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LAND TENURE IN THE COOK ISLANDS[1]

Summary of paper for

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As in other parts of Polynesia, the indigenous land tenure system of the Cook Islands was intimately related to its social organization - so much so that a knowledge of the social system is an essential prerequisite to the understanding of the system of land tenure.

The social system was segmentary in structure and had a strong patrilineal bias. Each minimal segment consisted of a single household headed by an elder (metua). It was joined with other related households to form a minor lineage under a subchief (rangatira or komono) - that elder among them who was senior by descent. Related and contiguous minor lineages were in turn connected to form a major lineage under the headship of a chief (mataiapo) - ideally the "first-born of the first-born" from the lineage founder. Finally major lineages were united for certain purposes under the leadership of the high chief (ariki), whose rank was paramount and whose descent was traced from the gods. Particular land rights lay with the respective groups at the various levels of segmentation.

Land rights held at the tribal level were relatively few. In peacetime there was a right of access throughout the tribal territory, provided known pathways were used and the activities were legitimate. The high chief, as head of the tribe, could impose a customary prohibition (ra'ui) on the use of particular produce throughout the tribal area in order to conserve it for a time of shortage or a forthcoming feast. He could require that foodstuffs from tribal lands

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1 The atolls of the Northern Cook Group, which account for 14% of the total land area and 15% of the population of the whole Group, have tenure systems which differ in some significant details from those of the rest of the Group and have been omitted from this analysis.

be provided for certain tribal ceremonies. Some lands belonged to the tribe as a whole and were the special responsibility of its high chief. These were the meeting places (koutu)of the tribe, and its religious centre (marae).

Each major lineage occupied a block of land known as a tapere. The tapere was almost invariably wedge-shaped - the boundaries beginning as defined points on the outer reef and running inland to enclose an ever-narrowing strip of land until they converged at a point in or near the centre of the island. As a result of this pattern of division and of the generally uniform topography of the islands, each major lineage had access to every category of soil type and land surface that the island had to offer - from the (usually) mountainous interior where forest products were collected, through the fertile valleys where the major food crops were grown, across the rocky coastal strip (makatea), to the ubiquitous lagoon and fringing reef.

In most instances the occupying major lineage was divided into several minor lineages, and the various lands were subdivided among them. Once so allocated the rights of the major lineage were limited to three - a symbolic right to regard the whole tapere as its own, the right of reversion in the event of any minor lineage becoming extinct, and the right to participate in deliberations involving the tapere lands as a whole. The lands were allocated among the minor lineages in such a way as to ensure that each had an adequate share of all the major categories of land and was thus virtually self-sufficient in so far as subsistence was concerned. While the lagoon waters were usually not divided within the major lineages, particular minor lineages had exclusive rights to fish weirs which they had constructed. Within each minor lineage there were further subdivisions among the various branches (kiato) and within the component households (kainga tangata) of each of them. The whole of the lands were not so divided, but generally only the taro swamps, cropping lands, and areas planted with the more valuable trees.

The rights of any individual in the lands of any group were dependent on his membership of or relationship to that group, and his social status within it. An individual's connection with any particular portion of land and with the minor lineage or segment of it to which that land was allocated fell into one of the following four categories.

Firstly, there were the rights of persons who lived in a lineage and derived their right directly from some other person (usually their father) who also belonged to that lineage. These we will refer to as primary members of the lineage. Primary members held primary rights to the land - i.e. they could plant and harvest as of right.

Secondly, there were the rights of persons who had been primary members of a lineage but had subsequently (usually in the event of marriage) left to join another lineage. Their connection with their lineage of orientation was still recognised on certain occasions (particularly in the event of feasts in connection with life crises) and they could return to that lineage if due to death of the spouse or other misfortune they wished to do so. Sometimes when a high-ranking woman married out, her lineage set aside a special portion of land for her personal use, but with this exception, her right to actively use the lands of her born lineage was contingent on her return there or on their express permission. The same applied to a man who married uxorilocally. Such persons will be referred to as contingent members of the lineage, and their rights to the lineage lands will be referred to as contingent rights.

Thirdly, there were the rights of the children of contingent members of the lineage. Such children had the right to participate in certain activities in the lineage of that parent, and could expect support and assistance from them in times of crisis. Adoption was very common, and the most common direction of adoption was back to the lineage of that parent who had shifted her (or his) residence at the time of marriage.[1] We shall refer to such persons as secondary members of the lineage concerned, and will speak of their rights to its land as potential rights, for while it was generally accepted that they would be admitted to that lineage if they wished to join it, and could thereby gain primary membership of it, they did not under normal circumstances plant there while residing in another lineage. To a lesser degree, the children of secondary members of a lineage were themselves secondary members, and they also had a potential, but markedly weaker, right to the land. They will be referred to as distant secondary members. In the event of dire necessity there was no limit to the lengths one could trace secondary affiliations of this sort, but in practice they were seldom revived to the extent of exercising land rights.

Fourthly, there were rights of persons who resided in a lineage but were not primary members of it. Most significant, of course, were the wives of primary members, whose connection with the lineage was conditional on the continuation of the marriage, or the approval of the lineage if the other spouse died. Also there were in some cases refugees, captives, or others who resided with the lineage but who had no close kinship connection with it. These persons will be grouped together as permissive members of the lineage, as persons holding permissive rights to its lands. Such rights could not be transmitted and their maximum duration was accordingly the life-time of the holder.

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1 If adopted back one thereupon usually became a primary member of the lineage of adoption.

The advent of the Europeans resulted in major demographic and social adjustments. Withthe exception of the fact that women came to be accepted as title-holders, there were no significant changes in land custom, though there were marked changes in the relative incidence of particular means of acquiring land rights. Largely by a process of uxorilocal marriages the port lineages became larger and those in the more isolated villages became relatively smaller. By the process of reversion, the rights of groups which died out in the epidemics fell to the holders of the higher titles who thus accumulated relatively large tracts. By encouraging uxorilocal marriages to their women, and judicial virilocal marriages with their men, the high chiefs were often able to acquire sundry junior titles and consequently the lands that went with them. The relative power of the high chiefs over the land was thereby enhanced and was reflected in increased demands for tribute from the lower social orders. There was some leasing of vacant land by the high chiefs to Europeans, but both the indigenous people and the mission opposed foreign settlement and permanent alienation was prohibited throughout.

In 1901 the Cook Islands were annexed to New Zealand. The New Zealand Government established a Land Court on the lines of the New Zealand Maori Land Court with the aim of making such lands as were not actively used by the islanders available for European settlement and increasing production from the lands used by islanders by individualising title and "freeing" the commoners from the control of the chiefs. The former ambition was never realised and by 1910 that part of the policy had been abandoned. The Land Court set about investigating title to the various lands, but due to there having been long periods without any judge, only about half the total land area of the group has been investigated to date. Owing to a misunderstanding by the Court of the significance of lineage affiliation in determining ownership of and succession to land rights, it awards title to all the children of a previous owner with the result that excessive fragmentation of title has occurred. Moreover, as equal rights are thus awarded to persons who are not primary members of the lineages concerned, and as the social status of the leaders of the various segments is not recognised by the Court in relation to land rights, there is no effective leadership of these rapidly increasing and heterogeneous groups of "owners" of each section. As may be expected, the work of the Land Court has not resulted in the increased per capita output of primary produce which had been hoped for.

In 1946 a scheme was introduced whereby a co-owner could be granted exclusive rights of occupation to a particular portion of the lands in which he held rights, for the purpose of planting long-term cash crops. Unlike the earlier changes in the tenure system which were imposed without consultation, this change was brought about after considerable discussion with indigenous leaders. At the time

of its introduction it was supplemented by a scheme of agricultural credit together with technical equipment, skilled personnel and organised marketing facilities. This innovation has resulted in land under the scheme being the most intensively and productively used in the group, and while it takes up less than one per cent of the land area of the group, production from it now constitutes the largest single source of primary income and brings in approximately fifty per cent of the total income from agricultural production. The success of this scheme and the method of its introduction and implementation provides a pointer to the pattern of future agrarian reform in the Cook Islands.

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A Century of Change in a Land Tenure System

(a) Introductory:

This paper makes an attempt to determine the major features of the indigenous land tenure system of the island of Atiu and to trace the changes which have taken place in the system since contact with European culture.

Atiu is the third largest island in the Cook Group, but is only ten square miles in area. It is roughly circular in outline and has a uniform pattern of configuration and soil types. From the fringing reef which encircles the island, cliffs of upraised coral stand about fifty feet high, and form the edge of a very rocky plateau of about half a mile wide. On the inner edge of the plateau is a slight depression, much of which is permanent swamp. Water from the swamps drains out to the sea underneath the coastal plateau. Inland of the swampy area the ground rises in slopes of varying steepness to a system of flat-topped ridges which radiate out from the centre of the island.

Each of the physical features outlined is associated with a particular soil type. Most of the coastal plateau is covered with coral rock, with frequent outcrops of limestone rising to a height of twenty feet or more. Pockets of soil are found throughout this area, and in them coconuts and other trees grow well; but transport is difficult and agriculture virtually impossible. The depression just inland of the plateau contains the most fertile soil on the island. The swamps are ideally suited to taro, which is the staple food crop, and the dry land (though less than 2 square miles in area) is fertile and suitable for agriculture.

The gentler inland slopes, while not particularly fertile, are suitable for some crops; but the steeper slopes are badly eroded and infertile, and support little but staghorn fern. The flat-topped central ridges have very poor soil - in fact the poorest soil in the Lower Cook Group. It is characterised by stunted fern, odd guava bushes, and scattered ironwood trees.

Little is known of the initial settlement of the island apart from the names of the founding ancestors, but genealogical evidence suggests that it probably took place about the 13th century A.D. During the 16th century a second group of immigrants arrived and established themselves on the island. After chronic warfare over a number of years the original settlers were defeated, and the survivors took shelter in caves on the coral plateau.

The victorious party then created seven titles, known as mataiapo, and each title holder was made responsible for one of the seven districts into which the island was divided. The titleholders lived in their respective districts and are said to have been the heads of the seven related descent groups which combined to defeat the earlier settlers. The first of these

mataiapo titles fell to Tearai, the warrior who had led and organised the conquest. While the mataiapo titles are all stated to have been of equal rank, and all are said to have been conferred at one time, they are invariably listed in the same order with Tearai's title first. He himself left the island soon afterwards, on an expedition from which he never returned and his title passed to his younger brother.

These seven mataiapo were intended to form a governing body for the island, and their meeting place was the Arangirea marae. In the course of time, however, two factions developed within them - the three Northern Districts forming one faction and the four Southern ones another.

About 1760, following an unsuccessful attempt by the descendants of the original settlers to regain control of the island, the victors elevated the holder of the senior mataiapo title to the new paramount rank of ariki or high chief. He was given the title name of Ngamaru.

There was some resistance to this creation of a single paramount title, and within a year thereafter the people of the Tengatangi district, supported by the other two Northern districts, elevated their mataiapo also to the rank of ariki, giving him the title name of Rongomatane. In order to forestall a division in the party, Ngamaru Ariki agreed to the creation of this second ariki title, but on the understanding that the two arikis would co-operate in the governing of the island. Tengatangi and the two districts which supported it were to come under the Rongomatane Ariki title and the other four under the Ngamaru title.

In order to cement the two groups together a unique arrangement was made whereby further mataiapo were created, each being made responsible to one or other of the ariki. The distribution of allegiance was made such that each of the two ariki had at least one mataiapo in every district on the island. By this process it was hoped that the aspirations of the two arikis could be contained, and that the natural tendency to split would be avoided.

This system of allegiances remains today, and on tribal occasions each mataiapo works under the ariki to whom he was attached by this allocation. In parochial affairs, however, he supports and works with his own village and district.

These lesser mataiapo (who have never achieved the standing of the original seven) were each allotted particular portions of the district lands, and accordingly many sections of land are associated through their mataiapo with a high chief other than the one residing in that particular district.

Several years later one of the districts coming under Tengatangi's ariki title elevated its senior mataiapo to the rank of ariki, making a total of three titles of this class on the island. It should be noted that the three arikis were related and that all were members of the party which had achieved dominance over the island.

Below the ariki and the mataiapo in the rank hierarchy were the rangatira, each of whom was the head of a particular segment of the lineage of his chief. Just when rangatira titles were first recognised is not known, though in traditional histories they predate the creation of the ariki titles. As with other categories of rank titles each rangatira was associated with a defined portion or portions of land. Every title-holder was the head of a major or minor lineage.

In the year 1777, not many years after the three ariki titles had been created, Captain Cook discovered the island and spent several days there. His description and names of the three arikis confirms the information given by the Atiuans to later visitors from the beginning of last century to the present day.

The chiefly structure outlined has been comparatively little modified in form during the past two hundred years, though there have been considerable changes in its functions. The same three ariki titles remain today, together with the same four senior mataiapo who with the ariki constituted the "council of seven" who were responsible for important affairs on the island.

While the seniority of the three ariki titles is always given in the order in which they were created, the relative strength of the encumbents has varied considerably. The three families have intermarried frequently - in fact the ideal marriage of a senior member of the ariki family has always been with a member of another ariki family. Consequently, today, two of the titles are held by brothers and the third is held by their sister's son.

(b) <u>The Indigenous Land Tenure System</u>:

From now on we will look more particularly at Tengatangi, the village and district in which field work was carried out. Tradition states that prior to the creation of the ariki titles the district of Tengatangi was divided into four tapere or subdistricts, each of which was owned and occupied by a separate lineage. By the time of first European contact, however, some of these lineages had split, and had subdivided the lands of the tapere among them.

Each tapere was based on a valley, and the whole district (like all other districts on the island) constituted a system of contiguous valleys. Taro was grown on the swampy valley floor and other crops on the lower slopes rising from the swamps. It was here on the lower slopes, just above the valley floor that the people lived. Their house sites were levelled by digging back into the hillside and using the soil to extend the site forward. These house platforms are still readily discernible.

Of the four tapere in Tengatangi, Taturoa was the largest and contained the most extensive areas of swamp and garden land. It was centrally situated in the district and the head of its occupying lineage was senior to the heads of the other lineages. It was the chief of this tapere who, in about 1760, was elevated to the rank of ariki over the whole district, and given the title name of Rongomatane. The large marae of the chief of Taturoa, which is said to have been the religious centre of the four tapere, stands today, with its rock walls and temple stones still in position.

Informants claim that Taturoa was the most populous tapere. The only available evidence on this matter is provided by the house platforms. Those of the other tapere are relatively few, while those of Taturoa are both more expansive and more numerous. The whole district has but one passage through the reef to the open sea, and this was controlled by the chief of Taturoa.

Atiuans say that from precontact times until comparatively recent years, every portion of land on the island was associated with one rank title or another. This is confirmed by an examination of genealogies presented to the Land Court at the time of investigation of land rights in the district in 1952. Many of the claims trace back to the precontact period and usually to a particular titleholder. Excluding the small patches of taro swamp for which rights are not traced so far, claimants traced back an average of 4 1/2 generations in establishing their rights to land in the district, though some went as far as 13 generations. The distance traced to establish a claim is not necessarily the greatest distance the claimant was able to trace, but rather the distance actually needed to substantiate the claim.

It is said today that in precontact times, with the exception of conquest, each lineage was autonomous in so far as the internal allocation of its lands was concerned, and that this allocation was the responsibility of the lineage head. The only available substantiation of this suggested lineage autonomy comes from Land Court records also. At the time of investigation, most of the lands were awarded to their respective claimants without dispute, and despite an interval of one hundred and eighty years between first European contact and the Court sitting, there is a discernible correlation between original lineage affiliation and the tapere in which the lands were claimed. This correlation is far from exact, for the system adopted by the Court, whereby inheritance was recognised from both parents instead of one, has led to considerable overlapping. Also marriage gifts, adoptions, and other particular arrangements have tended to blur the outlines of the pattern. The general pattern is nevertheless clear.

With the exception of conquest, adoption or asylum given to refugees, all land rights were acquired by blood from either one's mother or one's father. Inheritance was normally from the parent in whose family and lineage one resided, rights to the land of the other parent lapsing unless that parent had been the sole heir to the lands concerned. One did not necessarily acquire rights to use all the lands of the parent from whom inheritance was

claimed, and particularly with large families, planting lands were apportioned to various sections of the family.

Under native custom one did not acquire rights through women except in the event of uxorilocal marriage, when there were no male heirs, or when other abnormal circumstances arose. In the 35 blocks of land in Tengatangi to which claims were traced through women, 9 were instances of uxorilocal marriage, 4 were instances of women having issue but no recognised husbands, 21 were cases of there being no agnatic male heir, and the last one was a case in which there were agnatic male heirs but they had left the island and were living elsewhere.

All claims to land in the district were traceable to a single male ancestor, with but one exception. In this exceptional case, the source of the land was a female some three generations back from the claiments. She was quite possibly the sole issue of an earlier male ancestor but my information on the point is incomplete.

Informants statements and evidence given to the Court show that the retention of land rights under native custom required acts of use. Unless rights were exercised they lapsed, or in Atiuan terms they became "cool". There was no fixed period of non-use before rights were considered to be completely extinguished, the actual time for any particular case being determined by the exercise of rights by other rightholders, the need for land, and the status of the parties concerned.

Within the lineage group, the rights of component families and individuals were determined by family agreement. Although meetings are still held to determine which branches of the family will occupy which lands, Atiuans claim that the decisions taken are not adhered to as faithfully as formerly. Such meetings may be called by a dying titleholder who wishes to settle the distribution of lands before his death, at an adoption, or at a meeting called expressly for the purpose of allocating land.

These arrangements set the pattern for future land use. Each party and its issue lost its rights to use the land allocated to the other parties, though they could be reinstated by a further agreement or by the occupying party dying out, in which case the reversionary rights of the other party could be exercised.

On the rocky coastal plateau lands were not subdivided to the same degree, and large groups of relatives used large tracts of this area in common. Particular portions were in some cases out out for use by particular families, but in general the whole of each tapere held its coastal plateau land in common. This is still the case today.

Adoptees did not acquire rights to all the lands of their adopting parents, but merely to such lands as were specifically set aside for them (usually one piece of taro land and one piece of dry land). In so far as land was concerned a child was invariably adopted by only one of the two adopting parents. What rights he retained in his born lineage are not certain and informants gave varying views, some claiming that a person adopted out could not return without the permission of the family, and others stating that he had the right to return at any time.

Banishment of an offender and the plundering of his property was a recognised form of punishment in Atiu. Transgressors were sometimes put to sea in old canoes, and sometimes chased out of their home tapere, or fled when punishment was imminent. Such refugees were termed 'tamaiti peke', and according to informants and to historical accounts they were much in demand. The chief who gave them asylum gained in prestige and acquired the refugee as a personal serf attached to his household.

Only chiefs could take in such strangers, and some informants maintained that the approval of the high chief was required. Refugees lost all rights in their born lands, but it was not uncommon for the hosts who granted them asylum to allot them certain lands for the use of themselves and their issue. There is one old man in Tengatangi village today who was banished from his home village where he had been heir to a title. He gave outstanding service to the high chief who gave him shelter, and was given a title and some land in recognition of his efforts.

In some cases of marriages involving parties of high rank, a portion of land was given to the bride by her family as a 'marriage portion'. The husband gained no rights in this land, and it passed to the children of the couple, or in the event of there being no children, reverted by escheat to the donor family.

As to the matter of land use, informants maintain that in the pre-contact era one used land only in the tapere of residence. They claim not only that the use of land in more than one tapere is a post-contact phenomenon, but also that it is one of comparatively recent origin. The evidence on land use at the present time lends support to this view.

(c) <u>External Pressures and Internal Changes</u>:

The first Europeans known to have landed on Atiu after Cook were missionaries who immediately set about bringing the people together from their scattered hamlets to a single centre where they could be given religious instruction as a group, away from the environment of their heathen religious practices.

It was noted earlier that a party of migrants gained political ascendancy over the whole island, and that the three high chiefs were all members of this party. The high chief of Tengatangi district, who had just returned from leading a successful attack on the two neighbouring islands, was the first Atiuan contacted by the missionaries. He accepted the new religion wholeheartedly and very soon persuaded his relatives who held the other high titles to do likewise. The whole population owed allegiance to one or other of these titleholders and the almost unanimous and instantaneous acceptance of the new faith led the missionaries to consider Atiu to be a true gem in the Crown of the Lord.

All districts on the island meet on the central ridge and it was decided that the new settlement would be built in this area. In fact each district built its village on its own lands on one of the ridges radiating out from the central point where the church was built. The only exception to this pattern was the case of the three Southern districts which combined to form a single village.

This was the first time that all the people of any one district had lived together as well as the first time that the whole population had lived in contiguous villages. Initially the people of each subdistrict occupied a particular section within the new village. The previous owners of the land on which the village was built agreed that each family be given a house site for itself and its issue for so long as they cared to remain, but that in the event of their dying out or moving away the land would revert to its original owners. No payment or compensation of any kind was made.

This inland village was without water and was located on infertile land. The people therefore retained their houses on the planting lands. The practice then began of having one house in the village and another near the gardens, and this practice remains today.

The fact of all the people coming together in one settlement with their high chief, combined with his role as mediator between the mission and the people, was conducive to an increase in the power of the high chiefs. This was further enhanced by the fact that whereas previously each titleholder lived on the lands of the title, now all lived in the village away from their lands, and it became more feasible for a person to hold a title in a subdistrict other than his own. Such titles were often acquired by close relatives of the high chief.

With the arrival of the missionaries, acquisition of land by conquest ceased. Polygamy was stopped, and those with more than one wife were required to set the others aside. They returned, with their issue, to their born lineages. No person in Tengatangi today claims land from any of the rejected wives, and this is consistent with informants statements to the effect that they returned to join the households of their fathers or brothers.

Shortly after the mission established, foreign ships began to call at the island to trade. Previously Atiuans had grown crops for local consumption only. The first stimulus to foreign trade was given by the mission, which encouraged the people to contribute towards the cost of introducing Christianity to those islands which were still heathen.

Two indigenous products, arrowroot and coconut oil, were the first commodities exploited commercially. The chiefs organised the collection of produce for the mission, but whether cultivation was carried out by households or larger groups is not known.

In order to regularise trade with passing vessels, the mission established a market house under the control of the high chiefs, thus ensuring that all trade was channelled through them. This system continued for more than half a century. Informants say that the chiefs did not in the early decades control production beyond giving instructions at certain times that certain crops were to be planted, but they were planted by family groups on family holdings.

When the first trader settled on the island in the 1870's he was given a house and a wife by the paramount chief, in whose compound he lived. Later traders were similarly accomodated. Arrowroot and coconut oil continued to be exported, but to these products were added such introduced commodities as coffee, vanilla and cotton. The trade in fresh fruits and vegetables to providore whalers and other passing ships, which was considerable during the middle decades of the nineteenth century, died off towards the end of the century.

British men-of-war called at the island infrequently, but when they did so, they dealt through the high chiefs and reaffirmed their position. In 1888 a British Protectorate was proclaimed. The warship commander who carried out the mission read a statement at the island, imploring the chiefs to rule with justice, but affirming their authority and promising the support of the Navy for the maintenance of law and order.

In 1892 a Federal Parliament of the Cook Islands was formed, each island being represented by its high chief and one or two lesser chiefs selected by him. The Parliament gave the high chiefs new sources of prestige, revenue and power. By now, they were living in well furnished, two-storied mansions of European design, while the rest of the population remained in single-roomed thatched huts.

About this time, Ngamaru, one of the high chiefs of the island, began export production on a large scale, employing his tribal followers as labour. This practice was continued by some of his successors, some of whom also acted as agents for exporting companies in Rarotonga. In 1892 he purchased a trading vessel on behalf of the island and organised

the production of copra and arrowroot to pay for it. For eleven years this vessel plied between the Cook Islands and Tahiti, and had a virtual monopoly of the Atiu trade. Ngamaru, who controlled the shipping enterprise, spent much of his time in Rarotonga with his wife, who was a high chief of that island as well as being head of the Federal Government. The Atiuans were frequently required to load the ship with pigs and other food supplies to send to their chief in Rarotonga. His requests increased with the passage of time, until in later years people found them almost intolerable. When he died in 1903 they beached the ship with great ceremony and burned her to a cinder.

No other chief of Atiu, either before or after, achieved such power over the island and the latter half of the nineteenth century is still referred to by the Atiuans as the time of the 'mana ariki' - or power of the high chiefs. During this period, they say, the high chiefs were little influenced by their subordinates in the rank hierarchy, and freely deposed titleholders who did not obey their orders. They claim that the high chiefs usurped all power over the lands, and Land Court evidence does indicate that some arbitrary allocations were in fact made.

By the turn of the century, at least one title in each of the tapere of Tengatangi was held by a member of the high chief's extended family. When the senior branch of that family died out in 1911, there was considerable dispute as to who should take the title. One factor which helped the successful contender was his promise that he would "give back the people's lands". Informants say that this "giving back" referred to the fact that during the previous half century the high chiefs had assumed control over all unoccupied lands, and had also assumed considerable authority over occupied lands. These powers, they say, were to be relaxed, and the lineages were again to resume control of their respective lands. While the power of the high chief does appear to have increased during the nineteenth century in respect to lands in his district, it should be made clear that even in precontact times he had some rights in these lands. These included rights to demand produce for district ceremonies and to prohibit the use of land or crops for certain periods in order to reserve supplies of food.

(d) Effects of Annexation:

New Zealand annexed the Cook Islands in 1901. The administration of the Group was made the responsibility of the Department of Customs and Trade as the motives for acquiring the territory were predominantly commercial. The new administration created a Land Court based on the Maori Land Court of New Zealand, and the Judge who presided over its first seven years of operation had been a Judge of that Court. There was this difference however, that as Judge of the Cook Islands Land Court he was also

Resident Commissioner of the Group and as such held very considerable financial, administrative and other powers. His two major commitments were to increase production and to prepare the way for European settlers. The Land Court was designed to facilitate both these aims.

During the first few years of its operations the Court held several short sittings at Atiu to settle land disputes, to determine title to Church lands, and proclaim public roads. Though it was intended that title to all lands on the island be investigated, the Court was fully occupied on other islands until 1909 when the Resident Commissioner who had established it retired. Later Residents did not share his enthusiasm for Land Court work, and the Court did not sit in Atiu again until 1919, and then only to settle a few outstanding disputes and to investigate the ownership of some village housesites. It was not until 1952 that the bulk of the lands were investigated and titles issued.

The legislation which established the Land Court made several changes in land custom. It had been customary for a titleholder who was dying to call a meeting of his lineage and express his wishes as to the occupation of the lands after his death, and although such wishes had to be ratified by the assembled group, they constituted a means of regular readjustment of rights to meet current needs. Such wills were prohibited by the new law, so was any form of gift, including marriage portions. The creation of new titles was precluded. The practice of the previous Federal Government in forbidding the sale of land was confirmed.

In conjunction with the Court investigation in 1952, all lands in the district were surveyed, boundaries were fixed, and accurate plans were drawn. The Court was required by the legislation to determine ownership in accordance with "ancient native custom". The Court used three different principles in dealing with the three major categories of land. As there were no villages before the advent of the Europeans, the Court worked on the assumption that no ancient custom existed in relation to village lands, and generally awarded only to those persons actually resident on the particular section, irrespective of the origin or nature of their right. The descendants of the precontact owners of the village lands voluntarily waived their claims to either title or compensation.

Taro gardens are generally very small and often intensively cultivated. The Court advised people to minimise the number of claimants to these lands. Rights by blood had to be reinforced by recent usage before the Court would make an award.

In all other lands the Court recognised the claims of a much wider range of people, often irrespective of use in the last two generations or more, provided a blood right could be traced to the recognised owning ancestor. Other factors were of course, recognised in special cases.

Though the political and judicial powers of the high chiefs were considerably reduced after annexation, and their powers over land were challenged by the existence of a Court which (in the early years at least) publicly announced that chiefly powers over land were to be nullified, it was not until the Court sitting of 1952 that these powers in fact became void.

Chiefs of the ariki family have acquired rights in more land, and in more taperes and districts, than have commoners. The average number of plots held in each tapere is therefore listed separately for commoners, chiefs other than those of the ariki family, and finally the four chiefs who are members of the ariki family. It is apparent from a study of claims presented to the Court, that were it not for the Court investigation, the relative proportions of land held by members of the ariki family would have been even greater.

The average commoner today has rights in 2.96 plots of land in the tapere to which he adheres, 2.76 plots in the other three tapere in the district, and 4.8 plots in all other districts on the island. The average chief (excluding those of the ariki family) has 2.73 plots in the tapere to which he adheres, 2.27 plots in the other three tapere in the district, and 2.82 plots in all other districts. This is much the same proportion as for commoners, and though it indicates that those chiefs have slightly fewer plots of land than the average commoner, the situation is reversed if commoners who adhere to the ariki family are excluded.

The average of the four titleholders of the ariki family is 5.25 plots in the tapere to which each adheres, 11.25 plots in the other three tapere of the district and 12.75 plots in all other districts on the island.

To what extent did the Court in fact award in accordance with ancient native custom, and to what extent has the action of the Court facilitated increased production and security of tenure the two policy aims of the post-war period?

It was shown earlier, from a study of claims presented to the Court, that the most common indigenous form of succession was by descent from the parent in whose lineage one resided, and only in exceptional cases did rights pass through females. In determining original title however, the Court included females equally with males in its awards (in accordance with a practice it has followed since its inception in 1902). In determining succession to deceased owners, the Court is again required to do so according to custom (though the same legislation forbids wills and gifts which were in accordance with custom) but in fact it grants title to all descendants of the previous rightholder. This is not in accordance with custom, as it precludes allocations by family agreement as well as the hiving off of females who marry out, of absentees, and of adoptees; and accordingly results in the number of rightholders increasing each generation in geometric progression.[1]

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1. While the Land Court previously recognised some selective criteria in granting succession, it has for the past decade been forced by a decision of the Appellate Court to ignore such criteria.

While the effects of such a system have not yet been seriously felt in Atiu where original title has so recently been determined, they are apparent in Rarotonga where the system has been in operation for half a century with the result that many a housesite has several hundred people with legal rights to it. In Atiu the average section of planting land is 6 acres in area, and following the Court investigations an average of 80 persons hold rights in it.

Most of the rights acquired in other tapere and other districts were acquired by the operation of the Court, which generally gave equal rights to all descendants of the individual named as the "source" (whether in the male or female line and whether living on the island or not). This, as has been shown, was not in accordance with native custom. The Court generally awards full rights to adoptees in their born families as well as such rights as the adopting family wishes to give them. However, many Atiuans consider that this action is not in accordance with their custom, though evidence on the point is lacking.

The Court is admittedly hampered in conforming to native custom in that the legislation permits it to grant only one class of right - namely a freehold order. It should be noted that the term freehold order as used by the legislation has a very different connotation from freehold in its accepted English sense, for among other things an islander with a "freehold" title cannot sell, will or otherwise dispose of land. Under indigenous custom there were many different categories of rights depending on the nature of their origin - whether through males or females, whether by blood or adoption, whether by descent or by gift and so on. They also varied in accordance with the nature of the right conferred - whether it was a right to plant or merely to collect wild fruits, whether a right to use or merely to participate in decisions about the land, whether a right to inherit or to receive tribute from the land in question. The Court was required to determine whether or not a person had a right and if so to award that person a freehold interest. This necessitated the Court's making a value judgement to decide, among the many individuals who had rights of one form or another, which of them it would recognise. Those whose rights were recognised had them standardized by the Court into "freehold" rights, irrespective of their nature under custom. This standardization was not without advantage, for a considerable amount of dispute had previously existed due to the multiplicity of rights held in any portion of land.

It could be argued that in awarding to females the Court was merely recognising that women did have certain rights, and that though these rights were of a very different order from those held by males, the Court was not empowered to recognise such distinctions. If this were so however, it would be corrected in awarding succession, (for the children of women who married out would not be entitled under normal circumstances to succeed) but in fact this has not happened.

There is no provision for awarding to lineages or other groups, though there is provision for awarding to chiefs, such lands as belong to them by virtue of their office. This latter provision applies only to the marae or sacred ground, and other very small areas.

A most serious error of the Court, which is not imposed on it by the legislation, is its practice of awarding to persons irrespective of their lineage affiliation. Under native custom land belonged to a defined social group, with a defined leadership system, though the membership of the group was subject to variation. The Court practice has resulted in each piece of land being tied to an ever-increasing number of individuals who are not organized into any system of leadership, and without any provision for transfer or adjustment to suit particular needs. Under custom, land rights were held by members of a single social group.

Informants say that it was "proper", in precontact times, for commoners to marry within their own districts, but that this custom has long since ceased to apply. It was only the holders of titles, they claim, who ideally took wives from other districts. However, there is no evidence available on the point and present day marriages show no significant difference in this respect between chiefs and commoners.

Today, most men marry women from districts other than their own. Of the 35 marriages in this district today, in 26 cases the spouse is from another district or another island, and in the other nine cases both husband and wife are from Tengatangi.[1] If, under native custom, land rights were inherited equally from both parents, then the rights of most individuals would be spread fairly evenly throughout the island, but this is not so.

As with land ownership, so with land use, the titled families (particularly those belonging to the ariki family) tend to spread over a wider range of taperes and districts. Of the 25 commoner households in Tengatangi,[2] 21 grow all their subsistence crops within one tapere, the other four using land in two tapere. In the matter of cash crops, 19 of the 25 commoner families grow all their cash crops within one tapere, the remaining six using two tapere. A household does not necessarily grow all its subsistence and cash crops within the same tapere, and taking all crops into account, 16 of the 25 households use land in only one tapere while six use land in two and three use land in three.

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1. Of these nine, five are from different tapere within the district, 3 are from the same tapere but from different minor lineages within it, and one is a marriage between parallel cousins (within the same lineage). This latter instance is not socially approved.

2. Five atypical households are omitted from this analysis - they are those of the L.M.S. pastor, the Catholic caretaker, an employee of the high chief, the policeman, and a woman (with issue but no husband) who lives outside the village and does not plant.

Of the fifteen chiefly households, 9 grow all subsistance crops in one tapere, five in two tapere, and one in three. Six grow all their cash crops in one tapere, six in two, two in three, and one in four. Taking all crops into consideration, only 4 of the 15 chiefly households plant in one tapere, four use two, four use three, two use four and one uses five.

The defining of boundaries has done away with one major cause of dispute, and has contributed to security of tenure. The determining of owners, in those cases where there was dispute, has likewise made for stability. But the system of awarding equally to members of a number of lineages, knowing that the number of owners and the number of lineages to which they adhere is increasing constantly, has introduced an element of rigidity which offsets the advantages of the Court system. For a person must first obtain the consent of a multitude of co-owners before making use of the land.

In so far as effects on production are concerned, the per capita output of export crops has shown no increase since the court awards were made.[1] In fact the highest per capita exports were obtained during the period of chiefly power, when the significant factor appeared to the existence of a functional system of leadership.

(e) Current Trends:

The next phase in Atiu's land tenure system cannot be predicted though some current tendencies may be indicative. To some extent the people have resumed their system of informal allocation within the rightholding group, but with markedly less unanimity than before, as the right of the title-holder under law is of the same order as that of all other rightholders, an increasing number of whom no longer belong to his lineage. Moreover, informal partition has no legal validity and the Court seldom permits legal partition .

In so far as the allocation of land among co-owners is concerned, the chiefly powers which were annulled by the Land Court have not been replaced by any alternative system. With such large landholding groups, some system of leadership or organization appears essential. In respect to the organization of production it has been partially replaced by powers held b y the Island Council under which they periodically order the planting of specified minimum quantities of subsistence crops. In the last three years it has also been replaced to some extent by planting agreements of the co-operative movement. In work organization there is a marked increase in the use of tractors and other mechanical equipment, and in the hiring of labour

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1. The partial exception to this generalization is the citrus crop. While exports are still far below what they were in the earlier decades of the century, the native trees had almost completely died out by 1945. Production is steadily being regained by the scheme outlined on the next page.

for cash. The cooperative has begun some experiments in the exchange of labour among members.

The Legislative Assembly of the Cook Group, which two years ago was granted a considerable degree of autonomy, proposes to remodel the Island Councils, and it is possible that they will be given wider powers to require crops to be planted.

About ten years ago the New Zealand government introduced a scheme for the extension of citrus orchards, whereby long-term financial and technical help was made available. At the same time legislation was introduced requiring that this would only be available to individuals and that the one acre of land on which each orchard was to be established would have to be vested by the owning group in the particular individual concerned before assistance would be granted. This system, known as the 'occupation right' system because it gives exclusive rights of occupation to one member of the rightholding group, could be broadened to facilitate reduction of the number of owners of all lands on the island. Such action is unlikely at present however, due to a considerable current of feeling against the Land Court and against any move which might widen its jurisdiction.

Due to the large numbers of rightholders, almost half of whom have migrated to Rarotonga, New Zealand and elsewhere, it is virtually impossible to negotiate a lease, which is the only legally recognised form of transfer of land rights. This leads to informal arrangements about the use of land for cash cropping which are not only short-term and insecure, but also conducive to exhaustive techniques of land use. Some efficient system of transfer of rights is essential as the rigidity of the Court system of succession has led to a situation where some very small families own large tracts of land which they cannot use, whereas some large families are hampered by an excess of rightholders on relatively small plots of land.

The large number of rightholders has not infrequently led to the most forceful members of the family acquiring control of all the family lands while the others migrate to Rarotonga and elsewhere.

Only three families on the whole island live permanently on their planting lands, away from the village. All are special cases, but they may be the forerunners of a trend to again reside on the planting lands, as has already developed on some of the neighbouring islands. This trend seems to be at least partly due to multiple ownership, wherein actual possession is the only effective way to exclude a multitude of co-owners.

In the precontact era, the major stress in the system was probably instability of ownership due to lack of a centralized authority to safeguard rights. The mission era introduced such a centralised authority and concommitant stability, though at the cost of greatly reducing the rights of the

commoner in relation to those of the high chief. The Land Court has adjusted this relationship to the extent of leaving the owning group without effective leadership and has created a situation wherein a multitude of owners each holds a plethora of fragmented rights in a number of portions of land.

It will have been noted that changes in the tenure system itself have been made in response to pressures of external origin, but that changes in the distribution of lands within the system have taken place in accordance with the power and influence of the particular component groups and individuals. The current external pressure on Atiu's land system is the recently established, semi-autonomous Cook Islands Government. What modifications it will impose are yet to be seen.

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LAND TENURE IN THE COOK ISLANDS

Basic Ownership Pattern:

Almost all land is owned by the islanders; about two-thirds has been clothed with legal title and the balance is held under native customary tenure. With the exception of 1,293 acres owned or leased by the Crown, 270 acres held by religious bodies, and 2,904 acres leased by islanders to Europeans, all land is held by islanders.

Technically every islander holds some right in some land though in occasional cases the right (though not necessarily the land) is so fragmented as to be unusable. Inheritance is fixed by statute, and land rights pass to all decendants in equal shares (not divided on the land itself).

Crude density of population for the whole group is 3.2 acres per capita. But most of Rarotonga (with crude density of 2.2) is mountainous. The density for agricultural land is 0.49 acres per capita; and for all usable land 0.70 acres per capita.

The policy of the administration has been protective and cautious throughout. A Native Land Court based on the Maori Land Court of New Zealand was set up in 1902. It determines all land titles and settles disputes. Its approval is required for leases.

Changes taking place:

1946 legislation enables any group of co-owners to vest any portion of their lands in one of their number. This was intended to give security of tenure for long term crops and has permitted the successful expansion of the citrus industry.

There is increasingly more resistance to lending or leasing of land (even among islanders). The influence of contacts with New Zealand, the increasing dependence on trade, and population expansion (now three times the 1900 figure) are leading to emphasis on individual rights.

Major Problems:

The most important is the inheritance legislation which results in the number of owners of any section of land doubling each generation. Selective processes (such as wills, residence requirements, sex preferences and so on) which avoided fragmentation of title under the indigenous system have since 1902 been barred by statute. Each portion of land was always owned by a group (invariably a lineage or part of one) with a defined leadership structure. Legislation has annulled all powers of the leader, leaving a situation wherein an increasingly heterogeneous and leaderless group owns each portion of land. Many house sites in Rarotonga have more than 100 owners each.

Inadequate security of tenure (even by "owners" within the ever-expanding ownership group) exists and is a deterrent to the planting of longterm crops and erection of good housing.

Maldistribution exists to the extent that much usable land is idle because it is held by persons with extensive unused lands or is vacant due to dispute between co-owners. Migration to New Zealand is leading to an increasing body of absentee owners (estimated at 15%).

The Future:

Modification to succession legislation is essential; consolidation of fragmented holdings is desirable but expensive and slow; provision is needed to enable the transfer of rights at least between co-owners; industrial employment or planned migration is needed to absorb the surplus under-employed population; techniques of hill cultivation to determine whether or not the unused interior can be utilized should be explored; alternative systems of land holding and working may merit investigation e.g. incorporations of native owners (as with Maori lands in New Zealand), quasi-government trust corporations (as in Western Samoa), co-operatives and other institutions may offer some means of more productive and profitable use of the land.