

The Emerging Need for Regional Property Solutions – a Pacific Perspective

In his opening address at the FAO/USP/RICS Foundation South Pacific Land Tenure Conflict Symposium held in Fiji in April 2002, the Vice-Chancellor of the University of the South Pacific, Savenaca Siwatibau, said *“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. Land tenure, like culture and tradition, stands to evolve organically over time within a society. As in all things, changes and solutions have to be made and formulated. Solutions must be formulated from within and must reflect national, family and individual needs and aspirations and the changing global, regional, national economic, social and political dynamics that determine our destiny.”* (Siwatibau, 2002).

The Suva Declaration that evolved from that Symposium’s discussions recognized the clash between indigenous values and capitalism, acknowledging that most indigenous people see their relationships as coming from the land rather than owning it as a commodity. The customary nature of land ownership and control in the Pacific is acknowledged and respected; it does not prevent optimum use and development (in its many forms). The need and political will to find long-term solutions was re-emphasized by Adi Kuini Speed in her keynote address at the subsequent National Land Workshop organized in Fiji by the Citizens Constitutional Forum (Speed, 2002). Adi Kuini highlighted the need for land policy that is both sensible and sustainable: *“our leaders need a vision and wisdom that transcends party politicking and racial intolerance”*.

At a time when globalisation is perceived a positive paradigm by the ‘Western’ first world order, this paper ponders how appropriate such universalism really is in the developing island nations of the South Pacific. In the Pacific, as in African and many other developing and transition countries, the issue of land tenure is critical. The recent World Bank E-Conference discussions on Land Policy identified the need to for African solutions for Africa, and Pacific solutions for the Pacific (Medrano, 2001). This view is reinforced by Bromley, who argues that it is too easy to fall victim to a form of teleological imperialism in which some implicit end state becomes the norm against which region-specific problems are diagnosed - the diagnosis becomes the policy prescription (Bromley, 2001).

We are all influenced by our life experiences. Aid organisations are keen to fund Western consultants to resolve third world land management challenges. However, as Colin Aikman, the inaugural Vice-Chancellor of the University of the South Pacific, identified thirty three years earlier when introducing the a similar Land Tenure Symposium *“It is, of course, always useful and helpful to be able to look at what other people have done and the solutions that they have arrived at in regard to legislative and other problems. On the other hand, we must appreciate that Land Tenure problems are problems to which new answers have to be sought continuously and that the problems of a particular country are the problems of that country alone. A country may have particular problems and particular ways of handling those problems which are best suited to its own physical environment, culture and economy”* (Aikman, 1969).

Practical experience has demonstrated that approaches to land tenure and appraisal founded in the US, UK, Australia or New Zealand are not a panacea for Pacific property problems (Boydell, 2001b). Culture, tradition, religion, and paramountcy of indigenous rights combine to create individualistic property environments where tools, rather than rules, can be applied with careful adaptation. However, tools are just tools and can be used destructively if there is no underlying property philosophy, or theory, on which to ground understanding.

The institution of property, as it is found in the West, is not a static thing, but has matured and evolved markedly over time. Private property evolved through both the Greek and Roman periods. It has also changed completely in Europe over the last millennia. Along with those changes has been a constant discussion on the theory of property, with every age having its apologists and its critics. It is an appropriate time to define a Pacific property theory, with an opportunity to continue that evolution and debate. Especially, in this global age, it should be open to culturally specific resolutions to the problem of property consistent with a respect for peoples and their traditions. It is the evolution of Pacific property theory that this paper considers, drawing on the Property Theory work of Small (Small, 1997a, 1997b, 2001) and Boydell's Philosophical Perceptions of Pacific Property (Boydell, 2000a, 2001b).

A different paradigm

There is an overused adage that land holds a special place in the Pacific (Ravuvu, 1983). This view stems from the insularity of society amidst the independent and self-governing Pacific states, and it is buoyed by the romanticism of indigenous authors. The reality, in contrast, is that land holds a special place in all societies, Westernised and less developed countries alike. What varies is the nature and evolution of the land tenure. It is the nature of land ownership in the island nations of South Pacific that sets it apart from many other countries, in that such a large portion (83% - 100%) of the land remains in customary communal ownership (Paterson, 2001). It differs from the standardised model of private exclusive ownership that has now been disseminated in most societies (Hann, 1998). The semantics are particularly confusing in the Pacific, where the English word 'landowner' has been adopted to describe the guardians or stewards of the land. These guardians are not 'owners' in the western sense as they have a duty to protect the land for the spirits of their forefathers and ensuring it is available for their descendants, whilst having the right to use it (but not dispose of it as an asset) during their lifetime as they have no individual title to transact. Whilst the themes are common, the nature of land tenure varies significantly between Pacific island countries. The general tenure issues, transfer and access arrangements are detailed in Appendix 1.

A survey of the relationships between various native peoples and their land reveals that, typically, the relationship has two dimensions. The first dimension is spiritual, or metaphysical, and the second is material, relating to the political economy of land (Small, 1997a). Philosophically and spiritually, there is a deep-rooted belief in the stewardship of land. The current generation has a responsibility in respect of the land that relates to the spirits of their ancestors along with the expectations of their descendants, in addition to the needs of the current generation. Descendants, as future members of the tribe are regarded as having the same rights of access to land as those tribe members currently alive. For the same reasons, children cannot be charged for access to the land of their parents. Land is free for the use of current tribe members on the basis that it will be passed on, without degradation, for the use of future members. The communalism of the tribe and the timeless stewardship afforded the land is often difficult for Westerners to appreciate, that land is a common legacy (see Figure 1).

Put into Western tenure parlance, the stewardship afforded by native tenure is akin to a Head leasehold interest. The superior interest, which is seen as inalienable, is vested in wider (indigenous) society. However, today's tribal stewards have the potential to create inferior (quasi sub-leases) in parcels of land that are not anticipated to be needed by the tribe for the duration of the sub-lease term. The situation is not that straightforward. Custom demands that as land is owned (in the sense of stewardship or guardianship, rather than Western alienable ownership) communally, all tribal members must be consulted about the proposed sub-lease or use. Furthermore, they must all agree with the proposal (Paterson, 2001). The impact of overseas migration by such voting members of the tribe causes major challenges in achieving a consensus, often precluding development (in all meanings) in Pacific island nations. The challenge of attaining consensus is compounded by absenteeism in those countries with high levels of emigration (particularly Western Samoa, Niue, Nauru, Tuvalu, Tokelau and the Cook Islands) where customary decision making protocols (and indeed access to land) are at odds with contemporary constitutional voting rights.

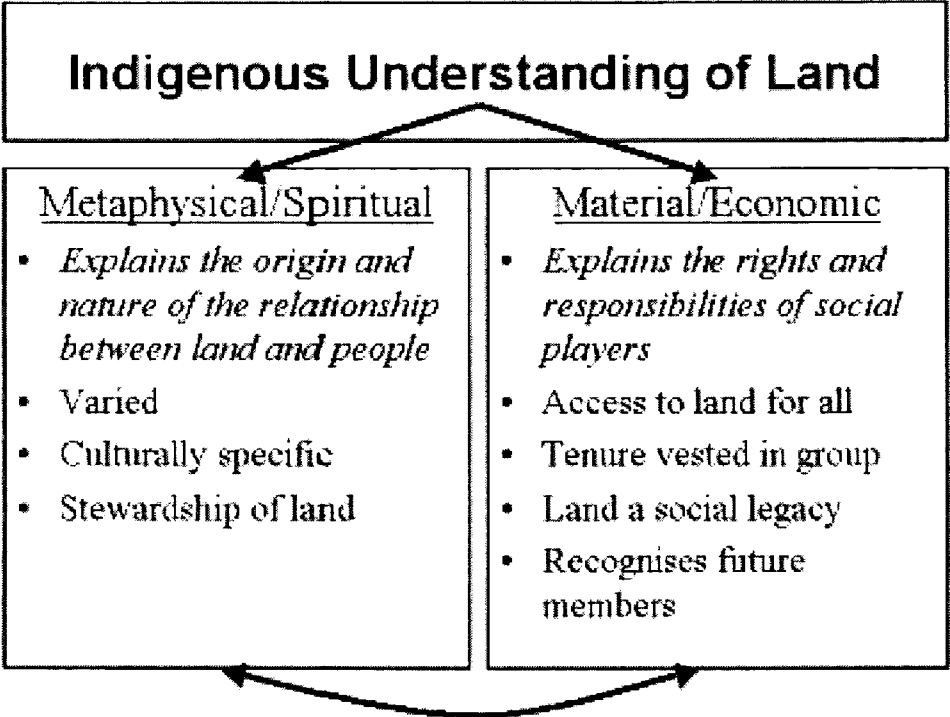


Figure 1: Indigenous Understanding of Land
 Source: adapted from Small, G. (1997)

Such challenges are further compounded, as custom does not require that the guardians (a.k.a. landowners) require relevant materials to facilitate an informed and wise decision. Indeed this leads into a question about the beneficiaries of development and land leases in developing countries. Often, title to the land is formally vested in the leader of the tribe or society on behalf of the collective in structures that are visibly feudal (the Tongan system being the best example), even though they have little apparent connection with historical European feudalism (Small, 1997b). Within these contemporary South Pacific feudal aristocracies,

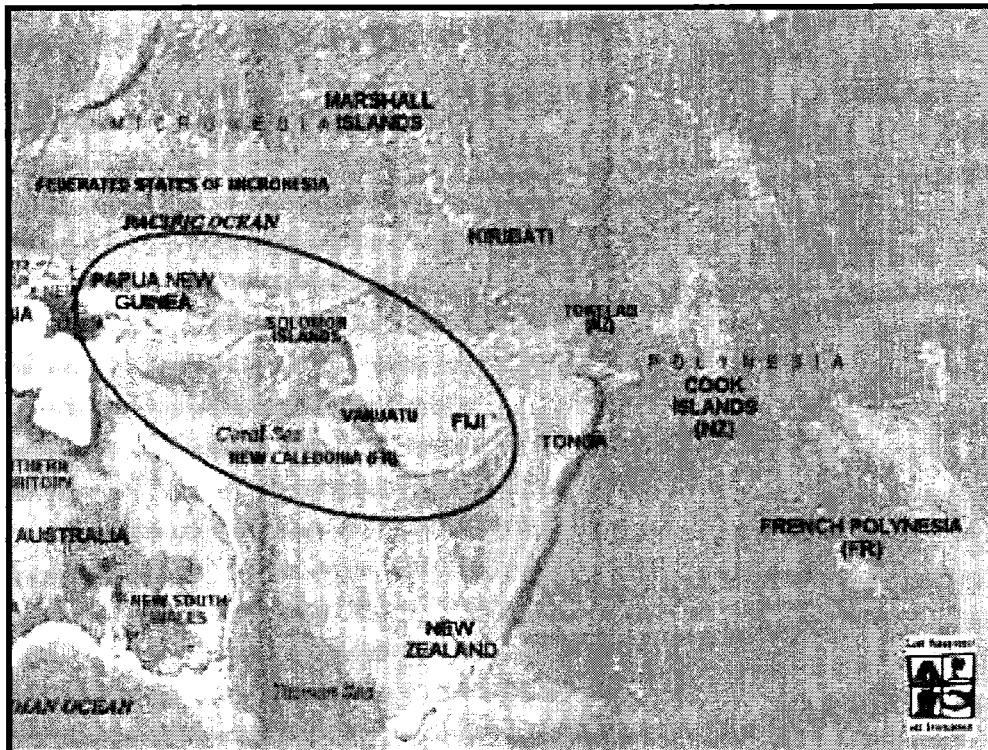
those with traditional high chiefly status have the means (power and money) to maintain personal and communal vested interest (Overton, 1987). As Ward notes, this elite group has furthered their wealth and power betwixt the communal ideal and economic development in the commercial arena (Ward, 1995). The term 'traditional' implies permanency, resistance to change and accordance with established custom (Walter, 1978). It is a fallacy to suggest that traditional society is not amenable to innovative change, as can be witnessed by the chiefly ability to embrace commerce and economic development. However, dysfunction is required to permit transition (Boydell, 2000b). Coups, as witnessed in Fiji in 1987 and 2000, and recent events in the Solomon Islands and Papua New Guinea, would qualify from a global perspective as being both transitional and dysfunctional.

In certain parts of the Pacific, notably Melanesia, there is a reaction to the 'unacceptable order' of chiefly control at two levels. The first is the sub-revolution of contemporary *nouveaux riche* new millennia chiefs. This backlash against the orthodoxy is action by successful capitalists who hold 'power' without the benefit of chiefly blood. Such business people have increased their control in the South Pacific, as capitalism has become king within the urbanised areas and tourist belt. They pay but lip service to tradition. The second group comprise the people power reaction at grass roots level. This category includes the humble villager who, through the influence of tourism (particularly in Fiji's case), capitalism and the media, has become wiser, more educated and thus more dissatisfied than their obedient and unquestioningly loyal forbears; there is also an associated ageism aspect to this, with those in their mid or later years adhering far more to tradition than the under thirties. In a soft reaction, this group votes with its feet and becomes part of the urban drift in search of low-end employment and a questionably better life in the metropolitan areas of the island nations. The break from the orthodoxy of quasi-feudal village life leads to a dilution of the fundamental loyalty that the high chiefs seek to perpetuate. In many instances, the urban dwellers are first generation, but the soft reaction group will continue to lose physical, if not spiritual, connectivity with their 'village' (Boydell, 2000b).

One critical area of land management where Melanesian aristocracy, the *nouveaux riche* and the grass roots villagers have collided head on with one another and with Western capitalism is in connection with timber resources. Timber is a valuable resource in several South Pacific island countries and is undoubtedly a significant aspect of the current conflicts in Melanesia, namely in the Solomon Islands, Papua New Guinea and Fiji (refer to Map 1 overleaf). The underlying philosophical roots of communal land ownership are poisoned when social good confronts the self-interest of capitalism head on. When it comes to natural resources, land equals money. Money gives access to political power, which in turn creates individual access to more land with correspondingly more money and power. Witness the devastation of Nauru by Western interests.

Urbanisation, population growth, and increasing 'Western/first world' influences have evolved the attitude towards land in developing island nations. The socio-spiritual value has given way to a more utilitarian approach whereby land value is derived from its economic returns as a primary asset, factor of production and source of wealth (Acquaye, 1984). Of those Pacific Island nations that were formerly colonies, most gained independence between 1965 and 1985. Political nationhood has overtaken tribal organisation resulting in a level of social integration that emphasises citizenship above tribal identity, placing a new political significance on land. Inherent in this is a conflict between nationalism, communalism and individualism (Boydell, 2001b). Nationhood implies the assignation to the State of responsibility for the improvement of social standards, and implies using land as an

instrument of socio-economic development. Achieving this development goal justifies governmental interference in proprietary structures, including land use planning and control, land management, the operation of the land market and the framework of customary land tenure. Such interference constitutes land reform (Acquaye, 1984). It must be recognised that these last statements are theoretical in the context of the nations of the western Pacific. Here the customary tenure systems are still very strong and are operating in practice; their continued existence is recognized and enshrined in the national constitutions. Any developments leading to change must actively involve these customary resource 'owners'. Anything other than participatory and inclusive processes on the basis of equal partnership will not be acceptable to the majority of each country's citizens (Boydell & Holzknacht, 2002).



Map 1: Melanesia (circled).

Source: Boydell, S., and Small, G. (2001), adapted from Microsoft Encarta Interactive World Atlas 2000.

Despite the increasing Westernisation of the chiefly classes, chiefly landowners resist land reforms because the levelling effects reduce their social and political power and thus their ability to control and dominate even non-land transactions. Further tensions arise as others in the system are westernised (partly through Western education, media, migration and urbanisation) and begin to critically appraise the performance of the leadership or otherwise acquire power. It is unclear if the initial corruption (Westernisation) of the chiefly classes is the root of the problem, or if the reality is that some were always deficient and tension is merely the burgeoning egalitarianism of others that includes the realisation that leadership respect is best earned. Even in the context of increasing returns to land ownership in terms of political rent, land concentration is not always the unique or stable political equilibrium. Much depends on the nature of political competition and the context-specific and path-

dependent formations of political coalitions. Given the strength of opposition by vested interests, many regard the political prospects for land reform in most poor countries as bleak, and therefore drop it altogether from the agenda of poverty alleviation. This is not always wise. In the context of political coalitions, a radical policy sometimes becomes feasible if it helps cement strategic alliances between, for example, sections of the urban upper classes (including white-collar workers) and the rural poor (FAO, 2000).

Capitalism threatens the traditional communalism of Pacific Island nations. Western society views customary systems as backward and undeveloped. When the dollar is added into the philosophical equation, the customary self-embedded-in-community perception of Pacific life is challenged by the Western value of individualism with its idea of the self as separate and separating from others. As Mollison suggests, there are ways of asking the same basic question “What can I get from this land, or person?” or, “What does this person, or land, have to give if I co-operate with them?” (Mollison, 1988). The former (which is a liberal ‘developed’ or capitalistic Western approach) leads to war and waste. The latter leads to peace and plenty (see Figure 2). He goes on to suggest that most conflicts lay in the way a question is phrased rather than how it is answered - the ‘wrong’ question should be rephrased or rejected. As already identified, the semantics of Westernised land tenure are particularly difficult outside the English language. However, the traditional (and contemporary) ‘feudal’ approach to land is synonymous with the underlying ethos of permaculture - the principle of co-operation. Mollison reminds us that co-operation, not competition, is the very basis of life systems and of future survival. Unfortunately, co-operation is at odds with capitalism, and capitalism currently reigns unopposed in the Western world. Is it too outrageous an assertion to suggest that it is aspirations of capitalism, rather than land tenure problems, that underlie current conflicts in the Pacific? Perhaps it is only outrageous from a Western perspective, as it serves to question self-interest over societal benefits.

Communalism & the Land

- **Contemporary *Permaculture***
 - “What can I get from this land, or person?”**
 - = liberal ‘developed’ or capitalistic ‘western’ approach**
 - ... leads to war & waste**

- “What does this person, or land, have to give if I co-operate with them?”**
- = peace & plenty**

Figure 2: Communalism and Contemporary Permaculture
Source: Boydell, S., and Small, G. (2001), adapted from Mollison, B. (1988)

Education is accepted as fundamental to development. However, education of the people can disadvantage the Pacific aristocrats. The more paranoid of the social elite of Pacific society represent critics who oppose educating grassroots people about their legal and human rights. There is a perception (paranoia) that it will remove their traditional 'humble' qualities (Tamata, 2001). Tamata argues that "*The violation of human rights usually has legal implications and this knowledge has not been effectively communicated to Pacific communities in their own languages. As a result, many Pacific Island people remain unaware of their legal rights and are therefore in a vulnerable position in society.*" Class conflict, gender competition and racial animosity are three things that most pre-occupy current Western susceptibilities (Boydell, 2001b) and yet such critical development issues can only be overcome through the education that some would seek to prevent.

Land tenure systems are social constructs. They are constructed to accommodate the particular way of life of the people, laws, and the physical environment, and are subject to change and transmitted from generation to generation with efficient modification. This view is reinforced by Marchak (Marchak, 1998) who argues that tenure systems exist only as long as society is willing to enforce them. If enforcement is missing, a tenure system ceases to exist. Colonial whites, in building empires for their respective sovereigns, forced the tenure systems of 19th-century Europe onto traditional commonhold and clan structures of the developing world (Boydell, 2000a). However, there is also a view (Lea, 1997; Ward, 1995) that the perception of tradition or 'custom' is a moving idealism, and is varied and recreated as needed to reinforce and support a particular historical or economic or political context. Thus what we now see manifest as nationalism could also be seen as a new kind of 'custom' (Boydell & Holznecht, 2002). Overton (Overton, 1987) suggests that the traditional economy has evolved whilst traditional social and political order is being reinforced and so becoming more static and so more entrenched.

There is a perception amongst industrialised nations that customary tenure inhibits the 'proper' utilization of land and of agricultural production in general. The argument follows that it should be replaced with a system that encourages individualism (Acquaye, 1984). This proposition requires examination, for as Acquaye argued, the debilitating impact of customary tenure has been pronounced so frequently and loudly by commentators that it is accepted by many as a universal and incontrovertible fact and to question it is taken by some as "*proof of reduced intelligence*". The reasons to support this include: customary tenure is assumed to encourage small, and thus uneconomic, holdings; it provides inadequate tenure security and thus is a disincentive to agricultural investment; it discourages the extension of credit; it is an impediment to an active land market; it encourages litigation; and, apparently, perpetuates tribal divisions and disputes. A close and critical examination of the evidence shows that each of these claims against customary tenure is either unfounded or where supported to some degree, is contradicted by potent counter-examples. There appears to be a great deal of Western myth surrounding customary tenure. Such is the embeddedness of property.

There are equally strong arguments to the contrary in defence of customary tenure systems. Self-interest ensures that there is huge bias surrounding this debate. A correlation can, of course, be drawn between agricultural productivity and tenurial arrangements, but this is a cause-and-effect relationship that works both ways, hence the overdue need for empirical study of both aspects as far as they interrelate in the Pacific islands. Only then can well-founded reforms be enacted, as all parties should better understand and appreciate the justification for change. Moreover, many of the arguments (or propaganda) for dramatic change lack non-political empirical support and, lastly but most importantly, the majority of

the populations where the customary systems are in force to a large degree do not wish these systems to change in any drastic way.

The language of land tenure, whereby ownership and possession may not easily be translated to maintain original comprehension, further erodes the Western liberal ideals. Similarly, constitutional legal parlance inadequately addresses customary land issues (Brown, 2000). A conflict exists between constitutional law and customary law. The complexity of common law reflects the dominance of individual property rights in capitalistic systems. In several cases, the constitutional law of the Pacific island nations mandates for gender equality, and thus implicitly (but rarely explicitly) equality of access to, and transfer of, land. Conversely, the patriarchal shield of customary land control largely ignores gender equality issues.

International evidence supports the efficient workability of the contemporary landlord and tenant relationship if it is allowed to be entered into at arms-length, negotiated and agreed equitably to the mutual advantage of two represented and informed parties. The concept of *landlord* requires explanation as communal rights mean that there are no landlords in the Pacific in the classic or western sense (Crocombe, 1983). This highlights the arguments over language relating to land (Brown, 2000). Indigenous people see their relationship as coming from the land rather than owning it as a commodity (Boydell, Small, Holzknicht, & Naidu, 2002). The term 'landowner' in this context is taken to refer to customary communal owners whose land rights may be statutorily administered by a Trustee (as in Fiji and Samoa, and under consideration in PNG and Vanuatu) or tribal clan. The inalienability of allodial customary land does not preclude the beneficial granting of subsidiary leasehold interests to support economic development, as has long been the practice in Fiji. There is limited access to freehold title in developed industrialised nations (often due to the high value of such interests) but that does not preclude the efficient use of productive land in both urban and rural locations.

There is a lack of understanding, or education, in the Pacific by many participants to lease contracts (particularly rurally oriented), that leasehold interests are a time-constrained wasting asset. Landlord and tenant law allows land to be utilised for a number of years in lieu of payment to the superior title of appropriate remuneration to support the forsaking of the land for the duration of the lease. Contractual covenants determine rental payment, rental review and the circumstances surrounding lease expiry, re-entry and compensation provisions for tenant's improvements. Often, landlords willingly grant a renewal, as they are content with the investment return; however, if the remuneration is inadequate they are not necessarily obligated to forsake the use of the land for another lease term. This is evident when land reform and regulatory measures are perceived as being politically motivated, precluding open market transactions.

Directions

Several aspects need further investigation and informed debate in order to allow the continued evolution of a Pacific property theory. These include land taxation, valuation, women's rights, research/education and ultimately, questioning if the customary approach to land ownership is so inappropriate to Pacific island nations. Many protagonists of change, who seek to perpetuate uncritical acceptance of the claim that customary tenure is the main impediment to optimal land utilisation and agricultural development, ignore the dynamic process inherent in customary arrangements. Some would even see it as an impediment to societal development. Such propaganda has clouded analytical thinking and led to the

adoption of unrealistic policy decisions (Acquaye, 1984). Whilst Acquaye's views may have been contentious seventeen years ago, little heed has been taken of them. This embeddedness has perpetuated as governments continue to seek solutions to low rural productivity, individualise tenure and adopt policy measures considered more consistent with modern market economics and agricultural production. It is essential that institutional arrangements be put in place to allow a localised Pacific solution to evolve.

Land Tax. All customary tenures in the Pacific traditionally provided for a form of taxation in the form of labour, food and community service. The responsibilities of defence and public works are now vested in the State, but there is resistance to community funding of them as there is no customary precedent (Crocombe, 1983). Land tax is only adopted in certain municipalities, and whilst monetary taxes are not appropriate on all customary land, it is desirable and feasible for land with productive potential. Examples abound of isolated parcels of alienated land, outside municipalities, that is held idle by offshore investors who have no financial incentive (tax burden) to stimulate productive use or disposal to more needy producers. Hitherto, the abundance of foreign aid in the Pacific islands has enabled governments to avoid politically unpopular land taxes, preferring instead to rely on handouts. The situation has not changed dramatically in the twenty years since Crocombe observed this unfortunate but inevitable reduction of self-reliance, inappropriate land utilization, and negative impact on agricultural productivity. He foresaw no change under prevailing political frameworks. The World Bank supports the view that it is now time for governments to embrace the challenge by undertaking an empirical study of the potential community, land utilization and agricultural productivity benefits afforded by land taxation (Hanstad, 2001; World Bank, 2001).

Land Valuation. There is confusion in addressing the valuation of inalienable customary land in all parts of the world, including the South Pacific. Just as attempts at transposing colonial tenure systems on customary land have run into complications, so too have erroneously applied contemporary/conventional valuation techniques designed for a Western paradigm (Myers, 2001). Unconventional situations require the application of unconventional practices and solutions. There is a need to evolve appropriate tools to apply to the South Pacific island land and property markets.

Land Rights of Women. Whilst women are recognised in constitutional law, customary precedents prevail in land issues in many countries with little evidence of intentional government intervention in the last two decades. In most countries, custom marginalizes women's access to land. The single most urgent need of women in respect of access to land is the creation of a legal framework for widows, giving them a secure right to a portion of their late husband's land during their own lifetime (Roth & Bruce, 1994). This approach to women's rights is distinct from Western feminism, despite sharing some common features. Western feminism is concerned primarily with individual rights for women, whereas the needs of customary women relate to their adequate inclusion in the support structures of customary society. As such, women who have been disenfranchised from adequate inclusive support within customary property use through family situation require amendments to traditional law. At best this could be viewed as an instance of the organic evolution of customary practice that Savenaca Siwatibau alluded to. The role of women in Pacific island land tenure matters requires major publicity, promotion, and research.

Is the customary approach to land ownership so inappropriate? Many of the changes required to increase output could be achieved if *traditional* customary land management

practices prevailed over the current systems in the Pacific islands that are incorrectly thought to be traditional. People need to acknowledge that the greatest impediment to current land problems is overcoming the legacy of colonial tenures (Crocombe, 1983). The customary relationship of indigenous Pacific islanders to their land is one of co-operation. The traditional subsistence approach to land utilisation within the village structure is what would be perceived as contemporary *permaculture*, or permanent agriculture under Mollison's definition. The semantics of Westernised land tenure are particularly difficult outside the English language. However, the traditional (and contemporary) 'feudal' approach to land is synonymous with the underlying ethos of permaculture - the principle of co-operation. Co-operation, not competition, is the very basis of life systems and of future survival. Sadly, such a philosophy is seemingly at odds with capitalism and self-interest. The willingness of customary owners to lease their land to tenants is a sufficient basis for the optimum utilisation of Pacific property resources. The challenge is to set appropriate rents and to establish appropriate distributional structures for those rents between the chiefly classes, the villagers, and the community. Some of the most productive land uses in the world have been developed on leasehold land where the ground rent flows to land owners who have no active involvement in the development that occurs on the land. This includes significant amounts of the land within the CBDs of the most vibrant cities in the West. The only reason that this cannot be achieved in the Pacific is that customary tenure prevents the easy bucks from capital growth being carried offshore.

Research/Education. The Food and Agriculture Organization (FAO) of the United Nations has identified (Riddell, 2000) that significantly more empirical data on the mechanisms of seemingly inefficient land markets is required to promote understanding. This global perspective is matched by a need for improved empiricism in respect of land tenure, land management and development in the Pacific island nations. The FAO has taken periodic leadership in this process in conjunction with the University of the South Pacific, notably in 2002 (FAO/USP/RICS Foundation, 2002) and 1984 (FAO/USP, 1984), both of which built on the South Pacific Commission endeavour in 1969 (South Pacific Commission, 1969). Most of the Pacific island nations began their independence with vigorous views on land policy (Crocombe, 1983), but other priorities led to land matters not getting the attention that was earlier expected; ignoring the problems does not mean that they have gone away, rather they have now reached a critical stage with conflict over land in several Pacific island nations.

Over the last two decades, institutional attention focussed on addressing the challenges of Africa, South America and the transition economies of Europe. Sadly, it has taken dysfunction and conflict to initiate a reconsideration of institutional attention on the South Pacific island nations. The Land Tenure Service of the FAO, the Department of Land Management and Development of the University of the South Pacific, and the RICS Foundation have fortunately grasped this mantle at a regional level with the South Pacific Land Tenure Conflict Symposium (FAO/USP/RICS Foundation, 2002). This has been supported by National Land Workshops in Fiji (Citizens Constitutional Forum), Vanuatu (Law School of the University of the South Pacific) and Papua New Guinea (PNG Institute of Valuation and Land Administration/UniTech).

There is a broad need for a systematic re-appraisal of the very fundamentals of property in a manner that will facilitate appropriate regional solutions. To be effective, local property institutions will need to respect local culture and tradition, as well as incorporate elements that recognise the needs and dignity of persons beyond the confines of the tribal owners. It is only in this way that the broader level of co-operation that is nascent within Western commerce

and culture may be made available to customary people. Part of this exploration of property necessarily includes investigations into regional issues and their solutions. It is only by reflecting on particular cases that the essential and universal aspects of property may be abstracted. In this way the meta-consideration of cultural responses to the problem of property may yield an understanding of property that can then be redeployed to refine existing property institutions. Implicit within this methodological approach is the recognition that the Western institution of property is as much in need of refinement as any customary approach. This is not to say that there will be a single solution to property globally, but rather that local institutions should embody fundamental characteristics suitably adapted for local cultural needs. Inevitably, a regional view has to generalize some of the most common characteristics of a variety of land tenure systems. Indeed the South Pacific Forum Secretariat, as the economic voice of Pacific Island Countries has suggested to other CROP Agencies (Council for Regional Organisations of the Pacific) that land tenure is not a regional issue, although they argue that agriculture is regional. The South Pacific Land Tenure Conflict Symposium identified that there is a need for long term solutions at appropriate levels, recommending local solutions for local problems – with the need for local acceptance and ownership of solutions if they are to endure (Boydell et al., 2002).

Time will tell if the real conflict is over societal development, as alluded to earlier in this paper, rather than being over land and land tenure systems. Critical to this is the primary strategy recommended by the Land Tenure Conflict Symposium to: “Explore and reach consensus on where people/citizens want to be located between the extremes of traditional customary ways and Western materialism”. Whatever the outcomes, such initiatives can only serve to positively question, investigate, and address the goals of evolution, through informed non-political discourse. Moreover, the ensuing dialogue affords an opportunity to debate and evolve Pacific property theory by identifying Pacific solutions to Pacific land tenure conflict.

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Appendix 1: Summary Land Tenure Issues in Pacific Island Nations

Cook Islands	Became self-governing in 1965 in free association with New Zealand. More contemporary (Western) approach to land ownership with associated culture clash, particularly with high numbers of absentee landlords (more than half Cook Islanders live overseas). This results in non-cultivation of potential agricultural land. Some individuals obtain additional occupation right over idle land. Some create leases by surrendering their occupational rights in order to create a securable legal entity for loan security purposes. Generally, women now have equal rights of access to land as men.
Fiji Islands	A former British colony, which achieved Independence in 1970. Land vested in the indigenous people comprises 90% (by area) and is administered by Native Land Trust Board. Freehold land comprises 6% and Government (Crown) 4%, although the 415,000 acres of Freehold is subject to legal contest. Land issues were significant in the attempted coups of 2000, despite the paramountcy of indigenous rights over customary land being explicit in the 1997 Constitution. Confusion prevails over the expiry of 13,140 agricultural leases, largely relating to cane production. The imminent expiry of residential leases on native land is yet to be addressed.
Kiribati	The Gilbert Islands were formerly held by Britain (as a protectorate since 1892) whilst the US had claims on the Phoenix and Line Islands, until Independence in 1979. The 1971 Constitution addressed property acquisition, with land only to be taken for public purposes. Land has social, political and legal significance in traditional society with real estate title being distinguished as 'full' and 'divided'. The division concept is explained by one group who cultivates and harvests, whilst the other group receives goods and services. The government holds Phoenix and Line. Traditional ownership has diminished with land being marketable and traded. However, land is traditionally held in multiple ownership, which causes inheritance difficulties. Native leases are restricted to 21 years and 5 acres.
Marshall Islands	Colonised by Germany, then taken by Japan in 1914. The Japanese ruled from 1914 – 1944, after which the US administered until Independence in 1986. The 1978 Constitution ensures paramountcy of traditional and customary land tenure. Most land is transferred through matrilineage. The average land parcel is 1 – 2 hectares. Given the variations that occurred under German and then US administration, there is a restlessness to move to individual ownership by the younger generation. The legislature has the power to override customary principles should that better serve the government of the day.
Micronesia, Federated States of	Formerly a UN Trust Territory under US administration, gaining Independence in 1986. Whilst tradition is supported by the Constitution, it does not address land issues. Matrilineal descent prevails, albeit administered by males, with most land held in group ownership. There is a traditional expectation that if a husband dies before a wife, leviratic principles apply and the wife should remarry the husband's brother to protect the land rights of the children. The concept of 'sale' has been introduced to Truk.
Nauru	Originally colonised by Germany, before falling to Australian administration in 1914. Independent since 1968. Economy very reliant on now depleted phosphate reserves. Land is not addressed in the constitution. Variable ownership patterns emerged, evolved from Anglo-German adaptations to customary ownership. Sales are rare, with exchange most common. Group ownership still exists and is administered under the 1976 Lands Act.
Niue	A New Zealand protectorate from 1901 until Independence in 1974 gave Niue self-governing status in free association with New Zealand. The Constitution allows for a Lands Court. A customary system of land ownership and transfer applies, whereby

	group title and adoption are important. Matrilineal and patrilineal transfer applies. Now absenteeism is an issue, but the family are allowed to take over the absentee's land.
Palau	Formerly administered by the US, Palau gained independence in 1994. Customary ownership prevails. Land cannot be alienated to non-Palauns, although aliens can be granted leases of up to 50 years. Only 8 – 10% of land has been registered. Previously the land was divided into, and administered by, village units with a concept of public community land. This public community land was transferred to 'district authorities' in 1974, akin to municipalities with land title boundaries being defined. Primarily patrilineal.
Papua New Guinea	Initially colonised by both Germany and the UK in 1885 before being transferred to Australia in 1902 and administered until independence in 1975. The Constitution does not specifically address land rights, instead deferring to the adoption of custom as 'underlying law'. 97% of land is held under customary tenure, facilitating a subsistence agriculture base. Colonisation resulted in the establishment of Crown land upon which 99-year lease were created. Since the 1973 land commission, a 'lease and lease-back' system has been established to generate some security through 25-year leases. Traditional ownership complicated by polygamy.
Samoa	Formerly a German colony, subsequently administered by New Zealand from 1914 until Independence in 1962. Land is divided into customary (81%), freehold (4%), Samoa Land Corporation (4%) and public (Government, 11%). The Constitution recognises that customary <i>matai</i> land should be held and administered under customary law. Customary land cannot be alienated. The traditional cultural social system remains intact despite foreign influences. There is a right for Samoans to use, live and build dwellings on family land provided they serve the <i>matai</i> . Land inheritance is bilineal, with women also acquiring land rights through their lineage.
Solomon Islands	Formerly a British colony, achieving Independence in 1978. Land ownership is not specifically addressed in the 1975 Constitution. Land is communally owned under a 'kinship' arrangement, although some individual ownership does exist (88% customary whilst 12% is registered). Current major tension prevails in respect of 'taken' land and desire for compensation in Guadalcanal. Lands and Titles Act under review as part of Townsville Peace Accord.
Tonga	The Kingdom of Tonga has never been colonised, and remains an independent monarchy. Under the 1976 Constitution, all land is vested in the Crown. Women are neglected in land matters. All males over 16 years of age are entitled to an 8-acre allotment for cultivation and a ¼ acre town allotment for a dwelling.
Tuvalu	Formerly as the Ellice Islands grouped under British colonisation with the Gilbert Islands. Became the British colony of Tuvalu in 1974, which led to Independence in 1978. The constitution does not address land issues. Traditional land rights were vested under chiefly stewardship. The chiefly system is weak. There is a "Tuvalu Land Code" in the back of the Land Act, which is regarded as a very accurate written statement of most of the rules of customary ownership of land. Customary rights can permit the extended family to use a members land parcel. Whilst preference is given to the male line, female inheritance does occur. Absenteeism is addressed under recent legislation which permits the land to be utilised productively through leases to government, church and companies.
Vanuatu	Colonised by Britain and France – achieved Independence in 1980. All land belongs to the indigenous customary owners, and land tenure is based on customary rules. All alienated land was abolished at independence, a solution that could potentially be followed elsewhere in the Pacific. Both patrilineal and matrilineal land rights apply in differing parts of the country.

Table 1: Boydell, adapted from *Land Management & Development Research 2001*.
Researcher: Anupam Singh. Based on an extensive range of sources.

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