

Land Law and Economic Development in Papua New Guinea

Land Law and Economic Development
in Papua New Guinea

By

David Lea and Timothy Curtin

**CAMBRIDGE
SCHOLARS**

P U B L I S H I N G

Land Law and Economic Development in Papua New Guinea,
by David Lea and Timothy Curtin

This book first published 2011

Cambridge Scholars Publishing

12 Back Chapman Street, Newcastle upon Tyne, NE6 2XX, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Copyright © 2011 by David Lea and Timothy Curtin

All rights for this book reserved. No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright owner.

ISBN (10): 1-4438-2651-0, ISBN (13): 978-1-4438-2651-8

TABLE OF CONTENTS

| | |
|--|-----|
| Acknowledgements | vii |
| Introduction | 1 |
| Chapter One..... | 7 |
| Melanesian Religion and Philosophy | |
| Chapter Two | 21 |
| Historical Perspective on Papua New Guinea Land Tenure | |
| Chapter Three | 31 |
| Integration of Custom into Papua New Guinea Law | |
| Chapter Four | 49 |
| Customary and Alienated Land | |
| Chapter Five | 61 |
| New Initiatives in the Development of Customary Land: Groups versus individuals | |
| Chapter Six | 81 |
| Freedom Based Defence of Private Ownership Rights | |
| Chapter Seven..... | 99 |
| Land Tenure Options | |
| Chapter Eight..... | 111 |
| Food Security of Customary Landowners | |
| Chapter Nine..... | 119 |
| Land Titling and Forestry | |
| Chapter Ten | 147 |
| Economics of Land Title | |

| | |
|---|-----|
| Bibliography | 179 |
| Appendix | 191 |
| From Customary to Titled Land Tenure - and Back Again: Zimbabwe's Road to Ruin Timothy Curtin | |
| Author Index..... | 209 |

ACKNOWLEDGEMENTS

We would like to acknowledge the assistance from the following institutions and persons without whom this book would not have been possible. Firstly, we would like to acknowledge the American University of Sharjah, which provided financial support through a Faculty Research Grant. Furthermore, we received research assistance from the Papua New Guinea National Research Institute and the Australian National University, which made research materials available through their libraries. We also received assistance from Pamela Swadling, Visiting Fellow, Department of Archaeology and Natural History, Australian National University, and wife of Tim Curtin, with respect to both research and formatting. Finally, Fakhruddin Hasnan and Tania Gupta, students at the American University of Sharjah, also provided invaluable work on layout and formatting logistics.

INTRODUCTION

This book is devoted to an analysis of alternative land tenure systems in Papua New Guinea and offers a blend of philosophical, legal, sociological and economic approaches to this issue. The first six chapters provide a religious, philosophical, historical, sociological and legal context in which to understand Melanesian culture and Melanesian customary land tenure and its contemporary recognition within the country's legal system. The last four chapters emphasize economic issues. They argue that conversion of undocumented collective forms of land tenure to registration of private – either individual or corporate – ownership is a necessary precondition if the people of Papua New Guinea are to aspire to the higher standard of living that only becomes feasible under private land ownership. The Appendix describes the counterfactual case of Zimbabwe, which has reverted from a system in which nearly half the country had the benefits of individualized land title to one in which outside the towns there is effectively a return to undocumented title.

Our first chapter offers a historical perspective on the sociological, religious and philosophical background from which Melanesian culture developed its land ownership structures. We explore the traditional Melanesian religious and philosophical approach to the cosmos, human mortality, community, land, and the products of industrialization. Accordingly we discuss a philosophy of cyclical development and regeneration, developing a model based on community obligations and relationships with ancestors, including traditional attachments to the community land base. We also discuss the “cargo cult” phenomenon that still to some extent influences interactions with both modern capitalism and Western religious belief.

In the second chapter we offer a brief history of legal developments that have taken place with respect to customary land tenure in Papua New Guinea. Initially we discuss the ‘transformation policy’ that was attempted in the colonial period. The so-called ‘transformation policy’ was adopted by the Australian Administration in the 1960s and involved the substitution of individual registered titles (freeholds) for the existing traditional forms of land-holding, and the replacement of customary law by English real property law. We trace the developments which led to its replacement by the *Incorporated Land Groups Act* 1974 in which the

legal emphasis stressed group ownership. We go on to discuss organizational issues associated with major developments that have employed the notion of group ownership, referring to the Bougainville copper mine crisis of the 1980s, and the role of incorporated land groups in the Kutubu oil fields development in the Southern Highlands and within the forestry industry.

In the third chapter we discuss the integration of custom into Papua New Guinea Law. We explore the advantages and disadvantages of such a project and argue that custom can be efficacious if consistently incorporated within a body of common law. However, we argue that although there have been a number of positive decisions in which custom has been intelligently applied, other more relatively recent decisions have been marked by a pattern of inconsistent application that has rendered custom unreliable in ways that mirror H.L.A. Hart's notable criticisms of conflating custom and law.

In chapter four we consider the distinction between customary and alienated land, the latter referring to land that has been removed from custom. We discuss Colin Filer's observation in which he sees the distinction becoming blurred with what he labels as "the partial alienation of customary land" and the "partial customization of alienated land". With respect to customary land, mobilization and forms of economic development are being realized despite the impediments associated with customary land tenure. With respect to the *partial customization of alienated land*, we are essentially seeing the growth of reclaimed control rights over under developed alienated land and the assertion of income rights over alienated land which has been subject to ongoing significant economic development. But using the insights of the Peruvian economist Hernando de Soto, we argue that in so far as land in Papua New Guinea is unregistered, allegedly collectively owned, unrecorded, lacking in integrated information and lacking in uniform formalized laws that protect the security of title and possible transactions, land cannot be mobilized for successful economic wealth generation. Without the formal alienation of customary land, this form of land tenure cannot be saved from the predations of an informal system of opportunistic privatized land titling.

In chapter five we consider new legal initiatives intended to facilitate the development of customary land. These initiatives have been realized in the 2009 amendments to the *Incorporated Land Groups Act*. These amendments seek to tighten group membership requirements, institute formal governance structures, and allow for the voluntary registration of customary land as claimed by the incorporated land group. We argue,

inter alia, that these amendments depart from the original intent of the Act, which was to preserve custom and customary arrangements. Clearly the amendments institute a governance structure that takes precedence over informal customary practice. In itself this is not particularly objectionable if it could be demonstrated that these changes are sufficient to protect and enhance individual interests and the ability of individuals to participate in collaborative undertakings. However, the emphasis on collective ownership and some form of majority control over decision making fail to protect the individual while offering a cumbersome vehicle for the mobilization of customary land. Moreover, the fact that designated individuals will have to take on responsibility for group interests means that the agency issues that have frequently undermined group undertakings in PNG are likely to continue.

Our sixth chapter argues for private ownership from arguments based on individual freedom as well as economic advantage. Despite the evident economic benefits of private ownership in terms of enhanced productivity, various critiques have questioned the institution on other grounds. It has been argued, for example, that the imposition of a formal system over traditional customary forms of land holding impoverishes the experience of value by subjecting qualitative and complex relations to the logic of the economic market. Another view holds that resources previously held in informal semi-communal arrangements or else under open access commons, for example, common land and water resources, are frequently enclosed to the benefit of some minority but relatively sophisticated class to the disadvantage of the collective majority. A third critique holds that property rights associated with hierarchically organized production and the market, work to constrain the freedom of the individual. Closely associated with this view is what we call the “cultural homogenization critique” that sees westernized legal systems as antithetical to cultural traditions and thus impacting on individual freedom. We argue that these critiques can be met by conceiving of freedom functionally, emphasizing that which individuals are actually able to do. Following the insights of Amartya Sen, who defines freedom in terms of opportunity, the opportunity to realize different forms of life, we argue that private ownership expands opportunities that allow people to recruit one another and the resources they control for collaborative projects.

Our chapter seven specifically explores land tenure options and economic development. In this and the remaining chapters, we emphasize economic issues concerned with wealth generation. We point out that the prevalence of customary land tenure has meant that there is a serious shortage of land for other than purely subsistence production and

relatively limited cash cropping. This explains the low levels of food production, agricultural exports, livestock, and limited land development beyond small holdings. We point out that oil palm is the only agricultural crop whose rate of increased output is consistently greater than the rate of population growth rate. Significantly, all of Papua New Guinea's palm oil is grown on five commercial plantations with their associated outgrowers, in New Ireland, West New Britain (2), Oro, and Milne Bay provinces. None is produced on stand-alone smallholdings.

Moreover, defining individual interests in land could also promote a more equitable distribution of the royalties and compensation payments to genuine landowners that are required of the developers. For example, disputes between putative landowners, many of which have been due to new arrivals in project areas - as at Porgera and Mount Kare - whose claims could not easily be contested by residents who had no evidence to support their own claims.

In chapter eight we focus on the inadequacy of food production based on communal land holding. Communal landowners' food production is even less impressive than their cash crop production, with data from 2000 showing how trivially low is the contribution of untitled "landowners" to the country's national income. Papua New Guinea's land tenure system, however admirable it may seem to some, has signally failed to deliver rates of growth of national income (GDP per head) that have become the norm in countries like China, Vietnam, Thailand and Malaysia, despite similar starting points around 1960. Although some argue that changing land tenure would not be enough to create the conditions for increasing output and productivity in Papua New Guinea's rural sector, experience elsewhere, starting with Europe, but including African countries like Egypt (since 1952) and Kenya (since 1955), as well as the South East Asian "tigers", suggests that such pessimism may be unwarranted.

Chapter nine addresses land titling issues in the forestry sector, and argues that a formal land titling system would promote increased levels of sustainable production. In doing so we trace the history of the legislation governing the forestry industry beginning with the time of independence in 1975, when Papua New Guinea had two separate Acts governing its forestry industry, the *Forestry Act* and the *Forestry (Private Dealings) Act*. We discuss the 1989 Report of the Commission of Inquiry into the Forestry Industry (the Barnett Report) that resulted in the new *Forestry Act* (1991) that came into force in 1992. We discuss Barnett's weak understanding of both land titling and pricing issues in the forest products industry. Under the new Forestry Act, which followed the Barnett report,

all forest resources are to be developed in accordance with a 'National Forest Plan', and the State awards itself the sole power both to enter into Forest Management Agreements (FMA) with landowners and then to select an approved logging company. This nationalization of the forestry industry was surprisingly endorsed in successive Structural Adjustment Programmes of the World Bank, despite its normal preference for privatization. Subsequent to the Report the government also introduced a new system of export taxation, which we argue was significantly responsible for a very large reduction in log exports, despite the depreciation of the Kina. We note that Sweden and New Zealand have significantly higher logging rates than PNG, while adhering to high standards of sustainability, in part due to the fact that their industries are not subject to the onerous conditions that have been imposed in Papua New Guinea since the Barnett Report. We argue that rather than nationalizing the forestry industry, the government would do better to establish a registered private sector ownership of Papua New Guinea's forest resources, as in Sweden, or privatizing half the state's forests as was the case in New Zealand in 1990, when the government sold over 350,000 hectares to the private sector. We suggest that the *Forestry Act 1991* should be repealed and replaced, perhaps by a reversion to the *Forestry (Private Dealings) Act*, thereby restoring individual private ownership of the nation's forest resource, subject of course to establishment of registered individual land titling of that resource.

The last chapter outlines the scope for land registration in Papua New Guinea. We review developments in Kenya that transformed customary ownership into individual private ownership, and point out that agricultural productivity increased and continues to compare favorably with comparative production in Papua New Guinea. Subsequently we revisit the arguments that undermined the Australian colonial administration's final efforts to enact land reform legislation. We also discuss arguments that have been made against the plantation system and the possibility of instituting a private ownership system. The chapter includes discussion of credit and mortgage lending, which arguably would be enhanced through private ownership. The chapter also contrasts England's land enclosure movement in the eighteenth century experience with Australia's Mabo Native Title Act of 1992. The latter enshrined non-individual titling across most of northern Australia with no evident positive outcomes in terms of living standards, whereas the English enclosures were the precondition for the Agricultural Revolution that underpinned Great Britain's economic growth from 1800 to 1900. The chapter includes other

data showing the superior performance of titled farms in Zambia relative to that of un-titled farmers.

This final chapter also discusses the relative social and private costs of customary and individualized land tenure systems that suggests the latter produces superior and Pareto-optimal outcomes for all in the sense that most if not all will become better off, while none will be adversely affected. The Appendix concludes the book with an account of Zimbabwe's remarkable retreat from any registered individual land ownership outside its towns from about 2000, and the consequent collapse of agricultural production beyond the barest subsistence minimum.

CHAPTER ONE

MELANESIAN RELIGION AND PHILOSOPHY

This text is intended as a treatment of property issues especially land tenure issues in Papua New Guinea. Papua New Guinea is regarded as part of Melanesia, which includes the other Pacific island nations of Vanuatu, the Solomon Islands and Fiji. Before discussing the more specific property issues, we begin by setting out some of the philosophical perspectives of the Melanesians.

It is generally understood that Indian traders who traveled throughout the East were the vehicles for the dissemination of central philosophic and religious traditions from the Indian sub-continent to the rest of Asia. But although Hinduism, Buddhism and Islam in different periods and at different times gained a devoted following among the people who inhabited the neighboring Islands of Indonesia, the religious and philosophic ideas of these major world religions never penetrated the shores of Melanesia. Until first visited by European explorers in the eighteenth century, Melanesia remained physically and socially isolated from Europe and Asia, and intellectually isolated from the philosophies and religions that swept through Southeast Asia. This meant that Melanesian ideas on ethics, metaphysics and cosmology developed in isolation and were entirely uninfluenced by the major religious and scientific ideas, from either the great Western or Eastern traditions.

Accordingly in coming to understand Melanesian philosophy, one must be careful to distinguish Melanesian thought from the major Western and Eastern traditions. It is also necessary to mention that Melanesian culture and ideas are embodied in an oral rather than a written tradition. This means that the ideas and philosophy of the Melanesians are not readily available or cited through identifiable written works, as for example, one might reference post-Vedic Indian philosophy through the *Bhagavad Gita*, or Medieval Islamic philosophy through the works of the Islamic Neo-Platonists. In a presentation of Melanesian thought, it is best to follow the so-called 'hermeneutical' approach. This means that understanding of the central ideas that animate Melanesian philosophy and cosmology demands an understanding of the so-called Melanesian 'cultural

field'. Beginning with Dilthey through to Habermas (1991) and recent communitarians such as Charles Taylor (1985; 1989) and Alasdair McIntyre (1981) there has developed a strong tradition of hermeneutical analysis, which offers an understanding, which departs from the epistemic models of simple empiricism based on detached observation. According to this view, the individual subject cannot be completely understood independently of his cultural context; understanding will require a complete familiarity with the cultural tradition, including self' definition within the cosmic order. This means understanding how the Melanesian views himself or herself in relation to the natural environment, immediate community and available resources and within the greater universe which includes both spiritual and material realities.

With reference to the literature one can articulate this cultural context as follows. The Melanesian ideology recognizes society as the ultimate value through which individual satisfaction is achieved. With this recognition one observes the importance of relationships over agents. Melanesian identification with the community is intimately and inextricably connected with the parallel identification with the communal landholding. Although, the community is central, it does not constitute the entirety of concern, the greater whole to which all social action is geared is society and the universe combined. The whole consists of living humans, ancestors, deities, plants, animals or things drawn from temporary conjunctions of different socio-cosmic combinations. In this context the Melanesian sees cyclical and not linear development in the universe and cosmological relations - things do not improve incrementally; rather phenomena are regenerated, renewed or restored in a cyclical movement. This is the motif suggested by the expressions found in the studies of anthropologists (de Coppet 1981, 1990; Iteanu 1983) expressed in such phrases as "regeneration of total society", "renewal through time", "life giving death", "ronde des echange", "circulation" or "ritual system". Finally, one needs to appreciate the transformation and reaction of Melanesian culture and ideas, in light of the encroachment of Western culture, including the introduction of Western industrial products and the cash economy initiated with the introduction of money.

A Philosophy of Renewal and Regeneration

Absent from Melanesian philosophy is the Aristotelian concern with an ultimate purpose, end or *telos*, that is, that individuals, nature and society develop towards an ultimate state of completion and/or fruition. Instead of the Western preference for lineal development with its definite terminus,

as we just said, there is a preference for seeing cyclical development. According to this thinking, things and events are restored, regenerated and even repeated in recurring cycles of renewal. This attitude is most famously symbolized in the “Kula Ring” trade of the Trobriand Islands, as originally documented by Bronislaw Malinowsky (1961). The Kula Ring system of exchange and transfer, as it exists among the Trobriand Islanders off the southeast coast of Papua New Guinea, involves two kinds of articles, red shell necklaces and white shell bracelets. These articles follow a ceremonial pattern and trade route. Each type of article travels in opposite directions around a roughly described geographical ring several hundred miles in circumference. The participants are permanent contractual partners who only keep each item for a relatively short time before passing it on to another partner from whom he/she receives an opposite article in exchange. The items are not producer's capital, being neither consumable, nor media of exchange outside the ceremonial system. The ultimate purpose of these partnerships is to effect a network of relationships linking many tribes for social and possible militate purposes. Ultimately, there is no point of completion in this form of trade, as each article continues indefinitely, endlessly returning to its place of origin along the two hundred-mile ring. Entirely absent are the usual Western rationales for commerce and trade, which have as their goals personal enrichment or consumption. In contrast, the Kula ring trade is solely intended to renew and restore social and community- relationships, through repeating cycles of trade for items which endow no permanent title.

Another interesting aspect of this belief in cyclical renewal is found in the beliefs surrounding ancestral devotion and the return of the ancestors (Weiner 1976). Melanesians believe that death is not the end of individual existence, but their concepts of the afterlife differ profoundly from more familiar Christian and Eastern views on survival after death. Unlike Christian thinking, which regards death as a terminus of earthly existence and a passage to other worldly existence, in Melanesia, the human personality does not die and leave the world to dwell elsewhere in an ontologically distinct afterlife, (such as Heaven or Hell). At the same time, Melanesians do not see this continuation as ‘return’ in the sense envisioned in the great Hindu and Buddhist traditions. These Eastern religions understand that the souls of humans continue or are reborn after the death of the body. According to the Eastern tradition we are reborn into different bodies, and different social and living contexts depending on past behavior and the ‘laws of *karma*’. Melanesians believe quite simply that the ancestors never leave and go somewhere else; they continue to exist as a presence in the community in which they were born. They do not suffer a

transformation in social and even existential contexts. Often the dead are thought to live nearby maintaining a watchful presence over the affairs of the community. Usually they are regarded as continuing to live in definite spatial locations like nearby islands, valleys or proximate mountains. Many Melanesian groups continue to maintain 'spirit houses' in which food is left to sustain the ancestors. In fact they are thought to be a recognized living presence that plays an important role in the affairs of the community; and according to this understanding, members of the community must not exhibit behavior, which displeases the ancestors, for they may react and bring harm upon individuals and the community. One may conclude that these beliefs have important ethical and ontological implications. With respect to ethics, one sees the ancestors regarded as having an important role in maintaining the customs and ethical traditions of the community through their perceived capacity to sanction deviant behavior. At the same time they are ontically part of the community, because the community is believed to consist of past as well as living members.

Wantokism

The character of Melanesian interpersonal relations is best understood through the phenomenon of 'wantokism'. 'Wantokism' refers to the mutual duties and responsibilities that exist between those individuals who share the same language. 'Wantok' is a Melanesian pidgin English term which refers to all those who share this language. Collectively, they are called 'wantoks'. (But as in all lexical matters, this term has a shifting usage and is often applied to individuals who come from the same part of the country or neighborhood.) Responsibilities for those within the wantok system can be extremely demanding. Wantoks are always under heavy responsibility to help other wantoks in terms of providing food, shelter and cash (Mantovani 1987). Essentially, its strictures prescribe mutual sharing of the advantages and benefits. To deny one's wantok is a grave matter which generates social repercussions which threaten one's place or standing within the community. This brings us to the cosmic view, which supports and buttresses the wantok system of social responsibility. According to Melanesian cosmology, the individual always finds himself situated in a web of relationships. These relationships consist not only of relationships within the community, but also connections with ancestors, with other communities and with the entire environment. One must maintain the proper attitude towards all these elements including one's ancestors. Individuals are not free to execute their plans according to chosen life

styles; these linkages to ancestors, communal traditions and the other sentient and in sentient creatures, which make up the environment, circumscribe their activities. Because one must carefully observe these relationships, individuals find themselves subject to very strong restraints.

The principal source of constraint is, of course, the community. Community existence is central to the Melanesian, to the point that life itself is not conceivable outside one's community. A community is thought to consist not simply of a particular aggregate of individuals, but individuals in a number of specified relationships. The Melanesian understands the community in terms of these relationships and, according to this understanding; these connections are seen to carry more importance than the individuals who are so related. As the community is thought to be made up of these relationships, the community and thus, life itself, may be disrupted or threatened if these relationships are ruptured. Clearly, the community can sustain the loss of certain individuals but if the appropriate relationships are not maintained the community itself may be destroyed and with it all the individual members. Thus, Melanesian cosmology expresses itself in an implicit Melanesian axiology, one which finds its basis in the idea of community and whose ethical implications will be seen to impose severe restrictions on the ideas of autonomous and self-interested behavior. Mantovani (1987), a cleric with extensive experience in the Highlands of Papua New Guinea, pointed out that in the traditional clans of the Highlands, individuals frequently put aside their most personal preferences (for example, marriage preferences) in favor of decisions which would be more advantageous to the group and the community. Furthermore, Mantovani indicates that since the community is the primary value, the ethical rules will respond to this primary value. In other words, what is considered bad behavior in terms of the individual's actions is that which hurts the community. What does not hurt the community is not had despite what the Western courts may say about individual guilt. Mantovani mentions the case of some villagers in Chimbu Province who were not much concerned about some petty crimes, which some younger members were committing in another village, except that those crimes might affect the safe travel of their own villagers who had, to pass by that village. The community thus responds to what the individual does as it is seen to bring harm upon the community. These Melanesian attitudes contrast somewhat with the Western cultural attitudes, which have been concomitant with the market economy and technological advance. Western thinking for over a hundred years has been dominated by liberal philosophy, which holds that the function of the community and civil society is to afford the maximum expression of individual freedom and autonomy. Liberals and libertarians

from John Stuart Mill to Robert Nozick have often repeated this formula. In traditional Melanesian society, however, the established order of the cosmos and the ultimate value of the community impose themselves upon the individual and there is little room for individual planning which does not take account of the well being of the community.

Emphasis upon individualism may well have engendered certain blindness in Western understanding of Melanesian culture. Certain anthropologists have remarked upon the impossibility of understanding indigenous Melanesian culture through the Western 'individualistic' paradigm, which pervades Western analysis. For example, anthropologist Daniel de Coppet (1981, 1990) has asserted that our modern approach to society is exceptional in that it disregards society as an ultimate value, to the benefit of a quite opposite and non-social value, the individual. He argues that as the liberal ideology values nothing beyond the individual, the continuous move towards its expanding freedom discredits society as a value and makes understanding society even more difficult. De Coppet contrasts individualistic societies, like those of the Western world with, what he calls, holistic societies like the Melanesian, societies in which the primary value is society-itself. Furthermore, the religious dimensions of Melanesian culture have worked to maintain the ontological continuity and identity of the Melanesian community. Animism and the various forms of ancestral worship we associate with traditional Melanesian life, for example, have and had a local topology which, like the land base itself, maintains the identity of communities and clans over time and given space. It is noteworthy that various forms of animism and a topology of local spirits also characterized the life of pagan pre-Christian Europe. When Christianity replaced these spiritual realities with an exclusive focus upon the one universal Summum Bonum embodied in the three persons of the Trinity, responsibilities to those spirits and gods, who traditionally maintained the well-being of the community were thereby lost. It is arguable that this only served to vitiate and undermine an original profound sense of community.

The most significant attempt to articulate formally Melanesian philosophy was made in the 1980s by the leading lawyer and Papua New Guinean politician, the late Bernard Narokobi (1980), who produced a controversial work entitled *The Melanesian Way*. Narokobi sought to develop the ideas of a Melanesian ethic based on cooperation and mutual support. He contrasted this perspective with the individualism of the West, and argued for the integration of customary law and Melanesian ways with the Western law and Western practices, rather than subsuming the former under the latter. However, with some truth many critics have seen

Narokobi's work as simply a distillation of nostalgic yearnings, rather than a system which successfully integrates the modern Western social and philosophical ideas within the ideological traditions of Melanesia.

Cargo Cults

Modern property issues in Papua New Guinea cannot be entirely understood without some reference to Melanesian "cargo cults". The 'cargo cults' represented a singular response of the Melanesians to the arrival of the 'white man' and the products of his advanced technology. It is worthwhile to examine the beliefs and ideas which animated these movements in order to gain an insight into the shifting changes in contemporary Melanesian approaches to development and property. An important component of cargo cult thinking was the belief that the modern products and the cargo, which the 'white man' possessed, had been sent by the ancestors, and intended for the indigenous people. The majority of these cults believed either that cargo had been intercepted and taken by the white man or that indeed the white men were in fact the returning ancestors bringing gifts, intended for the indigenous Melanesians. Because the white man continued to hold and control these products the preponderant view was that the white man had prevented the Melanesians from receiving their gifts.

These cults were highly ritualistic. P.M. Worsley (1975) summarized these events in the following terms. First, there was the adoption of new rituals - based on the behavior of the whites - aimed at the control and acquisition of these modern goods and gadgets. Indigenous people came to regard the behavior of the whites as ritual behavior with a magical connection to the arrival of the desired cargo. Hence the Melanesians imitated the behavior of the whites, dressing in western clothing, scribbling notations on bits of paper and passing them around. Second, there was a desertion of traditional ways and laboring activities in expectation of the arrival of the desired cargo. Associated with the latter were millenarian views, which carried expectations of the birth of a new age of peace and prosperity. But ultimately, the desired cargo never arrived, and the cultists reasoned that they had yet to master the rituals properly.

Among the movements best known to students of Melanesia are the "Taro Cults" of New Guinea, the "Vailala Madness" of Papua, the "Naked Cult" of Espiritu Santo, the "John From Movement" of the New Hebrides (Vanuatu) and the "Tuka Cult" of Fiji. What is important about this phenomenon, in terms of contemporary political-social reality, is that these

cults produced a new type of leadership, one whose prominent figures claimed charismatic magical powers which promised a healthy share of the white man's 'cargo' for the leader and his followers. Hans Martin-Schoell, writing in the *Papua New Guinea Independent* (23 October 1998), notes that many of the first Papua New Guinean parliamentarians came from cargo cults or were even their leaders. (Papua New Guinea became independent in 1975.) The implication to be drawn is that the leadership of these first parliamentarians was built upon a perception that these individuals possessed special abilities to acquire vast amounts of cargo and distribute it to their followers. For example, Francis Koimanrea, the former Governor of East New Britain Province of Papua New Guinea, was a former cargo cult leader for many years, who later turned his followers to commercial enterprise and subsequently built his own political career from the same following and thereby rose to be a powerful figure in national politics.

Cargo Cult Thinking in the Late Twentieth and Twenty First Century

In the nineteen nineties the cargo cult mentality re-emerged in the so pyramid schemes that swept through Papua New Guinea. Prominent among these schemes were the so called "money rain" and "U-Vistract" schemes. Money rain by its very name conveys the striking image evocative of the cargo cult mentality as money and wealth are seen as descending from the heavens, rather than monetary representatives of the mundane end products of human labor and productivity. In fact money rain was linked with Pentecostal groups, such as the Assembly of God, that promoted the religious belief that increased returns were rewards from God. An associated idea held that the link between prosperity and religious belief would result in the transfer of wealth from the non-religious to the religious. As is widely known, the success of a pyramid scheme is based on a strategy whereby early contributors receive inflated returns drawn from the funds of the later contributors. It is simply a zero sum game which redistributes wealth. The issue is always how to explain the losses to the later contributors. Here religious belief enters the stage as *deus ex machina*; those who do not profit or do not even get their money back are religiously unworthy.

Pyramid schemes also became interlinked with political movements and alternative governance. Noah Musingku, the creator of U-Vistract, a pyramid scheme, was originally based in Papua New Guinea's capital Port Moresby. U-Vistract became inoperative in the late 1990s. In 2002, Noah

Musingku went to Bougainville seeking Francis Ona's protection to evade police arrest and threats from unpaid investors (Janes 2008).

Ona had headed the Bougainville Revolutionary Army, which fought the Papua New Guinea government between 1988 and 1999 and ran Radio Free Bougainville. In 2002 the Papua New Guinean Government and the breakaway province of Bougainville managed to reconcile their differences through the Bougainville Peace Accord and the creation of the Autonomous Government of Bougainville (AGB). In the same year Musingku was instrumental in setting up the (self-declared) Republic of Mekamui, with Ona crowned as the king. Mekamui is the indigenous name for Bougainville and means "Holy Land". The Government of Mekamui was set up as an alternative and rival to the AGB. During this period Musingku continued to operate his U-Vistract scheme and many Bougainvilleans contributed and lost money. It is alleged that 1 million US dollars were lost or unaccounted for in the various transactions involving U-Vistract on Bougainville. After a disagreement with Ona in late 2004, Musingku established himself in Tonu in southwest Bougainville, and encouraged armed Mekamui Defense Force (MDF) rebels from various parts of Bougainville to provide security for him. From late 2005, 10 former soldiers from Fiji joined him, providing basic military and security training to young males in the area around Tonu, which sparked fears of a possible coup against the AGB. Insecurity increased in south and southwest Bougainville as armed rebels supporting Musingku reportedly became involved in robberies and mounted roadblocks imposing levies on motor vehicles.

It has been asserted that pyramid schemes are not part of the cargo cult mentality but represent alternative economies and forms of governance with a basis in Christian religious movements (Bainton, Cox and Regan 2008). However it is significant that one of the older Bougainville ladies stood up at a conference at the Australian National University on the subject of Mekamui and demanded to know where the millions subscribed to U-Vistract had gone.¹ She unequivocally stated that the money had been sent by the ancestors to the Bougainville people and demanded an explanation as to where it was now.

¹ Seminar presentation from Nick Bainton, John Cox and Anthony Regan, July 17, 2008, *Parallel States, Parallel Economies: Legitimacy and Prosperity in Melanesia*, presented at the Australian National University.

A Contrasting Libertarian Perspective

In 1974 Robert Nozick published his hugely influential book *Anarchy, State and Utopia*. In it he defends the somewhat extreme libertarian and individualistic view of property entitlements. He ridiculed the welfarist approach stating that such views would appear to regard personal property as though it has descended as manna from skies. Nozick's (1974) point is that the multifarious phenomena to which we attach property rights don't descend unclaimed from the sky awaiting the imposition of some distributive system. These phenomena come into the world with rights already attached. Welfarist theories, he claims, deny historical realities through programs of re-distribution that ignore historical entitlements based either on just principles of original acquisition or free and just transfers of owned holdings. However, Melanesian theories of entitlement succeed in both regarding property and wealth as manna descending from the skies, literally from airplanes (*balus*), but descending with rights already attached as this property has been sent from the ancestors through free transfer to their rightful recipients the Melanesian people. Unfortunately the smooth passage to the rightful beneficiaries has been interrupted by a race of interlopers, the white men who have wrongfully taken possession.

Nozick's vision in some respects projects the understanding of the capitalist market economy - the material world of living human productivity through which human products (cargo) are originally created and acquired and subsequently transferred on the free market with consequences that result in the enrichment of some and ineluctably the relative deprivation of others. Although Nozick avoids the claim that this distribution is based on merit, his examples appear to indicate that maintaining a system of unimpeded free transfers inevitably rewards the talented. Although in reality we know forced transfers and acquisition of land and real estate by occupation and conquest has and does frequently occur, but in many respects Westerners appear to view this as exceptional, preferring to see Nozick's model as a flawed but largely representative picture of the reality. The success of Nozick's book, *Anarchy State, and Utopia*, can perhaps be attributed to the fact that it does provide a moral defence of the inequalities in wealth distribution that are the inevitable consequences of the capitalist system.

But ultimately one might ask oneself which explanation of differences in distribution is the more convincing. Is wealth distribution and inequality better explained by acts of individual free choice between living individuals, which reward the talented or by gifts sent from the ancestors

that mostly fail to reach their intended recipients? To some extent the distribution of wealth remains somewhat of a mystery? .Nozick's description of the market and individual entitlement is disarmingly simple – goods are originally acquired through some assumed productive activity (although Nozick remained coy about the exact principles involved) and then are freely exchanged with other individuals. For example, I craft an ornate chair which I now own and trade with you for a sack of apples. But in capitalist society much intervenes between the act of production and the act of transfer. In the world of capital, money changes everything. Aside from the production and exchange market of tangible items, there is also the mysterious and arcane world of the money market, which includes collateralized and non collateralized loans, chattel and real estate mortgages, securities and bonds not to mention "collateralized debt obligations" and "credit default swaps" etc. with their attendant markets including the currency market itself. With these different layers of complexity and despite the science of economics we still cannot entirely explain why certain individuals and even classes of individuals possess wealth while other individuals and classes appear to be irredeemably impoverished.

Although economists have sought to base the generation and transfer of wealth on models of rational behaviour, much of the human race apparently continues to believe that generating wealth and money involves some elusive magic or virtual alchemy. We may well regard as comical the idea of indigenous Melanesians dressing as Australians and passing around bits of paper hoping this will stimulate the arrival of great wealth. On the other hand, is this so profoundly different from the behaviour of highly paid American financiers and bankers who printed imaginary sums on pieces of paper and passed them around with the hope of generating great wealth? As we now know from the credit crisis of 2008 the values placed on securities backed by sub prime mortgages were largely works of the imagination. The rituals were followed, pieces of paper were passed around, but instead of great wealth arriving, the system imploded, and as in some great pyramid scheme those at the end of the chain of transactions found themselves holding worthless pieces of paper (or computer print outs) inscribed with extraordinary promises for imaginary sums of money. The people involved were not uneducated Melanesians with little understanding of market fundamentals, they were highly trained individuals who had read Adam Smith, John Maynard Keynes and Milton Friedman. But in the end they succumbed to the idea of magic, the so-called magic of the market that would transform dross into gold simply by the act of writing numbers on pieces of paper and properly following the rituals of trade and exchange.

Ultimately John Rawls (1971), whose idea of justice was rejected by Nozick, may have been right, that is, possession of wealth, based on inheritance, talent, favourable genetic makeup is all merely inscribed in the great lottery of chance and there are no principles of justice or fairness that can be used to defend the distribution. The Nozickian tries to explain wealth distribution through principles of justice while the Melanesian sees injustice but ultimately Rawls may have held the most realistic view. But leaving aside issues of justice and injustice one can certainly argue that there exist factors that allow populations to gain and even lose wealth, although the distribution of individual wealth within a given population may not be susceptible to predictive laws. .

This work therefore seeks to get back to basics, which means the actual generation of wealth through the productivity of usable items and market efficiency rather than economic activity grounded in, for example, the exchange and sale of financial instruments. In other words we are not particularly interested in the possibilities of wealth generation based either on the wizardry of financiers or the magical largesse of the ancestors. In Papua New Guinea with its still relatively sparse population the principal resource is land. For millennia before first contact Melanesians maintained traditions involving rights and the management of land. However in the twenty first century Papua New Guinea has assumed the legal and political system of a modern Western state. The inherited legal system claims to give effect to customary traditions. The following work is devoted to the subject of property rights and it focuses on customary land tenure issues in Papua New Guinea and the legislation that allegedly supports such traditions. We consider whether current conditions with respect to land tenure and property actually promote the necessary productivity and development that enhance the generation of material wealth and higher levels of welfare. We have discussed the Melanesian cargo cults and their views on the generation and distribution of property and wealth, views, which are fundamentally different from those of Western capitalist society. The Melanesian view, as we have seen, includes a uniquely spiritual approach to materialism and the acquisition of wealth – a spiritualism, which can involve both relations with the ancestors and Christian Pentecostal views. Western capitalist economies, if properly managed, and despite obvious flaws, have been economically successful.

As we will see in the following chapters, Papua New Guinea has attempted to modernize by allegedly still maintaining customary forms of social interaction, including the traditional relations to property and land tenure. We will attempt to determine if these ownership structures really embody traditional customary practice and moreover question whether

these structures are designed to generate the desired wealth. Indeed as we will point out, there is a cargo cult mentality with respect to land and land tenure that refuses to criticize the atavistic belief that land must be owned and managed communally. At the same time there is continual demand that land be mobilized and structures be reformed, but frequently with the rider that this must be done through traditional ways. In the following chapter we tackle the fundamental issues as to whether traditional forms of land tenure were really communal rather than individual.

Conclusion

This first chapter has offered a historical perspective concentrating on the sociological, religious and philosophical background from which Melanesian culture has developed from pre-contact through to its contemporary engagement with Western civilization. In this chapter we explored the traditional Melanesian religious and philosophical approach to the cosmos, human mortality, community, land, and the products of industrialization. Accordingly we discussed a philosophy of cyclical development and regeneration, an axiology based on community obligations and relationships with ancestors, including traditional attachments to the community land base. Finally we have emphasized the cargo cult mentality that has coloured interactions with both modern capitalism and Western religious belief.

CHAPTER TWO

HISTORICAL PERSPECTIVE ON PAPUA NEW GUINEA LAND TENURE

A number of years ago Mark Sagoff (2000), the well known American environmental ethicist, argued a case for environmental protection that denied the widely held utilitarian argument that the activities of industrial nations were depleting natural resources and the world's energy supplies. Sagoff pointed to alternative technological advances and enhanced efficiency as future solutions to any perceived crisis in energy and resources. Sagoff's controversial piece sought to convince us that nature should be protected because of the inherent value ascribed to it, not because of a perceived relation to human utility and economic welfare.

At the same time Sagoff took aim at another familiar belief given expression in so called "development theory", a view that sees developed countries exploiting the developing nations by consuming a disproportionate share of natural resources sourced from developing countries. Using statistics from the World Resources Institute he emphasized that most of the resources consumed in the United States are from domestic sources. In fact, he says, throughout the 1980's the United States and Canada were the leading exporters of raw materials. Moreover, he stated, the share of the raw materials used in the North that it buys from the South stands at a thirty year low and continues to decline.

For Sagoff, third or developing world poverty cannot be explained through international relationships of exploitation; the causes of poverty he claimed are to be found in confrontations with intractable entrenched land tenure systems and lack of infrastructure that denies access to markets, education or employment. These remarks are particularly appropriate in the postcolonial era. Many of the postcolonial developing countries in the South Pacific and Sub-Sahara Africa are currently suffering declines in infrastructure and economic prosperity while struggling with traditional customary systems of land tenure. In this chapter I want to consider the role of custom in traditional land tenure systems of the developing South Pacific.

It is frequently alleged that public policy and legislation for emerging nation states need to be tailored to the cultural context of their subjects. Constitutions may even prescribe, as does Papua New Guinea's that national development proceeds according to existing social, political and economic forms. This has led in some cases to an emphasis on local customs and traditions in the creation of public policy – and in juridical matters, legislation that provides for the applications of custom over a range of issues in which the law is silent. This is especially the case in the Melanesian states of the Western South Pacific; Papua New Guinea and the Solomon Islands. However, custom has also reasserted itself elsewhere in the developing economies of Africa as has happened in the land tenure systems of Uganda and Kenya.

The Papua New Guinean Constitution adopted as a national goal the principle that development should be achieved primarily through the use of Papua New Guinean forms of social political and economic organization. It holds that villages and communities should remain as viable units of society and includes, *inter alia*, a guideline that :

“... [L]and policy should be an evolution from a customary base and not on a sweeping agrarian revolution or total transformation of society”
(James 1985, 50).

Transformation Policy of the 1960s

However, before independence Papua New Guinea was following a very different path under the Australian colonial administration. The so-called ‘transformation policy’ that was adopted by the Australian Administration in the 1960s involved the substitution of individual registered titles (freeholds) for the existing traditional forms of land-holding, and the replacement of customary law by English real property law (James 1984, 45). The more specific commitments included: the introduction of a single system of land-holding which was regulated by the central government and administered by the Department of Lands, providing for secured, individual, registered titles, following the pattern of the Australian system. This meant retention of land rights, as subject to native custom, but only until taken out of custom, either by acquisition by the Administration, or by a process of conversion of title to an individual, registered title. Acquisition or conversion of title would involve compensation in respect of the extinction of rights held under native custom.

Believing that the traditional system prevented the acquisition and utilization of land by potential enterprising farmers, the colonial