the basis of kinship groupings, accidents of birth can be a useful principle on which to allocate

land rights. Even so, it was always qualified in practice by a number of other criteria - adoption, marriage, acceptance of refugees and warriors and so on. Most colonial systems accepted the "accident of birth" principle, which is easy, but did not make adequate provision for alternative processes. At the beginning of this century that did not matter much, now it matters a lot.

Purgatives, enemas or continuing constipation?

Warfare was the extreme, but vitally important, mechanism for adjusting land resources to population needs. Adoption, gift, marriage transfers, redistribution at death, and even purchase for traditional money, were established practices in many Pacific islands. Land disputes were a problem to be solved, but their function as a mechanism adjusting land resources to needs was not adequately understood.

It was understandable that the early lands commissions 'fixed' land rights, but they did not provide adequate alternative means of land transfer. This has left people in most islands with inadequate facilities to acquire effective rights in places close to transport and markets. This is a significant disincentive. Subsistence farmers (and almost all islanders used to be subsistence farmers) had to have access to land. But the best distribution of land for pure subsistence was very different from its best distribution relative to cash crops, transport and markets, as the commercial component increases.

It is human to fear the dangers of a generation ago, and to be blissfully ignorant of the dangers of today. In this connection islands people have reason to be cautious of sale, but perhaps not so totally paranoid about it - especially once they are very quick to buy other people's land when they migrate abroad.

Limited provisions for sale under specific circumstances would facilitate increased productivity in many areas. Restrictions would need to be adapted to the needs of particular localities but would probably include:

1. Restriction or total prohibition on sale of agricultural land of foreigners (i.e. persons who were not citizens of the country concerned).
2. Restrictions on quantity such that even a citizen could not buy land if he already owned more than a specified area.
3. Restrictions on use such that a person could not buy agricultural land unless he actively used it for agricultural purposes. That is, the tenure would be of the kind called "conditional freehold" in German New Guinea before World War I.

In some situations (e.g. Fiji) restrictions may be necessary to afford temporary preference for those Fijian people who are at an economic disadvantage, but to adopt such a policy as a permanent and absolute would probably result in leaving those it was intended to benefit, worse off than they are at present.

Land tenure and productivity.

No land tenure system can be an incentive to produce, but tenure systems can be disincentives and inhibit production. The aim, then, is for tenure systems which facilitate productivity, i.e. which do not impede the operation of other motives.

Converting a subsistence farmer into a factory or hotel worker is relatively easy - he is given a new motivational context with clear directions, guidance and goals (short-term ones at least such as weekly pay). Converting a pure subsistence farmer into a fully commercialised farmer, on the other hand, is extremely difficult, slow and expensive. There are exceptions, and they can be encouraged and increased in number. But I am not aware of any example, anywhere in the Pacific, of rapid or even successful conversion of whole communities of subsistence farmers into commercial farmers. Aporosa Rakoto has shown that a high proportion of highly productive Fijian farmers are those who are self-selected (which by definition an established local community cannot be) and have moved a sufficient distance from their communities of origin to be able to avoid undue calls on their time and resources. This is not to suggest that they have severed ties with their relatives or that they ignore customary obligations. On the contrary, the highly productive farmers seem to do both more conscientiously than the less productive.

The main difference is that the 'productive' farmers meet their obligations with less loss of working time, and they avoid marginal obligations.

Some of this is unrelated to tenure, but some is vitally related. It implies that if increased productivity is a major goal, farmers must be able to get land away from the land they were born on, and that those who are not highly motivated to farming (and the percentage who are seems to be fairly small in any human community that has much choice) should be encouraged to level the land for other occupations. Once they are established, the land needs to be made securely available to more productive, self-selected farmers. Making the urban worker an absentee landlord may in some cases be politically defensible for a short while, or to keep enough for the small percentage of urban workers who ever do go back to the land. But in the longer term and for the larger areas of land and numbers of people, a permanent transfer is going to be necessary, and perhaps the sooner it recommences the better. The essential point is that all traditional tenure systems had some mechanisms for permanent transfer of rights.

The idea that a land-owner can do what he likes with his land is not accepted in the highly productive countries of the world. In every one, land is regarded to some degree as a national or community asset. All modern governments have provided laws, taxes, zoning, land-use regulations and other provision to encourage the productive use of land and to discourage owners from leaving good land idle. (Of course this was in varying degrees also the case with traditional tenures in the Pacific).

West Germany considers the matter so important as to write it into the Constitution (Article 14) : "Private property entails obligations. Its use shall at the same time serve the general welfare". France was one of the few countries of Europe that maintained until recent years ~~that there~~ could be no interference with property rights. But the need for increased economic growth led the French government in 1962 to rule that lands that were not adequately cultivated or used could be expropriated by the government and sold to farmers who would use them. Denmark and the Netherlands, being very short of land, introduced legislation of this kind last century.

England, Sweden and Germany introduced similar provisions shortly after the last war. In the U.S.A., agricultural and conservation boards have wide powers, and selective taxes, zoning laws, and other techniques are also being increasingly used to ensure that landowners use their land productively.

The trend is apparent in capitalistic and socialistic economies alike. It is not the work of any particular political system. It is the inevitable result of the increasing complexity of all human societies and the realization that the man who does not produce is reducing the living standards of everyone.

But let nobody be deceived into thinking that traditional Pacific tenure systems had no provisions to achieve these same broad objectives - they did, and in some cases very severe ones.

Those countries that are developing fastest are among those which have put most pressure on landholders who do not use their lands adequately. Japan, Taiwan and Israel are excellent examples of countries which have exercised these principles to the full and have been rewarded by increased production and higher standards of living. There is little effective sign of it in the Pacific yet.

Respectable racism.

With the increase in political power in the islands, the rights of non-indigenous persons have decreased. Since World War II, freehold land has been transferred back to islanders from Europeans and other expatriates in Papua New Guinea, Solomon Islands, New Hebrides, New Caledonia, Gilbert Islands, Marianas, Carolines, and Western Samoa. In some the return has been total, in other partial. Fiji is the only independent country in the Pacific which allows foreigners to own land, and almost the only one to allow non-indigenous citizens to own land - even though only to a limited degree. The rights of immigrant Gilbertese, long established in the Solomons, will be less than those of indigenous people.

Extensive lands have been returned to the assumed descendants of "original" landowners in several Pacific countries, but in most cases productivity has declined drastically, sometimes to zero. Reaction against land rights of islanders

from other islands within the same nation has become aggravated in several places. It is, perhaps, an inevitable swing of the pendulum, but one hopes it doesn't swing too far before seeking a new balance.

Where do we go from here?

Rainer Schikele, completed a review of world trends in land tenure improvement by saying that success seemed to depend to a large degree on whether tensions over land were left to build up to a point of explosion, or "whether such tensions have been gradually and progressively released by appropriate adjustments well before breaking point was reached." Tensions over land tenure are already widespread in the Pacific. The rapid increase in population in many countries, and rapidly rising expectations, are likely to intensify them. At present, most Pacific governments are avoiding serious action on the land tenure front both because it is inevitably slow and difficult, and because the ready availability of foreign aid allows them to put off the evil day.

It is ironic that many Pacific governments have to allow a high proportion of their and their people's future incomes to be paid to foreign interests, at least partly because the people resist the introduction of tenure patterns which would facilitate higher productivity from local resources. Most of the agricultural land in most of the Pacific is under-utilized. It is likely to remain so for some time, for cultural innovation is easier to introduce in new activities off the land, and innovators are generally mobile. Conversely, cultural lag is likely to last longer among the people on the land. The situation is likely to worsen before it improves, for it requires very considerable commitment to long-term national gains to bring land tenure into gear with the other principles laid down in the national development plans. Specific and fairly small changes to facilitate some greater flexibility of transfer, to reduce the size of rightholding groups on land used for most forms of agriculture, to free land increasingly from ties with social groups which came into existence for quite different purposes, and to make access to land more a function of productive potential than accident