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TENURES

Constraints and Opportunities Relating to Land and Water

Land and water tenures are shaped by the environment, by past experiences and present circumstances of the people who live by them, and by external forces. Tenure systems also influence ecology, society and economy in a continuing process of interaction.

Tenures used to be guided only by diverse traditional customs and precedents. Today they are also covered by laws - lots of laws - of the 14 independent nations and 12 dependent territories of the region!

The more intensively used and valuable is a section of land or water, the more important law is likely to be. The smaller and poorer it is, the more significant custom is likely to remain. However, it is not a case of some areas being covered by law and others by custom, because most land and water is influenced by both in varying degrees.

Traditional precedents

Pacific tenure systems were diverse, but shared some common elements. All evolved to facilitate allocation of rights of access for subsistence (agriculture was the main food source in most places), sea foods (which were important in coastal areas), hunting and foraging (which was supplementary except in a few infertile pockets where it was the main food source).

Rights to land were in all cases multiple, conditional and negotiable. What was owned was not the land or water so much as rights to it - rights vis-a-vis other people. No rights were absolute. Some rights were held by individuals, but there were many shades of difference between the rights of even close relatives. Rights of males differed from (and were generally superior to) females. Rights of older brothers, and cousins of more senior lines, were often superior to those of juniors. Other things being equal, resident rightholders had precedence over non-residents. Those who worked the land enhanced their claims over those of equal blood right who did not. And more forceful personalities and more persuasive arguments could tilt balances, for multiple principles could be called upon and given varying degrees of emphasis to benefit those relying on them.

No one person held all rights to any one plot (nor do they anywhere incidentally, including in industrialised nations). As well as interacting laterally with the rights of one's peers, individual rights were nested with those of extended families, lineages, clans, tribes - and now governments, banks, insurance systems and other institutions. Wives (or in some cases in-marrying husbands) held rights contingent on the marriage. The land rights of adoptees varied greatly even within communities, for much depended on the circumstances of the adoption and the relationship of the adopting parents and the adoptee. Refugees and others with special needs were often accommodated under negotiated arrangements.

As Guiart (1996) observes, "there is no formal ownership of land in Western terms [but] systems regulating access to land for each individual in each generation," and people "spend as much time evading the consequences of the theoretical models as following their component rules." Day to day decisions were based on broad customary principles modified by pragmatism, as different customs could be used to justify different actions. For example seniority might give priority over juniors, but persons with outstanding records of military or community service may rate higher - the latter remains important in Samoa today where, for example, a lawyer was given a chiefly title and land rights for winning an important court case (Tuimaleali'ifano 1996). As the Fijian anthropologist Nayacakalou (1992) often pointed out, custom provided guidelines rather than rigid frameworks.

Rights to land were normally acquired as a consequence of membership of a group. What mattered was not only being a member but what *kind* of member you were. Although all were in a loose sense members of a group, the rights and obligations of a chief, an orphan, a warrior, a wife, a son-in-law, an absent sister, a priest or a refugee differed greatly. The notion that all members of a land-holding group were equal is false. No two members had equal rights, not even two brothers, as the elder usually had superior rights in some respects to the younger. Customary organising principles have eroded in most places, and there is a need for the rights of members to be clarified.

As there was no writing or mapping, rights and boundaries relied on memory. The memories of specialists in this art (for an art it was) were at times prodigious, as exemplified by recent converts memorising and reciting whole chapters of the bible. Although memory is selective and tends to deflect in the interest of the person remembering, it allows flexibility and adaptation. Tuimalealiifano's (1996) study of the competing and often radically different memories of Samoan experts in relation to the same land and chiefly titles - always deflected to the service of the 'remembering' party - is an excellent example of a Pacific-wide (and humanity-wide) tendency.

Most land rights were transferred by inheritance from a parent or other close blood relative, but in the process many factors came into play. These included the needs of individuals, the harmony or conflict between potential heirs and heritors, the extent to which heirs had used that land, who provided for the elders in their declining years, what payments were made at funerary feasts (this was particularly important in some Vanuatu and Solomon Islands cultures), and other considerations.

Warfare was more important in transferring land rights than is often recognised. Wars were usually triggered by disputes over pigs or other property, over women, insults or compensation. But as a consequence of war, land rights often changed hands. A New Zealand Maori proverb observed that the deaths of men were caused by land and women, and Ballard (1996) notes that although Papua New Guineans often deny that wars were fought over land, many resulted in land acquisition. He notes that Huli people deny that they fought for land, but the oral history of 3,000 plots there showed that wars "reconfigured the social landscape on a massive scale". One clan, between 1820 and today, raised its holdings of rich lands from 20% to over 70% due to a series of wars. The losers in such conquests seldom relinquish their claims to the land or their hope that eventually they will get it back. Examples could be presented from throughout the region.

Everyone needed access to several kinds of land for different purposes, so soils and crops influenced tenures. Even on atolls with their apparent uniformity, plots were usually narrow slices running from the lagoon to the ocean to give the holder access to different micro-environments. Even so, almost all people have rights in more than one such 'slice' because that facilitates exchange of use rights with others in a complex pattern of mutual obligation and reciprocity that broadens options and enhances social security (Crocombe 1968).

Most land needed seven to fifteen years of fallow after harvest because rain and heat leached soils, and pests concentrated in gardens. Fallowing facilitates flexible allocation of land, adapted to the needs of those involved at the time the land is ready to plant again. But taro (*Colocasia*) and puraka (*Cyrtosperma*) can be grown continuously in fertile swamps and thus rights to them were strictly defined. At the other extreme, medicinal plants, fibres, trees, birds and animals were scattered in the wild and accessible to all members of the large community with rights to that forest.

Climate is a vital determinant. Most plants brought by the Maori from tropical Polynesia to New Zealand would not grow, so they relied more on hunting and gathering which necessitated rights to large areas shared by many people. Afsenius (unpublished) showed how the importance of Polynesian staple crops (and the area devoted to them, and tenure forms), varied with latitude, sunlight, temperature and rainfall.

Demography influenced tenures. Denser populations recognised more precise and detailed rights than sparser populations, except when self-propagating species provided much of the diet (as in a few fertile and densely populated estuaries of coastal Papua). Likewise, the more the labor needed for production, the more individualised the tenure tended to be, so the intensive cultivation required for the staple yams in Tonga was associated with more individualised tenure than the self-propagating breadfruit and bananas which were the staples of Samoa.

For most of the region about one tenth of a hectare of land per person was needed under cultivation at a time, although this varied with soils and crops. Because of the long fallow, half to two hectares of gardening land per person (up to ten hectares per family) was needed in addition to land for hunting and foraging.

Water rights were more varied. A community normally had rights to the water adjacent to its lands, but land rights were usually sub-divided further, and in different ways, than those to water. Polynesians and Micronesians were among the world's most skilled mariners, navigators and fishermen for many centuries. As might be expected among people who depended so heavily on the resources of the sea, their marine tenures were among the world's most complex, and included different categories of rights (to reefs, shoals, passages, swamps etc) being held by communities, descent groups and individuals; rights to use of surface waters being differentiated from those of bottom waters; rights to particular fish being separate from those of other fish and from the waters they swam in; and sometimes seasonal changes in rights. [ ]
[For Solomon Islands marine tenures see Akimichi 1991, Hviding 1996; for Micronesia see Falanruw 1994, Johannes 1981; for PNG see Carrier 1981, Tabira et al 1990.]

Culture, values and knowledge should not be overlooked. Some Papua New Guinea people lived near the sea for centuries but made little use of it, while others (such

as the Motu) who arrived later with intimate understanding of marine environments, used it intensively. This often led to trade between the two economies.

Where waters were extensive and foods plentiful, there was little subdivision, many rights being held by the community. Several communities may have rights of access through a reef passage, even though only the community where it is located will have rights to fish in it. Those who invest labor, such as in making fish weirs, will have stronger rights of use than those who do not (eg. Atanraoi 1995).

Salt water in lagoons, estuaries and the open sea was usually a more important source of food and other resources than fresh water. The degree to which rights were divided by area varied enormously, with some cultures making detailed provision for individual rights to valued fishing sites. The number of persons sharing rights was generally larger the further it was from the village and the more difficult it was to mark. Thus open sea was often accessible to all whose community lands bordered it, whereas shallow waters and fringing reefs were more clearly demarcated (see pages ....).

Even far inland where fresh water is plentiful, customary rights to it are very detailed (see eg. Pospisil 1966, Kalinoe 1997). They cover who may draw drinking water from where, who may bathe and where, who may catch fish and prawns and where and when, who may divert water for irrigation or other use, access rights and so on.

External influences

Elements of the ancient traditional systems outlined above are still evident - particularly in more isolated areas. All the ancient systems have been radically modified, and today's customary tenures are very different from yesterday's.

New technology, from steel tools to bulldozers, alters the amount of land one person can farm, and the terms of its tenures. High technology and a money economy led to global markets and the attraction or seduction to turn Melanesian forests into Japanese toilet paper, the chiefly beverage kava (*Piper methysticum*) into a herbal medicine for Germans, and coconut oil into 'health' soap for tourists. The demand for imports leads Kanaks to grow coffee for Europe, Tongans to replace yams for subsistence by pumpkins for Japan, and Micronesians to work in hotels rather than gardens.

New products required different land types. Coconuts were grown in small quantities for subsistence, but commercial production required larger areas. Most attempts to farm cattle have been abandoned, or reduced to a few, because farmers cannot get sufficiently exclusive rights to a large enough area (or sufficiently exclusive rights to the cattle) to make it economic. Moreover, many Pacific people are averse to fences, which may imply mistrust. Many fences have been chopped down.

Central governments brought substantial change. Most Melanesian communities recognised no authority over more than a few hundred people, and few Polynesian communities contained more than a few thousand. In both cases, leaders at the top did not usually interfere in the day to day allocation of land rights, which was a matter for families. Change wrought by central governments is often thought to be due to their being colonial, but it is an inevitable by-product of technological development. The Kingdom of Tonga, which was never a colony, introduced the most extensive tenure reforms and the strongest rights of any government in the region (Crocombe 1975).

Another action of any national government is to stop warfare - or at least to try. No one doubts the virtue of stopping warfare, but it was done without adequate understanding of the longer term function of warfare in adjusting land to population. So no adequate alternative access was provided for those who outgrew their former areas.

I used to think that land disputes were a function of need, ie. the greater the population pressure the more the dispute. But the evidence shows no such correlation. Tonga has one of the densest populations but among the fewest land disputes. All land is surveyed and registered, tenure rules are the briefest and clearest in the Pacific, and the court can easily handle the relatively few disputes that come to it (there are also family squabbles about internal allocation which do not get to court). Tonga's nearest neighbour is Niue, where need is least and dispute much greater. Niue has 8 people per square kilometre as against Tonga's 140 and a lower proportion of Niue's land is used as more people have government work. Yet in the 1980s (I have no data since) the rate of land disputes per head of population was over 100 times higher in Niue than in Tonga. Many more fester in Niue without being brought to court and much land is left idle for that reason.

The difference is not in need but in legal and administrative structure. Tonga obliterated traditional claims and criteria by declaring all land as belonging to the government and allocating from there. Once an allocation is made, it is normally perpetual to the person and his heirs.

Customary processes for resolving disputes are becoming less effective from one side of the Pacific to the other, so more disputes are taken to courts and lawyers, both of which are expensive relative to the value of the land. In many cases the law requires disputes to be settled by the courts "according to custom" which is a contradiction in terms, in addition to which the ultimate customary determinant, that of fighting over it, is forbidden. Moreover, custom often depended on past usage which is difficult to prove, and on residence which is now often multiple, so efficient farmers often have to give way to a non-farming relative who has a closer connection to some ancestral right-holder by accident of birth, which was formerly only one of a number of criteria.

Demography is related to tenure, but often imperceptibly. Last century many Pacific populations were decimated by introduced diseases to which they had no immunity, by more lethal weapons, and by labor migration. The early colonial lands commissions came in when populations were at a low ebb and fixed land rights but did not provide adequate alternative means of land transfer. This century, growing immunity and better medical services led to booming populations, so today in many situations there are five times more people to be accommodated than the traditional tenures were designed for. The proud claim that every islander has customary rights to land is hollow when, as for a growing proportion, their rights are minuscule, fragmented, restricted, badly located relative to today's opportunities, or shared with hundreds of others. They may give psychological support, but it can be illusory.

Density of people per square kilometre of land ranges from only 9 in Melanesia to 140 in Micronesia, but with great variations within both. Moreover, vast areas of Melanesia are too mountainous for human habitation. But despite population increase, much land is used less and less effectively, as tenure problems and preference for urban occupations attract people away.

Moreover, the last decade has seen more immigration into the region than ever before, mainly by Chinese and Filipinos, and particularly to the Marianas, Palau, Papua New Guinea and Fiji. The change is due to the demands for investment and skills, and in some cases to replace emigration of local people. This too has implications for tenure.

Indigenous people no longer live where they used to. Whereas traditional systems evolved in a context where most people spent their whole lives in the one locality, mobility has been growing for over a century. The first change, in the 1800s, was young men working on foreign ships, plantations and mines, as missionaries, or in other capacities. New medical, educational, commercial and religious services led to concentration into villages and towns, of people who were formerly spread more evenly across the landscape. This process continues, but tenure adaptations have in most cases been inadequate to accommodate them satisfactorily.

Motor transport and the abolition of warfare expanded the range over which rights could be effectively maintained. Traditionally, few people held rights more than five kilometres from home, and most considerably less. Now, in many islands (eg. American Samoa, Cook Islands, French Polynesia, Niue, and many outer islands of Fiji), most 'owners' live on another island in that country, or abroad.

Risks and benefits of codification

Since customs are often disputed, does it help to codify them? Not necessarily, for codification changes custom by cementing it in place, whereas flexibility was one of its key elements. It would be impossible to implement a law which said, as customary systems provided, that rights fade over time to the extent they are not used and relative to the needs of others who use or want to use them more, that those who fulfil community obligations best usually receive stronger support for rights, and that good memory, persuasive power and physical force enhance de facto land rights. Payment of taxes is easy to measure, but degrees of unspecified (and largely unspecifiable) community participation are not. Customary practices are a different approach to land management from formal law.

Once there is a central government, however, it will always retain a final say over land disputes through the court or administrative procedures, even where it does not always exercise the powers it has. Perhaps the most extensive history of central government involvement in disputes over 'customary' land is in Samoa (see eg. Meleisea 1987, Olson 1997, O'Meara 1990, Schmidt 1994).

Land customs have been codified in a few places such as Kiribati and Tuvalu, where populations are small, the atolls relatively uniform. Those countries each has one main language and similar land customs. More commonly custom is not defined, and in cases of dispute, the courts decide what accords best with custom for that case. Most land courts of the region, however, have vastly more cases than they have the time or resources to resolve. Where judgements are given, many are ignored, as few governments have the administrative capacity to enforce the decisions of their land courts.

In most of the rural Pacific the law states that custom shall prevail, but it is always with qualifications. Many customary systems accepted that serious offenders be killed, banished, deprived of land rights, have their homes burned, their animals confiscated or property destroyed. Most such actions are prohibited today - even though not in all cases

in Samoa. Even where custom has been completely replaced by law officially, custom often 'invades' the law. Thus governments that nationalised all sea water are not always able to implement that law, and will not force legal rights over the (legally former) customary owners who have votes in the next election!

Land registration - when, what and how?
Registration aims to define who owns what rights in order to resolve dispute as well as enhance stability, productivity and environmental protection. These goals will not necessarily be achieved. A major difference between most tenures in Europe and Asia today on the one hand, and traditional Pacific tenures on the other, leads to much misunderstanding. In customary Pacific tenures (as in earlier customary systems in Europe and Asia), land and water rights waxed and waned at different phases of life from birth to death, in response to personal, family and community needs, and to political and economic forces. This dynamic process gave flexibility. In capitalistic societies, on the other hand, rights are precisely defined in area and time. A seller's rights are extinguished and the buyer acquires them in total. It is the same with gift or inheritance, and similar in communistic societies in that the rights of the state, the commune and the members were all precisely defined. This was not so in Pacific societies, where one who gave, lent or sold land rights to another did so as part of a continuing relationship. Rights were never fixed but constantly strengthened or weakened, and faded out for those away too long.

No registration system can provide for all eventualities. Registration was resisted where people feared it might facilitate forced sale, but in most situations registration was welcomed in order to confirm one's rights, for land disputes were common - flexible options have negative attributes as well as positive.

When lands commissions were set up to register land, people usually insisted that they register the traditional boundaries recognised at that time for subsistence purposes. But the small, fragmented lots into which lands were divided for subsistence often differed in size, shape and location from what would be best suited to the commercial farming or other occupations many of them were then going into.

In any case, registration is a long and expensive process. The governments of Fiji and the Cook Islands decided 100 years ago to register all land, expecting it would take a few years, but neither is yet complete. The decision more than 20 years ago to register all land in Papua New Guinea has made almost no progress and Lakau (1995) is one of many who caution against hasty or extensive registration of customary land in rural Papua New Guinea. Public trust in the government is low, its funds and skills limited, and change in rural communities is too complex for systems to keep up with in the present socio-political climate. The government cannot even keep up with registration in towns and areas of high investment and intensive utilisation where accurate records are a priority.

After registration, in most Islands countries, land rights can only be acquired by accident of birth - that is, by inheritance from parents. This is a poor basis for allocating what is in many cases their most valuable resource. Traditional flexibility was reduced at the very time when mobility of people and changes in production technology necessitated more flexibility. It has led to many people who use little or no land having lots of it, to many who need land having none, and to much land lying unused or under-used. Those who originate from isolated islands or remote areas find it difficult to get effective access

to land near towns, ports, markets or jobs. Likewise many whose grandparents had adequate land but large families, now have nominal rights to such infinitesimal plots, or share the rights with so many others, that they are of little but symbolic value. Traditional mechanisms of gift, permissive occupancy, adoption, voluntary reallocation, gift, transfers at marriage, redistribution at death, purchase for traditional money, and the threat or reality of warfare, and often some combination of these, have not been adequately substituted for even though a mobile population in a modern economy needs more flexibility of land transfer. The task of getting effective rights to those who need them is a major problem.

Sale of land is prohibited in most Islands countries or, if allowed, is strictly controlled. This ensures that families do not lose their rights, but needs adaptation to the current need for more flexibility. In the Cook Islands, Nauru, Niue, Tokelau and Tonga for example, it is against the law to sell land rights, even to close relatives. American Samoa allows sale between blood kin, and FSM, Kiribati, Marshall Islands, Northern Marianas and Palau allow controlled sale to other indigenous persons (in the Marianas this is defined as having at least 25% indigenous blood). In the Cook Islands, Nauru and New Zealand, once a name is on the register it stays there, and those who by customary processes would have retained rights in some lands and dropped out of others, remain in perpetuity - and their children and grandchildren ad infinitum.

Land rights were inherited primarily through the father, but could be inherited through the mother. Rights through both were seldom activated for long. Rights transferred through the dynamic interaction of multiple principles over time. These included the gender of transferor and transferee, age, number of dependents, seniority of birth, legitimacy, adoption, other lands available, place of residence, use of land, conformity to social norms, personal forcefulness, standing, knowledge of genealogies, boundaries and other relevant data. All other interactive criteria have withered slowly to be replaced by increasing assertion of automatic rights to biological parents in mathematical shares as the sole or primary determinant.

Partly the problems were caused by colonial governments which understood the way rights were acquired better than the way they withered if not activated, but even more today they are caused by the persons who insist on every descendant inheriting a share of every registered piece. No one wants to 'fade out' of any plot, so tiny plots now have hundreds of legal owners. If land is registered and sale is forbidden (as in much of the region), and *all* offspring inherit equal rights from both parents, the number of 'owners' in each plot more than doubles every generation. Many Polynesian and Micronesian people accept it as their established custom, which it is now, although very different from earlier traditions (see eg. Ward and Kingdon 1995). Many individuals in Nauru now 'own' one thousandth or less of a share in a plot less than a hectare. In several other countries hundredths are common. The problem of fractional inheritance is often attributed to 'customary' principles, but it is a travesty of them. Reversion to the real traditional principles is difficult for a number of reasons, not least of which is that those in positions of privilege and political power, especially those in paid work in urban areas, would not then inherit as they do not live on, use, or need the land, but they value the prestige of being a landowner and having a fall-back position, especially as the costs fall not on them but on those left at home.

Consolidation and other solutions to this problem are only worth undertaking if selective principles (either the former customary ones, or new ones, or some creative adaptation of both) are introduced at the same time. Otherwise they keep recurring.

In Fiji and Samoa freehold land may be sold, but freehold comprises less than 8% of the area in both countries. In Kiribati land may be sold to other I-Kiribati if the buyer can prove that he/she has no land on that island and needs it for housing or other approved purposes, and if the seller can prove that the land being sold is surplus to the requirements of the seller and his/her family. In Papua New Guinea land can be sold "in accordance with custom" which provides some flexibility but also leaves it open to accumulation of large areas by entrepreneurs.

In most countries land transfer other than by blood right is restricted to leasing, often subject to heavy restrictions. It is also cumbersome in situations such as French Polynesia or the Cook Islands where leasing a house site may require the approval of dozens or hundreds of individuals with rights in it.

Land transfer: Sale and other forms of alienation

In Melanesian societies with complex monetary systems, land could be bought with traditional currency (eg. Pospisil 1963), but where this occurred it was in a context of on-going social relationships. Outright sale of land was unfamiliar to most Pacific peoples, and when European entrepreneurs purchased large tracts (most sales took place between 1840 and 1900) there was often misunderstanding on both sides about what rights changed hands and for how long. Europeans familiar with freehold thought they had bought all rights unconditionally, whereas many islanders thought equally genuinely that they had provided land to immigrants in need with the customary understanding that it would revert to them if the 'buyer' did not use it, and that they would receive periodic help and tribute from those to whom they supplied land.

In the early stage there were many instances of cheating and fraud on both sides. The worst European speculators deceived Vanuatu people of enormous areas (Sope 1976, Van Trease 1987); and Samoans sold Europeans three times the total area of Samoa (Meleisea 1990, Schoeffel 1996). Some lands were taken by force by colonial governments, as in New Zealand (Kawharu 1977, Ward 1974) and New Caledonia (Saussol 1979), or by local chiefs as in Tonga (Rutherford 1977), Fiji (Routledge 1985) and Kiribati (Namai 1987).

Nevertheless, in the region as a whole expatriates generally found plenty of people willing to sell their land. Even decades after outright sales had been established and both sides were familiar with their conditions, it was not generally difficult for outsiders to buy land. One often hears today that Pacific Islanders would never sell their lands. This was not the case. They wanted money or things it would buy, but often also hoped that plantations or other facilities built on alienated land would facilitate employment, trade, roads, wharves and even education or medical services. These hopes were often not realised, or inadequately achieved, and many regretted having sold. However, foreign buyers had little difficulty buying much more land throughout the region than they were ever able to use over the ensuing hundred years. Capital and labor were scarcer than land. One of the few places where all alienated land was used was Micronesia from 1914 to

1945, when Japanese settlers outnumbered indigenous people (Peattie 1988, Yanaihara 1940).

Where land sale was stopped it was often due to the influence of missions, colonial governments or local chiefs who were aware of problems caused by alienation elsewhere. Because of wars over land between Maori and European in New Zealand, the British government forbad land sales in Fiji and annulled most sales that had taken place before it became involved. Britain allowed New Zealand to administer the Cook Islands only on condition that land sale was forbidden. Germany refused to recognise most land purchases by Europeans in Samoa before it took control.

Leasing therefor became the common way immigrants acquired land rights from the beginning of this century. It was better because the original owners earned rent and got the land back at the end of the lease - usually 66 or 99 years. However, the erosion of the fixed rents due to inflation and the rise in populations, made leasing less popular by mid-century. As a result, the world-wide trend for leases to be shorter, rents to be reviewed regularly, more sharing of benefits (eg. shares of ownership, turnover, profit and/or management of enterprises on leased land), are now apparent in the Pacific.

Much of the formerly alienated land has gone back to the descendants of its former owners. Vanuatu cancelled all freehold titles and declared all land to be owned by indigenous people under custom, though immigrants could lease lands they were actually farming (Alatoa 1984, Arutangai 1987). Papua New Guinea and Solomon Islands adopted similar but less comprehensive policies. The pro-independence party in New Caledonia has a similar goal. Fiji in the 1990s decided to return most government land (about 10% of the national area) to indigenous ownership. Japanese were repatriated from Micronesia after World War II and most lands they occupied were returned to Micronesians, but the remainder is still a matter of controversy. Kiribati bought back the alienated Line Islands. The government or individuals in Samoa acquired almost all foreign owned land. Now very little land is owned by immigrants in the tropical Pacific Islands except in Hawai'i, Guam, the French territories and Irian Jaya, where massive immigration from Java and other parts of Indonesia has been facilitated by confiscation and intimidation.

Even where immigrants outnumbered indigenes, and where most of the land was alienated to Europeans or Asians (as in Guam, Hawai'i, Northern Marianas, New Caledonia, New Zealand, Palau and Pohnpei), large areas have been returned to indigenous ownership in recent years due to political and economic action. More is likely to return. However, the proportion of national income deriving from land is reducing, so some of the gains are more symbolic than real. And given current trends in the region, it will not be surprising if that which is acquired from Europeans by the end of this century, will be controlled by new Asian investors within a generation or two.

It is ironic that where no land was ever alienated (as in Tonga, Niue and the Cook Islands, and with trivial exceptions Tokelau, Tuvalu, Wallis and Futuna), or where alienated land has long since been returned (as in Samoa), the desire of people to emigrate permanently is very strong. Many times more Samoans apply to join the annual quota of immigrants to New Zealand than can be accepted, and Samoans and Tongans are among the most notorious overstayers in metropolitan nations. To the maximum extent that they can gain access, the countries they want to go are those where most land was alienated and converted to tenures and uses which enabled those countries to generate higher

incomes. As a result, many times more Polynesians now live in New Zealand, Australia, USA, Chile, France, New Caledonia and elsewhere than in tropical Polynesia, and many Micronesians emigrate to USA since access was granted in 1986. They have no qualms about buying freehold land where they settle.

Now that sale of land is generally restricted to citizens of the nation concerned, the economically attractive areas are being increasingly acquired by a small landowning elite. Several countries that do not allow sale, even among citizens, do allow 'gifts' of land. In such circumstances sales are registered as gifts. This is common in the Federated States of Micronesia and Papua New Guinea.

Every nation wants (and has) roads, public buildings, port facilities and airports. Many need space to resettle disadvantaged people eg. due to volcanic eruption in Tonga (Rogers 1986) and Vanuatu (Tonkinson 1968), overpopulation as in Kiribati emigrants to Solomon Islands (Knudsen 1964), deprivation as with Solomon Islanders in Samoa and Tonga (Meleisea 1980, Fonua 1991), or simply for citizens who need land near the capital if they are to enjoy equitable opportunity to work at the headquarters. Moreover, every Pacific Islands government has a policy of attracting capital to generate income and employment. Hotels, factories, plantations, even the Japanese space-port planned for Kiritimati (in Kiribati), all need land and modify tenures in practice - even if there is no change in law or stated principle.

Public facilities necessitate acquiring rights from private interests. This does not mean that only one form of tenure is suitable for public lands, but some change to the former systems is inevitable. I assumed before independence that land acquisition in the public interest would be easier after independence, but it is harder, due to growing populations, the increasing value of land, and a decline in the 1990s in public confidence in the elected governments. Also, some governments have used publicly owned land to buy votes and ensure their own political survival. The government of Chuuk, in the 1980s, began giving away government land, which was currently in use by government departments, to the descendants of those who had formerly sold it to the government many decades earlier, and then leased it back from them at several times the market value because the funds were at that time almost totally derived from US aid. Now that US aid is shrinking, the Chuuk public are burdened with uneconomic debts incurred by the elected leaders.

Other intensive uses are beset by similar contentions. Disputes over the relative benefits to lessees and landowners have seen resorts, factories and other enterprises burned or closed. Even tiny, isolated, government-owned telecommunications repeater stations on remote peaks which had never been used by anyone, have amazingly high values attributed to them by a range of claimants which gets wider as the payouts increase. Many national facilities in Papua New Guinea have been seized, smashed or threatened in the on-going battle for more compensation. Airports have been closed in several countries while landowners negotiate for more compensation - even in isolated areas where they are the main beneficiaries of the facility.

In subsistence societies the needs of the community took precedence over those of individuals. The community is now the nation, and land rights increasingly need to be allocated according to public need. But cultural change takes place at different speeds, and land is always an area of cultural lag, so it may take time before the systems of land

allocation catch up with the current needs of the people they are intended to serve. Nevertheless, change is taking place both consciously due to planning and political action, and unconsciously and imperceptibly - the way most change takes place in any society.

The continuing evolution of marine tenures

Customary rights to coastal waters and tropical lagoons tended to shrink after contact with industrial technology. Reliance on the sea reduced due to population losses last century, the growth of paid employment, emigration, commercial agriculture and imported proteins. Today, however, the sea is becoming more intensively used due to rising populations, new marine products (eg. cultivation of seaweed and shellfish, tropical fish to foreign aquariums, exporting octopus to Japan), and tourist diving.

Many governments declared a century ago that all water, and land below high water mark, were henceforth government property and available equally to everyone. In practice, however, customary rights usually continued to be recognised in varying degrees. Even in Tonga, where by law all water rights belong to the government and are open to the public, customary practice still influences use in some cases. It is a good example of a law being there for 150 years, but some customary practices persisting because people find them convenient.

Even in countries where laws provide that coastal waters belong to the customary owners and that custom shall determine their use, much has changed. If what was a quiet village becomes a town and harbour, the water rights and practices are going to adapt, whatever the law or custom says. And if a product that was regarded as rubbish (such as sea cucumber) becomes commercial product (it is exported to China) then the tenure of the water where it is harvested may change in practice if not in principle. Likewise if people who fished for subsistence begin fishing commercially.

Some governments are giving more recognition to customary rights. Fijians assert traditional claims to water vis-a-vis Indian and other immigrant populations. Traditional rights were acknowledged by the independent government since 1970 and the colonial government before that, but not implemented much in practice. Growing populations, more commercial fishing, and heightened ethnic tensions have led to closer definition and stricter enforcement of such rights. Likewise in Manus (PNG), increased population and commercialisation, including tuna boats catching bait-fish, has extended claims and intensified competition for coastal waters (Carrier 1981, Otto 1990, Turner 1990).

The technology for culturing pearls enhanced the value of suitable lagoons. Customary claims were reasserted or reinterpreted. Pearl farmers want exclusive rights to an area. As the best spaces filled up, competition became keener. And as some people were going to be rich, jealousy sharpened disputes over access, even though there was no customary precedent for commercial use of lagoon space. Many atoll people who worked in town came back, along with some who had never been on their 'home' atoll (but whose forebears came from there), to claim water for pearls and land for living. And some strangers from other islands arrived because in law the lagoon was public property for any citizen of the nation - not just the island (and in French Polynesia lagoon space is allocated by the government). Pearl farming has changed the de facto tenure and use of the lagoons, and exacerbated disputes in the Tuamotu Islands (Rapaport 1996) and the northern Cook Islands (Newnham 1996), as well as generating enormous differences in

incomes. It is likely to have similar effects in Tuvalu, Kiribati, Marshall Islands and other places which are beginning pearl culture. This is not to deny its value, for many Pacific people want to produce pearls, but it shows that customary systems which evolved for subsistence needs will change as they adapt to new forms of livelihood. What to do about lagoon rights is constantly discussed, but progress in resolving the problems is slow.

More extensive use of reefs, particularly commercial use, naturally enhances claims to them. Outboard motors, new fishing technology including refrigeration, extend the distance over which rights can be effectively exercised (and claimed or stretched!).

Catching a tonne of octopus a day for Japan from the outer reefs of Tarawa is a profitable new industry. It may lead to stronger assertions of traditional rights to reefs, and their more precise definition. Other new reef products being explored and in some cases exploited, include pharmacological extracts from marine plants and animals. Tourism and sand for construction are leading to more disputes over rights between low and high tide marks, and to beaches. For case studies on current directions in traditional marine tenures see South et al (1995).

The United Nations Law of the Sea Convention arose out of disputes between nations of north and south America. Although the origin was incidental to the Pacific Islands, they are the greatest beneficiaries from the new regime. Drafted in the early 1970s, the Law of the Sea (LOS) was applied in the Pacific Islands by national legislation in the 1970s and 1980s, although did not come formally into force internationally until 1994 when the required number of countries had ratified it. Before that, however, it had been sufficiently widely accepted to have become established by what is known as "international customary law". LOS recognises a 12 nautical mile territorial zone and a 188 nautical mile exclusive economic zone (EEZ) - in most cases more, because in archipelagoes the 200 miles can be measured from lines joining the extremities of the outermost islands, provided the ratio of water to land does not exceed nine to one. This new marine tenure is the basis for the largest source of earnings (mainly from tuna and snapper) for Kiribati and Tuvalu, and for a possible bonanza for the Cook Islands which has vast deposits of seabed minerals in its EEZ.

Although national governments control the EEZs, they may make concessions to component units. In Australia, FSM and Papua New Guinea there are different formulae for marine rights to be shared between the national government and state or provincial governments. USA granted the economic benefits (not the sovereignty) from waters around Guam and the Northern Marianas to their local governments, and the Northern Marianas is suing the US government for exclusive control of its 12 mile territorial sea. Some Islands nations are recognising the claims of local landowning communities to adjacent waters in varying degrees.

Beyond the EEZ lie the international waters, which are coming under increasing international control, including by the International Seabed Authority which leases mining rights to seabed minerals to member nations. Those in the Clarion-Clipperton zone southeast of Hawai'i were the first to be so allocated.

The influence of fresh water sources on tenure forms

Crops like irrigated taro enabled higher productivity, denser populations, more elaborate social and leadership systems, and more complex rights to land and water. Where

irrigated taro was the main starch food, each valley was the primary traditional political unit in which a chief or council of chiefs controlled people and water. Within the valley, smaller clans and families controlled the water they drew off for their taro. Watersheds were the main boundaries (in contrast to localities where irrigation is not used, where the watercourse rather than the watershed is often the boundary). Taro requires hard labour, so the right to it usually lay with the household which did the work.

On atolls there are no valleys and no running water. Fresh water is scarce and therefore more valuable than on high islands where it is generally plentiful. On atolls, access to water requires different technology and results in different patterns of social organisation. Digging wells for domestic water is hard work - even harder before metal tools arrived last century - so wells are valuable assets of those who dug them. The usual root crop (*Cyrtosperma*) was grown in artificial pits to reach sub-surface water (see ch. 1 p.19). Soil is created from leaves, food remains and surface soil from elsewhere. Each tuber is cultivated by hand. The hard work is reflected in the value of that crop and the concentration of rights to it in the planter. With no need for central control of water, more egalitarian leadership systems often evolved. Despite some exceptions to these generalisations for other reasons, it was commonly so.

Rights to the bowels of the earth, and up to the skies

Like subsistence agriculturalists everywhere, Pacific peoples seldom used more than a few centimetres of soil. There was surface mining of stone for tools, salt for cooking and ochre for painting, but no awareness of the existence or value of gold, copper, nickel and other minerals.

Colonial governments usually followed their metropolitan principle which in many cases meant that minerals belonged to the state and that income should be used for public benefit. In practice, unfortunately, this was often for the colonial public more than the indigenous public. Since independence much of it has been absorbed by the central bureaucracy rather than used for national development. Former or present landowners were usually compensated for disturbance, although France did not compensate for the nickel mines in New Caledonia, nor Indonesia for the gold and copper mines in Irian Jaya, nor Japan for Angaur in Palau.

Independent governments followed the principle of national ownership of minerals. Responding to the public demand for work and income, they sought investment, much of it foreign because of the low propensity to save in Pacific communities. This national interest, however, conflicts with the interest of the landowners. The most spectacular case is Bougainville, where the civil war which raged from 1989 to 1998 was triggered by the dispute between landowners and the government over benefits from the copper mine - then the government's largest source of revenue. Smaller disturbances over the same issue have occurred at most mines, oil fields and other developments. Consequently the Papua New Guinea government decided to give landowners more of the benefit. That does not stop the trend, however, which applies whether the enterprise is owned nationally or from abroad. Where landowners see an opportunity for more benefits, they or their lawyers can build a sense of grievance and maximise claims. Some, like Donigi (1994) believe that all benefits belong to the traditional landowners and that governments have no right. The share for those who

supply capital and expertise is also a matter of contention. But most elected governments consider that most of the massive benefits derived from such 'unearned increment' should accrue to them to provide public services. The principle that all parties should benefit is generally accepted, but what constitutes a fair share is one of the most contentious issues in much of the region today (Larmour 1989).

The Fiji government had a long dispute with USA because its military aircraft flew through the Nadi Flight Information Zone, which includes not only Fiji, but all air space above a certain altitude over much of Tuvalu, Nauru and Kiribati, east to Samoa and south to the New Zealand zone. The dispute was kept quiescent by giving Fiji additional aid. Since then the Small Islands States group (Cook Islands, Kiribati, Nauru, Niue and Tuvalu), has been investigating the possibility of charging aircraft to fly through their air space (including all aircraft between Australia and New Zealand and the Americas) - in the way that Japan pays Russia for the same privilege. Maori claimed to own all radio waves in New Zealand and demanded compensation for their use by broadcasters. The claim was rejected by the Supreme Court, but is still being pursued.

The land rights of women

In 90% of Melanesia, part of Micronesia and all of Polynesia, tenure rights were inherited mainly through men. Women's rights were in most cases secondary and inheritance was most commonly from father to son. Even in the 10% of cultures where land rights were transmitted predominantly through women, land management was largely by men. The colonial governments were from patrilineal cultures of Europe and Christianity is a male-dominated religion. When Japan, whose culture and religions were likewise patrilineal, was the colonial power in Micronesia, this further reduced traditional matrilineal principles there. In the part of Fiji (Bua) where matrilineal principles prevailed, the British government absorbed them into the predominant patrilineal pattern. But even without pressure from governments or religions, commercial agriculture had a similar effect, so it became common for Tolai men in Papua New Guinea to transfer lands they derived from their mothers, on which they had planted coffee and cocoa, to their sons rather than their sisters' sons as they would have under custom.

Change has been radical in some countries, minimal in others. Thus in Hawai'i, French Polynesia, the Cook Islands, Niue and New Zealand, where land rights and chiefly titles were the prerogative of men, they are now just as commonly held by women. The change came about not as a result of policy or activism, but of largely imperceptible shifts in behaviour in response to such technologically-driven innovations as women gaining control of reproduction, labour-saving devices, and a related world ethos including equal education and opportunity, In Guam and the Northern Marianas, where the traditional systems were matrilineal, and changed during Spanish, German and Japanese colonial eras to patrilineal, now both inherit equally. A trend towards greater equality in land rights is discernible in Kiribati and Samoa, but there is little sign of it in Tonga or most of Melanesia. Islamic influence from Indonesia in Irian Jaya will reinforce patrilineal tendencies there.

"Local" and "foreign" ethnicity remain important

What constitutes the 'in-group' or 'out-group' in the Pacific is largely in ethnic terms. This always was, with people of other tribes (particularly if they had a different language or culture) being generally in the "foreign" category. The categories have expanded with mobility and with immigration of Europeans and Asians, but they remain important.

Citizenship in a Pacific nation does not give equal access to land. In most countries ultimate title is reserved for indigenous people, often only those indigenous to a locality within it. These are reinforced by traditional logic of blood, bone and history, and by selected quotes from the Old Testament. Thus the land rights of Indians who have lived five generations in Fiji and are citizens, or equivalent Europeans and Chinese in Solomon Islands and Papua New Guinea, or Solomon Islanders in Tonga and Samoa, or any non-indigenous person in the Northern Marianas, and many others, are constrained by both law and custom.

The trend is intensifying rather than relaxing, with recent constitutional reviews in Papua New Guinea and Solomon Islands recommending more discrimination rather than less. In Fiji since the 1987 coups, the rights of indigenous Fijians have strengthened relative to those of other categories. Ethnic tensions are high over leases and rents. Some 14,000 Indian farmers lease farms from Fijians, but many leases were not the wish of the Fijian landowners, for the Native Land Trust Board may lease Fijian land whether or not the owners agree. The lease rentals were fixed by law, far below the market value of the land. Many Fijian landowners do not want to lease their land again, after the 30 year leases to Indian farmers expire. Now the owners are again being subjected to political pressure to ensure that many of those lands are leased for another 30 years. Some lessees have been harassed into abandoning the farms. How many others will be renewed and on what terms is still being negotiated. Whatever the outcome, the insecurity will reduce productivity and national income, and exacerbate ethnic tensions. Whereas many Indian farmers are unhappy with their Fijian landlords, the opposite is heard in towns, where the landlords are usually Indian and Fijians are tenants.

Those who claimed traditional rights to areas that have become urban are in many cases reasserting those rights against the now legal owners, both indigenous and non-indigenous. With towns expanding and income gaps widening, demands for a greater share of benefits by former landowners are growing.

The question of return of land to former owners is a matter of political bargaining power more than ethics or justice. And once the door is open, it can be hard to shut. For example a Hawaiian of chiefly ancestry said he was not so concerned about getting reparations from USA for taking Hawaiian land 100 years ago as he was about getting reparations from the family of Kamehameha, who conquered all of Hawai'i nearly 200 years ago and deprived his family of their former land rights (Ross 1993:16). Given the wars over land before the establishment of central governments, this could open a Pandora's box in a number of countries.

Pacific Islanders now control more land in Australia, New Zealand and USA than Europeans own in the Islands. This is a radical change from a generation ago, reflecting the fact that many more Pacific Islanders now live in those countries than Europeans live in the Pacific Islands. Except in Hawai'i, over 20 times more Pacific Islanders live in USA than vice versa. Samoans, Tongans, Tahitians and Micronesians own substantial lands in USA. The Nauru government and individuals own many properties in Australia, New

Zealand and USA. Thousands of immigrant Polynesians have bought land in New Zealand.

Post-colonial backlash

A post-colonial backlash against European domination is the assumption that the sins of Europeans last century should be rectified by their great-grandchildren today and tomorrow, paying compensation to the great-grandchildren of those sinned against. Equivalent sins of Islanders at the same period, however, are given the stamp of tradition, and confirmed as inevitable or irrelevant.

For example the descendants of European settlers who acquired land in New Zealand, Hawai'i and French Polynesia by processes now regarded as improper, are being asked to return it or compensate the descendants of those from whom it was acquired. But the land Taufa'ahau Tupou I of Tonga acquired at a later date by even more ruthless methods, and likewise the Cakobaus in Fiji, the Pomares of Tahiti, Tem Binoka of Kiribati, and others in Samoa, Tokelau, Solomon Islands and Papua New Guinea, is not being challenged.

Why the difference? Perhaps the main reason is that in the indigenous societies the descendants of the conquerors are in dominant roles and determine what is acceptable, whereas the fading of the European empire not only engenders attacks on Europeans but leaves them feeling guilty and vulnerable.

Relations between tenures and productivity

Tenure systems are not an incentive to produce, but they can be disincentives. The aim is for tenure systems which facilitate sustainable productivity, ie. which do not impede other incentives to produce.

Much of the most fertile and best located land is not under customary tenures. It is in freehold, leasehold, occupation rights or other tenures which give more secure rights to producers. Even where these lands lie side by side with lands under customary tenures of equal fertility, the former are markedly more productive. There are various reasons for this, but tenure is an important one (Acquaye 1987, Kamikamica 1987). Customary tenures are used exclusively by Pacific Islanders, but land in freehold, leasehold and other introduced tenures are held by immigrant as well as by indigenous peoples.

The customary lands are generally less fertile and less conveniently located. This reality is often missed, because land is usually spoken of by area rather than value, which is much more important but more difficult to measure. It is constantly asserted in Fiji, for example, that Fijians own 83% of the land. By area that is true, but also irrelevant, and leads to much misunderstanding. The important question is what proportion do they have by value? No one seems to have done the necessary calculations, but in my estimate it is below their proportion of the population. Relative to population Europeans used to be best off for land, but during they have sold out increasingly to Asians in Fiji and abroad. In Papua New Guinea, where less than 3% of the land by area was alienated, it was worth probably 30% of the total land value, being the best located and most fertile.

Socialisation and value systems are also vital factors in productivity, and lead to radically different outputs from the same tenures. The way in which some New Guinea highlanders migrate to coastal areas and outproduce coastal neighbors whether immigrant

or local, despite insecure tenure, parallels the way Chinese farmers in Tahiti and Fiji outproduce Tahitians and Fijians despite insecure tenures.

Converting subsistence farmers into factory or hotel workers is relatively easy. They enter a new motivational context with clear directions, time frames and goals, and immediate incentives like hourly pay. Converting subsistence farmers into commercial farmers, however, is difficult and slow. I know of no example, anywhere in the region, of the rapid or highly successful conversion of whole communities of subsistence farmers into commercial farmers, although in most places there is some commercial cropping. Aporosa Rakoto's (1973, as well as unpublished data) study of Fijian sugar farmers showed that those who were successful were self-selected (which no established community can be), had moved sufficiently far from their place of origin to be able to avoid undue calls on their time and resources, and had individual tenure. The productive farmers met customary obligations more selectively, though often more generously. Most of them were immigrants from other districts of Fiji.

Where increased productivity is a goal, farmers need to be able to move from their community of origin. Those not highly motivated to farming (and the percentage who are is small in any human community that has much choice), should be encouraged to seek other occupations to the extent that they are available. As Rusiate Nayacakalou pointed out a generation ago, the disadvantages of rigidly tying land to social groups now outweigh the advantages. It reduces flexibility, constrains opportunity and inhibits productivity. Such rigidity was not characteristic of customary systems.

Tying land to social groups is more problematic when the only way one can join is by accident of birth. In situations of pure subsistence, minimal mobility and social organization by kinship, accident of birth (ie. sex, order of birth, seniority in a clan or family, etc) is one useful principle on which to allocate land rights. It was commonly the primary *ideological* principle, but extensively qualified by multiple criteria (as noted on pages 2-3 above) and the ability to defend it from others. For most of world history most humans relied on such criteria, but now that more flexibility is needed, it is often lost due to registration of rights as they were at the moment of registration, and allocation of rights thereafter by accident of birth.

Allocating scarce resources on the basis of accident of birth may simplify record-keeping and minimise short-term disputes, but rigidly applied it is not equitable, economical or sensible, and it inhibits people's goals for higher productivity and freer mobility. Imagine if only the sons of doctors were allowed to be doctors, and all sons of farmers had to remain farmers. Such inherited employment was common in Europe, Asia and the Pacific in ancient times. It can be done in today's context at the price of keeping people poor. Yet many Pacific countries still allocate land on criteria which reduce their income and opportunities, and encourage young people to seek livelihoods elsewhere.

Whereas it was common for basic rights to large areas to be associated with a local or descent group, rights to component plots for cultivation were held by individuals and households. For administrative convenience, some colonial tenures registered only the group rights, leaving internal allocation to its leaders. With increasing population and commercialisation, however, individuals and households need more clearly defined rights. This can be done by leasing (extensively in Fiji in relation to non-Fijians more than Fijians, and to a lesser extent in Tonga and elsewhere) or by occupation rights (which are

common in French Polynesia, Cook Islands and Niue). Occupation rights are cheaper and easier to administer than leases, longer term (perpetual if used), and tied to usage. They are also closer in principle to the traditional custom in that in the event of prolonged non-use they revert to the original descent group for reallocation. Occupation rights and leases are associated with much higher productivity than lands under customary tenures.

Customary tenures usually allowed for non-rightholders to be granted informal use of land. This flexibility was greater the shorter the time the land was to be lent for, the smaller the area to be lent, and the closer the relationship of lender and borrower. Finally, the more the benefit the borrower was likely to gain, the more likely that the lending was conditional on sharing of benefits. Where subsistence is the main goal, such flexibility is widespread and advantageous, but disadvantages and disputes grow with commercialisation, mobility and population. Customary arrangements continue, despite their drawbacks, because of the cost and remoteness of the legal system, and sometimes because of corruption and inefficiency.

Almost all Pacific Islands governments solicit investment to generate employment and income, but "insecurity of land tenure in all sectors has impaired investment and new entrepreneurship" (Prasad and Tisdell 1996:31 writing of Fiji, but it applies to most of the region). For most of Polynesia and Micronesia, land is no longer the main source of livelihood. The dependence on foreign investment and control would not be nearly so necessary if Pacific tenures were adapted to facilitate freer transfer of rights among nationals (or even among indigenous nationals, as that is an important issue for many), subject to restrictions on utilisation and excessive aggregation of interests, to enable higher internal productivity. Most agricultural land under customary tenure is under-utilised and likely to remain so, for innovation is easier to introduce in new activities off the land and innovators are typically mobile. Conversely, cultural lag is longest among people on the land. The situation will probably worsen before it improves, because adaptations to land tenure are usually resisted, and changes in law alone are seldom enough to bring about the improvements.

Small, targeted modifications are usually more effective than massive reform programs which seldom achieve their goals. Past fears about land transfer are understandable but out-dated, and appropriate restrictions on size, value and retention of land by original landholders can be designed and implemented. Another urgent modification needed in many countries is to reduce the number of landholders per plot, which has become ludicrous because of misunderstanding of traditional principles of exclusion. Third is the need to re-establish a more effective organisational structure within groups of joint landholders. Fourth is the need to allocate land more in accordance with efficiency, including freeing land increasingly from social groups which came into being for quite different purposes, and to make productive potential a more important factor in access than accident of birth. These changes would make the tenures more similar to the ancient tenures than to the present ones which are labelled 'traditional'.

Tenures are adapting to the fact that many people now live in towns, or elsewhere doing 'urban-type' work in resorts, mines, military or fishing bases, logging camps, or as transient administrators, nurses, teachers, extension workers, church ministers, store-keepers or pensioners. This is true for the great majority in American Samoa, Cook Islands, Easter Island, French Polynesia, Guam, Hawai'i, Marshall Islands, Nauru, New

Zealand, New Caledonia, Niue, Norfolk, Northern Marianas and Palau - and for about half in Fiji. Traditional customs require modification to be of optimum use to such people.

FSM, Samoa, Tonga, Tokelau, Pitcairn, Tuvalu, Wallis and Futuna fall into another category. Most indigenous people *remaining* in those countries, live on their land and derive much of their livelihood from it. But most of the people *derived from most of those countries* now live in metropolitan countries. And most goods and services in all those countries are financed by transfer payments from abroad (inter-government and NGO aid, remittances from absent relatives etc), salaries, wages and contract work.

Land and water remains the source of livelihood for the majority in Irian Jaya, Papua New Guinea, Solomon Islands, Vanuatu and Kiribati. This small number of countries nevertheless contains most Pacific Islanders. But even for them, tenure conditions are radically different from those of the self-sufficient, subsistence past. Mobility and intensifying interaction with commerce and government leads to standardising influences on land policy and practice from the capital and from abroad.

Most Pacific governments aim to promote rural development and minimise urbanisation, but practice is often contrary to policy. The many positive adaptations to urbanisation include planning better land utilisation, specific tenures for commercial, industrial, residential, public service and other uses, and strata titles for intensive uses.

Most "land-owners" in most countries, are "absentee land-lords"

Only in Nauru and Niue does one island constitute a nation. Both are sufficiently small for everyone to live at home and drive to work each day. So everyone has access to lands they traditionally identify as theirs. But in neither case is land the main source of livelihood. Most Nauruans remain on Nauru, but depend on paid work, phosphate royalties, and government services. But 91% of Niueans live overseas, and many who remain on Niue work for the government. Many services are paid for by aid and remittances.

Even in nations with extensive rural areas, there is increasing concentration on commercial centres. This world-wide trend will intensify. How far should the land rights of the growing number of 'absentees land-owners' be recognised? One possibility is to cancel them, but it is more easily said than done, for absentees value their rights at 'home', even if they never return there. Fiji law allows any clan to delete from joint ownership of clan land, any person who had been absent for two years. Yet no clan has ever done so, even though probably *most* men have left their clan land for at least two years. Some islands in Kiribati had a traditional rule that a man absent for seven years was 'lost at sea' and his lands reallocated. But the law is no longer applied. Niue introduced legislation to cancel the rights of Niueans who had lived abroad more than 20 years, but the absent majority living in New Zealand and Australia, who contribute to relatives back home, protested. The legislation was withdrawn.

Nevertheless, the rights of absentees are modified, reduced, compromised or made conditional by social as well as legal processes. Others are often allowed to use the land of absentees. While it would be impolite to cancel legal rights of absent clan members, most realise that there is competition for land at home and do not try to exercise such rights. Many who do are made so unwelcome that they move out again.

Ambiguity adds flexibility, but it can also reduce rural productivity, which is very low in most islands states. Where governments or the public want to increase it, the rights of absentees must be addressed. In many islands they frustrate both those who remain and those who go. More predicability is needed, so all parties are clearer as to their rights and responsibilities, to improve security and productivity. This may include prescribing periods of absence before one's land rights are reduced (eg. restricted to enough for retirement) or made conditional (such as allowing succession only to those retaining citizenship - as was the case in Tonga until the High Court reversed the policy by a new interpretation of law), or making long-term absentees return and convince authorities of their intention to remain (as some Land Court judges in the Cook Islands have required). Other conditions might include making inheritance conditional on appropriate contributions to community needs (as is common in many societies in practice), or on the approval of resident kin.

The land rights of chiefs

The word "chief" (and such other terms as "big men") is used to describe many different kinds of customary leader. In the subsistence past the land rights of chiefs were fused in varying degrees with those they led, but in today's money economy there is no precedent to determine the 'proper' monetary or fractional share for a chief - that is assuming people want such benefits to be allocated on criteria fitted to another era. It is tempting for chiefs to claim money benefits as theirs alone, or largely.

At a time when Fijian chiefs undertook a lot of administrative work it was decided that they should have 30% of the rent from clan land. Since then the population of Fijians had trebled while the number of chiefs remains the same, so chiefs now get three times more than they used to, whereas most of their work-load is now done by the government. The income gap between chiefs and commoners has in many cases widened alarmingly. Chiefs generally rationalise this as a traditional entitlement, whereas more equitable distribution would reflect prior custom more accurately.

This trend is visible in some countries (although chiefly power is waning in others), and accentuated by the fact that investors find single chiefs easier to deal with than with numerous clansmen. Corruption too is easier the more power is concentrated.

Potentials for the future

Humans adopt change in some aspects of life very readily, in others reluctantly or imperceptibly. Resistance to conscious changes in tenure is often reinforced by the assumption that the traditional system was God-given and should remain for ever. Caution is reinforced by the history of land alienation in some countries, and by the insecurity of paid work, for alternative social security systems are minimal and jobs precarious. Nevertheless, as with all of us, amazing changes are acceptable, even insisted on (often reinterpreted as traditional) if we assume we will benefit from them.

Change cannot be achieved by laws or policies if there is strong resistance to them - as many Pacific examples show, eg. the Mau protest in Samoa (partly in response to proposals to individualise land), Fiji's ineffective provisions to cancel the rights of absentees (above page 21), or the short-term lease provisions in the Cook Islands which aimed to boost productivity but which met neither resistance nor action, only apathy.

Because changes in tenure lag behind other changes in society, increasing mismatch between customary principles and current aspirations reinforces other motives leading the more enterprising and innovative to seek livelihoods off the land. That tendency will remain. For those who stay on the land, the discrepancies themselves generate slow but imperceptible change (eg. O'Meara 1990). Due to growing populations, the permeation of monetary values, and a weakening of respect for both traditional and introduced tenures, conflicts over land are increasing throughout the region.

Water rights are no less contentious. In New Zealand, some Maori claim 100% of the 200 mile EEZ. In a recent settlement the government gave Maori claimants 50% of the national fishing quota. Other Maori claim all rivers, which are now public assets, as tribal property. If current experiments with wave energy and ocean thermal energy conversion succeed, they will have implications for tenure of suitable reefs throughout the region.

The only places in the world where comprehensive land reforms have been quickly implemented is where someone holds absolute power (or close to it). Examples include the land reforms in Japan required by the US army, the communist revolutions of Eastern Europe and East Asia, the reforms imposed in Taiwan by the invading capitalist Chinese army, and radical changes introduced by immigrants to Israel on lands acquired from Arabs. The only comprehensive reform in the Pacific was in Tonga, where a conquering warlord introduced a new system as part of a package designed to retain his power. It worked. His descendants still rule Tonga a century and a half later.

Nowhere in the Pacific today do such conditions exist. Radical change is not an option, but progressive, incremental improvements to better adapt to evolving needs and aspirations are feasible. Tenure change seldom takes place until the problems are acute, but in many islands they are. Even so, meeting the challenges head on can lead to violent resistance. De facto change often takes place long before de jure change is feasible. Tenures take longer to adjust than most aspects of life, so the tendency is to get on with other activities. Some improvements are taking place, but the Pacific will not be alone in the world if many rural communities become stagnant backwaters occupied by apathetic people, while more rapid adaptations take place in towns.