

THE FOI INCORPORATED LAND GROUP:
LAW AND CUSTOM IN GROUP DEFINITION AND COLLECTIVE
ACTION IN THE KUTUBU OIL PROJECT AREA, PNG

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Introduction

In 1930, Malinowski quoted the British Judicial Committee of the Privy Council concerning the evaluation of indigenous land and property law in African British colonies:

“The estimation of the rights of aboriginal tribes is always inherently difficult. Some tribes are so low in the scale of social organisation that their usage and conceptions of rights and duties are not to be reconciled with the institutions or the legal ideas of civilised society. Such a gulf cannot be bridged. It would be idle to impute to such people some shadow of the rights known to our law, and then to transmute it into the substance of transferable rights of property as we know them.”

To which Malinowski responded: “It is absurd to say that such a system ‘cannot be reconciled with the institutions or the legal ideas of civilised society’. To reconcile the two is precisely the task of Colonial statesmanship”.¹ The argument between Malinowski and the-then Provincial Commissioner in Tanganyika, P.E. Mitchell, which was the context for Malinowski’s comments in 1930, for all that it must seem frustratingly no closer to resolution today, must by that token appear tantalizingly familiar to contemporary multinational companies operating in countries with significant indigenous landowning populations-- for the weight put on the term “reconciliation” between indigenous and western law, the colonial preoccupation with the nature of indigenous property rights, and in the argument between the anthropologist and agents

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¹ B. Malinowski, “The rationalization of anthropology and administration”. *Africa III*: 406 (1930), cited by Wendy James, “The anthropologist as reluctant imperialist”, in T. Asad, ed., *Anthropology and the Colonial Encounter* (1979): 58-59.

of the state as to the anthropologist's role in effecting this reconciliation or fusion of cultural and legal horizons.

The development of social anthropology, particularly in the British colonial world in the era preceding and following the Second World War, was intimately linked to the exigencies of codifying indigenous law and custom so that colonial subjects could be justly and properly administered, protected, and brought into the existing European system of law. As Roy Wagner pointed out in his landmark article, "Are there social groups in the New Guinea Highlands?" (1974), social anthropology in tribal regions such Africa, New Guinea and Australia around the early middle of this century was preoccupied with identifying the key units and principles of indigenous social and territorial organisation (see also Hirsch 1999). The principle of unilineal descent, the assumption of the basic universality of consanguineal kinship, and the unilineal descent group, became the basic tools by which apparently communal institutions of native social life and territorial control were translated into units which could find some place in the catalogue of human institutions recognized by European law and customary usage.

But although descent theory became demonized as one of the key architectural components of Colonial rule, even in its hey-day, the understanding of the practical ethnographic situation was far more nuanced and complex than some contemporary critics, including Wagner himself, are prone to give it credit for. Gluckman and Schapera, among others, argued, *contra* the Malinowskian functionalist orthodoxy of the times, for the analysis of a "total social field with its relationships of conflict and co-operation" (Goody p. 120). Jack Goody once remarked:

One cost of concentrating upon *a* village, *a* tribe, or *a* state, is that the analysis is oriented towards internal rather than external relationships (1969: 120).²

² Apropos the discussion to follow, Cooter notes that in Papua New Guinea, "... in some villages the clans cannot agree upon their boundaries, but adjacent villages may be able to agree upon boundary between them" (1989: 1).

Nowadays many of the territorial and property rights of indigenous people are protected by the laws of their own independent countries rather than the Administrative protocol of their former colonial status. Yet through the exercise of these legal transformations, the continuity between colonial and post-colonial regimes of indigenous legislation remains intact. The new legislation, having been based on western jurisprudential principles, has transformed “customary” law into justiciable law. The premise of recent writers such as Aletta Biersack (ed., 1995) Francesca Merlan (1998) and myself (in press), however, begins not so much with a simplistic acknowledgement of a more subtle form of contemporary “crypto-colonialism” nor with an overly dualistic notion of hegemony and resistance, as with the observation that a conjunctural field (in Sahlins’ [1976] terms) exists, and has existed for a long time, within which the laws, practices and customs of both the western nation state and indigenous people embedded in it, are developing and evolving out of each other. Cooter thus observed in 1989:

Papua New Guinea has reached the stage where the courts participate in the evolution of custom through the common law process. The courts do not invent custom, but, by articulating it, they shape it decisively (p. 27).

This principle informs no less the development of anthropology and its craft as a result of the pressures placed by a variety of colonial and postcolonial institutional practices on indigenous societies.

In this paper I examine the genesis and progress of the incorporated land group (ILG) in Papua New Guinea. The ILG is a legal entity empowered by legislation passed in 1974 to give legal and formal recognition, protection and powers to customary land-owning groups in PNG. Foi and Fasu clans and Gulf Province clans in the Kutubu oil project area, at the instigation of the Chevron Niugini Company (CNGL) the managing partner of the Kutubu Joint Venture, have become incorporated under the Papua New Guinea Land Group Incorporation Act (1974) and have been receiving royalty payments

from the sale of petroleum. The Incorporated Land Group has been viewed by the Company as the best mechanism with which to:

- establish stability and remove ambiguity over ownership of territory
- establish acceptable mechanisms for the selection of landowner representatives
- effectively channel royalty and other petroleum-derived revenues to landowners
- build upon what is perceived as a customary social unit of long standing in Papua New Guinea and thus *capitalize upon the stability of customary cultural units* (Power n.d., emphasis added).

But since the original round of ILG registrations, there have been numerous applications for new ILG status from sub-groups within these original ILGs incorporated in the early 90's. In 1998, thirteen new Fasu ILG applications were lodged, all of them by sub-groups within already incorporated clans. The most common complaint being made is that the income is not being satisfactorily shared by those members of the executive committee designated by the ILG to distribute its income. These new ILG's wish to have their own passbooks and receive their income payments directly.

The Company interprets this trend in two ways: as a sign that local clan leaders are dishonest and that local people themselves have not yet sufficiently understood the nature of contemporary managerial procedure. They stop short of admitting the possibility that the clans themselves are not “customarily” either corporate or collective units that exist for the common interest of its members. I will argue here that it is the ILG mechanism that is essentially faulty, not the behavior or the moral quality of land owners.

One of the main points I wish to make is that, in line with Goody's earlier observation quoted above, there is too much assumption that the *internal* affairs and composition of landowning social units are both practically and ontologically prior to their external relations. The companies and government departments who have attempted to implement the Land Group Incorporation Act have made an

ethnographically infeasible apportionment of the “political” to external relations among land-holding units and consequently see the resulting conflict and competition *within* them as adventitious and subversive of the “customary” land-holding units themselves. The LGIA is based on a quite erroneous assumption of the communal nature of land-holding and transmission within the Melanesian “clan”, and of its essentially “collective” interest.³

As Evans-Pritchard reminded us, however, and which became a founding approach of the Manchester school of African social anthropology in the 50’s and 60’s, the whole concept of the segmentary lineage system around which the attributes of corporateness were first empirically examined was founded on the notion of *enduring and regular structural relations of conflict and consequent group fission as the mode of societal reproduction*. Acts of legislation such as the PNG LGIA have disregarded this aspect of societal formation in PNG with the resulting problems that companies such as Chevron have encountered in applying the LGIA to customary “land holding” units.

The ILG and the Petroleum Industry in Papua New Guinea

In the early 1990’s CNGL undertook a complete census of all Villages with clans who owned land in its petroleum license development (PDL) area, and incorporated the recognized land-holding groups at the time. A total of 54 Foido incorporated land groups were registered as PDL landowners with the aid of CNGL’s Lands Department between 1992 and 1994.

In an unpublished paper circulated amongst Chevron Niugini and other petroleum industry and government personnel, Tony Power, one of leading proponents of the Land Group Incorporation Act stated:

³ Lea writes recently with respect to indigenous corporations: “... a community is obviously a group of people, but we need to ask ourselves what makes a group a community” (2000: 10).

The Land Group Incorporation Act was the most significant outcome of the 1973 Commission of Inquiry into Land Matters (CILM).⁴ The Act embodied a constant refrain in the CILM reflecting the desire of the Commissioners that Papua New Guinean ways be employed to maintain the integrity of custom in the management of land. The Commissioners soundly rejected all forms of land tenure conversion. At the same time the same concepts were being developed by the founding fathers and found their way into the Constitution exhorting the use of Papua New Guinean ways. *The mind of the legislator was clearly that modern management mechanisms can and should be applied by customary groups to manage their affairs in relation to land and related matters* (emphasis added).

The administrators trying to come to terms with protecting customary Papua New Guinea landholding units today are engaged in the same epistemological exercise that their structural-functionalist predecessors were earlier this century during Radcliffe-Brown's time. To quote Wagner again at this juncture:

The more emphatically the investigators insisted on the importance of definitions, rationality, and their own conceptions of law and property, the more substantial and strictly bounded the groups became. They became, in short, much more like the consciously organized, planned, and structured groups of Western society in spite of a lack of any kind of evidence that natives actually thought of them in that way. "Groups" were a function of *our understanding* of what the people were doing rather than of what they made of things (1994: 97).

Anthropologically, it might seem as ironic that just as global industry is (re-)discovering the wisdom of Colonial Codification, anthropology has focussed its attention away from the normative, the collective and the bounded in social life. In more recent years, a variety of theoretical developments have caused the pendulum to swing away from an acceptance of the collectiveness and corporateness of indigenous landholding units, and towards an understanding of the unstable, porous, nomadic, centripetal and fluid characteristic of such groups (despite E-P's long-standing characterization of Nuer clans). And yet the increasing contemporary struggle over control of land and resources amongst indigenous custodians, settler land-owners and lease-holders, resource companies, and the majority-settler state and national governments has produced a movement in the opposite direction: towards some evolution of universal principles for the protection of property rights and the

⁴ Actually the LGIA was one of a number of pieces of legislation that emerged from this Commission. The *Land Disputes Settlement Act* was arguably more important.

codification and legal protection in general of indigenous customary law around the world.⁵ What then are the consequences for the future of indigenous custom, practice and self-understanding of the present panoply of laws (increasingly subject to international codification and recognition, most notably through the United Nations and other international agencies) that define a wide range of indigenous customary institutions? Although these questions have been recently and explosively been put before the white settler public, notably in the Coronation Hill and Hindmarsh Island Bridge sacred sites claims in Australia, the Ok Tedi pollution case in PNG, and the Exxon Valdez compensation case in Alaska, Australian anthropologist Kenneth Maddock has put the matter succinctly somewhat earlier:

...it is important to distinguish, in principle, between rights originating in modern statute law and rights having some other origin. Otherwise, *anthropologists will smuggle into their accounts a legal view that, intended to express a traditional reality, has been shaped in its original formulation and subsequent development by the exigencies of legal policy and reasoning* (1989: 173, emphasis added).

Background and Problem

The first problem is that nowhere in Papua New Guinea law is there a definitive definition of what a “landowner” is. As Filer has convincingly argued in the Papua New Guinea context, the issue of “land ownership” as such is largely an artifact of the recent mineral exploitation in Papua New Guinea:

...landowners are acting out an ideology of landownership which has its own history, and which colours the definition of compensation in particular ways. [People] may fail to see that when landowners become engaged in a relationship of compensation with some external agency, their status as landowners (and their consequent role within this relationship) is not a simple and straightforward fact of life. For there is a sense in which Papua New Guineans have only *become* landowners over the course of the last 10 years... the question of whether ‘clans’ exist as ‘landowners’ in the fabric of national identity is the question of how *have actually become* groups of landowners claiming compensation from development of their own resources (Filer 1997a: 162, 168).

⁵ This explains the impetus behind the current British ESRC funded project “Property, Transactions, Creations: New Economic Relations in the Pacific”.

The genesis of the concept of landowner can be traced to, among other places, the various preambles to and explanatory addenda to the LGIA, as in the following by

Power:

Developers of resources in PNG must by necessity involve the owners of land because all land where resources are located is privately and communally owned. Developers are concerned that the landowners in the project area fully support their project. In order for this to happen landowners must manage the physical, social and economic impact of the resource development. A critical element of impact management is the distribution of direct cash benefits arising from land use, royalties, and equity. If the impact of the project is so great as to destroy the social fabric then the security of the project will be greatly eroded. The ILG system is not just a simply exercise to distribute cash benefits. The ability to fairly distribute cash benefits, though important, is only one outcome of a successful ILG system (Power n.d.)

This points to the second problem: There is a critical ambiguity in the above statement—is, or is not, the chief function of the ILG system to distribute benefits from commercial developments such as mining and logging, or should it have some wider and more synergistic function with the traditional social units in PNG, specifically with respect to the protection of land rights and their customary form of transmission? But having worked with the Foi both before and since the Oil Project, there seems no doubt in either my mind or theirs: the ILG is perceived solely as a petroleum benefit-receiving body, and all of the uses to which it has been put by the Foi (and other people within the petroleum project area) have been exclusively related to this function. It has not yet been put to use to attend to matters pertaining to ownership of land *per se*, as it was originally designed. The Chief Commissioner of Land Titles, Ms. Josepha Kanawi made this same point in the recent judgement on the *Gobe South East Gobe Customary Land Dispute Ownership* (1993/69):

...the issues contested in the hearing is [sic] not only limited to customary land ownership. There are arguments on public policy considerations, application of the Land Act and the Petroleum Act for purposes of settling claims of rights of parties owning land affected by the petroleum project (p. 11).

Rather than the ILG mechanism serving to legally “modernize” the existing system of land proprietorship, the Foi are employing it as the unit of political struggle over petroleum-benefit sharing, much to the consternation of the Chevron Niugini company’s External Affairs Office, the PNG Department of Petroleum and Energy and Lands Departments, which deal with landowner relations in mining license areas.

The Proliferation of “New” ILGs

Anthony Power, who was working for the CNGL External Affairs Department when the initial registration of Oil Project area ILGs was first carried out in 1992, wrote this account recently:

Since the beneficiaries are Incorporated Land Groups, vetting of lists that have developed since dividends began to be paid must be done to prevent possible fraud. In the early 1990’s before there was any clear incentive to form new land groups all the population within the project area belonged to the original land groups assisted by Chevron to incorporate via the Land Group Incorporation Act. All of these people were also censused and recorded in the Village Census Books. Nobody forced these village people to record their genealogies in this manner and hence it must be assumed that the original groups were for the most part accurate. Since the original land groups were incorporated a number of “new” ILGs have emerged. As new groups will dilute the benefits to the original groups it is necessary to examine all new ILGs to see if they are justified. This could be done in the field by a team including Chevron, DPE and a Provincial Lands Officer, after consultation with the Registrar of Titles and PRK.⁶

As I’ve said, the ILG is simply seen by the Foi as a strategic device whose purpose is primarily political-economic rather than one of customary land management per se. For example, one landowner put it this way: “I have empty land, so I want to create a new ILG to inhabit it”. I should point out that unlike their Huli neighbours to the north, land is not a critically scarce resource in Foi and the Foi still treat it as such. The gift of land is a common way to acquire allies, enhance one’s clan size and power by comprehensive resources to those who will settle and become clan members. In Foi

⁶This was the impetus behind my current involvement in auditing the Foi incorporated land groups that began in March 2000 as a consultant to Chevron Niugini Ltd.

Previous work on Foi politics has been supported by the University of Adelaide and the Australian Research Council and more recently, by the Wenner-Gren Foundation for Anthropological Research. I am grateful to all of these organizations for their generous support.

land is used to create a group-- but it does not therefore follow that the land and the group are “two sides of the one coin” (Power 2000: 36). Land can be alienated from the group, but people cannot in an absolute sense be alienated from their relatives.⁷

Power’s emphasis on the customary land group is undermined by the managerialism he wished to also write into the LGIA. As a result, despite the repeated affirmation of the customary land group as the building block and central plank of benefit delivery, the Company and National Government have insisted on dealing with landowners on the basis of their “ethnic” designation and through recognizable “Landowner Associations”, neither of which had any “traditional” basis in the political landscape. Leaders among the Foi are using the creation of new ILGs to leverage additional shares of the petroleum revenue for their supporters (since as a result of the initial MOAs, each ILG owning land in the PDL would receive the same share of the revenue, regardless of population size or absolute amount of PDL land owned). PDL landowners are also enhancing their own support amongst non-PDL landowners by offering to make them “PDL landowners” in a variety of ways.

An example of how this is working itself out can be found in Lower Foe. Soni Kanu, the leader behind the Muiyoke Limited landowner company realizes that he represents only a small population, and what is more, compared to the larger and more central Foi villages, he commands few educated, literate men who can help him form the core of an effective political and economic organization. He thus uses Muiyoke Ltd. to attract men from the more populous Upper Mubi—by promising them that if they buy shares in the company, not only will they receive oil revenues, but by forming their own ILGs, they can, in effect, through their shares in Muiyoke, become by definition PDL landowners. What we see here is a distributive mechanism (see Weiner 1998) that is based not on the assumed behaviour of the liberal sovereign individual (see also Lea

⁷ See also Cooter’s comments (1989: 83) where he observes, “There is no such custom as expelling a clansman from a clan”.

2000; Rowse, n.d.) which is the basis of the governance system empowered by the LGIA.

In the same way that this autonomous, sovereign individual is required by the LGIA, although not enshrined in the legislation itself, the same urge that characterized early social anthropology towards achieving a clear, unambiguous “sharp-edged” definition of indigenous social units and their territorial property is evident in the LGIA architects’ thinking as has been the case in the recently amended *Native Title Act (1993)* in Australia. Power thus comments:

If an original land group divided into two or more then the members would have to demonstrate the following:

1. That the two or more land groups have distinct land and do not have cross claims or interests in each other’s land.
 2. That they followed their ILG constitution when dividing the original ILG.
 3. That they have the support of their ethnic group who recognize their separate identity.
- *Where new ILGs have no customary basis for division* they would divide their original one share between them. This is exactly what happened with the Foi beneficiaries for royalties. 24 ILGs representing 8 clans shared 8 shares of dividend [emphasis added].

...

A primary consideration must be that recognition of new groups will dilute the benefits to existing beneficiaries. In that case any new groups would have to be approved by the existing beneficiaries. A mechanism will have to be devised to seek approval of existing beneficiaries by means of consultation at general meetings with the members of landowner associations or shareholders of companies. Once this vetting takes place a definitive list of beneficiaries can be recognized by DPE and forwarded to the Trustee.

But as the above examples indicate, the ILG has been uniformly misunderstood and misapplied by the great majority of ordinary Foi, at least according to its architects and implementers. At the current time, there have been at least 48 cases requiring “land group maintenance”: that is, the alteration, re-registration, or splitting and new registration of already-incorporated land groups. By mid-1999, 26 original ILGs had been de-registered by the Lands Department in Port Moresby, and about 80 new ILGs had been registered claiming distinct and separate status (and separate petroleum revenues as well). Additional new ILGs are applying for and receiving ILG certificates

from the Lands Office in Port Moresby even as I write this in June of 2000. The reasons given for these proposed alterations have been varied: groups fear that money has not been distributed equitably within the ILG and therefore wish to establish their own income stream and passbook; there have emerged disputes over the land borders originally registered, and over the membership of groups already registered; there was uncertainty as to the kinship and clan membership of component groups within the ILG; finally, and commonly, accusations of improper behaviour leveled at ILG chairmen. At a broader level, regional leaders tried to register as many ILGs under their own political “Association”⁸ as they could, to claim as large a proportion of the fixed petroleum royalty as possible, and to enhance the appearance of their numerical support. In all of these cases, the codification of customary ownership of *land* figures hardly at all.

This progressive fragmentation of “traditional” land-owning groups has been perceived to be against the spirit of the ILG program. The philosophy of the ILG is that the corporate group will act in the interests of a body corporate. When it does not do so, it is common to blame the failure on the self-interest of its leaders, or on the ignorance of local land-owners (although the frequent and regular emergence of such “self-interested” leaders should itself act as a critique of the assumption of the land-owning

I have recently argued, however (Weiner 1998) that the fragmentation of Foi ILG's is consonant with more deep-seated oppositional behaviour that governed to a marked extent the shape of political life and the resulting composition of local residential groups in Foi and indeed throughout the societies of the petroleum project area (including the Fasu). The Company, on the other hand, has mistakenly taken the

⁸ As of 1998, there were the following landowner Associations in the Foi area: The Foe Association (Lake Kutubu); the Foe Landowners Association (Middle Upper Mubi); and Fukigi Landowners Association (Lower Foi). In 1999, the conflict had resolved itself into that between the Foe Association and the other PDL landowners, who combined into one group called the Foe Association of PDL and Pipeline Resource Owners.

appearance and rhetoric of collective *action* as evidence for the existence of a collective *interest*.

As Wagner described for the Daribi in his 1974 article, the proliferation of “splinter ILGs” represents the response to the pressure on the Foi system of pervasive social differentiation caused by the influx of petroleum revenues. The “names” of Foi social groups, as with the Daribi, “only group people in the way that they separate or distinguish them on the basis of some criterion” (Wagner 1974: 106). Usually, this criterion is territorial in Foi. Hence, sub-divisions of clans are referred to as, for example, Mubiga So’onedobo (“the So’onedobo who live near the head of the Mubi River), as opposed to Baibu So’onedobo (“the So’onedobo who live near Baibu

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Individual lines within a Foi clan are conventionally differentiated in one of two ways. The most common is to label them according to their land. For example, in Hegeso village, the elder men Abosi and Haibu were ‘Hesa Orodobo’ and Midibaru and Tari were ‘Yebibu Orodobo’. Midibaru’s son, Kora cannot build a house or garden on Hesa Orodobo land without permission; and Abosi’s son, Dobo, cannot do the same without permission from Yebibu Orodobo, even though they maintain they are of a single clan, and act collectively in other matters. The other manner of distinguishing lines within a clan is by way of their clan of origin. For example, Sobore, a Fo’omahu’u man, was taken in by the Orodobo clan of Hegeso and given resources and protection, and kinship ties were extended to him. His descendants, though functionally full Orodobo clan members, are more precisely referred to as Fo’omahu’u Orodobo.

As Wagner has observed, these names are significant “not because of the way they describe something, but *because of the way in which they contrast it with others*” (Wagner 1974: 107, emphasis added). These distinctions are for the most part

⁹ Chief Commissioner Kanawi acknowledged this in the *Gobe South East Gobe Land Ownership Dispute* judgement, for example, “... there never existed a clan by the name ‘Isoweri Bubuku Gohu clan’ or ‘Sowolo Haporopake clan’ even before the dispute, but the names were invented to make claims of land ownership in the Commission hearing” (p. 15).

contingent and emergent—they appear in the context of some specific incident of oppositional behaviour, and can easily disappear once that opposition is defused or brought to some resolution. Most often, Foi men of the same local clan find themselves in dispute over one issue or another—the division of bridewealth, the use of specific spots of land, accusations of adultery or theft, and so on. These can lead to factions emerging that look “as if” the clan is fissioning. But such acts of fission are not necessarily either irreversible or even long-lived, though they can be both.¹⁰ They merely reflect the territorial fluidity of such groups, in a manner strikingly reminiscent of the way Evans-Pritchard described the Nuer in 1940:

Nuer tribes are an evaluation of territorial distribution and tribal and intertribal and foreign relations are standardized modes of behaviour through which the values are expressed... Moreover, it is not only relative because what we designate a tribe to-day may be two tribes to-morrow, but *it can only be said to determine behaviour when a certain set of structural relations are in operation, mainly acts of hostility between tribal segments and between a tribe and other groups of the same structural order as itself, or acts likely to provoke aggression.* A tribe very rarely engages in corporate activities, and, furthermore, the tribal value determines behaviour in a definite and restricted field of social relations and is only one of a series of political values, some of which are in conflict with it (p. 149, emphasis added).

More generally, what Schieffelin calls the “opposition scenario” in this part of PNG (1976) can have a more positive rendering—that is, the customary understanding that land boundaries and land ownership are what neighbouring clans acknowledge them to be. In the *Hides Gas Project Case* (1993, PNGLR 309), and in the *Gobe South East*

¹⁰ The issue of the name of such emergent factions is actually the central issue in some of these new ILG cases. For example, Firman Hana claims membership in Gesege Aidobo (ILG #7480). His land is at Gara, near Tubo Lodge in Tugiri Waidobo clan territory. But he objects to the use of the name “Gara” in the name of the (ILG #7494), “Gara Egadobo” of Gesege, because this land does not belong to them. They should be forced to choose a different name, he maintains.

At Ibutaba, our arrival to audit existing ILGs precipitated a vigorous argument, centering around Masene Yabe, the Chairman of the new, FPR-registered *Isa Orodobo* (ILG #7316), and the group he broke away from and which was de-registered by FPR [Foi Petroleum Resources], Orododo (ILG #351). Both Masene and members of the old Orodobo clan claim that there were two lines of people that were missed out of the original census and genealogies, and which presumably form the core of this new ILG. The argument we found ourselves in the midst of was whether Masene Yabe was entitled to use the name “Isa Orodobo” for this ILG, which literally means “New Orodobo”. The old Orodobo (ILG #351) of Ibutaba insisted that he abandon the name Orodobo if he insisted on breaking away from his own clan in this manner.

Gobe Customary Land Ownership Dispute it was recognized that “a land [sic] is said to belong to a group when the land boundary is acknowledged by the neighbouring clans” (Kanawi, p. 17).¹¹ It is this recognition of the *relational* aspect of property, and of land in particular, that leads Cooter to contrast “market property”, appropriate to the non-kin-based societies of the modern West, with “relational property” (1989: 13), characteristic of the kin-based societies of nations such as Papua New Guinea.

The “opposition scenario” can have the opposite effect as well—lines without genealogical connection have formed an ILG by banding together, in both the PDL2 and the PDL3 and 4 (Gobe and South East Gobe) areas. Kanawi opined that this was an improper use of the LGIA.¹²

Foi Local Clan and Lineage

The Fragmentation of Foi Clans: Many of the new ILGs at Lake Kutubu are the result of large clans such as Wasemi Fo’omahu’u Orodobo or the large Damayu and Fiwaga clans splitting into constituent sub-clans and lineages. These new applications are defensible in terms of population growth alone, which was the most common precipitating cause of clan fission. In Foi, what they call an *ira* (“tree”) is the term for three generations of male descendants of a single man. Practically, it takes the form of a group of full brothers whose land is normally contiguous—in other words, they live near-by each other as well as being closely related. The ILGs that were audited at Wasemi were all “trees” of the Orodobo and So’onedobo clans, the two biggest clans at Wasemi.

¹¹ This is also a significant test of the existence of Native Title rights under the amended *Native Title Act (1993)*.

¹² “...Wagireyu Siripu belongs to the ‘Makof subclan’ and not the ‘Isoweri subclan’ but the claims by Koloka Dumano was to use the name ‘Isoweri’ which is the third subclan of Wagireyu Siripu to join up with Isaweri Makof clan to substantiate claims of ownership under the name ‘Isoweri Bubuku Gohu clan’” (p. 81)... this does not mean that they own the same portion of land together as one clan. By joining the names and assuming that they are part of each other is not based on customary land ownership practice.” (p. 99).

I earlier identified the *ira* as the property managing and work-related cooperation group within the Foe social system (see Weiner 1988, 1987), and so there is nothing non-traditional about this kind of division—it merely gives formal ILG recognition to a unit that is already explicit and visible in the Foe social system.

The ILG, though based on principles by which clans are defined as land-owning entities, is not the same as the clan *per se*. The Foe themselves are clear about the different functions of ILGs and their traditional clans. For example, a single clan may consist of two or more sub-clans for the purposes of ILG recognition and land-stewardship. But the entire clan still acts as a unit, for example, in the collection and receipt of bridewealth for its female members.

There are two common reasons for a clan splitting into two or more separate units: One, which I have mentioned already, is that its population has grown too big for it to stay together. The second is that it has large land holdings, at some distance from each other, relative to its population size, making co-residence difficult. Either one was traditionally grounds for separation. But here is a question with respect to the new ILG, and which the LGIA gives no guidance—which is the more legitimate splitting of a clan—a clan which divides its people up sensibly according to population pressure, but does not then divide the land equally; or a clan whose members divide up randomly and unjustifiably, but which divides the land up sensibly and equally? This, in fact, was the situation we encountered at Tugiri.¹³

Ownership vs. Authority: A singularly appropriate feature of the LGIA as it was applied in the Kutubu oil project area initially is that it defines the land belonging to a

¹³There is, however, at least one limiting factor in how small land-holdings as such can get in Foe. A domestic group, in order to function, must have access to all the different types of resource territory—water, hillside, garden land, sago swamp, hunting ground, pandanus swamp, bamboo grove, and so on—or else it cannot provide itself with the necessities of life. These different types of land are found in different ecological zones and are, by definition, spread out. If a land-holding unit's total holdings begin to exclude necessary types of land, it will not function well as a basis for the promotion and maintenance of domestic life. This was traditionally Tugiri Village's problem—it lacked conveniently close sago swamp near its present village site, and in fact, was, in an absolute sense, short of this type of land, and had to make more complex arrangements to obtain access to sago swamps in Gesege.

landowning group not in terms of a discrete unbroken border, but in terms of a list of specific sites over which its constituents exercise what for all intents and purposes are the prerogatives of ownership (in this context, ownership is defined as control of access to the site or ground in question). A local clan in Foi exercises a sort of nominal communal dominion over its territorial resources, but effective *ownership*, that is *control of access*, is always exercised by specific individuals or at most, a set of full male siblings and their father (see Weiner 1986, 1988).¹⁴

The issue at stake is not just *control of resources* but also *the mechanism and locus of decision-making at the local level*. As a result of there now being two social units, the ILG and the clan, clan-wide decisions concerning things such as bridewealth and ceremonial will be split off from decisions concerning resource management and distribution. It is an open question whether in terms of traditional custom, the control of land was seen as distinct from all these other clan functions.¹⁵ As Ballard (1997)

¹⁴In Hegeso in 1980, the man Dege of the So'onedobo clan, planted sago on the ground of Hamabo, his FB near Ibuga. Hamabo retorted, "it's my ground, plant sago on your own ground. My children will be angry when they grow up and find another man's sago on their land." Dege replied "it's common So'onedobo land." Hamabo attacked Dege with his umbrella. Hamabo then ordered Dege to remove the sago and plant it on his own land, or else he will cut them down himself. The consensus of Hegeso men supported Hamabo and people ordered Dege to remove his sago suckers. It is common ground, but the place where Dege planted his sucker was near a place that Hamabo was residing on and making use of—in this case, to dam a creek, and so Dege was ordered to remove his sago suckers from it.

¹⁵This is arguably a question of wide-ranging applicability to the developing property rights of indigenous peoples everywhere. For example, in the report on Australian Aboriginal cultural property rights, *Our Culture, Our Future: Report on Australian Indigenous Cultural and Intellectual Property Rights* (Janke and Frankel 1998), chapter 15 raises the following issue: where artistic designs, stories and artifacts have an intimate connection to land, whether rights in such designs and stories can survive the extinguishment of rights and access to the land in which such designs and stories inhere. The separation of such rights is a two-edged sword as far as empowerment is concerned: on the one hand, it paves the way for a recognition of "Native Title" rights in cultural property by Aboriginal people who have retained knowledge of songs, designs and stories even after they have become dispossessed of the land from which these things derive; on the other hand, by separating out land from the cluster of expressive conduits in which it was traditionally manipulated, it threatens to introduce western divisions of types of property rights that are opposed to "customary" ones.

Another convergence between the scholarly language of Melanesian and Australian Aboriginal customary land ownership revolves around the so-called "bundle of rights" concept. See Cooter 1989: 11: "Full ownership of land consists in possessing a bundle of rights, such as the right to occupy, use, develop, bequeath, inherit, sell, give, defend, and exclude others. If all these rights belong to one person, the question, 'Who

suggested, invoking a general anthropological perspective, issues of land ownership are “enmeshed in a web of other forms of relationship” (p. 52).

The local Foi group reached consensus not by a convergence upon a common interest but by the temporary rhetorical abeyance of the fissive mechanism that really “founds” group formation (cf. Goldman 1978). In traditional times, the local clan rarely acted as a single unit, except ceremonially, in bridewealth distributions, for example. Land decisions were the affairs of those directly involved. Although disputes over land within the clan were commonly adjudicated, they did arise. Disputes over distribution of bridewealth were also common.

The Local Clan vs. the ILG

There is thus a fundamental conflict at the heart of the ILG mechanism, which crops up constantly. This conflict can be stated as follows: The ILG Act of 1974 was purportedly designed to enshrine the *traditional land owning group as legal land-owning corporation*. The purpose of this was to give *legislative protection* to the traditional landowning units in any given area of PNG. Take the following list prepared by A. Power in his *Village Guide to Land Group Incorporation*:

Measurable indicators of ILG effectiveness

owns the land?”, has a right answer. In some circumstances, however, no one possesses some of these rights... Customary ownership is not unitary because the bundle of rights granted over land in freehold are dispersed among different people, at least in some groups”. Allen (1993) provides a perspective on the “bundle of rights” concept in the East African (Tanzania) context: “The precise content of the bundle of rights varies between legal systems, but nonetheless it is applied throughout the Commonwealth. At a minimum, the bundle has been taken to include the right to exclude others from the thing owned, the right to use or receive income from it, and the right to transfer to others. According to the majority of Commonwealth cases, an individual has property once he or she has a sufficient quantity of these rights in a thing. What is ‘sufficient’ appears to vary from case to case, but it is doubtful that a single strand of the bundle would be considered property on its own” (1993, cited in *Civil Appeal No. 131 of 1994, Court of Appeal of Tanzania: Honorary Attorney General vs. Lohay Akhonaay and Joseph Lohay*).

The most important deliverable of the land group incorporation process is the identification and training of a cadre of village land workers, being villagers, old and young, keen to become involved in the learning process in the transition from an oral to a written society. These are the contacts in the villages that can relate to government and developer extension officers in developing management for the ILGs. Answers to the following questions will illustrate the degree of progress made.

- Does the ILG have a recognized "custom expert"?
- Does the ILG recognize a "custom expert" from another clan in the village?
- Does the ILG have a literate facilitator?
- Does the ILG have access to a literate facilitator within the village?
- Have any of these ILG functionaries ever attended a training workshop to help them develop their skills?
- How many outstanding land disputes over either ownership or use rights between resident clans are in the village?
- How many outstanding land disputes over either ownership or use rights are there with outside clans?
- Does the village recognize a Dispute Settlement Authority (DSA) empowered under the Land Groups Incorporation Act?
- How many times has the DSA met since the formation of the village ILGs?
- Does the ILG have a Minute book?
- Does the ILG have a corporate seal?
- How many formal decisions have been made by a given ILG in the last 12 months?
- Were these decisions recorded in a minute book, signed off by the Committee and kept for future reference?
- Does the Village Development Committee take an active interest in ILG functions, activities and responsibilities?
- Is there a formal member of the VDC responsible for ILG matters?
- Enumerate any ILG related activities pursued in the village.
- Does the ILG have any customary obligations to outside clans that should be addressed by the ILG Committee or are these obligations more on a family basis?
- Does the village have any permanent residents from other villages?
- Which ILG (s) has responsibility for managing these people?
- What land rights do these guest residents have?
- When did the guest residents first come to the village?
- What is the status of guest residents in regard to land management?

However, the above terms of the ILG Act are the Western terms of *corporation*: A corporation is a group that is legally treated as a single individual. It assumes that the land-owning unit *acts collectively in its collective interest*. It assumes that the decisions that a land-owning unit makes are similar to the decisions a corporation makes.¹⁶

¹⁶ Cooter makes the point: "... the term 'communal' suggests a degree of cooperation and common use that is uncharacteristic of most traditional groups. Indeed, attempts by outside authorities to foster cooperative enterprises based upon traditional social

This is not the case, at least not among the Foi. It is not demonstrable that the local clan acts collectively to further the interests of the clan *as a collective unit*. What anthropologists such as Wagner, Harrison, M. Strathern and myself have described as the “givenness” of connection and obligation in Papua New Guinea sociality has been mistaken by the architects of the LGIA as evidence of communal, corporatist ownership and decision-making. If this is so, then the act of incorporation cannot protect the customary status of the local Foi clan—it can only force it into new forms which can take on the functions that the ILG assumes such units will undertake.

The conclusion we must face is that *traditional custom cannot be protected by an act of legislation*.¹⁷ The legislation is composed and empowered by a cultural and legal system very much at odds with the way local “traditional custom” arises and is implemented.¹⁸ To again quote from Power:

The [Land Group Incorporation] Act actually spells out this relationship between land and group in the opening words: “*Being an Act – (a) to recognize the corporate nature of customary groups; and (b) to allow them to hold, manage and deal with land in their customary names. and for related purposes.*”¹⁹

...

Thus the purpose of the Act is to empower groups owning land *communally* to manage their land. NB The Act does not narrowly confine itself to the aspect of managing benefits coming to the owners, though it clearly accommodates this (emphasis added).

organisation have sometimes collapsed in bitterness” (1989: 12). Sullivan (1997) makes the same point in regard to Aboriginal Corporations in Australia.

¹⁷ Cf. Cooter 1989: “Fresh national legislation for systematic registration is not the most important means of increasing the certainty of customary ownership” (p. 2). And: “The work of clarifying and modernizing property rights is to be performed in the land courts. Legislation and central administration play a secondary role” (ibid: p. 7).

¹⁸ Mantziaris notes in the Australian Aboriginal context: “...the very centrepiece of ACA Act novelty — the ability to embody “Aboriginal custom” in the corporate constitution — has been subverted through the administrative frustration of Rules which do not reflect the associational norms underlying Table A of the Corporations Law. The effect of this process of analogical legal reasoning has been to impose on the indigenous corporation a set of consequences stemming from a legal category which has evolved on the basis of a very different corporate substratum – that of the nineteenth century commercial enterprise (p. 38-39).

¹⁹ “Definition of Land Groups and Group Lands”. File note A.P.Power 6 Feb 1998.

Kanawi in her judgement on the *Gobe South East Gobe Customary Land*

Ownership Dispute said the following:

Where claims arise in that [sic] a certificate is issued under the provisions of the Land Group Incorporation Act amount to title in land, such claims are not valid on the basis that [sic] the characteristics of the “title” referred to in the provisions of Section 1 of the Land Groups Incorporation Act is [sic] not the same title to land ownership in that the it [sic] relates to “title to name” of the customary land owning group... (p. 31)²⁰

She re-iterated this judgement later on:

...Sowolo clan members by their own admissions have allied with the Haporopakes and have formed a common clan unit sharing social values, protecting and using various common land marks. This traditionally binds the persons as a clan unit and therefore one cannot retract from [sic] those customary obligations for the sake of some monetary benefits derived from the land at this time (p. 64).

Thus, insofar as the Incorporated Land Group is acknowledged by Ms. Kanawi to have been utilized primarily as a petroleum benefit receiving unit, it must constantly work against what she perceives to be the interests of the traditional customary land owning group. Towards the end of this paper I will argue, as does Cooter (1989), that customary law must first become transformed into national Common Law before appropriate legislation can codify and apply it—that is, the “reconciliation” which I illustrated at the beginning of this paper must occur.

What is Customary Law (or, What do the Companies Think it is)?

Power went on to write about what constitutes the “law-like” in customary law:

The LGIA deliberately allows a range of possible membership for groups for the very reason that the Act had to accommodate custom and allow customary groups to conduct the management of their group according to their custom but with the added protection of a legal identity and formal corporate decision making...

²⁰ Cf. Cooter: “The registration of customary boundaries under... legislation has little or no effect upon the legal powers of the groups whose boundaries are recorded. Their property rights are allocated according to customary law, as determined in the land courts” (1989: 3; also p. 25).

...

The corporate nature of the land group makes allowance for a constitution to govern the management of the group. This is analogous to the constitution or articles etc of companies and business groups. A very significant weakness in implementation of the LGIA to date has been the failure of the groups to appreciate the importance of their constitution and hence their inability to manage their affairs accordingly. Thus when issues arise that could be dealt with by the group under the leadership of their management committee, the group fails to act. This leads to dissension in the group and moves to split up into smaller groups.

*Splitting into smaller groups may completely distort the responsibilities and effectiveness of the land controllers and should be avoided at all costs since it is totally contrary to the purposes of the Act [emphasis added].*²¹

The intent of the audit of the Kutubu ILGs I am currently engaged in, and the policy of the Chevron Lands Officers and External Affairs, is to make sure that the ILG program preserves the customary land-holding units in the Oil Project area. However, to repeat, the LGIA is based on Western notions of property ownership and collective, corporate decision-making that are not Melanesian principles as such. Therefore, the ILG Act (1974) already works to some extent against traditional custom, by making a concrete “thing” out of land and of the land-owning group (see Weiner 1998). But as Hamnett once remarked: “...customary law is not a statement of practice. It is a normatively clothed set of abstractions from practice...” (1977: 7). Bohannon (1967):

Whereas custom continues to inhere in, and only in, these institutions which it governs (and which in turn govern it), law is specifically recreated, by agents of society, in a narrower and recognizable context—that is, in the context of the institutions that are legal in character and, to some degree at least, discrete from all others (p. 45).

Law has the additional characteristic that it must be what Kantorowicz²² calls “justiciable,” by which he means that the rules must be capable of reinterpretation, and actually must be reinterpreted, by one of the legal institutions of society so that conflicts within nonlegal institutions can be adjusted by an “authority” outside themselves. (p. 46)

²¹ “Definition of Land Groups and Group Lands”. CNGL File note, A.P.Power 6 Feb 1998.

²²(1958) *The definition of law*. Cambridge University Press.

I think the issue of justiciability and its relation to the work of “interpretation” more generally is what is critical here, and I will return to this at the end of this paper.

The Foi land-ownership system was highly flexible in traditional terms and varied dramatically in size, from the large clans of Damayu and Fiwaga which had over one hundred adult male members, to Kuidobo clan of Hegeso which in the 1980’s had a single adult male. There simply were no guidelines or ideal parameters governing what a local clan “should” consist of. Clans and individuals alienated land frequently and commonly, and gained exclusive ownership over new parcels of land constantly.²³ It must also be repeated that no local clan was in any absolute sense disadvantaged over others in terms of access to all types of land.

In fact, the evidence (see Weiner, ed. 1988) is that customary land law is a human cataloguing of a land redistribution mechanism that has evolved over a very long time in the development of interior New Guinea agricultural systems. As Cooter notes:

Customary law in the highlands redistributes land involuntarily in response to changing power relationships among groups. Weak groups that are dispossessed of land by their enemies get absorbed by others [voluntarily in nearly all cases—JW] to bring power back into balance. *By keeping groups small and constantly re-aligning them, no group gains complete dominance over others* (1989: 69, emphasis added).

But the fact that PDL land is valuable in a way that traditional land was not means that the system threatens to “set in concrete” a division of the clan into PDL and non-PDL land-owners. (cf. Weiner 2001), although, as the example of Muiyoke Pty. above indicates, there are indications that the Foi indirectly re-distributing even PDL land more widely.

These points have already been summarized more effectively in the course of Cooter’s earlier observations (1989):

²³ This is and was also the case elsewhere in Papua New Guinea. See the Notofana and Kofika Clans land dispute, Goroka Local Land Court, No. vember 26, 1984, cited in Cooter 1989, pp. 81 ff.

The courts that hear cases in customary law—village courts and land courts—are better placed than parliament to make authoritative findings about customary law.... Melanesian legal principles are to be discovered by deciding cases in customary law. The ‘common law process’, which refers to the courts working custom into formal law, involves litigation, not legislation (p. 19).

Observations and Conclusions

I wish to end by making the following observations: (1) customary law cannot be made into justiciable law without turning it into something altogether non-customary; (2) the land-holding clan, at least in regions like the Kutubu oil project area, is neither solidary, corporate, nor bound by collective sentiment; (3) I agree with the architects of PNG post-Independence land reform that the relation to land is central to the PNG person’s being and social identity. As is the case with the Nuer, social units, though phrased in the language of consanguineal kinship, are also equiprimordially territorial relations. But land is only one part of what a local clan exists to “control”, or should we say: the allocation of rights to land is only one of the social conditions through which the clan is elicited as a social entity (for the most part, rhetorically).²⁴ The local “External Affairs” requirements of the resource companies tend to phrase their concern for achieving a *manageable local decision-making process* in terms of *clear guidelines for the allocation of authority over land matters*.

(1) Customary Law:

The enduring problem with the “protection” of customary law is expressed succinctly by Hamnett (1977):

... whereas the criminal law tends to be in evidence principally in the breach, the civil law—the law of contract, delict [tort], property, marriage, succession,

²⁴ R.J. Giddings, the Presiding Magistrate in the 1978 land dispute between Hogeteru clan *et. al.* In Lufa (EHP) local land court said the following in his assessment: “The evidence before the Court suggests that questions about the ownership of land per-se were not normally issues over which people fought. In traditional times honour was not bound up with the ability to control land but rather with other more personal issues such as those associated with sorcery, adultery and property, principally in the nature of food and pigs” (quoted in Cooter 1989: 73).

etc.—is arguably most effective when it simply forms the defining context of

... the law serves merely as a consensual and implicit context of transactional discourse... Notions of “control” do more to obscure than to illuminate this feature of law (p. 5).

This returns us to the issue of justiciability—of what, being external to an institution nevertheless defines and encompasses it, which just another way of describing the “work” of interpretation, and in particular, the rhetorical forms that it usually takes in both Western and Melanesian societies such as the Foi. Chief Commissioner Kanawi said in her judgement on the *Gobe South East Gobe* case that:

Whether [sic] a party relies on the traditional account of an ancestral [sic] story relating to the claims of land ownership and the ancestral existence in that part of the land are matters of judgement based on other intervening factors, in that, in such circumstance, where ancestral stories are given to support claims of land ownership, the test to apply are [sic] whether the story told resembles the community behaviour of the people who now live from [sic] the generation of that ancestor and whether the party relying on that ancestral story can positively relate their ties and their association to the land features and the use of the land marks in their normal traditional usage practices (p. 39).

Ancestral stories in this regard might be one “customary form” of “justiciability”—a mythopoietic realm of distinct linguistic and temporal qualities which nevertheless adjudicates conditions in the present.

Perhaps it is in what Bohannan saw as the major *difference* between Western and non-Western law and custom respectively, that a “reconciliation” between the two through language will be possible—thus it is in the very epistemological clash between such legislation as the LGIA and Foi “relations to land” that some postcolonial conjunctural fusion will eventually occur. There is no reason why the LGIA cannot eventually become as “customary” as village *kots*, *kaunsils* and *komitis* are today. They will merely have to assume a more indigenous form, a form largely unanticipated by the current shape of the LGI Act.

Further, Cooter echoes Malinowski in doubting the assumed irreconcilability of different indigenous, and between indigenous and western court processes that would protect both customary and non-customary law alike:

It is a mistake to imagine that customs differ so much from place to place [in Papua New Guinea] that no general principles can be found. Finding underlying principles is a matter of getting the level of abstraction right (1989: 23).

He wrote later in 1991:

Politicians and intellectuals often say that law should express the Melanesian way of life, and they feel frustrated with delays and puzzled over the obstacles. They do not appreciate how law assimilates custom. The problem is not to declare what people know, but to discover what is implicit in what they do...²⁵ No one can simply observe the general principles underlying social practice and declare them. Instead, they must be discovered through a process that will extend over decades (p. 34).

And going back to his 1989 observations:

Customary law must be allowed to evolve and modernize itself through the common law process as it operates in the land courts. This will happen... with the passage of time as people respond to business opportunities (1989: 3).

(2) *The non-corporateness of the local clan.*

In a discussion of the cultural appropriateness of the Australian *Aboriginal Corporations Act (1977)*, Mantziaris advocates that:

The search for the attributes of corporateness [be] replaced by the examination of the context of social action in which the category “corporation” operates. The question is therefore “What facilities does the corporation provide for the coordination of action?” This question redefines the task of the corporate law theorist. The task is now to produce descriptions of social action coordination that elicit the particularity of each setting while resisting the temptation to universalise the particular (p. 6)

Wagner (1998) has characterized the so-called solidariness of Daribi social units in the following way:

...vengeance raids, nasty fights over a pig or domestic situation, and factional standoffs are not so much accidents of the critical social structure as social structuring within the larger accident of the critical social mass. They carry the same weight as social norms and rules or family-values, only in a different mood. The social charter of the Sogo people is the fight of their split from Noru; that of Weriai is the fight of its fissioning from Iogobo, and so forth. Fights, in this context, are the elementary structures of kinship (p. 60).²⁶

²⁵ This phrase was quoted, without acknowledgment, towards the end of Ms. Kanawi's judgement in the *Gobe South East Gobe* case (e.g. at page 156).

²⁶ The account of a similar series of fights which led to the creation of new landowning units was given in the *Gobe South East Gobe* case (p. 151).

Bamford (1998), writing about Kamea inheritance through clans makes a similar and more general statement:

Land, paternal names, and modes of ritual competence are all transmitted through men, typically from a father to his son. Yet it is important to note that gaining access to these and other resources is not an automatic concomitant of patrification—instead, it is constitutive of it. (p. 30).

What is significant about the Company's managerial approach to Foi and Fasu land-holding units is the manner in which they posit the constitution of human groups and their collective nature as prior to the parceling and control of land and resources. However, ethnographic experience leads us, if not to totally reverse this causal link, then to at least view people and land in a much more mutual relationship (cf. Bamford). As Smith notes (1974):

Evans-Pritchard's distinction between the types of corporateness of local and lineage units among the Nuer implies a recognition of distinctions between the ideological and organizational aspects of social units, and as such, between corporateness evidenced by group action, and corporateness postulated as such. (p. 43).

(3) The role of territory and co-residence in defining units of collective interest

From Evans-Pritchard 1940:

Similarly, these fights were foreshadowed in the PNG Gas SEIS:

“Samberigi itself was previously occupied by Polopa speakers when they were displaced by Kewa some time ago. The Polopa consequently moved south and east to the Gobe and Mt. Murray area. The Samberigi people had themselves been constantly ruptured by internal conflict and one of the tribes, the Yanguri, moved eastward. Of the Polopa who moved south the Wolotu clan from Sikida tribe migrated back to Samberigi to assist Yanguri in their wars. The Yanguri also arranged for other Sikida clans to assist them and granted the now Imawe Bogasi clans land in return for their help. Imawe Bogasi is the name adopted by the Sikida clans residing at Pawabi village. Also resident at Pawabi are 8-9 other Polopa clans who do not have land rights in the current PDL2 area. The Sikida then find themselves in the position of ‘guests’ to hosts such as the Luhali clan. The SE Gobe field was discovered on the land from which the Sikida were brought back by the Samberigis. Luhali has 0.3% of the Gobe PDL while Imawe Bogasi has 36%.’

The enmity between these groups stemming from this history and the circumstances in which each group now finds itself, permeates all aspects of Samberigi life and Gobe politics.” (Goldman 1997: 19).

Nuer lineages are not corporate localized communities, though they are frequently associated with territorial units, and those members of a lineage who live in an area associated with it see themselves as a residential group, and the value or concept of lineage thus functions through the political system (p. 199).

Another important feature of the fragmentation of Foi clans through the ILG mechanism is that adopted lines are singled out either for second-class status within the clan, or for expulsion as outsiders. Or, the process can work the other way around—the impetus can come from the descendants of immigrants themselves who use that justification of foreign origin to set up their own ILG. In either case, the *territorial* dimension of clan, that is, *local group*, organization, is being eroded by the inextricable link between the ILG mechanism and the distribution of resource benefits.

In either case, the full status of descendants of immigrants is subject to erosion of full clan rights. While it is true that foreign origins were never forgotten, there was virtually no distinction in status within the clan because of it. It appears that the Foi are on the way to developing their own model of infra-indigeneity, whereby “original” people are contrasted with “immigrants”.

Postscript: Other Considerations:

As John Morton says, “systematic documentation and codification... necessarily ‘brings unresolved conflict and competition into the open, ultimately forcing people to be explicit about their claims’²⁷” (1997: 87). Morton goes on to say, that “the anthropologist can be active in the generation of disputes and could be defined as part of the cultural situation out of which a claim will be constructed” (ibid.). This is a highly sophisticated understanding of the anthropologist’s dilemma as both scientific researcher and node of agency through which a wide range of legal and administrative procedures exert their influences on our indigenous hosts, clients and informants, although it is no less sophisticated than the understandings that informed the tension

²⁷ N. Peterson (1995), “Organising the anthropological research for a native title claim”, in P. Burke, ed., *The Skills of Native Title Practice*. Canberra: Australian Institute for Aboriginal and Torres Strait Islander Studies, Native Title Research Unit.

between anthropologist and colonial administrator almost a century ago, as Malinowski's and Mitchell's argument indicated.

Finally, if we are to take the critique of the self-evidence of internal and external relations seriously, then neither can we long sustain the fiction that the Chevron Niugini company is *radically external* to the land groups themselves. Through their own attempts at educating landowners as to the relevant PNG legislation, their own acts on behalf of the State in registering the ILGs in the first place, and their commitment to monitoring, evaluating and maintaining in "good repair" the ILG system, the Company is a critical force for the transformation of group dynamics in the oil project area. The anthropological study of indigenous culture and society in a resource extraction environment cannot limit itself to the indigenous people as such. A complex, non-local "culture" comprising Government, resource company, and local landowners is developing in every mining enclave in Papua New Guinea, and this non-local and non-traditional culture deserves monitoring in its own right.

A last comment would confirm Cooter's far-sighted observation made in 1989: that a national culture of judicial precedent and evolving custom must emerge for this process to achieve both a local and theoretical purchase on the developing "imagined

The common law process is carried out by an intellectual community consisting of court officials, lawyers, and scholars. Such a community requires dialogue and interchange over actual court decisions (1989: 5).

A nation of landowners *by itself* is not a compelling vision for any modern nation state—inevitably it will require citizenly interaction with an urban sector. And here the resource companies play a decisive role too—for in the nationalization of their work forces, they serve as well the process of creating a trained and educated segment of skilled workers and white-collar managers. The current problems with "landowners"

should not be considered without reference to the ultimate effects of this process on the place of the landowner ethos in Papua New Guinea's future.

References

- Allen, T. (1993). "Commonwealth constitutions and the right not to be deprived of". *Comparative Law Quarterly* 42.
- Asad, T., ed. (1979). *Anthropology and the Colonial Encounter*. London: Ithaca Press.
- Ballard, C. (1997). "'It's the Land Stupid!' The moral economy of resource ownership in *Compensation for resource development in Papua New Guinea*", ed. S. Toft, Canberra: Law Reform Commission of Papua New Guinea *et al.*
- Bamford, S. (1998). "Humanized landscapes, embodied worlds: Land and the construction of intergenerational continuity among the Kamea of Papua New Guinea". in S. Bamford, ed., *Identity, Nature and Culture: Sociality and Environment in Melanesia. Social Analysis* 42(3): 28-54.
- Bentsi-Enchill, K. (1964). *Ghana land law: An exposition, analysis and critique*. (Law in Africa series no. 10). London: Sweet and Maxwell, Lagos: African Universities Press.
- Biersack, A. ed. (1995). *Papuan Borderlands*. Ann Arbor: University of Michigan Press.
- Bohannon, P. (1967). "The Differing Realms of the Law". *In, Law and Warfare: Studies in the Anthropology of Conflict*, edited by P. Bohannon. Garden City, NY: The Natural History Press.
- Cooter, R. (1989). *Issues in Customary Land Law*. Port Moresby: Institute of National Affairs.
- (1991). "Kin Groups and the Common Law Process". *In, Customary Land Tenure: Registration and Decentralisation in Papua New Guinea*. Edited by P. Larmour. Port Moresby: Institute of Social and Economic Research.
- Evans-Pritchard, E. (1940). *The Nuer*. Oxford: Clarendon Press.
- Filer, C. (1997). "Compensation, rent and power in Papua New Guinea," in *Compensation for resource development in Papua New Guinea*, ed. S. Toft, Canberra: Law Reform Commission of Papua New Guinea *et al.*
- Goldman, L. (1978). *Talk Never Dies*. London: Tavistock.
- (1997). PNG Gas Project: Social and Economic Impact Study. Chevron Niugini Ltd.
- Goody, J. (1969). *Comparative studies in kinship*. Stanford: University of Stanford Press.
- Hamnett, I. (1977). "Introduction". in, I. Hamnett, ed., *Social anthropology and law*. London: Academic Press.
- Hirsch, E. (1999). "Colonial Units and Ritual Units: Historical Transformations of Persons and Horizons in Colonial Papua" *Comparative Studies in Society and History* 41(4): 805-828.
- Janke, T. and Frankel, M. (1998). *Our Culture, Our Future: Report on Australian Indigenous Cultural and Intellectual Property Rights*. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies.

Development, Rationalization and Sacred Sites: Comparative Perspectives on Recent Australian Cases". in: J. Weiner and A. Rumsey, eds., *Mining and indigenous lifeworlds in Australia and Papua New Guinea*. Adelaide: Crawford House Publishing.

Morton, J. (1997). "Why can't they be nice to each other?" in D. Smith and J. Finlayson, eds., *Fighting over country: Anthropological perspectives*, Centre for Aboriginal Economic Policy Research Monograph No. 12. Canberra: CAEPR, Australian National University.

Power, A. (n.d.) "Trustee Arrangements to Deliver Royalty and Equity Benefits to Landowners". Unpublished Chevron Niugini Limited File note.

--(1998). "Land Groups: The Foundation for Nation Building in Papua New Guinea". Unpublished manuscript.

--(1999). "Papua New Guinea Queensland Gas Project: Benefits Study". Port Moresby: Ivin Enterprises Ltd.

--(2000). *Land Group Incorporation: A Management System*. Canberra: AusAid.

Power, A. and Hagen, P. (1996). "The Escalation of Landowner Benefits in the Kutubu Petroleum Development Project". in *Petroleum Exploration, Development and Production in Papua New Guinea: Proceedings of the Third PNG Petroleum Convention*, ed. by P. Buchanan.

Rowse, T. (1993). *After Mabo*. Melbourne: University of Melbourne Press.

--(n.d.) "Appropriate forms of Indigenous Organization". Unpublished seminar presentation, Australian National University, 1998.

Rumsey, A. and Merlan, F. (1991). *Ku Waru: Language and segmentary politics in the western Nebilyer Valley, Papua New Guinea*. Cambridge: Cambridge University Press.

- Sagir, B. (n.d.) "The Politics of Oil Extraction in Kutubu". To appear in the collection, *Mining and Indigenous Lifeworlds in Australia and Papua New Guinea*, edited by A. Rumsey and J. Weiner.
- Sahlins, M. (1976). *Historical Metaphors and Mythical Realities*. Ann Arbor: University of Michigan Press.
- Schieffelin, E. (1976). *The Sorrow of the Lonely and the Burning of the Dancers*. New York: St. Martin's Press,
- Smith, M.G. (1974). *Corporations and society*. London: Duckworth.
- Strathern, A. (1979). "'It's his affair': A note on the individual and the group in New Canberra Anthropology 2(1): 98-113.
- Strathern, M. (1985). "Discovering 'social control'". *Journal of Law and Society* 12(2): 111-34.
- Sullivan, P. (1997). "A Sacred Land, A Sovereign People, An Aboriginal Corporation: Prescribed Bodies Corporate and the Native Title Act". Darwin: *North Australia Research Unit Report Series No. 3*.
- Sutton, P. (1998). *Native Title and the Descent of Rights*. Perth: National Native Title Tribunal.
- Taylor, M. and Whimp, K. (1997). Report on Land Issues and Hydrocarbon Framework Study. Report made to the Asian Development Bank.
- Tonkinson, R. (1997). "Anthropology and Aboriginal Tradition: The Hindmarsh Island Bridge Affair and the Politics of Interpretation". *Oceania* 68(1): 1-26.
- Wagner, R. (1974). "Are there social groups in the New Guinea highlands?" in M. Leaf, ed., *Frontiers of anthropology*. New York: Van Nostrand.
- (1998). "Environment and the Reproduction of Human Focality". in S. Bamford, ed., *Identity, Nature and Culture: Sociality and Environment in Melanesia. Social Analysis* 42(3): 28-54.
- Weiner, J. (1986). "The Social Organization of Foi Silk Production: The Anthropology of Marginal Development". *Journal of the Polynesian Society* 85(4): 421-439.
- (1988). *The heart of the pearl shell*. Berkeley: University of California Press.
- (1998). "The incorporated ground: The contemporary work of distribution in the Kutubu oil project area". Resource Management in Asia Pacific Working Paper no. 17. Canberra: Australia National University.
- (2001) "Afterword". in, A. Rumsey and J. Weiner, eds., *Emplaced Myth: The Spatial and Narrative Dimensions of Knowledge in Australia and Papua New Guinea*. Honolulu: University of Hawai'i Press.
- Weiner, J., ed. (1988). *Mountain Papuans: Historical and Comparative Perspectives on New Guinea Fringe Highlands Societies*. Ann Arbor: University of Michigan Press.
- Whimp, K. (n.d.) "Deconstructing incorporation: Indigenous land owners and representation in PNG and Australia".