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FOREWORD

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Since the 1700s, Europeans have arrived in the Pacific and have begun to formulate indigenous land law, often with the goal of protecting local custom from the effects of the new asymmetry in power wrought by colonization. Thus, the three articles by Lashley, Farran, and Filer attest to the way in which Western common law, even when it has been embedded in the constitutions of newly independent Pacific countries, nevertheless continues to provide a wealth of legal loopholes to assist in this appropriative process and, more important, the language of distraction and misdirection that seems to allow people of power to provide a veneer of legal coherence to theft and appropriation of customary land.

But any formulation is also a reformulation; all translation is also a traducing; and any codification of unwritten indigenous "custom" turns that custom into something altogether different—namely, some version of Western judiciable law. Therefore, even the best-intentioned efforts to protect indigenous law only facilitate its ultimate codification and subsequent appropriation by the colonial culture. All the papers in this collection provide valuable and fascinating case material, both historical—to which Lashley's paper provides a useful introduction for three Pacific countries—and anthropological to illustrate this process. The article by Glaskin and Dousset, in particular, explores the dilemma of the legal recognition process—how does the institution of the law handle the problem that recognition of indigenous law, custom, and society involves them in their own ethnographic enterprise, however different that might be to the conventional anthropological one?

However, as against the asymmetrical progress of incorporation, there is also the counterreaction of indigenous self-objectification of custom that the incorporative process elicits in turn (e.g., Goldman 2007, Weiner 2007). Thus, the chapters all in one way or another provide evidence of the resilience of indigenous forms of territoriality and to anthropology's key role in the development of social science concepts such as society, descent group, and human territoriality. But all of the chapters provide testimony to the utter disparity between the language of law and codification and of anthropology's commitment to interpreting and translating the vernacular in human life. The difficulties in the western courtrooms of today, where more and more indigenous attempts to defend land are played out, attest to how difficult it is for legalists and scholars to make their own practical and linguistic rapprochements. Hence, the legal pressure on indigenous people worldwide has lead to the emergence of a speciality within anthropology, the consultant anthropologist. These anthropologists are not just specialists in matters to do with indigenous social organization and practices of landholding; they also have to take responsibility for managing the interpretive arena within which we stand to achieve some success in brokering these social science concepts and our evidence to nonspecialists, and authors Filer, Howard, and Glaskin and Dousset provide an insight into this movement of anthropology.

There are several important themes that run through this collection that I draw to readers' attention. First, the early ethnographic or quasi-ethnographic formulations of culture, social organization, and local landholding customs play a key role in local indigenous people's continuing interpretation of their own "customs" in the present. John Burton, who carried out native title research in the Torres Strait Island, observed that "Every family owns photocopies of Rivers' tables in Volume 6 of the *Cambridge Reports* which is now known as the *Giz Book* (lit: "root, base" + book)" (Burton 2007, 4). The articles by Gonschor and Goddard in particular show how dependent indigenous peoples have become on early documentary material, even when it has been obtained by a nonindigenous person. In Australia, the genealogies and tribal boundary maps produced by American anthropologist Norman Tindale between 1938 and 1974 are now key resources for many Australian Aboriginal families who, having become disconnected from their culture, language, traditional land, and ancestry, seek to reinstate some version of indigenous identity and connection.

Second, there is a tendency on the part of both colonial land and legal officers and indigenous people themselves to embrace unilineal models of descent. This has taken place as a result of a kind of connivance between

lawyers and indigenous people, the hypothesis being that unilineal modes of descent provide a more unambiguous mode of transmission of inheritance and local group membership than nonunilineal descent mechanisms. Eves, in his article on Lelet (New Ireland, Papua New Guinea) matrilineal land tenure, draws attention to the colonial emphasis on "pure" lineality. Eves then goes on to note that within a "classic" matrilineal model, ethnographically there are still important, customarily recognized mechanisms of transmission of rights in land between a man and his sons. Guo, in her article on Langalanga in the Solomon Islands, demonstrates that patrilineality is only "pure" at the ideological level; practically, rights to land are acquired through the mother's side as well as the father's. I think this is common to what we might called "practical unilineality"—that, as I observed among the Foi, any focus on descent through one gender automatically calls forth a reflection of itself in terms of a coupled line through the opposite gender (Weiner 1988, 90), even if the indigenous system is not what we would classify as "bilineal" or "bilateral," as the Rotuman system, described by Howard, appeared to be before colonization.

Third, the pressure to adopt unilineal models was itself part and parcel of a more general trend to simplify and idealize indigenous customs across the board. Thus, Pascht, in his chapter, notes that the Cook Island Land Act of 1915 prohibited "private" wills of land transfer. The Australian Native Title Act (1993) defined Aboriginal title to land as communal, and lawyers and judges have subsequently had great difficulty in assimilating the anthropological evidence that indicates personal and individual ties to and subsequent authority over land. Howard discusses how a Fijian model of patrilineal inheritance of land was adopted by the Rotuman Lands Act of 1959 and replaced the original indigenous bilineal model of transmission of land rights. Howard himself was involved in providing an anthropological critique of this act in the late 1950s and continues to be actively involved in Rotuman efforts to repeal or amend the act (which, however, has never been enforced).

Along with this drive toward the "simplification" of indigenous models of land tenure transmission is a simultaneous introduction of complexity—the proliferation of a bewildering array of different tenures, leases, and laws and statutes wrought by the imposition of Western common law in regard to property. Gonschor's, Farran's, and Filer's articles effectively show how this has affected Easter Islanders', ni-Vanuatuans', and Papua New Guineans' relations to customary land. In the Australian domain of Native Title, the High Court decision in regard to the Miriuwung-Gajerrong native title claim in Western Australia (*Western Australia v Ward* [2002] 213 CLR 1) for example, demonstrated how many different tenures are recognized

in Australia under the common law, each with its own particular relationship to the issue of survival of native title rights and interests.

Fourth, there is an insinuation of Western common law sensibilities in regard to property in indigenous custom in regard to rights to land. Prominent among these is the elevation of ties to land based on "use" and "occupation" to the status of unshakeable property right. This is noted in the Pascht chapter to have occurred in the evolution of Cook Islands land law. Professor of law Robert Cooter, who visited Papua New Guinea in the 1970s and attended local land courts at a number of places around the country, observed that what he called "adverse possession"—the transfer of ownership of land from the "ancestral" owners to those who have actually maintained occupation and use of the land as such—was an integral component of Papua New Guinea understandings of their own customary land law (Cooter 1989). It became a decisive component of the Land Title Commissioner Amet's decision in the Hides Gas Fields landowner dispute, and later Land Title Commissioner Kanawi would also invoke it in the Gobe oilfields landowner dispute (see Weiner 2002).

Descent or parental connection by itself does not secure rights to land in traditional indigenous Pacific and Australian societies. As Guo, Goddard, and Pascht show in their articles, entitlement by descent has to be activated by actual occupation, use, and acquired knowledge of the land in question, whereas Farran indicates that introduced common law concepts may be adopted and adapted to secure precarious customary rights.

Finally, the introduction of new modes of inhabiting the land as such includes the introduction of new crops, including cash crops, which have distorted or altered the relationship between land-rights transmission, horticulture, and the traditional patterns of land use. Chief among them is the introduction of permanent tree crops such as citrus, as both Pascht and Eves observe in their chapters. Leach also notes that the introduction of a cash value to traditional food crops, and the subsequent inflation of prices for such crops (as often happens in the vicinity of a resource extraction project), put pressure not only on land but more significantly, on the human labor that is associated with land use and subsistence horticulture.

Filer's article provides a grim example of how this original colonial expropriative process has now been fully indigenized in the modern indigenous "nation state." The article by James Leach also reminds us of something that anthropologists know full well after they return from the field—that land is not simply another item of property but is the base, foundation, and grounds (in the both the literal and philosophical senses) of community and family life for most indigenous landed peoples. The activities of deriving food and subsistence from the earth are the core

activities that define temporality, rhythm, and the pace of transformation and reproduction in community life. This temporality itself becomes the ground of memory, because place names and personal names oscillate back forth between their distinct onomastic domains. How opposed to these life processes are the labyrinth of laws and regulations that nations create through the conceit of artifice and power, which drive a conceptual blade between indigenous people and their land, and how tragic and predictable have been the results in so many places and so many times in history.

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