

Myth, Embeddedness and Tradition: Property Rights Perceptions from the Pacific

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Introduction

Myth, embeddedness and tradition

This essay is introduced by delving into the myth, embeddedness and tradition that surrounds people's perceptions of property rights. In all societies the property rights of individuals are subject to both political and legal regulation, whether this is by custom, modern legal instruments, or both. In the Pacific there is often a confusion and conflict between constitutional and customary law. Embeddedness, or preconception from prior upbringing, clouds and confuses attitudes to property and land ownership.

Is there such a person as a customary landowner in the Pacific Islands or is society actually adopting inappropriate *borrowed* western language? To answer this question, it is necessary to explore the concept of communalism, which is accepted practice in many Pacific island countries, and investigate how it is, like most things in the Pacific, grounded in relationships.

The South Pacific in context

Before discussing property rights issues in the region, it will help to contextualize the Pacific Island nations and their sustainable development challenges. The Pacific Island Countries and Territories (PICs) comprise 12 nations to 22 nations depending on the definition of various regional organizations.¹ The Pacific islands region is unique because of the combination of geographical, biological, sociological and economic characteristics (Miles, 1999). The region occupies a vast 30 million km² of the Pacific Ocean. The 22 countries and territories comprise some 550,000km² of land with 7.5 million inhabitants. Notably, if the largest landmass, Papua New Guinea, is excluded from the summation, the remaining 21 nations comprise 87,587km², with a total population of

2.7 million. The region comprises three sub regional groupings: Micronesia, Polynesia and Melanesia, with a diversity of people and cultures – over 2,000 different languages are spoken across the region.

The common characteristics of the region include remoteness and geographic isolation; environmental fragility; rapid population growth; limited land resources; poorly functioning and immature land markets; land access issues, with 83–100 per cent remaining vested in the Indigenous owners; informal housing; dependency on marine resources; (relative) poverty; limited diversification; limited capacity; and vulnerability to critical environmental, ecological, and economic risks (Boydell, 2004).

Through colonization, a broad range of external tenure influences have been brought into the region. In many Pacific Island countries, these influences result in a plural system whereby western notions of freehold and leasehold operate alongside customary regimes. The influences can be summarized thus:

- United Kingdom: Fiji, Solomons, Gilbert Ellice (Tuvalu) and partly New Hebrides;
- France: New Caledonia, French Polynesia, Wallis and Futuna and partly New Hebrides;
- Germany: (until 1914) for north-eastern New Guinea, Western Samoa, Nauru, Caroline and Marshall Islands;
- Netherlands: until 1962 for West New Guinea (now called Irian Jaya);
- Indonesia: (since 1963) for Irian Jaya;
- Australia: Papua (since 1906), north-east New Guinea (since 1914) and Nauru (1914 to 1968);
- New Zealand: Cook Islands and Niue (since 1901) and Tokelau Islands (since 1925) and Western Samoa (1914 to 1962);
- Spain: Guam, Mariana and Caroline Islands (till 1899);
- Japan: Mariana, Marshall and Caroline Islands (from 1914 to 1945);
- US: Mariana and Caroline Islands (from 1945) and Hawaii;
- Chile: Easter Island.

This chapter will focus on the investigation of the compatibility of the United Kingdom system as introduced over the traditional system in Fiji.

As Farran and Paterson highlight, one of the difficulties with the approach that looks at property as rights in the South Pacific is that 'in English common law, the notion of property as rights is seen as the relationship between the individual – or legal person – and the thing' (Farran and Paterson, 2004). A similar challenge is present in considering ownership from a western and an Indigenous perspective – the former being an individualistic paradigm, the latter often being grounded in communalism, prioritizing the relationship between native peoples and the land.

A survey of the relationships between various native peoples and their land reveals that, typically, the relationship has two dimensions – spiritual (or meta-physical) and material (relating to the political economy of land) (Small, 1997). Philosophically and spiritually, there is a deep-rooted belief in the stewardship

of land. The current generation has a responsibility in respect of the land that relates to the spirits of their ancestors along with the expectations of their descendants, in addition to the needs of the current generation. Descendants, as future members of the tribe, are regarded as having the same rights of access to land as those tribe members currently alive. For the same reasons, children cannot be charged for access to the land of their parents. Land is free for the use of current tribe members on the basis that it will be passed on, without degradation, for the use of future members. The communalism of the tribe, the timeless stewardship afforded the land and the idea of land as a common legacy, are concepts often difficult for westerners to appreciate (Boydell and Small, 2003). They differ from the standardized model of private exclusive ownership that has now been disseminated in most developed societies (Hann, 1998).

Table 6.1 *Property rights summarized*

Right	Explanation
Direct use	Rights to plant, harvest, build, access and similar, maybe shared rights
Indirect economic gain	Such as rights to tribute or rental income
Control	Conditions of direct/indirect use, held by persons other than the user
Transfer	Effective power to transmit rights – by will, sale, mortgage, gift or other conveyance
Residual rights	Remaining rights at the end of a term (such as lease, death, eviction), includes reversionary rights
Rights of identification (symbolic rights)	Associated with psychological or social aspects with no direct economic or material function
Duration	Length of time property right is held, indicating profits and/or savings
Flexibility	Right should cater for modifications and alterations
Exclusivity	Inverse of the number of people with shared or similar rights, more relevant to water property
Quality of title	Level of security that is available as tenure shifts from the optimum of notional freehold
Divisibility	Property right can be shared over territories, according to season, etc.
Access	Entry/admission onto the land
Withdrawal (extraction)	Extraction of resources by owner despite leasing property
Management	Be able to make decisions on how and by whom a thing shall be used
Exclusion	Disallowing others from entry and use of resources
Alienation	Transfer of an interest (right) in property to another, in perpetuity
Usufruct rights	Collection of fruits or produce
Chiefly rights	Inherited by a headman in communal ownership (tribe, clan, village)

Source: Adapted from Crocombe, 1975; Bromley, 1991; Payne, 1997; Rigsby, 1998; Sheehan and Small, 2002; World Bank, 2003; Farran and Paterson, 2004

There are many different interpretations, or lists, of property rights. Table 6.1 provides a list combined from several different sources. On closer inspection it will be noted that some of these *rights* (e.g. duration and flexibility) are actually attributes of more fundamental rights, rather than separate individual rights. Chapter 1 of this book provides definitions and further discussion on property rights in general.

Property Rights and Spiritual Materialism

It is only by reflecting on particular cases that the essential and universal aspects of property may be abstracted. In this way the meta-consideration of cultural responses to the problem of property may yield an understanding of property that can then be redeployed to refine existing property institutions. Implicit within this methodological approach is the recognition that the western institution of property is as much in need of refinement as any customary approach (Boydell and Small, 2003).

Eroni's story

The first investigation is grounded on the example of Eroni, an educated, respected and humble man. While Eroni lives in Suva, Fiji, and works at the university, he is head of the Tokatoka (tribe) back in the village near Savusavu where his family comes from. In a cruel example of the spiritual materialism that surrounds Pacific property rights, Eroni almost died last year. There is a view coined by, among others, Ravuvu (Ravuvu, 1983) that land holds a special place in the Pacific. The reality is that land holds a special place in all societies on economic, social and environmental grounds, but that the difference in the Pacific is that much of the land was never alienated through colonialism and remains in the communal ownership of the Indigenous islanders.

Living alongside Indigenous and settler communities in the Pacific expands a researcher's appreciation of the spiritual connection of humankind with not just their land but particularly their property rights. This chapter uses the phrase *their land* with both caution and circumspection, having previously presented a convincing argument that those Indigenous Fijians who believe themselves to be land owners have no legal ownership in a western legal context, but instead collectively own a bundle of property rights (Boydell and Shah, 2003). Interestingly, that view has evolved in the light of a subsequent appeal judgment of the Supreme Court, which recognized lessons from the *Mabo* case and now gives legal identity (*locus standi*) to members of a Mataqali (*Native Land Trust Board v Narawa* May 21, 2004).

So, back to Eroni's story, in a land where *Christianity* (Methodism in this instance) and *vakadranikau* (black magic) are as strong as ever and work alongside one another in the plural spirituality of many educated as well as less fortunate Fijians (as is well documented in, among others, Katz, 1993). Katz simplifies the definitions of *western* and *Indigenous* in a pragmatic manner, alluding to two different but overlapping and interrelated ways of being, which

are themselves dynamic and evolving. He suggests the application of the term *western* to people and institutions affected by forces such as modernism, capitalism and urbanism. In contrast, *Indigenous* applies to people and institutions more affected by traditionalism, cooperative economics and rural or *bush* life. Katz does indeed qualify this in identifying Indigenous people as being descended from the first or original inhabitants of a place, acknowledging that while they are *more* traditional, they are often influenced by the western values of the larger nation within which they reside.

Eroni is head of a Tokatoka, a chiefly communal grouping which is smaller than a Mataqali. He took over this responsibility on the death of his father in 2003. Operating in the plural societies of urban Suva and the bush village near Savusavu, with responsibilities and obligations in both, exemplifies the stress that can be placed on an individual in a communal society. With responsibility and obligation comes the need to make decisions for and on behalf of members of the Tokatoka. When Eroni became sick with a necrotic tropical ulceration of the leg (and near lethal blood pressure) he initially sought solace and relief in bush medicine. Time passed. By the time medical evacuation to Australia was facilitated, he had taken to his bed with Fijian Methodist Bible in hand in the hope that it would protect him from the black magic being cast in his direction by his villagers, in anger for a property rights decision he had made on behalf of his kinsfolk in the Tokatoka. For Eroni, property rights almost became last rites.

Happily, Eroni responded to appropriate health care in a Sydney hospital, and lives to tell the tale. His life and his leg were saved and the physical wound is healing. The deeper wound that underlies his mind-body challenge may take longer to heal. He recently returned to the village to address the underlying issues in the oxymoron that is the spiritual materialism (Roy, 2004) of property rights. How did Eroni make amends for a property rights dispute that allowed his kin to almost spiritually kill him? With materialism, of course; by paying for expensive visa fees for members of the Tokatoka to apply to serve as (comparatively) well-paid security officers in Iraq.

Eroni's story has introduced the concept of property rights. It is important to reflect on these rights and review the confusion that seems to surround them – confusion that can lead to all manner of land tenure conflicts. The next section reviews what is meant by property rights and they are then contextualized by putting a Pacific 'spin' on them by using another investigation, this time of Jale and the differing rights that he has from both a customary and western perspective.

Property rights as a human and spiritual concept

Our understanding of property rights can be enhanced by using anthropological explanations to look at institutions. There is no property in nature – the concept of property and property rights is a human construct. Taken in isolation, such as in the world of Robinson Crusoe, property rights play no role (Demsetz, 1967). It is only when another person, group of people, clan or larger society are involved that a sense of territoriality becomes important.

Humans need to define what is ours, and like many animal species, humans will defend their space – with their lives if necessary. Our perception of value is affected by others needs – a monetary value is placed on property rights within the economic structure of society. Material value is very tangible and it can be measured in economic terms. Spiritual value is intangible. Just because spiritual value cannot be quantified in conventional economic terms, its importance in Indigenous societies cannot be overemphasized.

Society accepts that land holds a special place in the Pacific for many reasons. As mentioned above, one of the most important reasons is that it was never alienated as a result of colonization in the way that the Aborigines had their land taken in Australia and likewise the Maori had much of their land taken as a result of white European settlement. Alienation means the transfer of ownership (property rights) in property to another, e.g. sale of a freehold, grant of a lease or the taking of customary land.

We need to define what we mean by property and investigate what we value. Taking the Demsetz example, when Robinson Crusoe was shipwrecked his first concern was not what property rights he had, rather his very survival, the need to find food and fresh water, the need for some form of shelter. With time he would have accepted his environment and with his basic needs satisfied he may have started to take his environment for granted, until he felt threatened that someone may try and take his *world* away from him. At that point, his value systems would have started to change as he became territorial and felt that his informal property rights might be affected.

There is a similar transition evolving in Pacific small island developing states today. Many Pacific Islanders have in recent generations, since settlement and a move to colonial rule after the law of the *club* (tribal warfare), become more settled in their environments. Perhaps they too have taken some things for granted. However, the move to a global market, access to natural resources and the capitalist paradigm have placed more emphasis on economic value in relation to property rights, as opposed to cultural, spiritual or subsistence value.

Land tenure as an evolving paradigm

When we think of land, we find levels of understanding and levels of confusion. This is compounded by the difference between the western *real estate* definition of property and the Indigenous explanation.

The real estate definition of property is that which is capable of being owned: classified as personalty and realty. Examples of personal property would include furnishings, artwork, jewellery, machinery and household goods. In other words personal items; as opposed to real estate.

They say that land, like financial and human capital, is a factor of production, which helps drive economic and social development, generates national income, wealth, jobs and government revenue, combats poverty, improves the standard of living of all and ultimately entrenches social and political stability in any country. Land

tenure, like culture and tradition, stands to evolve organically over time within a society. As in all things, changes and solutions have to be made and formulated. Solutions must be formulated from within and must reflect national, family and individual needs and aspirations and the changing global, regional, national economic, social and political dynamics that determine our destiny. (Siwatibau, 2002)

The definitions themselves can become confused. The US Dictionary of Real Estate Appraisal (3e) suggests that 'real property comprises all interests and rights related to the ownership of physical real estate' (Appraisal Institute, 1993). This indicates the inclusion of different interests and different parties. Conversely, the UK Glossary of Property Terms defines real property (realty) as 'freehold land, but not leaseholds; the latter are defined as personalty or personal property' (Jones Lang Wootton, 1989).

If contemporary western society cannot agree on what we mean by real estate and real property, the whole picture becomes even more clouded when we try to explain it from an Indigenous perspective. The Indigenous explanation is grounded in social relationships and how people (individually or communally within a group) own, value and dispose of things.

Property Rights in Communal Context

Property rights in the communal context: Jale's story

Jale is an Indigenous Pacific islander. To provide context, it will be assumed that he is from Fiji. He lives on customary land *belonging* to his clan (Mataqali), but just outside of the main village. He worked for many years in the capital, but is now leading a simpler rural life. However, he has learned many ideas in the city and while being very respectful of tradition is not content to stick with a customary subsistence village lifestyle.

Jale was *given* land by his village/clan to construct a home. He has always contributed to the communal well-being of his kinsfolk and is a respected member of the clan. He has identified an opportunity to establish a small piggery adjacent to his home, a modest commercial venture that will allow him to generate an income and continue contributing to the village, now that he is no longer in paid employment.

As a member of the community, he is living on communal land. He needs some financial support to establish his piggery, so he approaches the manager of the local bank. The bank manager is interested in his initiative and keen to support Jale's venture. He agrees to lend Jale some money, provided Jale can offer him some collateral, some security for the bank if Jale fails to meet his mortgage/loan repayments. The bank asks Jale for title to his land to be pledged as a guarantee of the repayment of the loan, to be forfeited in case of default. The bank asks for this because Jale has no other security.

Problem 1: Jale does not *own* the land in the western (or bank security) context. As stated, it is held communally by his clan. However, his clan does

have the ability to alienate parcels of land outside of the village, provided that the land is not needed for subsistence purposes by the villagers, now or in the anticipated future.

Problem 2: Jale is a member of the village, so if he needs the land for subsistence there is a Catch-22 situation. Jale, as a member of the village, is seen as needing the land, which by inference may prevent the land from being released for his subsistence piggery.

Not daunted by this, Jale prepares a *tabua* (traditional gift) for his chief and asks that the elders agree to allow the Native Land Trust Board to create a lease for him. If he has a lease, he has formal property rights that can be used as security – a long lease is considered adequate security by a bank, as long as the lease term is longer than the length of the loan.

The chief is not happy with Jale's proposal, even though it has the potential for Jale to provide some financial support to his fellow villagers. Why would the chief not be happy?

The chief knows Jale, has faith in his business acumen, and is happy for Jale (as a member of the village) to work the land. But what will happen if Jale defaults on his loan (fails to make his mortgage repayments)? If Jale uses a long lease as security against his bank loan, this means that the bank has enforceable property rights to foreclose and sell Jale's interest (Jale's property rights) in the land. A forced sale may result in an outsider buying the lease, with resultant temporary loss of community ... a sense that the land could be lost from the village for future generations. The reality is that the communal 'ownership' rights of the village to the land would only be *lost* for the duration of the lease term, rather than in perpetuity.

It could also be that the chief may feel insecure and intimidated by the modest wealth that Jale may generate, making Jale more respected by the community, and, critically perhaps, more respected than the chief in the eyes of some. Apparently, with no alternative security to raise venture capital, Jale is being unrealistic in expecting the village to formalize his property rights to the land he already occupies (for which he would pay rent, whereas he currently occupies the land for no *direct* cost) so that he can feel more (individualistically) secure in building a piggery.

In this example, the chief declines Jale's request to obtain a lease from the communal landholding. As a result, the bank manager is unable to satisfy his lending criteria and has to refuse Jale's loan application. This leaves Jale without finance to establish his piggery, and without any title (property rights) to land to invest in. Is this progress? Who has benefited in the short term? Not Jale, not the bank and probably not the community as they will not receive any rent or any formal financial contributions from Jale.

And the long-term view? The village land remains intact, but the land is less productive than it could be.

Property rights of different parties in communal context

Reinforcing the oxymoronic nature of spiritual materialism in dealing with land issues, power relationships come to the fore when interpreting property

Table 6.2 *Summarizing the property rights of different parties*

	Jale's Customary Rights	Jale's Lease Rights	Village's Communal Rights	Bank Rights with Lease as Loan Security
Direct use	Yes, at grace of village	Yes	No	No
Indirect Economic Gain	Only if land is leased out and he is a beneficiary	Yes, he could sub-lease	Yes, as co-beneficiaries of any lease arrangement -- and direct from Jale	Yes, interest payments on debt
Control	No	Yes	Yes, unless leased	Only in the event of repossession
Transferability	To descendants, but only with the grace of the village	Yes, dependent on lease covenants to assign or sub-let	Right to grant lease, or to give access by grace and favour	The bank can sell or transfer the debt, but can only transfer the physical assets in the event of foreclosure
Residual Rights	Assuming Jale has heirs, at the grace of the village	Yes, dependent on wording of lease	The land (and improvements) should revert to the village as communal landowner on lease expiry	Nil
Rights of Identification (Symbolic Rights)	Communal	Communal	These need not be lost by the grant of a lease	Nil
Duration	Guardianship for life	Rights for duration of lease	In perpetuity	Rights limited to mortgage and/or lease term
Flexibility	No	Yes, subject to lease covenants	Yes	No
Exclusivity	No	Yes	No	No
Quality of Title	Poor	Good	Unclear	Good
Divisibility	No	Potential, subject to lease terms	Potential	No
Access	Yes, by the grace of the village	Yes	Communal	No
Withdrawal (extraction)	No	Yes, subject to lease terms	Communal	No
Usufruct	Possibly	No	Possibly	No
Chiefly Rights	No	No	For chief	No
Management	No	Yes	Communal	No
Alienation	No	No	No	No

rights. These relationships can be explained by investigating the above property rights and the parties involved in Jale's piggery scenario (Table 6.2).

As Table 6.2 highlights, there are different property rights relating to different institutions. Jale's property rights will vary depending on if he has a lease (and thus a title and defined property rights) or if his situation remains communal and informal. The main powers of the bank only come into play in the eventuality of Jale defaulting on his loan and the bank exercising its powers of foreclosure and selling on the lease.

In this example, the concept of development in its widest sense is limited both by a lack of flexibility by the chief and a lack of flexibility by formal credit systems. As is demonstrated in Table 6.3, if Jale decides to pursue his piggery venture without access to domestic savings, his *de facto* communal tenure will force him to seek credit from informal lenders, inevitably at a higher interest rate (to reflect the lack of security) than structured credit through a formal lender.

Table 6.3 *Credit and tenure options according to levels of security*

TENURE	De facto – No Title, Communal Land rental	Regularized – No Title Use Rights Contract Licence	Freehold Leasehold Tenant – Statutory Tenant – Contract
CREDIT			
Formal Credit System			X
Credit Unions			
Savings Banks		X	X
Public Grants			
Guaranteed Loan			
Domestic Savings			
Informal Credit	X	X	X
Loan Sharks			

Source: Payne (1997)

Criteria for Assessing Tenure and Property Rights

Clear criteria are needed for assessing tenure and property rights. These criteria are based around clarity, efficiency, equity and *de jure* and *de facto*. Each of these criteria will be explored in turn. This section also presents discussion on potential consensus and on institutional arrangements in contemporary Pacific society.

Clarity of tenure status

Clarity can be formalized through the registration of all property rights, measured by the difference between *de jure* and *de facto* status. *De jure* means

according to law whereas *de facto* means in fact – a phrase describing an accepted situation, which is accepted for all practical purposes, but that may not be *legal* or may be extra-legal (*vakavanua* in the Fiji context). This is a very unclear explanation because of the status of customary law versus constitutional law in the Pacific Island countries. Indeed, this pluralism highlights two related, but quite different, realities. It implies that *de jure* includes our *formal institutions* whereas *de facto* includes our *informal institutions*. However, Pacific societies exist in a legal environment where the concepts of *de jure* and *de facto* overlap significantly in many aspects of everyday life, more strongly than in many other societies. At the end of the day, perhaps we are just confusing ourselves by trying to fit the Pacific systems into a western model that has evolved over 2,000 years ... and we are still using the Latin words to explain the concepts.

How compatible are the concepts of *de jure* and *de facto* to contemporary institutions in the Pacific? Should we be finding a Pacific solution? These questions are raised because, as demonstrated by Jale's scenario, we are trying to make a customary ownership situation *fit* a western lending requirement. Unfortunately, as the banks hold the *power* because they are holding the money, there is pressure on Jale, and the rest of society, to conform to their reality, rather than the bank adapting its systems to allow lending flexibility within the customary framework it is trying to operate in. The tail (the bank) is clearly wagging the dog (the communal landowners).

Fundamental to an efficient tenure and property rights system is simplicity. The existing structures are not straightforward, so how can we simplify the system and who are we trying to simplify it for? Presumably, the simplification will benefit all parties who want access to land and capital. To simplify, we may need to find (or develop) a new Pacific model (or hybrid), rather than relying on an imported colonial system, which was designed to keep people in their place.

As pointed out in Chapters 2 and 3 of this book, flexibility is one of the key characteristics of successful institutions. Certainly the banks are not demonstrating flexibility. The banks are showing an embeddedness of lending policy which was designed for an Anglo-Australian institutional framework rather than a Pacific Islands institutional framework grounded in post-colonial evolved traditional and customary systems.

Transferability of both property rights and of the investment return (or surplus of productivity, e.g. rent) is seen as important from a western perspective, but if Pacific Islanders adopt their traditional spiritual approach, they are guardians for their ancestors' spirits as well as those of their descendants. Why would you want to transfer that sociological and spiritual responsibility under a façade of spiritual materialism?

Further to institutional compatibility, a good tenure system requires land management compatibility. This implies the potential for improvement of the land resource over time, be it the land's propensity to either generate income or to be more efficient in its productive output of food or other natural resources, or the ability to generate additional income from land/property, subject to planning regulations and other statutory restrictions.

In his *Discourse on the Origin of Inequality* (1754) Rousseau reminded us

that 'you are lost if you forget that the fruits of the earth belong to all and the earth to no one' (de Botton, 2004). This challenges the oversimplified but popularized clarion call to regularize land title to enable the land/property to be used as collateral (de Soto, 2000), as the apparent solution to Jale's stalemate with the bank in particular and the concept of development in general. When Rousseau meets de Soto, we have to make a compromise within our spiritual materialism to acknowledge that earth is vested in the Almighty rather than in an individual (Boydell and Shah, 2003). The bank does not require Jale to *own* the earth in order to provide collateral security; what the bank requires is for Jale to have clearly defined and enforceable property rights.

The tenet of equity demands accessibility to property rights by all socio-economic groups, with sufficient security to encourage investment by residents. Equity also requires transferability (and a share in investment return) and balanced property rights between all parties – owner, head leaseholder, sub-tenants. Did Eroni experience equity if his rank in society requires that he has to make decisions that may be construed as unpopular by his kin, and then suffer the consequences of misplaced spiritual materialism? Like Eroni, Jale is an Indigenous Fijian and thus seen by most as favoured in society as a member of the supposed landowner class. The ownership myth has previously been challenged (Boydell and Shah, 2003), and any doubts Jale may have had over his ownership have been confirmed by the bank, which uses his lack of enforceable property rights as grounds not to lend him the venture capital funds to realize his piggery dream.

Seeking consensus

As we have seen from the Eroni and Jale stories, spiritual materialism is, perhaps, less of an oxymoron in the Pacific than in western cultures. I try to demonstrate this point by conducting each year tutorial discussions with students who study land management. A new cohort of islander students is asked about their values. The answers from these would indicate that valuers/land managers are not measured in monetary dollar or materialistic terms. Their relationship to the land is strong, both in terms of family and of spirit, the seen and the unseen. When the same question is repeated with graduating students at the end of their course, to find out what they aspire to do with their skills, the majority of students prioritize economic goals both at home and overseas above returning to their roots to benefit the community with their new found knowledge. However, the communal expectation to send remittances back to their kinsfolk remains a priority and a major obligation.

As Eroni's example also demonstrates, material dissatisfaction can result in spiritual negativity. The critically important but unspoken quandary of spiritual materialism, which affects land and daily life in the Pacific, merits further investigation.

Institutional arrangements

One of the biggest challenges for sustainability is how to provide an institu-

tional framework that allows for sustainable management of landscape, water, air, biodiversity and industries and communities (CSIRO, 2003).

As discussed in Smajgl and Larson, Chapter 1, the rules influencing human behaviour can be broken down into two categories, formal – which tend to be enforceable and informal – which are in many cases unenforceable (Table 6.4).

Table 6.4 *The rules influencing human behaviour*

Formal Institutional Arrangements	Informal Institutional Arrangements
Constitutions	Relationships
Statutes	Social expectations
Regulations	Family
Plans	Firm
Policies	Community
Title	Traditional Laws and Customs

As Eroni's and Jale's scenarios demonstrate, the difficulty in contemporary Pacific society is with the overlap that exists between formal and informal institutional arrangements, and their interface with society's needs and aspirations. The overlap and interface were considered at length during the FAO/USP/RICS Foundation South Pacific Land Tenure Conflict Symposium in 2002 and are further discussed in Boydell et al (2002).

Finding a Way Forward

This essay did not promise solutions to the major development dilemma surrounding property rights in the Pacific. Instead it provides an insight into the myth, embeddedness and tradition that surrounds and confounds property rights in one particular Pacific Island country, grounded in two sample investigations. As has been stated before, the solutions must evolve as land tenure does, locally and appropriately to the culture, tradition and reality of those they affect. This essay is intentionally personal, grounded on the informed interpretation of actual experiences.

To be effective, local property institutions need to respect local culture and tradition, as well as incorporate elements that recognize the needs and dignity of persons beyond the confines of the tribal *owners*. It is only in this way that the broader level of cooperation that is nascent within western commerce and culture may be made available to customary people (Boydell and Small, 2003). This essay highlights the need for a systematic reappraisal of the very fundamentals of the institution of property and property rights in a manner that will facilitate appropriate regional solutions.

What is important is that such interpretations may assist others from beyond the shores of Pacific Islands to better understand the realities surrounding property rights from an Indigenous perspective. Through

understanding comes clarity, and the potential for the better appreciation of property rights by grounding theory on local experience.

Note

- 1 The University of the South Pacific (USP) incorporates 12 Pacific Island Nations, the Pacific Island Forum Secretariat (PIFS) incorporates 16 members including Australia and New Zealand, whereas the South Pacific Geoscience Commission (SOPAC) has a membership of 19 Pacific Island Countries/ Territories. The South Pacific Games (SPG 2003) in Fiji included 22, encompassing the full width of the Pacific Ocean, with an administrative responsibility for one-seventh of the earth's surface (i.e. double that of the USA and almost triple the area of Australia).

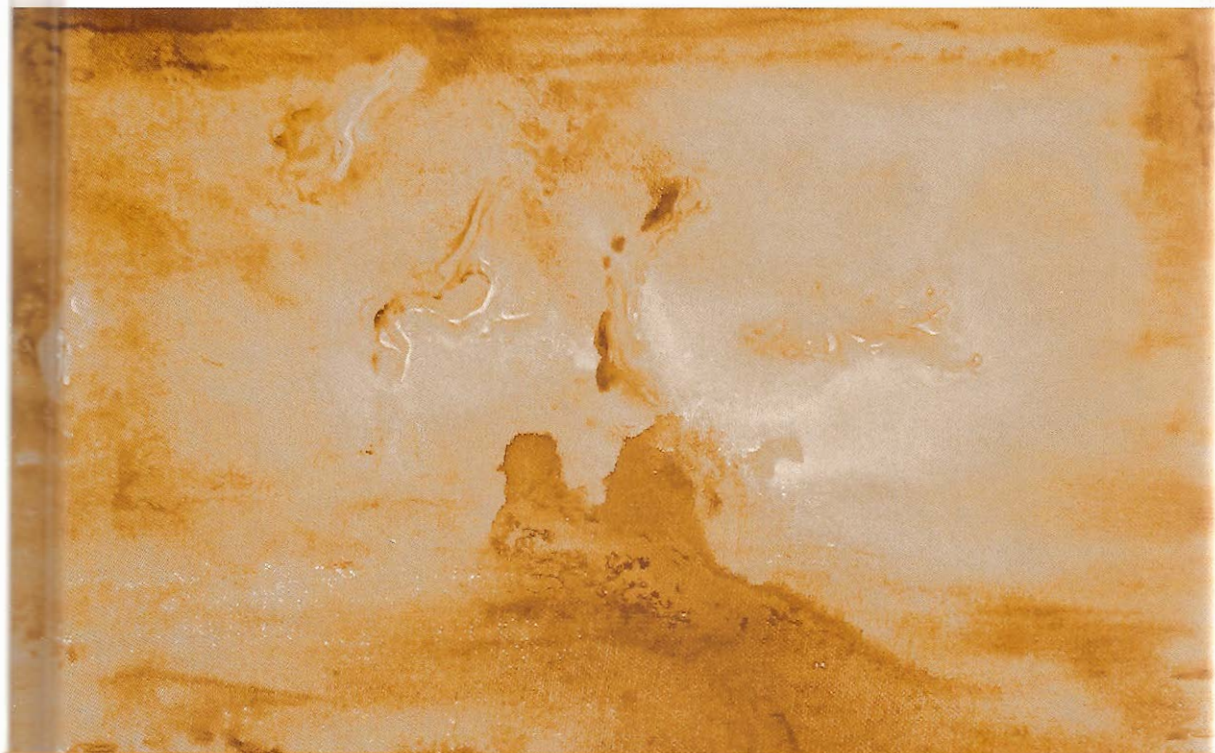
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SUSTAINABLE RESOURCE USE

Institutional Dynamics and Economics



EDITED BY ALEX SMAJGL AND SILVA LARSON



The way that humans organize both resource access and resource use is vital to the management of natural resources. Within different contexts, institutional arrangements (such as the rules of common and private property rights) become levers by which human behaviours can be modified and steered towards the goals of sustainable natural resource management. Featuring contributions from leading thinkers in the field, this groundbreaking volume examines institutional dynamics from the perspective of natural resource management.

The book is organized into four parts. The first discusses institutional diversity and contextual change. Following this, institutional misfit is analysed with a strong focus on the long-term impacts of colonial structures in the Asia-Pacific region. The book then discusses experiences with institutional dynamics in order to ease the tension of such misfits before examining future research needs.

Ultimately, through careful argument and by deploying original research, the authors make the case that institutional arrangements cannot be perceived as a set of parameters that can be optimized and locked in for the most efficient functioning of a system; nor can institutions be evaluated outside the context in which they were developed. This is powerful, thought-provoking and important reading for academics, researchers, policy-makers and professionals in resource, institutional and environmental economics and land use planning and policy across the full range of natural resource sectors from forestry to agriculture.

Alex Smajgl has a PhD in Environmental Economics. Currently he works for the Commonwealth Scientific and Industrial Research Organization (CSIRO) and its Division Sustainable Ecosystems and develops multi-scale decision support tools for policy-makers in Australia and Indonesia in the context of climate change, water quantity and water quality issues, and land use change. Prior to this position he worked for European stakeholders on the implementation of an emissions trading scheme in the Post-Kyoto negotiations.

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