

## South Pacific Land

### *An Alternative Perspective on Tenure Traditions, Business, and Conflict*

Spike Boydell

In the South Pacific, the growing influence of globalization and modernity privileges individual wealth accumulation through the economic benefits derived from indigenous landholdings. Yet, this phenomenon contrasts with regional tradition. Depending on the definitions of various regional organizations, the South Pacific may encompass as many as twenty-two nations. The following discussion on customary land, however, is most appropriate to twelve of them: Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, and Vanuatu. The article's generalizations also hold true for their larger neighbor, Papua New Guinea. Collectively, these countries are spread over a vast 11.5 million square miles of ocean. Nevertheless, they share a combination of geographical, biological, sociological, and economic characteristics, and they all have enduring, traditional systems of customary land tenure, which conflict with Western notions of land use.

This newfound modernism affecting countries with traditions of customary land tenure means that decisions are occasionally made for personal gain rather than in the best interests of the land-owning group. Despite the influ-

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ences of individualism, however, most indigenous peoples maintain an interconnected relationship with the land, choosing not to use it as a commodity. Thus, there is a pronounced clash between indigenous values and capitalist interests, with some commentators asserting that prevailing land tenure traditions preclude the success of business ventures in the region. This article will challenge this reductionist perspective, arguing that the customary nature of land ownership and control in the Pacific does not preclude the optimum use of land—in its many forms—for development.

**Land in the Pacific.** Scholars cite land—more specifically, the lack of clearly defined real property rights based on access to land and resources—as a major cause of dispute and resultant instability in the South Pacific. This situation is compounded when viewed from outside by those who are familiar with the Western approach to land use. A recent report by the Pacific Islands Forum Secretariat highlighted the ongoing misuse of supplanted English words from the colonial era—in particular, the word *ownership*.<sup>1</sup> The dictionary definition of *ownership*, for example, is straightforward: if one owns something, it is the individual's to do with as he or she pleases. The individual has absolute right over it—to preserve it and even to destroy it. This is the Western perspective of a *fee simple estate* in the United States: unencumbered, absolute ownership subject only to the limitations imposed by the four powers of government—taxation, eminent domain, police power, and escheat. As a result of colonization, the South Pacific

draws more on Westminster law influences and terminology from the United Kingdom, adopting the concept of freehold instead. *Freehold* is shorthand for an estate in fee simple of potentially unlimited duration, and represents the most extensive property rights that any individual can hold: full ownership of the land at the grace of the Crown and guaranteed by the State. Such terms, however, are not the essence of indigenous land ownership, with its spiritual connotations and enduring notion of intergenerational guardianship. Thus, in both indigenous and Western societies, what is actually owned—individually or as a family, group, clan, or tribe—is a collection of property rights.

Currently, the United Nations Human Settlements Programme (UN-HABITAT) is promoting a continuum of property rights under its Global Land Tool Network. These range from informal land rights, perceived tenure approaches, and customary land rights—“weak” forms of land holding—at one end of the spectrum, to registered freehold and the leasing system—“strong” forms generally found in Western societies—at the other end.<sup>2</sup> However, this continuum privileges Western forms of land holding, since informal customary tenures are located at the lowest end of the spectrum and registered freehold is at the ideal or optimal end. While this may indeed be ideal from a Western or donor perspective, the cultural context and customs of indigenous land holdings make the continuum ill-suited for the South Pacific. Freehold is unrealistic, and any adoption of leasehold solutions requires that the land be leased by customary land rights holders to other parties.

While land is obviously important in all societies, it holds different relevance in the South Pacific because the majority of land was left alone under colonization—Tonga being the only nation of the Pacific Islands Forum not to be colonized. This is in stark contrast to Australia, which violently dispossessed the vast majority of its aborigines, sub-

transferring ownership through sales and purchases does not reign supreme in the region. During colonization the Crown ultimately held the superior interest of the land but allowed others to use it for their purposes; when it permitted freehold, the Crown was allowing individuals to use, transfer, or will land to others. In Fiji, for example,

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jecting them to economic and political marginalization and oppressive state control. Some 83 to 97 percent of land remains vested in the stewardship of the indigenous guardians who retain control of and own the land in the South Pacific.<sup>3</sup> In traditional societies ownership of land relates to the notion of custodianship, where individuals and wider society bear a joint responsibility and duty to maintain the land for current and future generations. Such values do much to strengthen sustainable use of the land and to ensure the happiness of roaming ancestral spirits. Thus, for indigenous South Pacific peoples, ecological, geophysical, social, spiritual, and economic characteristics underlie their ties to the land.

**Real Estate in the Pacific.** In general, inhabitants of Pacific Island nations believe that the “superior interest” of land—who determines its primary uses—should not be sold but should be retained for the sake of inter-generational equity. Thus, the idea of

the Deed of Cession on 10 October 1874 transferred the superior interest of all islands in the archipelago to Queen Victoria and her heirs—making them a possession and dependency of the British crown—but still allowed for indigenous chiefs and their kin to continue to use their land. Unfortunately, many post-colonial and post-independence legal structures inadequately addressed customary land issues, in turn requiring several South Pacific nations to revise their constitutions—on more than one occasion—to better protect indigenous interests.

Today, tribal groups and families indeed hold the superior interest to their land; however, there is a disconnect between communal ownership in customary land tenure systems and the Western view of individualized private property rights. In the latter case, many consider such rights fundamental to a market-based economy, believing that the financial importance of a piece of land derives from its utilization for the most economically productive activi-

ties. As such, freehold is the dominant and preferred form of land tenure in the West. This belief in the land's economic value is also embedded in the leasehold tenure system, which enables possession and use of land for a fixed period. Leasehold's history in the West is considerable, as it correlates with some of the West's most successful periods of economic growth and equity.<sup>4</sup>

This is not to say, however, that South Pacific nations lack individualized private property rights. Partly resulting from its cession to Queen Victoria in 1874, Fiji now has the most established market for land and real estate in the South Pacific. Commercially, Fiji also benefited from the establishment of the Native Land Trust Board (NLTB), a quasi-governmental body that administers customary land on behalf of indigenous groups. Although it has been criticized by many in Fiji, the NLTB manages a significant portfolio; has created a leasehold structure—similar to a leased fee estate in the United States—that facilitates access to land for development, occupation, and production purposes; and generates an economic return to customary landowners. Thus, Fiji demonstrates that, in terms of land holding, leasehold structures do not necessarily detract from customary ownership.

Nevertheless, communal ownership is the dominant form of land holding in the South Pacific, resulting in differences between indigenous and Western perspectives on customary land use. A key source of conflict is their unequal respect for the contractual obligations governing real estate, land, and property rights. The principle of *caveat emptor*—let the buyer beware—is an

accepted foundation of Western commerce; contractual obligations are paramount, regardless of the equity found in the arrangement. This is generally true of low-context societies, such as the United States, Canada, Western Europe, and Anglo-Australia. Yet, in high-context societies characterized by tradition, collectivism, and honor—including Japan, China, Latin America, and the Pacific Islands—indigenous peoples place more emphasis on equity and respect for cultural traditions, thus making contractual obligations of secondary importance. These distinctions become problematic when indigenous landowners discover that their leases for commercial activities were below their real economic value and decide to back out of their contractual obligations.

Some economists have argued that customary ownership is linked to poor economic performance. They claim that communal ownership hinders development, and thus they encourage land privatization through individualized freehold interests.<sup>5</sup> Such claims rest on several valid observations regarding the economic underperformance of customary-owned land, and in turn they conclude that customary-owned land cannot deliver effective economic outcomes.<sup>6</sup> This view wrongly characterizes customary land tenure traditions as harmful for business ventures in the Pacific, subsequently invalidating customary ownership as an unrealistic option.

The problem is one of perception rather than fact. This view presupposes that individualized title—in particular freehold title—reduces poverty and encourages development in poorer regions of the world, including the

South Pacific. Francis Fukuyama challenged this view of development and progress when he argued that democratic capitalism, such as that found in the United States, represented cultural and economic systems at the "end of history."<sup>7</sup> This translated into the popular claim that no system of property can deliver the same benefits as the capitalist freehold title could. Such reasoning is tied to neo-classical market economics and implies the following conclusions. First, development necessarily requires land reform, resulting in the Western concept of freehold title. Second, general economic thought is written to privilege freehold private property as the only effective system of land title. Third and most uncomfortably, if another system of land property succeeded economically and socially, it would challenge the foundations of economic thought in the West.<sup>8</sup>

### **Indigenous Perspectives on Land Holdings.**

In contrast to the implications of Fukuyama's theory, customary land ownership in the South Pacific provides an alternative way of dealing with land—one that is not socialist but nevertheless revolves around a system alien to modern Western thought. The possibility of its success is beyond the scope of modern economics, and the realization of that success would force a major rethinking of some of the West's cultural beliefs. It is therefore important that one understands criticisms of customary land systems in terms of both Western theory and culture.

Although the pro-privatization literature correctly recognizes problems with the quality of property rights in

many developing countries, its claim that privatization and individualization of title is the best or only practical alternative to these rights is hardly proven. Critically, mainstream thought on land policy has already defined property rights in terms of indigenous needs and customs.<sup>9</sup> Moreover, there is a crucial difference between possession or use of an asset and ownership of that asset, since one does not have to "own" the freehold interest in an asset to use the land productively.<sup>10</sup> This can be achieved through a leased fee estate or, in other words, a leasehold in the South Pacific.

Since much of the South Pacific's land remains under the stewardship of customary guardians, they own the superior interest and ultimate property rights to the land. Yet, Western nations view property in terms of ownership, not stewardship, and as a result traditional indigenous systems may thwart business interests, especially through transaction uncertainty and limitations on loan security.<sup>11</sup>

Perhaps the real issue is the donor community's continued belief that imposing Western institutional conditions on agrarian societies will bring about development. Such ideas continue to gain widespread currency, particularly from donors, as they are central to the power and stake models between developed and developing in a neo-colonial context. Yet, history offers evidence to the contrary. For example, Thorold Rogers's study of England's economy between 1300 and 1900 indicates that individualized freehold property title is strongly associated with the impoverishment of the nation's working people.<sup>12</sup> In the

South Pacific, widespread adoption of individualized freehold title may produce a similar outcome; if land was sold to Western interests, customary indigenous landholders may quickly find themselves landless and without access to resources.

ments of the people of Papua New Guinea's Burum Valley, reveal instances of outstanding entrepreneurial performance.<sup>15</sup> The Maori trusts in New Zealand are self-governing corporations managed by and representing the interests of Maori customary landown-

## If another system of land property succeeded economically and socially, it would challenge the foundations of economic thought in the West.

The pro-privatization movement does acknowledge that land loss may result from the freehold title system, but it argues that indigenous peoples would have access to jobs in a way that is currently not possible.<sup>13</sup> These jobs would result from the development of labor-employing entities, such as factories or businesses, on customary land tracts. However, this scenario does not specify the level of wages these landless indigenous peoples could expect. In the case of Hawaii, foreign interests did not compensate the island's inhabitants for loss of land. Within a generation of establishing freehold title, foreigners owned more than 75 percent of indigenous land, and although indigenous Hawaiians did find employment, today they occupy the lowest strata of the island's economic and social hierarchy.<sup>14</sup>

Of course, there is ample evidence that indigenous peoples can achieve impressive economic outcomes through productive use of their land. The enterprises of early colonial era Maori in coastal shipping, milling, and other businesses, in addition to the achieve-

ers. They have a level of autonomy and responsiveness that is higher than Fiji's Native Land Trust Board system. As private entities they are entirely self-funded and responsible for providing human and organizational resources to manage Maori land on behalf of other customary owners. While non-Maori tenants occupy much of the land administered by the Maori, their long-term goal is to return the land to Maori occupants once leases expire. In turn, because Maori trusts emphasize both social and financial goals, their financial performance may be lower than that of comparable non-Maori ventures.

The Ahi people of Lae, Papua New Guinea, are producing similar outcomes.<sup>16</sup> The Ahi Corporation is a company owned by the Ahi people to manage their land and other financial interests. The corporation operates under the management of Ahi community leaders, whose incomes are based on a management salary rather than an arbitrary rental. The company ensures that profits remain within the indigenous community by using rental income for community maintenance

and support. Thus, the Ahi demonstrate that economic prosperity can result from a customary tenure system.

Given the above examples, how can indigenous peoples increase the success of customary-owned land projects? Additionally, if land must be used within cultural parameters, how can the peoples of the South Pacific balance their economic independence with their obligation to protect traditional ways of life?

### **Current Trends and Implications.**

The South Pacific has not escaped the influences of modernization and globalization. These phenomena have brought fundamental changes to the region's peoples, affecting the egalitarian and communal lifestyles of the South Pacific's indigenous communities. To address differences between Western and indigenous views on land ownership, the region's governments should strive toward land reform. In particular, they should encourage leasehold solutions sensitive to customary ownership as well as strike a balance between communal and individualized property rights that is agreeable to their citizens.

Intergenerational equity provides a framework for undertaking these changes while preserving customary ownership. It ensures that decisions regarding land do not harm future generations. Specifically, it differentiates between land possession and ownership. Possession refers to rights governing land use, whereas ownership occurs within an overarching regime of financially beneficial, continuing customary ownership. As a result arrangements should be culturally acceptable to inhabitants

but still have the capacity to generate economic returns. Such solutions need to focus on the mechanics of leasehold tenure arrangements and examine how they can achieve the cultural and economic objectives of Pacific peoples.

As mentioned before, leasehold arrangements are often the preferred tenure system for property users in Western countries. Recently, businesses have turned to these arrangements as a strategy for financial success, pursuing them aggressively. In doing so, many national and international corporations have divested themselves of their property assets to free capital for their core business, in many cases leasing back the property assets they previously owned. This is not to say that leasehold is the most attractive tenure system for encouraging foreign investment, or that its design is without considerable challenges. As noted at the beginning of this paper, the view promoted by UN HABITAT concerning the continuum of property rights is inappropriate to the South Pacific's cultural traditions.<sup>17</sup>

Setting objective performance criteria—agreed on a nation-by-nation basis—to guide the design of a land tenure system can provide a solution that is optimal and includes inhabitants' cultural and economic objectives.<sup>18</sup> When setting these criteria, the question of equity is a practical issue tied to the cultural dimension of effective land use. It is closely linked to land-related conflict, which is a major issue in the region. The notion of equity, however, is problematic within economic thought. This is partly because economics implicitly uses utilitarianism as its moral reference point, and partly because ethical considerations are considered beyond its scope.<sup>19</sup>



Due to this conflict between economics and equity, good governance is often needed to deal with land matters. Principles, such as legitimacy, accountability, effectiveness, participation, and fairness, all relate to land administration and are now on the agendas of the World Bank, the UN Food and Agriculture Organization, and the International Federation of Surveyors (FIG).<sup>20</sup> These principles build on recent regional initiatives and plans that address Pacific land issues, including symposiums concerning land tenure conflict and initiatives regarding good governance.<sup>21</sup>

When many of these island countries became independent, it was determined that they would eventually resolve their land tenure arrangements in the early years of their independence. In most cases, however, that task remains incomplete. Although the broad principles of good governance and land administration are applicable to countries in the South Pacific, one must accept that the land tenure regimes of particular countries are domestic matters that each country must resolve independently. While there are many similarities among the

customary land regimes of the region, specific policy recommendations cannot address the entire South Pacific.

In a 2002 symposium on land tenure conflict in the South Pacific, Fijian academic Savenaca Siwatibau succinctly and poignantly articulated the following: "They say that land, like financial and human capital, is a factor of production, which helps drive economic and social development, generate national income, wealth, jobs and government revenue, combat poverty, improve the standard of living of all and ultimately entrench social and political stability in any country. As in all things, changes and solutions should 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."<sup>22</sup> This wisdom encompasses all the principles of good governance and highlights the need for donors and business ventures to work with Pacific Island nations and their leaders to find solutions to the question of land tenure in the region.

#### NOTES

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