# BRAMELL'S RULES: CUSTOM AND LAW IN CONTEMPORARY LAND DISPUTES AMONG THE MOTU-KOITA OF PAPUA NEW GUINEA

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Jurisprudence in Papua New Guinea acknowledges "custom," "customary law" and "customary title." Also, courts accept oral history, legends, and mythology as legitimate evidence in the investigation of land claims. At the same time it is generally acknowledged by legal scholars that custom is fluid, flexible, and adaptive to changing circumstances. When contemporary law courts investigate local custom, conceived to be manifest in traditional practices, paradoxes are inevitable when the legal preference for consistency engages with the vicissitudes of orally transmitted understandings of land rights. Europeans established themselves on the territory of the Motu-Koita, on the southeast coast, in the 1870s, and local systems of "land tenure" linked to kinship principles were described by various authors in subsequent decades. A document on "Native Land Custom" composed by a European land commissioner in 1964 has become the standard resource on Motu-Koita land customs for legal purposes in Land Courts and Higher Courts in the postcolonial period. Two sets of "custom" are now observable in the settlement of land disputes among Motu-Koita villagers. One is visible in informal procedures, which do not involve the land court. The other is the "official" version of traditional land custom used in the land court. This paper discusses the effects on postcolonial intragroup land disputes and conceptions of descent principles when Motu-Koita have recourse through the courts to a colonial-era representation of their customary attitudes to land rights.

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## Introduction

The first Europeans to make landfall in the area on which Papua New Guinea's capital city, Port Moresby, now stands encountered two intermarried groups known as the Motu and Koita. These had in the past been culturally different, as evidenced by language distinctions and oral histories, which were subsequently reinforced by archaeological investigations.[1] The Austronesian Motu were marine oriented, preferring to build houses on or near the shoreline or even offshore, and Motu women specialized in the making of clay pots that the men traded by sea voyages along the coast. The non-Austronesian Koita claimed the coastal plains and were gardeners and hunters thought to have split in the distant past from hinterland people known as Koiari (Dutton 1969). The original encounter between the Motu and Koita, and the terms of their alliance, are the subject of innumerable oral histories (see for example Oram 1981), and no conclusive account exists. Questions remain about whether the Motu, being marine-oriented migrants, had no land in the first instance and gained access only with the permission of the Koita.[2] However, the alliance of the Motu and Koita had fused their sociality and ontology to a degree where early European descriptions could not distinguish between them in these regards. An attempt by Seligman just after the turn of the twentieth century to provide ethnology specifically of the Koita substantively demonstrates an inability to treat them separately (Seligman 1910). Despite ongoing discursive differentiation by the Motu and Koita themselves, a study of local blood groups in 1950 could find no difference between them (Groves et al. 1958).

Lingering questions about the precolonial migration patterns of the Motu and Koita, their interaction with neighboring and more distant people through trade and warfare, and their integration are grounds for caution in the representation both of their traditional customs and of the culture in which those customs might be contextualized. Few anthropologists nowadays would conceive of peoples like these as having temporally immutable and impermeable customs before European contact and certainly not during the subsequent century and a quarter. Although anthropologists might be intrigued by the vagaries of custom, however, courts of law in Papua New Guinea are obliged to acknowledge its legitimacy and relevance particularly to land cases. They consequently prefer to treat it as a field capable of being cataloged: it is thereby rendered stable insofar as it is taken to be oriented to a set of essential principles of social organization.

The township of Port Moresby was first established at the end of the nineteenth century near a large Motu-Koita village cluster known as

Hanuabada, without noticeably interfering with existing land access and use by that cluster or other villages in the vicinity. A century and a quarter has passed, and Port Moresby is a large migrant city. Because it has steadily grown and expanded on their traditional territory, the people now collectively called the Motu-Koita(bu)[3] have come to see themselves as marginalized, deprived of their rightful place in the political economy, and inadequately compensated for their concessions to urbanization and the growth of the National Capital District (UNESCO 2001; Goddard 2010). Insufficient recognition of their territorial proprietorship and a significant degree of land loss are concomitant preoccupations, and their litigiousness has become more marked in recent decades. In this article, I investigate historical developments in representations of the customs pertaining to landholding and succession among the Motu-Koita. As the reader might anticipate, there is some disparity between the custom represented in law courts and what occurs in the negotiation of land issues at village level. At the same time, the legal view of custom, partly driven by the commercialization of land, is subtly influencing discourse and practice among villagers. I relate this to some popular but equivocal assertions about descent and kinship, which derive from colonial-era attempts to elicit and record information about Motu-Koita social organization and landholding. My overall purpose is to show how patrilineal idioms, which were once only a small part of the consideration of rights to land use among the Motu-Koita, are becoming transformed into legal rules.

## Patrilineal Descent

The earliest anthropological descriptions of Motu-Koita society, predating participant-observation fieldwork, relied heavily on observations about material culture and the responses of one or two native interlocutors. The first, by Turner in 1878, contains no useful information about kinship and descent, but three decades later Seligman (1910) attempted to understand the nature of local residential groups called *iduhu* and some kinship principles that seemed to be articulated with them. Seligman's work was prefunctionalist and influenced by evolutionism: seeing little trace of "mother right," he generalized that the Koita, Motu, and nearby groups were all patrilineal (Seligman 1910, 16). However, he decided that, although a patrilineal idiom was present in local representations of iduhu, they were not, technically, clans (Seligman 1910, 49). Some decades later Groves referred to iduhu as "a patrilineal and patrilocal group" (1954, 78) and subsequently (Groves 1963) attempted to distinguish between two types of groups called iduhu. One type consisted of large name-carrying groups of

which sections occurred in different villages, suggesting a shared ancestral origin. The other type consisted of smaller fragmentary units found within each village. He proposed calling only the former clans and calling the latter village sections (Groves 1963, 16).

Belshaw (1957, 13) and much later I (Goddard 2001) have also been reluctant to call iduhu within villages clans. Although they are residential and political units containing a number of putative lineages, they are far too flexible in practice to be comfortably categorized according to a conventional definition of clan such as Fox's "descent groups whose members claim to be descended—on one principle or another—from a common ancestor" (1976, 90). Membership of an iduhu can be gained, for example, through residence and social commitment (Seligman 1910, 50–80; Belshaw 1957, 13–20), and although people marry out of their iduhu, the iduhu itself is not the unit of exogamy (see below). Further, claims to land are not strictly governed by a patrilineal descent principle. For example, interlocutors encountered in my own fieldwork place themselves primarily in particular iduhu, but it is not unusual for them to identify with other iduhu (by recounting variable personal genealogies) particularly in relation to historical claims, including land-related ones.

On matters of land use, clear rules or principles were hard to discern for early anthropological researchers attempting to use kinship as a guide. Again a patrilineal idiom of inheritance was offered by male interlocutors[4] in the first instance, yet observations and "what if" inquiries indicated a great deal of variation. Seligman reported being told that "no woman really owns land" (1910, 88). This was an equivocal interpretation, however, because the Motu-Koita did not traditionally "own" land in the European sense, as Bramell (1964) later pointed out in his attempt to codify matters of land rights. Further, despite the idealization of Seligman's interlocutor, women could inherit land, and a man could inherit land from his mother, that is, land belonging to his mother's iduhu.[5] What individuals inherited, or gained permission to use, were actually plots (*inogo* in Motu) in an area belonging to an iduhu. The principle of inheritance of such use was explained by Groves as follows: "all descendants of the original cultivator whether descended through males or females or both, may claim the right to cultivate a plot in a tract of land under the management of the genealogically senior agnatic descendant" (1963, 26).

The unilineal model of Motu-Koita descent instituted by Seligman appears to have been unchallenged by Groves and Belshaw even though they discovered some anomalies in their 1950s fieldwork. Had Groves and Belshaw first encountered Motu-Koita kinship in a later anthropological era, they might have more acutely interrogated claims of patrilineality,

because beyond the idioms used by male interlocutors, a number of the observations above about land inheritance are compatible with the cognatic descent principles that anthropologists began to moot more seriously in the 1970s. For example, Keesing said of cognatic systems that the "on paper" potential for individuals to make extremely broad claims of multiple group membership was limited in practice by a number of mechanisms including parental residence and systems of primary and secondary rights and frequently a bias affording stronger rights or status to patrilineal descendants of a group's founding ancestor (Keesing 1975, 92; see also Holy 1996, 115–21). In the 1950s, however, theories of cognatic descent were barely formulated among anthropologists (see Keesing 1975, 91–92; Holy 1996, 115–16). Interestingly, Lévi-Strauss, having originally thought that cognatic systems were irrelevant to his theories of elementary structures of kinship because they were exceptional, later conceded they were common but still excluded them from his typologies of elementary structures "for they no longer define, perpetuate and transform the method of social cohesion with regard to a stable rule of descent, but to a system of land rights" (Lévi-Strauss 1969, 105).

Further implications that Motu-Koita cannot be simply considered patrilineal are found in their kin classification terminology, which emphasizes generational difference and displays bilateral symmetry. This is essentially a Hawaiian terminology, which kinship theorists came to associate with cognatic descent systems (Keesing 1975, 104; Fox 1976, 246–49). Also, although iduhu have been fairly described by Belshaw (1957, 13) and Groves (1963, 18) as exogamous, the bilateral exogamous unit of the Motu-Koita does not necessarily coincide with the boundary of the iduhu and can extend considerably beyond the bounds of a small iduhu. The structure of the unit fits the anthropological typification of cognatic systems (see Keesing 1975, 96) in that it is a matter of degrees of relatedness.

I should qualify my interrogation of the patrilineal descent of the Motu-Koita here by emphasizing that I do not wish to label the Motu-Koita alternatively as "cognatic." My point is to show how the institutionalization of the patrilineal model was shaped by descent theory and its predilection for finding unilineal principles in non-Western societies. In the mid-1960s, discussions of the difficulty of applying African-derived models in the PNG highlands (Barnes 1966; Langness 1966) portended changes to the way kinship theory was being applied in Melanesia, shortly reinforced by the challenge posed by the translation of Lévi-Strauss's (1969) opus and the analytic focus on marriage and alliance. Later anthropological discussion of kinship focused more on disparities between the social practice and idiomatic representations of local groups, and influential critiques such as

Schneider's (1984) questioned whether it could be assumed that all societies shared the conviction that blood was thicker than water (Schneider 1984, 165–77). Other contributions such as Scheffler's (1985) examination of the idea of "rules of descent" and Strathern's (1988) reevaluation of Melanesian exchange and personhood have moved anthropological reflections on kinship considerably beyond the models that shaped colonial-era representations of the Motu-Koita. Nowadays there is a more cautious approach to lineage models in kinship studies (see Holy 1996, 90–101; Parkin 1997, 143–52).

In the early colonial period, however, social evolutionist attitudes disposed Europeans to regard Melanesians as governed by simple, unilineal, descent principles. Colonial negotiations were pursued with male representatives of local groups and patriarchal attitudes and explanations that leadership was inherited through a principle of agnatic primogeniture reinforced the inference that the Motu-Koita had a patrilineal descent system. Seligman's observation of some anomalies did not, in his day, encourage him to question the commonsense view, and similar anomalies noted by Belshaw (1957, 13, 26–30) and Groves (1963) failed to dissuade them from the by-then institutionalized patrilineal model. Thus, the Motu-Koita were patrilineal with some cognatic (or even "matrilineal," see Belshaw 1957, 13) elements. One of these cognatic elements concerned the inheritance of rights to use land. As I have already noted, Groves found these were enjoyed by all descendants, male and female, of an original cultivator (Groves 1963, 26). Nevertheless, Groves argued that it would be misleading to say that the Motu conceived the iduhu as a "nonunilineal" descent group because "in respect to any particular block of land the multilineal descendants of the apical ancestor who first staked a claim to the land never act corporately" (Groves 1963, 26). He concluded after examining a number of aspects of the iduhu that the Motu had a "permissive" unilineal ideology (1963, 21, 27).

By the mid–twentieth century, then, the patrilineality of the Motu-Koita was a *sine qua non* (and it is nowadays reiterated without reflection by the Motu-Koita themselves) and would shortly be reinforced by quasi-legal accounts of land-related customs, one of the first and most influential being the "notes" of Land Commissioner J. C. Bramell (Bramell 1964). In the same document, Bramell also recorded the cognatic element noticed by anthropologists—the "bilineal" inheritance of certain types of land rights—contributing to its axiomatic status in authoritative discourse on Motu-Koita custom. The anomalous relationship between these two apparent principles has become a *problematique* in formal land disputes, as we shall see below. I now turn to another aspect of Motu-Koita social organization significantly

affected by the colonial endeavor to understand their land practice, the nature of the land controller.

## The Land Controller

Despite the flexible nature of iduhu, early researchers found that each had a male leader (*kwarana*, from *kwara*, = head[6]), whose position appeared to be inherited. An idiom of agnatic primogeniture (inheritance by the first-born son) was and is used by Motu-Koita to explain succession to the position. However, exceptions are not hard to find. A second-born son can take the position if the first-born is unwilling or unsuitable, and a very old iduhu kwarana may "abdicate" in favor of a caretaking brother or son some years before his own death. Other exceptions on record include Firth's note on a kwarana's sister's son, rather than one of his own sons, filling the position and also a son's unmarried status resulting in the position going to another man (Firth 1952, 88). These examples imply that criteria of practical suitability and competence at least qualify appeals to agnatic primogeniture.[7] Turner wrongly called iduhu heads "chiefs" in his 1878 description, which committed him to puzzling why they had no apparent political authority of the kind conventionally associated with chiefdoms (1878, 53). I have argued elsewhere that the iduhu kwarana was never a chief but is best understood as a personification of the idiom through which an iduhu expresses its political and historical identity (Goddard 2001). Traditionally he incarnated the ancestry of the iduhu. Not only did he represent the ancestors to the living iduhu, but through ceremonial rituals (most now discontinued), he represented the living iduhu to the ancestors and to other groups.

In respect of land use, Groves's reference to a "genealogically senior agnatic descendant" who managed matters of cultivation among the Motu-Koita resonates with an earlier observation by Seligman, who noted "When a man desires, for any reason, to take up more garden land, he discusses the matter with his clan chief [*sic*] . . . who, after the usual discussion with the elders of the *iduhu*, assigns him an adequate amount" (1910, 87). It appeared that someone was "in charge" of land matters, and indeed early European settlers had been keen to find out whether they needed to negotiate with groups as a whole or representative individuals to acquire land. The earliest attempts by the colonial administration to purchase land (near the main village complex of Hanuabada) revealed a complexity for which the Europeans were hardly prepared: a purchase of 552 acres involved four weeks of daily transactions and the payment of 1,258 different "vendors" (BNGAR 1886, 18). The colonial negotiators noted a consensual

approach by the Motu-Koita to selling land to the administration. The land was "owned by groups of individuals, who are all more or less connected by kin . . . no one member [can] alienate the land without the consent of the family group . . . each member will claim to receive a share of the profits of the sale of such land" (BNGAR 1886, 18).

Although the administration continued to acknowledge individual right-holders in purchasing land, the apparent authority of iduhu leaders in settling issues of land use and dealing with multiple and overlapping claims within the group invited the inference that these were land "controllers." By the Second World War, the administration had adopted a system of handing over payments for purchased land to "headmen or representatives" for distribution among claimants within the iduhu. "Headmen or representatives" and "land controllers" were the phrases used for instance in the Australian High Court in 1941 (Commonwealth of Australia 1943) in the first case taken by customary landholders in PNG to a High Court.[8]

By the 1960s, a term specifically referring to a person in charge of land matters within an iduhu had gained currency. This was *tano biaguna*, most commonly translated as "land controller." Tano can be unproblematically glossed in English as "land," but the concept biaguna is harder to represent with precision. The earliest translation (master, owner) was offered in 1896 by the missionary W. G. Lawes, who ignored the compound nature of the word (1896, 80), for */na/* is a possessive suffix. This was corrected in a 1931 dictionary (which has become the standard reference), which reduced the word to its noun form *biagu* but reproduced Lawes' translation (Lister-Turner and Clark 1931, 46). The most careful discussion of the word in the literature has been Belshaw's in 1957. He found the term was used where group activity, such as fishing, house-building, or gardening, was embarked on, and one person was "in charge" or acted as the "entrepreneur." In the case of land use, where people worked in family blocks on iduhu land, Belshaw wrote that the "block biaguna . . . is almost equivalent to a chairman in the discussions that the group hold about the use or disposal of the ground; his words have some *ex officio* prestige; but he has no powers to dictate to the others what they should do" (1957, 28). Belshaw also emphasized that the biaguna had to cooperate with others, and could lose the position if he was persistently uncooperative (1957, 28–29). In an unpublished fieldwork note of 1963, Nigel Oram observed that a regular Motuan informant with whom he discussed land matters in some depth did not use the term tano biaguna. The Motuan "appeared to agree" with Oram's suggestion that it was a colonial-era neologism (Oram 1963).

At the same time, tano biaguna was becoming a formal title in the colonial administration's documentation of Motu-Koita land customs. The

loose phrase "headmen or representatives" was now inadequate in administrative and legal discourse, particularly because careful enquiries were revealing that an iduhu head was not always the tano biaguna. A Land Titles Commission (LTC) was established in 1963 and immediately received land claims from around PNG, including Motu-Koita groups in immediate proximity to Port Moresby. The latter sought to reclaim land lost to foreign interests, or to establish uncontested ownership of areas of customary land endangered by the growing capital town. As a guide to Native Land Custom, the LTC relied on a document prepared by J.C.B. Bramell (Bramell 1964), who had been the commissioner of the LTC's precursor, the Native Land Commission. In an introductory section, Bramell acknowledged that land custom did not remain constant and that the word "ownership" was not an altogether appropriate interpretation of local traditional understandings of landholding (Bramell 1964, 1). He also recognized that the introduction of a cash economy had affected Motu-Koita approaches to land use.

Although he was sensibly cautious, Bramell's interpretation of Motu-Koita landholding attitudes was guided by Western jural principles and criteria of verification and used kinship—or more specifically, descent principles—as the touchstone for his understanding of land matters (1964, 10–20). Also, throughout his discussion, he employed the term tano biaguna (and a Koita language equivalent, *mata'omoto*) as a title for a land controller. The collection and distribution of money had become an increasingly significant responsibility for whoever represented landholding groups to interested outsiders. Substantial land cases pursued in the 1960s in higher courts frequently involved claims that early colonial land purchasers had failed to ascertain the real owners, or had negotiated with the wrong people.[9] The burden to prove groups' land ownership, to identify the correct representatives, and to ensure accountability in the distribution of benefits generated a jural concern to understand the customary rules of succession to the position of land controller. The crystallization of the tano biaguna in the 1960s was noticed by Oram, who gave an example of a kin-group that had formerly complained when the controller sold an area of land without consulting them but on a subsequent occasion defended his right to do so. He commented that "there is some evidence that the 'controller' is becoming increasingly powerful in matters relating to the disposal of land" (Oram 1970, 17).

Subsequent attempts to explain succession to the role of tano biaguna produced some ambiguity. There was some acknowledgment that a tano biaguna could lose the position through bad management and lack of consultation and that somebody could achieve, rather than inherit, the position through demonstrated ability (see for example Tau 1978, 80; Haynes 1990,

73). This perspective is consonant with Belshaw's observations about the single term biaguna, its similarities to the English notion of a chairman and its implications that the biaguna was (or should be) the voice of the majority. However a patrilineal idiom of descent was emphasized, which evoked much of what had earlier been said about the nature of iduhu (see for example Diritala 1976, 59; Goava and Wrondimi 1986, 16).

Like the responses elicited by earlier anthropologists' "what if" queries about iduhu membership and iduhu kwarana, discussion of the inheritance of the tano biaguna position allowed for some exceptions to a basic principle of agnatic primogeniture. Oram (1963) was told that, if a tano biaguna's eldest son was deceased and his second son still alive when the tano biaguna himself died, the position would go not to the second son but to the son of the deceased eldest son. Tau (1978), a Motuan, wrote than a woman could stand in for a brother who was too young for the position or inherit the position herself if she were the only heir of the incumbent (1978, 82). This explanation was repeated by Goava and Wrondimi (1986, 16), who added that, if she was acting for a younger brother, the position might revert to that brother on her death or to a male member of an immediately subordinate patrilineage who shared a male ancestor with the previous tano biaguna. Goava and Wrondimi added a further convolution that, if there was no available male of a subordinate patrilineage, the woman controller could advocate for her son "even if his father was of a different lineage or clan" (1986, 16). Their reference to a different clan (which they use as an interpretation of iduhu) is equivocal here, because they add that the general purpose is to prevent the land passing out of the iduhu (Goava and Wrondimi 1986).

Indigenous contributions have been a significant part of the expository literature on the tano biaguna but often involve imprecise cribbing from preceding publications stretching back to Bramell's 1964 document. This is to be expected, because the authors were not rigorously conditioned by scholarly tradition, and their intention was to try to describe informal indigenous practice according to the terms of reference of Western readers likely to bring jural scrutiny to information on land matters. As Oram pointed out, the traditional system of land tenure did not provide clear-cut rights and well-defined land boundaries (1970, 8), and the changing political-economic circumstances affecting land dealings added to the difficulty of delineating procedures, which were, in everyday practice, flexible and adaptable. Nowadays, however, as a result of chronic reiteration of Bramell's interpretation (joined with folk representation of descent principles), there is an institutionalized understanding that Motu-Koita are a patrilineal society in which land is inherited bilineally and that intra-iduhu land

problems are dealt with by a tano biaguna who usually inherits that position by agnatic primogeniture. I will now turn to my own findings in research in a more recent era: since the early 1990s in Pari, a coastal, peri-urban Motu-Koita village.

## Village Practice

The southeast edge of the spreading city of Port Moresby has been moving closer to Pari in the past few decades, but the village has largely retained its land during the past century and a quarter. The land is said to have been originally apportioned by Kevau Dagora, a culture hero who established Pari in the eighteenth century at the foot of a hill called Tauata and invited some other headmen to bring their iduhu. Land rights were negotiated as new iduhu arrived. Land is conventionally recognized as belonging primarily to those iduhu whose members have continuously used it over a long period of time. Although land is conventionally said to be inherited by males patrilineally (as Seligman was told at the turn of the twentieth century), a woman can be given land by an agnate (her father, usually). Also, immigrant people without land have traditionally been able to acquire gardening land by negotiation with Pari landholders or by marrying into a local iduhu and gaining access by way of their spouses' rights. Newcomers join the household of their spouse and may be given permission to build houses on allotted sites. In these basic respects land practice in Pari village is consonant with that found generally among the Motu-Koita.

The strongest claim a person can make to land is by virtue of *siahu*, commonly translated as "right" (see for example, Bramell 1964, 1) but also meaning "heat." Heat was an important constituent in the traditional cosmo-ontology of the Motu-Koita, related to the existential qualities of ancestors, and ancestors and their powers could be ritually reached by individuals through the creation of conditions of heat, dryness, and lightness.[10] In relation to land, the siahu of a person derives from a focal ancestor's presence and actions at a given place, and the claim is consolidated by genealogical reiteration. Thus, the phrase *lau mai egu siahu* spoken by a land claimant can be fairly translated "I have my right," but the translation "I have my heat"[11] better captures its traditional potency. These individual claims are not necessarily exclusive: given the variable oral histories of movement, settlement, and resettlement by the Motu and Koita (for example, see Oram 1981), it is possible for several individuals to declare siahu in respect to the same piece of land. Land can also be given as a gift, for example as a quasi-dowry (*hetu*) with a daughter in marriage, although the gifting father would normally gain the agreement of fellow iduhu members

first. Such gifting is mostly strategic, for instance encouraging an approved in-marrying male, toward some perceived benefit for the iduhu. Land use can also be negotiated by way of *hamaoroa* (verbal permission, or stipulation: from *maoro*, meaning correct or unequivocally agreed) from the landholder. None of these forms of acquisition are immutable: the hold on land acquired by siahu can become weaker if the individual is absent for a lengthy period or shows no commitment to the land or the iduhu, and conversely hamaoroa usage can be transformed into a stronger claim over time according to the behavior of the user. These variables contribute significantly to the complexity and flexibility of negotiations and renegotiations of ongoing claims to land.

The village has grown considerably since first contact by Europeans (1873), particularly in the past half century. The first reasonably reliable census of Pari village was conducted in 1888 by the London Missionary Society, which found fifty-six houses built in traditional line formations over the water and a population of 306 (LMS 1890, cited in Rosenstiel 1953, 145). By the 1940s, the population had grown to about 600. During the Second World War, the villagers were evacuated to a new location to the east. The shift took a mortal toll because a lack of gardening resources and poor nutrition resulted in the death of about a sixth of the population (see Tarr 1973, 16, 22). Meanwhile most of the houses had been destroyed as the village had been looted by soldiers for timber and garden produce and had to be substantially rebuilt (Tarr 1973). As the village reestablished itself, houses began to be built on the land, although to the present day lines of houses still extend over the water. The population has increased markedly over the decades from about 500 at the end of the Second World War to well over 2,000 at present.[12]

Houses built on the land after the war were often sited on the territory of the male household head's iduhu. However, house sites were also negotiated through affinal or cognatic links. The result is that in Pari nowadays, although some clusters of land-houses represent a definite grouping of iduhu members on their own territory, overall the location of households in the general on-land village area cannot be taken as a guide to iduhu territories. With a growing population, there has for some years been an undercurrent of chronic friction over landholding as people seek to build new houses or develop new gardens. Disputes that arise from this are managed through negotiation, involving meetings of iduhu heads and elders. Genealogies are recounted, with recollections of previous negotiations and agreements. Settlements are usually achieved, although they would be better described as situational agreements, since reciprocation and social behavior are important considerations particularly when decisions are made

about permissions for ongoing land use by people who cannot claim uninterrupted transgenerational possession and use of plots. Bad behavior or failure to fulfil obligations can have a negative bearing on the prospects of someone seeking a continuation or variation of a permission given at some time in the past. Old men I spoke to about landholding relied on their own memories and drew on handed-down accounts of previous negotiations. These went back several generations, and genealogies were recited to authenticate speakers' representations. My inference from these conversations has been that, although in the past iduhu kwaradia or tano biagudia may have given the final word on landholding, negotiation has always been prevalent among individuals over gardening and other rights.

The term tano biaguna had currency when I began my research in the early 1990s, and iduhu heads were usually the tano biaguna, unless they chose to hand the duty to another senior male in the iduhu. Tano biagudia (pl. of biaguna) were more or less permanent village dwellers, rather than people who worked in town or spent significant periods of time away from the village. I knew of an instance where a younger brother of an aging iduhu head took over the tano biaguna position rather than the older man's son who worked in town and showed no particular desire to take over the role. Uncertainties about rights to areas of land were referred in the first instance not to tano biagudia but to specific elderly people considered to have immediate historical knowledge about the plot or garden. Iduhu heads or tano biagudia involved themselves only when such consultations failed to satisfy inquirers or if the advice of the elderly persons was disregarded or breached. Newcomers seeking village land were usually referred to iduhu heads and tano biagudia.

Although villagers commonly referrred to a tano biaguna in English as a land "boss," I saw no evidence of autocratic decision making in respect of those land disputes which I perceived to be publicly acrimonious. Tano biagudia appeared reluctant to assert individual authority, and consulted at length among mature and elderly villagers before giving decisions. In this respect, while casual description of their role gave the impression they were authority figures, they appeared to me more as the voice of a consensus or at least a strong majority of senior and elder villagers. My view of tano biagudia in Pari resonates with the results of a questionnaire survey carried out in the 1980s by Goava and Wrondimi among "clans" in the large village complex of Hanuabada near Port Moresby's "CBD," where most of the land controllers were "clan leaders" and decisions on land matters were said to be reached mostly by consensus or meetings among clan leaders (Goava and Wrondimi 1986: Appendix II, 1–7).

Much of the land traditionally held by the large village cluster of Hanuabada has been commercialized in the spread of Port Moresby, but the same is not true for Pari, where land issues are still mostly concerned with gardening or house building. This could partly explain why tano biagudia in Pari do not appear to have the degree of individual power that Oram suggested was growing among land controllers in the 1960s. However, a growing population and increasing pressure on available land has contributed to a tendency among some younger generations to try to exercise a degree of exclusivity over their landholdings. Among these, males who see themselves as belonging to the core lineage of an iduhu (i.e., claiming direct, patrilineal, descent from the iduhu founder) are likely to advance a dogma of patrilineality against, for example, a tano biaguna's argument that they should allow a non-agnate to have a garden on their land on the basis of previous arrangements among older generations. Although the patrilineal idiom is pervasive in discussions of social organization in Pari, however, the same cognatic and affinal influences can be found as in other Motu-Koita villages, and multiple and overlapping claims on land are common, as in many parts of Melanesia. Situational agreement and transgenerational renegotiation typify land practice more than do fixed rules of inheritance. If there is any firm principle fundamentally guiding tano biagudia and elders in considering land matters, it is that land should not pass out of the iduhu.

## Custom in Court

The advent of the LTC in the 1960s and the intensification of land claims with potential to proceed to higher courts were accompanied by jural requirements for precise representation of customary principles. This was reflected in the Native Customs (Recognition) Ordinance of 1963, by which the colonial administration attempted to be more accommodating of custom than it had previously. Section 5 of the ordinance provided for the ascertaining of customs when circumstantially relevant as though they were matters of fact. The effect of this directive was that custom was not found or recognized in the same manner as is ordinary law but had to be "pleaded and proved as any other fact before a court will accept it" (Ottley 1995, 104; see also Nonggorr 1995, 73–74; Corrin Care 2001; Zorn and Corrin Care 2002). Zorn and Corrin Care point out that customary norms act as "counters and benchmarks" and that many norms can seemingly apply to the same circumstances, such that disputants can call upon those that best fit the moment (Zorn and Corrin Care 2002, 615). However in approaching custom as fact, courts are likely to find one rule, divorcing it from the social

milieu in which the customary norm was supposed to operate, as well as the principle that the norm was meant to further (2002, 616).

In PNG Land Courts, and the higher courts to which appeals proceed, the proving of custom is manifest in the consultation of elders and any documentation taken to be authoritative. In cases involving the Motu-Koita, one or two elders are sought from villages other than those of claimants or disputants, on the presumption that they have no vested interest in the case. The elders invariably answer questions about land rights and inheritance by reiterating the same idioms that queries have elicited since early colonial times and the same alternatives when asked about imperfect circumstances (for example, the absence or immaturity of male heirs). Testimony such as this is usually measured against what is understood to be the most authoritative documentation, which remains to the present day Bramell's 1964 notes. By these means, the conventional explanation of the acquisition of the position of tano biaguna among the patrilineal Motu-Koita has become that it is inherited by the principle of agnatic primogeniture. In the absence of older or mature male siblings, a woman might be assigned to the role that would revert on her demise to a younger male sibling or, if there were none, to an agnate of the woman's father or paternal grandfather. The possibility that the position could be achieved through demonstrated ability rather than a descent principle or could be lost through lack of ability is not acknowledged in this representation.

To illustrate the legal approach to custom and its effects in court, I will use a case involving Motu-Koita disputants, which not only involves the notion of the tano biaguna but also involves the complication of two women in succession holding that position. Like many matters of contestation over land in PNG, the history of this particular issue can be traced back many generations before the events that brought it to court, and the finality of a court's decision cannot be assumed to have ended the possibility of continued disputes between individuals and groups. Although the case is a matter of public record, I have nevertheless chosen not to identify the disputants or the area of land involved.

## The Bogahisi Case

In the course of an ownership dispute in the 1960s, two lineages of Iduhu X jointly took a claim to the LTC and were acknowledged to own the area of land I will call *Bogahisi*. In the absence of a willing or able male, a woman ("A," see Fig. 1) of lineage X2 who had an *inogo* (garden plot) on Bogahisi was agreed to be the tano biaguna (land controller) for the area. She signed a statement to the effect that, should anything happen to her,

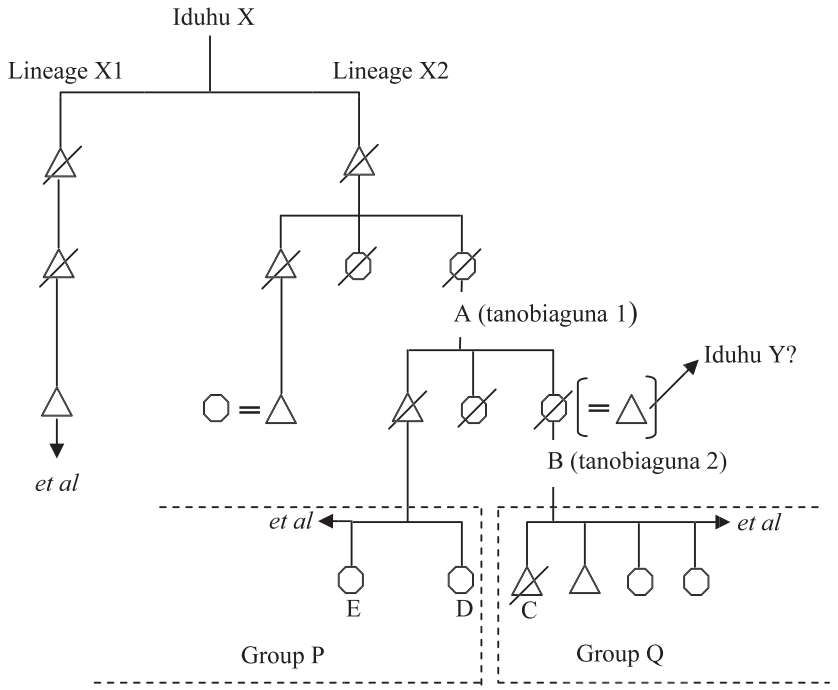


FIGURE 1. **Descent relations of significant individuals in the 'Bogahisi' land dispute.**

the tano biaguna position would revert to two named males, representing lineage X1 and X2, respectively. Time passed, during which one of A's daughters helped her significantly in her garden. Subsequently A changed her mind about the reversion of the tano biaguna position, and the daughter ("B") inherited both the inogo and the position of tano biaguna. The latter position was uncontested by members of the two lineages. When B was tano biaguna she allowed a commercial organization to rent part of her inogo. As the immediate recipient of the rental income, B signed an agreement with representatives of her own lineage and lineage X1 that the income would be distributed among them, to the benefit of both lineages.

After a while, a dispute over distribution developed when immediate descendants of B's deceased elder brother (group P in Fig. 1) complained that they were not receiving their rightful share of the rental benefits. This eventuated in Land Court proceedings in which group P and the immediate descendants of tano biaguna B (group Q in Fig. 1) contested

entitlements to rental proceeds. As the dispute continued, tano biaguna B died, leaving no living siblings. No consensual arrangement was made regarding a replacement tano biaguna, and B's eldest son ("C" in Fig. 1), as inheritor of the garden plot, began receiving the rental payments. Several members of the two lineages considered that the income was not being fairly distributed, and after a meeting of concerned people, a trusted and financially capable woman ("D") was chosen to represent the two lineages to the commercial enterprise and collect and distribute the rental income. D was a daughter of B's deceased brother. This arrangement was opposed by C and his siblings (group Q), who made a legal challenge on the basis that C was the eldest son of B and should therefore be the tano biaguna and that B had left a legal will to that effect. The District Court found in favor of C and group Q, but D and her siblings along with some other members of lineages X1 and X2 (group P) subsequently appealed the District Court decision on a technical point of jurisdiction. They were successful, and the matter returned to the Land Court. C had died in the meantime, but his siblings continued to argue C's case that he was the rightful inheritor of the position his mother had held, now claiming that one of group Q should be the tano biaguna.

The court was presented with a variety of arguments by disputants and their supporters about the tano biaguna position. An elder of lineage X2 said that by custom, at A's death the position should have reverted patrilineally in the manner represented in A's first written agreement. An elder of lineage X1 argued that B's children (group Q) belonged to a different iduhu, and none of them could be a tano biaguna for Iduhu X land. Group P members argued that the position should revert through B's dead older brother. Group Q argued that C's inheritance of the block entitled him (and subsequently one of his brothers) to be tano biaguna, backed by the legal will left by B. The court excluded the will from its considerations on the ground that wills were not Motu-Koita custom. The court consulted Bramell's explanation of Motu-Koita land customs. It also elicited information on custom from two senior men from other villages, who said the position of land controller was inherited by the first-born male, and a first-born female could only inherit the position if she had no older male siblings. Its final decision was to declare the woman "E" (see Fig. 1), the first born child of B's brother, to be the new tano biaguna.

For anyone guided by the explanation that the position of tano biaguna is inherited by agnatic primogeniture, the case presents some anomalies, even allowing for the qualifications that make inheritance by women possible. A woman (A) held the position by general consensus in the 1960s and there had been no objection to her passing the position to her own dutiful

daughter, even though she had signed an agreement in the 1960s that the position would revert to particular agnates. It is impossible to know whether the signing of that agreement was stipulated by the LTC at the hearing in the 1960s (perhaps guided by Bramell's understanding of land rules) or whether the Motu-Koita signatories felt in any degree bound by this signature.

The Land Court addressed itself more directly to the lack of an agreed tano biaguna after B's death and the contention over control and distribution of the rental income from B's inogo, inherited by C. Here the inheritance of the tano biaguna position became partly guided in the court's deliberations by the understanding that inheritance reverted according to a patrilineal descent principle, whereby on B's death an agnatic link should be pursued. Complicating this reasoning was that B had inherited not from her father but from her mother, and her brother was deceased. There had been no patrilineal continuity in the inheritance of the position of tano biaguna since three generations ascending from the primary disputants. The argument that group Q were not iduhu members, and the agreement among group P that E, a woman and the eldest child of B's brother, would be an acceptable tano biaguna, appear to have inclined the court toward its decision.

It is not my intention here to attempt an assessment of the appropriateness of the court's choice according to law or custom. The relevance of the case here is that its history illustrates several points implicit in my earlier discussion. We can begin with the assumption by A of the role of tano biaguna in the 1960s. With no immediate commercial interest in the land at the time, she was an uncontroversial choice. Her decision to pass the position on to a dutiful daughter seems also to have been uncontroversial. This accords with Belshaw's "chairmanship" interpretation of biaguna that enterprise, competence, and cooperative behavior were significant qualities of a tano biaguna. The rental arrangement, which generated the dispute, demonstrates the effect that commercialization of land was having on the role and power of the tano biaguna. In the latter part of B's life, the alleged inequitable distribution of financial benefits had become an issue, yet she retained the position of tano biaguna, contrary to Belshaw's 1957 observations about the consequences of uncooperative behavior. Dissatisfaction with B's son (the inheritor of the commercialized inogo) had resulted in a coalition of lineages X1 and X2 mooting the capable and trustworthy D as a tano biaguna. This development also is consonant with Belshaw's interpretation.

The challenge mounted by C and his group was grounded on the fact that he was B's eldest son. Traditionally C would have been permitted to

garden on the land by virtue of his cognatic link through his mother to the ancestor who had been the first cultivator, but such a rationale has never been offered in relation to the position of tano biaguna. According to the chairmanship interpretation, C could take the tano biaguna position by showing aptitude and with the agreement of the majority of interested parties. The agnatic primogeniture interpretation, however, implies that on B's death the position should revert to a male linked to her patriline; therefore, C would not be eligible. The argument by the member of lineage X1 that C was a member of a different iduhu resonates with an idiom of patrilineality but also with the common concern among the Motu-Koita that land belongs to an iduhu, and although extra-iduhu individuals might have gardening rights via cognatic links, control of the land should not be in their hands. It also implied that C and perhaps his mother had not demonstrated sufficient social commitment to iduhu X for him to represent their land interests.

## Conclusion

The Land Court's attempt to deal with the Bogahisi case illustrates the paradoxes arising from colonial-era attempts to interpret, document and legally categorize Motu-Koita kinship in relation to land holding. If we bracket for the moment the legal forum, the various arguments offered by the disputants evoke the point made by Zorn and Corrin Care (2002, 615) that many customary norms can seemingly apply to the same circumstances, and disputants call upon the most fitting to the moment. However, in court the flexibility and situational agreement that traditionally typify land negotiation at village level or within iduhu are not possible. The disputants' arguments, though, also reflect the burden generated by the effect of commercialization on the flexibility of customary understandings of land management and its responsibilities. In past times, untrammelled by commercial considerations, the matter of who should be the biaguna—the person in charge or chairing the management of Bogahisi—could not have resulted in the prolonged and acrimonious contest the case became. The knowledge of elders together with the competence of an encumbent or aspirant would have ensured a communal recognition of the appropriate person, a representative individual who expressed a consensus or at least a majority view. But the modern-day biaguna is becoming a different kind of individual, with a different kind of accountability.

Above I have reviewed the commercialization of Motu-Koita land, which has increased steadily over a period of more than a century. It began shortly after European contact, with the "buying" of land from local villagers "by

giving to the claimants of the ground desired certain articles in barter, such as hatchets, gaudy cloth, tobacco, &c" (BNGAR 1886, 16). With the introduction of a cash economy, these transactions soon became financial, problematizing traditional methods of circulating the benefits of trade and exchange among recipient groups. Accompanying this development was a jural concern on the part of colonial officials to identify not only the land controller but also the principles and qualifications legitimizing that individual. I have shown how the investigation of Motu-Koita kinship and descent came to inform this exercise, and European understandings of Motu-Koita landholding were consequently oriented to a bio-jural model of kinship. The model is visible in the discussions by Seligman (1910), Belshaw (1957) and Groves (1963), and also in Firth's brief attempt to explain flexible iduhu membership (Firth 1952), all of which show the dominant influence of unilineal descent theory. With this has developed, since the 1960s, a quasi-jural rule about the acquisition of a position, tano biaguna or land controller, which seems to be modelled on earlier interpretations of customary idioms of the inheritance of iduhu leadership. This official version of Motu-Koita custom used in the Land Court is an example suggesting a gradual transformation of a patrilineal idiom into a rule as customary behavior becomes increasingly subjected to Western juridical principles.

In critiquing the colonial-era representations of the Motu-Koita as patrilineal, I have not attempted to offer an alternative descent principle. It is more important in the current context to qualify my discussion of the transformations generated by land commodification and jural attention by emphasising the preexisting mutability of Motu-Koita social organization. I refer here not to early twentieth-century theories about shifts from one form of unilineal descent to another but to less tidy processes. The Motu and Koita were at some time in the past two distinct groups, with different languages, subsistence activities, and, quite possibly, different ideas of kinship. We cannot now ascertain what each group brought to their alliance in this respect or how these contributions were integrated (or perhaps in some cases were not) to eventually shape the characteristics encountered by Europeans in the late nineteenth century. Nor can we know the influences of the joint and separate Motu and Koita encounters and relationships with nearby groups and distant trading partners before European contact. Rather than seeking traditional kinship principles, then, we might be better served by a more Heraclitean appreciation of the (pre-) historical context of the anomalies encountered by Seligman and others. Recognizing the dynamism and chronic adaptability of Motu-Koita kinship and social organization, we can begin to appreciate the indeterminacy that creates the

need for recurrent negotiation and situational agreement and at the same time makes such flexibility possible.

There is irony, then, in the liberal attempt to admit the customs of the Motu-Koita, along with those of hundreds of other culturally distinct societies, into the considerations of courts in PNG. The colonial encounter and its aftermath can been interpreted as a continuation of the flux that characterized Melanesian existence and social organization, the transformative influences of migration, warfare, trading, intermarriage, and so on. But its legal influence, at least, generates a paradoxical rigidity, as we have seen in the institutionalization of the patrilineal nature of the Motu-Koita, their rules of inheritance, and succession to positions like that of the tano biaguna. When idioms become rules, the possibility of negotiation becomes less. Disputes that have been managed, one way and another, for perhaps generations become legal contests.

It is commonly recognized by legal researchers that Melanesians and other Pacific Islanders do not regard courts' findings as the end of a matter, that courts are "just another counter in the negotiation game" (Zorn and Corrin Care 2002, 634). Zorn and Corrin Care go on to say that Pacific Islanders are attempting to treat the courts as part of the customary system, to turn law into custom, whereas judges are trying to convince Pacific Islanders to turn custom into law (Zorn and Corrin Care 2002). Such neat contrariety does not quite encapsulate the Motu-Koita case, though, because in the case of intravillage land disputes older villagers seemed to me to be reluctant to go to court. Long experience that disputes could never be finalized disposed them to attempt negotiation, compromise, situational concession, however dissatisfied and resentful it might leave some parties in the meantime. A reemergence of the dispute, maybe among people of a later generation, was inevitable, and the possibility of reconsideration and renegotiation had to be available. Younger people, however—with visions other than house-building and future garden development—were quicker to embrace court procedure, to try to achieve a clear declaration of their rights under an inflexible rule.

The idiom of patrilineality has become a principle and is now becoming a rule, in the discourse of successive generations of Motu-Koita in the litigious climate accompanying their growing sense of land-loss and political-economic marginalization in the face of the burgeoning city of migrants on their territory. It remains to be seen how soon other idioms will become rules, superceding the anomalies of descent and inheritance that colonial-era anthropologists found and negating the flexibility that has sustained Motu-Koita social organization in the past.

## NOTES

1. See Chatterton (1968), Dutton (1982, 1994), Oram (1981), Swadling (1981).

2. This interpretation is popular among the Koita and was suggested in an early (and frequently cited) account by the missionary James Chalmers (Chalmers 1887, 14). An early colonial settler, Robert Hunter, who married into Motu-Koita society and acquired land from them in the late nineteenth century, told Malinowski emphatically in 1914 that the Motu did not own land and had to pay the Koita in food or armshells for its use (Malinowski n.d., 77).

3. *Koitabu* is what the Motu call the Koita and is also the name of a locally common shrub. The Koita have largely capitulated to this usage over time.

4. Seligman relied almost exclusively on a single Koita interlocutor, a prominent man called Ahuia Ova who had the patronage of the colonial governor Hubert Murray (see Williams 1939; Belshaw 1951). In 1914, Malinowski spent a short time in Port Moresby on his way to the Trobriand Islands and used the same man more or less exclusively as his "native" interlocutor (see Malinowski n.d., 1988: 9–10).

5. Oram took notes specifically on such an arrangement involving a Koita friend in 1963 (Oram Papers, Box 1, folder 5).

6. An *Iduhu kwarana* is commonly addressed, or referred to, by a more general term *lohia* (= man of prestige/renown) which has become conventionalized in literature. Kwarana (plural kwaradia) is a precise term. For discussion of the terminology, see Goddard (2001).

7. Segmentation also problematizes the assumption of automatic authority of first-born sons. In Pari village, where I have conducted fieldwork, in two cases where fraternal disputes resulted in "breakaway" iduhu being declared, the new iduhu founders retained the generic name of the iduhu and (polemically using the patrilineal idiom) added their fathers' names as a qualifying suffix.

8. The case arose from events that began with the acquisition of land belonging to Kila Kila villagers to build an aerodrome in 1929. It became a legal issue in the late 1930s when villagers objected to developments that cut off their access to gardens. Consequent actions by the administration led to compensation claims by the Koita villagers. The case was finalized in the Australian High Court in 1941, during which the notion of iduhu headmen or representatives as distributors was recognised by judges (Commonwealth of Australia 1943; see also Haynes 1990: 80–82).

9. Two tortuous examples are the Granville East claim involving an area of land purchased by the colonial administration in 1886 in the township of Port Moresby (see PNGLR 1973) and the Fisherman's Island claim involving a nearby island classified "waste and vacant" by the administration in 1889 after local enquiries failed to find owners (see PNGLR 1979; Goddard 2007, 2010). In the Granville East case, claims were made that colonial buyers had bought a section of land from representatives of an iduhu that did not own it, whereas in the Fisherman's Island case it was implied by ownership claimants that the early colonial enquiries about ownership had not been adequate.

10. Space does not permit elaboration of Motu-Koita cosmo-ontology and mythopoeia here. I have discussed siahu and some related concepts in more detail—although not at all exhaustively—elsewhere (Goddard 2007: 238–39; 2008; 2010: 23–25).

11. A more phenomenologically rigorous translation would be "I *with* my heat," but "I have . . ." is appropriate to the present discussion.

12. According to the 1990 National Population Census, the population of Pari was about 2,000 in that year (National Statistical Office 1993, 6). Official census figures are unreliable in PNG and should be treated cautiously.

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