Introduction

Life in the Pacific Islands has been transformed over the last century and a half, economically, geographically, politically and socially. Nevertheless, for the majority of islanders land is still central to their life and the land tenure arrangements which people use help shape their settlement patterns and agricultural systems, and are important components of socio-economic and political structures. The majority of land in all South Pacific Island countries remains under what are commonly described as ‘traditional’, ‘customary’ or ‘native’ land tenure systems. This book argues that in many parts of the region the ways in which the ‘customary’ land is now held by owners or users have changed to a much greater degree than is commonly acknowledged. The changes are intimately linked to concurrent changes in the socio-economic and political organisation of Pacific Island communities, but they are not unique to the region. They are specific cases which have, or have had, parallels in other parts of the world. The details are not identical, but the general processes of transformation have led to a widening range of situations in which land formerly held in common, or used through various communal arrangements, is now controlled and used exclusively by individuals or small family groups. In a broad sense much customary land is being privatised. Historical parallels can be found in Japan and China over the last millennium or more, in the mediaeval and later enclosure movements in Europe, and in Africa and insular Southeast Asia in the present century.

A central component of the socio-economic transformations, of which the tenure changes are part, is the change from subsistence to market economies. Cooperative or communal modes of life, with both labour mobilisation and the exchange of goods and services based on reciprocal obligations, have been, or are being replaced by wage labour and money.
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The nuclear family is often emerging as the main socio-economic unit at household level. As group interests weaken and individual interests strengthen in the economic and social realms, attitudes towards land have changed. Land has become a commodity rather than simply a stage on which activities take place. In several Pacific Island countries, individuals and small groups use customary practices to acquire usufruct and then longer term and more exclusive rights to land for non-customary purposes. Informal and formal privatisation has occurred and inequality in land holding is increasing. In some cases landlessness has emerged or is in prospect. Rural settlement patterns have changed in concert with the changing balance between community and individual interest, and the increase in the relative importance of the commercial component of agriculture.

Changes in land tenure practices have not proceeded at the same pace or in the same way in all countries. Neither are they inevitable. Nevertheless, to retain older styles of life and socio-economic organisation in the face of the incorporation of the region into global commercial and political systems would require extraordinarily strong commitments to customary practices, and a degree of community solidarity which the people of few other regions have achieved in the face of comparable forces. One country, Vanuatu, has taken constitutional steps towards such a goal. More commonly, leaders declare that the country’s system of ‘customary land tenure’ is a basic component of the national way of life. But what is set out as that system is usually a standard description of practices followed in some earlier, and often unspecified, period in some part of the country. The divergences between this officially accepted ‘custom’ and the practice of agricultural villagers, or even urban dwellers, tends to be ignored by national leaders and development planners.

In countries where customary land tenure systems have been codified, as in Fiji, key aspects of former land tenure arrangements, such as redistribution mechanisms, including the possibility of alienating land, were lost. Regional variations in practice were overridden by written and uniform laws covering the whole country. Fiji’s new colonial and Tonga’s constitutional land tenure systems came to attain the status of ‘tradition’ in the eyes of some. In Fiji the colonial orthodox model ‘has been adopted as a protective device into the Fijian ethos. It has come to be regarded as immemorial tradition. For the strength of tradition depends less on its historical accuracy than on its social significance’ (France, 1969:174).

Despite the absorption of new conventions into tradition, many features of pre-codification land tenure remain in use. For example, mechanisms for land transfer which are now extra-legal, but which
accord with older customary principles, have continued to be used in some areas with the result that significant areas of land are now used by people who have no legal rights to that land. Some of the constraints of codified systems are being ignored, as for example in Fiji or Tonga, where forms of renting of land which are technically illegal or extra-legal are common. The divergences between de facto, de jure and customary land tenure arrangements, and the changes within the realm of customary land, are beginning to be recognised publicly in some countries. In others they are not. Politicians and government agencies find it extremely difficult to deal with these problems through reform of the tenure systems, not least because the rhetoric of cultural preservation, and the fostering of national or ethnic identity for new states, often depend on the maintenance of the image of an idealised social system founded on ‘traditional’ land tenure conventions. The old systems often formed the bases of elite power and status and it is to the advantage of many who hold leadership positions in the new democracies to call on tradition as well as the ballot box to bolster their position and their influence over followers. Yet at the same time governments and aid agencies foster development programs the social results of which undercut the customary foundations of leadership.

Each author of the four studies of this book had undertaken research in one or more Pacific Island countries which revealed marked divergences between current practices and either proclaimed ‘custom’ or codified land law, or both. Each had come to similar conclusions about the effects on land tenure of broad tendencies such as the individualisation of economic and social life, commercialisation of agriculture and other activities formerly covered within the subsistence arena, and the widening of the role of the state in all spheres of island life. Each had become aware of the socio-political role given to land tenure by island leaders in the rhetoric of national identity, but also of the discrepancies between this rhetoric and the practices they observed in villages and towns where communal land was being privatised, the rhetorical ideal of access to land for all was not being met, and illegal or extra-legal practices were commonplace. Thus the present collaboration arose.

The four studies are anchored in the authors’ fieldwork but also examine the historical changes which have occurred over the last century or more. The detail of the story is different for each country but there are striking parallels as well as contrasts. The parallels stem from the common exogenous economic, social, geographic and political forces which have affected the region, as well as a certain uniformity in the pre-colonial economic and technical systems which people used.
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The contrasts arise from differences in the forms of the old indigenous social and political organisation, different colonial policies and histories, and different degrees of involvement (over both time and space) in the worlds of commerce and post-colonial independence.

The order of the country chapters emphasises some of these contrasts. Vanuatu, the most recently independent of the four countries, proclaimed in its constitution that all land belongs to the customary owners. This includes land which had become freehold under the colonial regimes but which was now returned to the customary owners. But the customary ways of the 1990s are not those of the pre-colonial era. The ending of internal warfare and the opportunities offered by commercial agriculture encouraged some leaders to use the latter as a new route to prestige, influence and money. To this end they established large personal land holdings under the guise of custom. Thus there is now an open question as to what is the customary tenure which should be recognised by government.

In Western Samoa customary tenure has not been codified but the Land and Titles Court does have exclusive power to rule on disputes. Its rulings and most accounts of the Samoan ‘system’ of land tenure tend to present a picture of relatively unchanging adherence to old and uniform ways of land management under the guidance of the matai (chief) of the ‘aiga (extended family). But in Old Samoa there was some variation in practice from village to village, and from family to family. In recent decades there has been an increasing transfer of ownership of land from the ‘aiga under authority of its chief to the heads of nuclear families. Until recently the change towards greater individualism in the control of land has received very little public recognition.

In the other two countries studied land tenure has been codified. In Tonga, customary tenure was replaced by an entirely new land law based on quite different principles. In Fiji, a simplified, standard version of customary tenure was established. In both countries many people ignored the codified land tenure laws for decades and continued to follow former practices. But when new needs emerged and commercialism penetrated the countryside more thoroughly, some began to exploit and conform to the codified system if it suited their personal circumstances. Others continued to ignore it, or found extra-legal ways to circumvent it that best served their personal ends.

For as much as a century, pragmatism and the pursuit of self-interest in this region, as elsewhere in the world, has meant that practices in matters of land use and tenure have often been at odds with both ‘custom’ and the law. With people keen for ‘development’, and this being fostered throughout the region by governments, international aid agencies and donor countries, it is doubtful whether the discordance between
practice and the customary or codified law can continue to be masked indefinitely. Pressure for both ‘customary’ systems and codified systems to match current needs will increase. At present this pressure for change is not widely accepted at policy-making levels of government. If it is accepted and acted upon, dramatic modifications of the social, economic and geographic character of Pacific Island countries could result.
CHAPTER 1

_land Use and Tenure: Some Comparisons_
R. Gerard Ward and Elizabeth Kingdon

Land tenure in the Pacific Islands has always been subject to change. Even in pre-colonial times, which are sometimes portrayed as a time of stability and little change, land tenure practices were modified pragmatically to meet changing conditions, and control of land frequently passed from one group to another as a result of warfare, changing demographic pressures, or migration. Indeed, all tenure systems change over time, conditioned by broader socio-political shifts, demographic trends, technological and economic innovations, and alterations in the extent to which land is a scarce good. The current complexity and state of flux in the tenure arrangements for what is usually defined in the Pacific Islands either as ‘native land’ or ‘customary land’ is not unique. Comparable situations can be found in many other places and at many other times. One of the themes of this book is the occurrence in the Pacific Islands of particular cases of what is arguably a world-wide trend for communalistic forms of land tenure to be replaced by forms in which individual ownership plays a much greater role.

What makes the South Pacific Islands unusual is, first, the relatively recent occurrences of major changes in land tenure. Second, many of the changes have been unusually rapid. Third, national leaders in the region often refer to traditional land tenure as one of the important markers of national or cultural distinctiveness. At the same time a reluctance to acknowledge the extent to which the customary practices of today differ from those of a supposedly immemorial tradition is coupled with a willingness to ignore the divergence between current practices and the law where the conventions of land tenure have been codified. Keesing has pointed out that ‘across the Pacific, from Hawai‘i to New Zealand, in New Caledonia, Aboriginal Australia, Vanuatu, the Solomon Islands and Papua New Guinea, Pacific peoples are creating pasts, myths
of ancestral ways of life that serve as powerful symbols’ (1989:19). The process is a common one world-wide, and in the political sphere some of the most important of these ‘myths’ relate to land.

The economic, geographic, political and social transformations taking place in the Pacific Islands gained force in the colonial period and there has been a tendency to regard them all, including the changes in land tenure, as a consequence of colonialism. As is shown later in this chapter, the comparable changes which occurred in other parts of the world were not necessarily associated with colonialism. They often stemmed from the pressures of commercialism, population growth or decline, or the introduction of new technologies in agriculture. These and other changes frequently provided new opportunities for individuals to further their own ambitions in ways not available within the older socio-economic systems in which social position was often ascribed and economic structures favoured communalism. In many parts of the world these forces were internally generated. They sometimes followed the integration of formerly isolated and self-sustaining communities into wider political units and more complex societies and states. Furthermore, the comparable changes in other parts of the world often took place centuries ago, with the result that the evidence is now fragmentary and spread over a long time span. It usually lacks the detail of variations which must have occurred from place to place and from time to time in the acceptance of, or resistance to change. Thus, when studying the changes in such regions, there is a tendency to see the very broad trends as having uniformity and inevitability.

Colonialism and commercialism came to the Pacific Islands relatively recently and the creation of independent nation states is very recent. Some states still lack internal coherence and a widely accepted sense of national identity. While these new nation states provide the opportunity for more detailed examination of comparable changes, the mass of detail available can give rise to an opposite tendency wherein the variety of local conditions may obscure the presence of broader trends. The outlines given later in this chapter of some comparative cases from other parts of the world serve to counter the assumption of too great an element of specificity for the Pacific Islands.

**What is Required from Land Tenure**

Land is one of the essential resources for most societies, and one which is often in short supply. Thus ownership of land, and control of access to its use, can be a primary basis for power and authority, and a source of status for those who wield that authority. People’s use of land is always mediated through some set of conventions which the majority accept,
either willingly, out of necessity, or under some degree of duress. For effective functioning of agricultural systems and other forms of land use, the conventions of land tenure must be reasonably consistent with the requirements of the particular economic, agricultural, and socio-political systems in operation. However, as all these contextual systems are constantly changing in themselves and in their interrelations, the level of consistency inevitably varies from place to place and time to time, and from the needs of one land user to those of another. Furthermore, a particular set of land tenure conventions or laws may match the needs of an elite group, or a particular ideology, extremely well but be economically inefficient or socially inequitable for others in the community. Those whose needs are not well met may follow practices which do not accord with the law, or general custom, but are condoned by their community because they meet local needs. As societies become increasingly complex the likelihood of such divergent practice increases until land tenure laws are reformed or the new practices are absorbed into the conventions of custom to become part of a new orthodoxy. In the rapidly changing conditions of the Pacific Islands it is not surprising to find considerable variation and lack of fit between practice, custom and law in land tenure. These will be examined in later chapters.

The variety of land tenure

A great variety of land tenure arrangements can be found around the world. At one extreme might be versions of freehold or fee-simple tenure wherein an individual holds permanent, inheritable, but alienable rights giving exclusive and unconstrained ownership and use of specified pieces of land. At the other would be state ownership of all land, with all use being at the discretion of the state. These are extremes and the reality in most places lies somewhere between. In the absence of a state as a supra-local organisation, the ultimate level of land ownership often rested with the communal group which functioned as the unit within which most people’s work and social life revolved on a daily basis. In such cases individuals might have no rights to outright ownership of land, but a great variety of rights to the use of the communal or common land and its products which gave them basic security. Elsewhere a great variety of more or less individual rights over land may be found.

In practice no ownership or usufruct of land is absolute. In strict terms, ‘human beings do not own land: what they own is rights to land, that is, rights vis-à-vis other human beings’ (Crocombe, 1972:220). Even where freehold tenure is the norm, it is never totally unconstrained. Individuals and groups other than the owner will have interests in a parcel of land and these interests might include rights to hunt or gather, of easement or
as a mortgagor, or the right of a neighbour to prevent an owner using land in a manner detrimental to that neighbour’s interest. Local authorities, whether in the form of village or town meetings, chiefs, or local government bodies may impose constraints on the use and tenure of land in the interests of a wider community. Thus the ‘tenure’ of any parcel of land is likely to involve a combination of overlapping interests of a number of individuals or entities. This has always been as true in the Pacific Islands as anywhere else (Crocombe, 1972:220–8).

In common usage, however, we can accept that the term ‘ownership’ encompasses the situation in which the ‘owner’ or ‘owning’ group has the prime right of property over the land entailing a relatively high degree of exclusivity in its use, the right to sell or otherwise alienate, and the discretion to pass it on to heirs. Where such a degree of ownership is not found or lay with a broad community group, as was the case in many Pacific Islands two centuries ago, the rights of individuals or families over land tended to be those of usufruct, with use sanctioned for particular purposes and for limited periods.

Tenure and the rural economy

The Pacific Islands have had rural economies based primarily on root crop and tree crop agriculture for the last few millennia.¹ In a few cases fishing, hunting and gathering have remained the main sources of sustenance, but in most communities these activities have been secondary. As elsewhere in comparable economies, the nature and technical requirements of gathering or farming have shaped features of land tenure. For hunters and gatherers it may not be necessary for each small group, family or individual to hold exclusive rights of ownership over specific plots of land, provided they have the right to travel and hunt over a territory and to gather produce when they require. In such circumstances it is common for control over extensive areas to rest with the community in general, with its members having common access in order to fulfil their hunting and gathering needs. Boundaries with the territories of neighbouring groups may be ill-defined and only delimited by agreement or force when conflict or other need arises. In some instances, however, particular trees and their produce, or specific sites for the extraction of workable stone, ochre or other high value resources may be controlled by smaller groups.

The tenure arrangements found in many communities using shifting or swidden cultivation may be seen as a partial modification of those used by hunters and gatherers. Such arrangements and the specific lines of authority through which they are controlled vary considerably although certain characteristics are widespread. A group may claim a territory, the
boundaries of which may not be precisely defined, but within which those group members who clear and plant an area may claim usufruct for as long as their crop remains in production and perhaps while any explicit intent to re-use the plot remains. But as the land lapses into fallow and reverts towards forest, its tenure also reverts towards that of the pool of common land. Eventually it may be re-allocated, or taken by others for cultivation. In such a system an individual or family has clear rights to use part of the land of their group, but the particular part or parts may not be precisely or permanently defined. Clearly, concepts of outright ownership in the sense of exclusive and perpetual control of a defined plot of ground, such as are embodied in the ideas of freehold or fee simple, are scarcely applicable in such systems. Bohannan, referring to the Tiv of Nigeria, describes such a system with considerable insight, noting that the Tiv ‘see geography in the same image as they see social organization’ (1963:105).

The ‘map’ in terms of which the Tiv see their land is a genealogical map, and its association with specific pieces of ground is of only brief duration – a man or a woman has precise rights to a farm during the time it is in cultivation, but once the farm returns to fallow, the rights lapse. However a man always has rights in the ‘genealogical map’ of his agnatic lineage, wherever that lineage may happen to be in space. These rights, which are part of his birthright, can never lapse. A mathematician . . . suggested that whereas the Western map, based on surveys, resembled geometry, the Tiv notions resembled topology, which has been called ‘geometry on a rubber sheet’. Whereas the Western map is rigid and precise, the Tiv map is constantly changing both in reference to itself and in its correlation with the earth. . . . Every Tiv has a right to an adequate farm on the earth which holds his tar [the people, the compounds and the farms]. This is a right to a farm, not a specific piece of land. A farm lasts only for two or three years, then reverts to fallow and the specific right lapses. However, the right to some farm in the tar never lapses. . . . [So] Tiv might be said to have ‘farm-tenure’, but they do not have ‘land tenure’. (Bohannan, 1963:105–6)

Such arrangements can be satisfactory indefinitely under swidden cultivation, provided the area available to the population involved is large enough for soil fertility to be maintained through long fallow periods. But once fixed field cultivation or long-term tree cropping are introduced, changes are necessary.

Where an agricultural system is able to maintain fertility and productivity over a long period through the use of techniques such as crop rotation, composting, irrigation with nutrient rich water, use of fertilisers, or the alternation of cropping with intensive grazing, farmers need longer-term rights and the inbuilt re-allocation mechanisms of swidden cultivation systems may not be appropriate. The same is true when farmers depend primarily on long-term tree crops. Such rights can be maintained under many forms of tenure, ranging from outright ownership to