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From Colonial Intrusions to 'Intimate Exclusions': Contesting Legal Title and 'Chiefly Title' to Land in Epi, Vanuatu

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Introduction

Exclusion from land was evidently a pressing social concern in November 2011 in Lamén Bay on Epi Island in central Vanuatu. At a community council meeting I attended a few days after I arrived in my field site, the village chief appealed to the local people to resist registering their land. The chief said that the registration of land under state law (*loa*) would make it vulnerable to leasing by outside 'investors'. He urged people that land should be left for chiefs to manage according to *kastom*. At the time of this council meeting, two major land disputes put the majority of Lamén Bay land under contention. Senior Li-Lamenu¹ men were the principal actors behind these conflicts, both of which involved attempts to register the land. These men had issued eviction letters to their own kin and

¹ Just as the people whose ethnic origin is of Vanuatu are known by the demonym 'Ni-Vanuatu', so I shall refer to people who identify as originating from Lamén Island as Li-Lamenu, meaning 'people of Lamén' in the vernacular.

neighbours, across several different clans (*nasara*).² Later in this chapter, I shall discuss these two disputes in order to show how those attempting to exclude kin and neighbours from land in processes of ‘intimate exclusion’ (Hall et al. 2011: 20), and those trying to prevent these exclusions, deploy different discourses of *kastom* and *loa* to legitimate their actions.

Beyond Efate and Santo islands, where urbanisation and tourism are concentrated, Epi has the next highest degree of land leasing in Vanuatu (Howlett 2012). Lamenu Bay is located on the northwest coast of Epi (see Figure 11.1), and is named after the small offshore Lamenu Island, whose inhabitants use the bay area for cultivating their gardens. Over the past 50 years or so, Li-Lamenu people have begun to move from Lamenu Island to the Epi mainland more permanently and in increasing numbers. Unlike most of the mainland, Lamenu Island and Lamenu Bay are densely populated, and there are growing worries about future land shortages. The pressure on land could be a reason why Epi islanders see Lamenu Bay as a place where land disputes between kin are especially common.

The exclusion of kin and neighbours from land is a process that Derek Hall, Philip Hirsch and Tania Murray Li (2011: 145–66) term ‘intimate exclusion’. The authors suggest that such processes are frequently motivated by a desire for wealth and capital. Likewise, in both the land disputes I analyse in this paper, local people saw the attempted exclusions as motivated by a desire for income from rent or leases. Like the Lamenu Bay chiefs, many people also perceive exclusionary processes as being facilitated by the creation of formal legal titles to property and state regulation of land titles.

2 *Nasara* is the Bislama term most often used by Li-Lamenu people for their primary kinship groups, which I also refer to as clans. Whilst *pamerasava*, the vernacular term, refers to ideals of exogamy, *nasara* is also the Bislama term for a ritual and dancing ground, and thus has more territorial connotations as oral histories relating to such historical sites feature often in land claims. The terms *nasara* and *pamerasava* usually map on to each other, and are often used interchangeably.

11. FROM COLONIAL INTRUSIONS TO 'INTIMATE EXCLUSIONS'

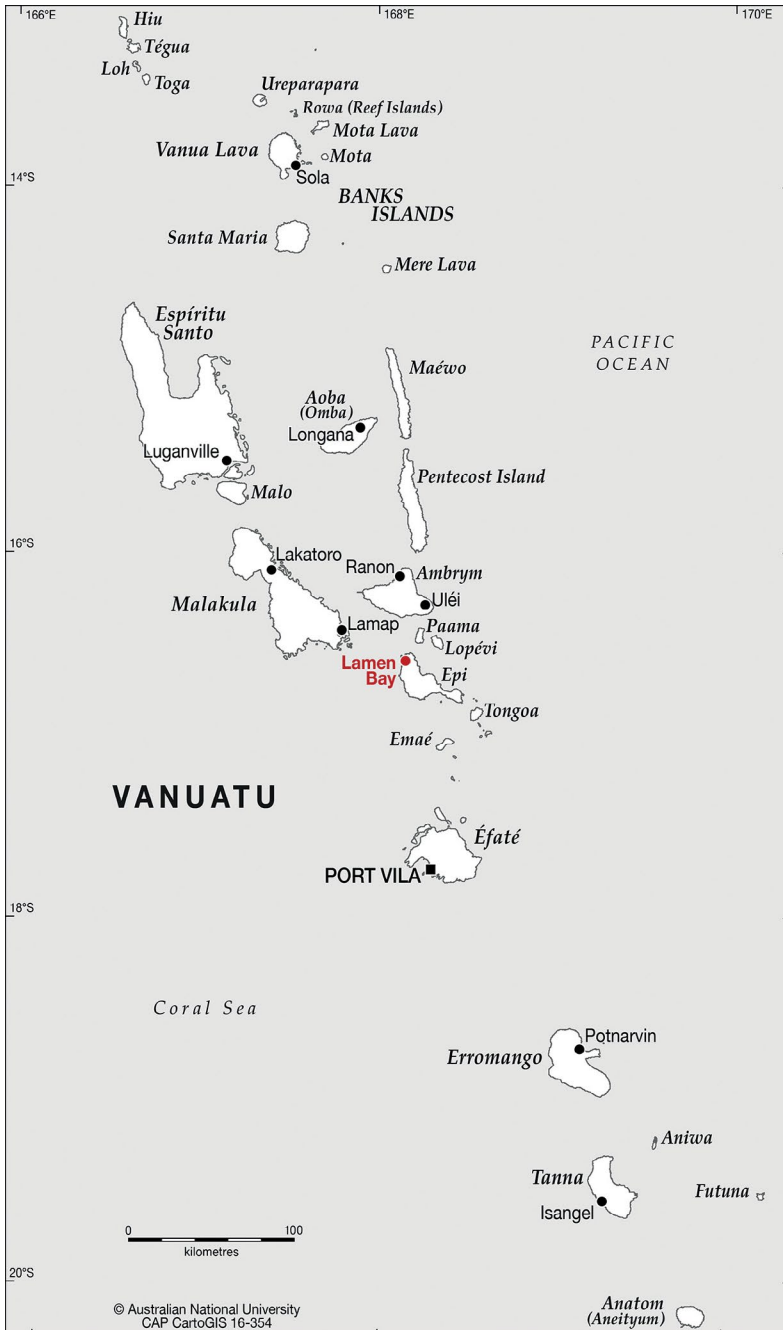


Figure 11.1 Map of Vanuatu, showing the location of Lamén Bay.

Source: CartoGIS, The Australian National University.

Conflicts over land and resources are simultaneously struggles over power, and the meaning and values that give authority to those claims (Hall et al. 2011: 166). As elsewhere in Melanesia (McDougall 2005; Filer 2006), political and moral discourses about land are often articulated in terms of *kastom* and *loa*, or *loa blong waetman* ('white people's law'). *Kastom* denotes knowledge and practices deemed to be indigenous or customary, usually in contradistinction to counterparts characterised as 'foreign'. In Vanuatu, people often say that *loa*—whether relating to land, criminal or civil cases—creates 'winners' and 'losers' (Forsyth 2009: 195), whereas the principle behind *kastom* courts is to restore peaceful and ordered social relations. Nevertheless, I suggest that senior men stand to benefit more than others, as the ideological principle of the restorative power of *kastom* has the effect of reinstating and reinforcing existing hierarchies of power.

As I shall argue in the first part of this chapter, in relation to major land claims on Epi, *kastom* is usually framed in terms of an 'ideology of chieftainship', and claims to 'chiefly title', by which rival claims are judged. Like any ideology, powerful actors can manipulate assertions of 'chiefly title' for personal gain. So, although in Melanesia *kastom* is often conceptually opposed to *loa* in a way that would seem to express an axiomatic distinction between the 'indigenous' (or 'autochthonous') and the 'Western', this duality must be understood as contextual and contested, articulated according to changing and often contradictory political strategies. Furthermore, appeals to *kastom* conceal the way in which local leadership and land tenure systems have been shaped and transformed through interactions with missionary, colonial and state influences.

Although *kastom* and chiefs, *loa* and the state, have a long and complex history of entanglement, they can still act as salient conceptual oppositions, deployed by Ni-Vanuatu people to represent contrasting and conflicting political and moral principles. When local people make the distinction in relation to land tenure today, they often contrast the 'inclusive' principle of *kastom*, ensuring everyone has some access to some land (whilst putting everyone in their rightful place), with the private property regimes of state law, which uphold the 'exclusive' rights of a recognised landholder whilst denying the claims of others altogether (Lea 1997: 12). On Epi, the ideology of chieftainship has also evolved in connection with social processes that (following Hall et al. 2011) I shall term 'intimate inclusions', by which displaced allies from outside were incorporated into kin structures and the 'relational economy' (see Chapter 5, this volume).

In contrast, people on Epi associate *loa* with imported and imposed European legal definitions and procedures, recalling the historical enforcement of processes of exclusion from land by foreign interests. From the late 1890s to Independence in 1980, Epi was one of the centres for European plantations in the archipelago (Bonnemaison 1994: 46–50), but throughout this period local people contested the legitimacy of colonial land titles. In the second part of this chapter, I shall give an account of these political struggles over land, to show how *loa* became a byword for exclusion from land, and *kastom* came to be understood as a compelling political framework for countering these 'foreign' intrusions.

As the phrase *loa blong waetman* suggests, Ni-Vanuatu people continue to associate state law with imported and imposed European legal definitions and the continuation of colonial rule, failing to represent indigenous practices and principles in the post-colonial era. Although land was returned to 'custom owners' following Independence in 1980, the boundaries created by colonial powers, and the legal system that encoded them, continue to be retraced in land disputes and leasing patterns taking place between kin and neighbours. A World Bank survey of leasing on Epi found 23 registered leases, of which 17 were created on land that had been alienated prior to Independence (Porter and Nixon 2010: ii). A subsequent report argued that 'pre-independence land alienation experience shapes land leasing on Epi today' (Stefanova et al. 2010: 2).

In the final part of this chapter, I shall present two case studies that serve to illustrate the micro-level processes by which local actors, usually senior men and self-proclaimed 'chiefs', strategically deploy discourses of *kastom* alongside legal claims for political and economic gain. However, as the second case demonstrates, alternative discourses of *kastom* that emphasise a more 'inclusive' ethic can be deployed as an effective means for countering exclusive legal claims.

Customary Landownership and the Ideology of ‘Chiefly Title’

‘When you talk about land, you talk about chiefs.’ So said the Epi representative on the National Council of Chiefs (Malvatumauri) in a recorded interview.³

Kastom and *loa* can be seen as shifting and contested categories that can each incorporate aspects of their conceptual opposite, according to the contexts in which they are applied.⁴ As the juxtapositions in the terms ‘customary law’ and ‘custom owner’ imply, in post-colonial Melanesian states there is an ambiguity in the relationship between *kastom* and *loa* that allows their configuration to take on an ideological character, concealing changing political and economic relations by presenting a front of time-honoured tradition. For instance, in Papua New Guinea, Filer (2006: 66) argues that the politically salient opposition between custom and law has been eclipsed by an emerging post-colonial ideology of customary landownership, in which indigenous citizenship is increasingly premised on legal status and entitlement within an extractive economy. The new ‘ideology of landownership’ in this context reflects the desire for resource compensation from mineral extraction and other lucrative development projects, in which claims are structured through the legal framework of membership of incorporated landowning groups.

In Vanuatu, where land leasing and rents rather than resource extraction dominate land transactions, it was the figure of the chief that stepped into the post-colonial space between *kastom* and *loa* to dominate the definition of ‘custom ownership’. Following Filer, we might term this an ‘ideology of chieftainship’, in which the hereditary chief is the personification of *kastom* and rightful guardian of a traditional social order in which he represents the legitimate authority (White 1992: 75; also Chapter 1, this volume). On Epi, major land claims tend to be framed in terms of ‘chiefly title’, and these often entail contests over land occupied by people other than those of the chief’s immediate kin group.

3 The chief quoted here is a key claimant in Case Study 2.

4 I am grateful to Keir Martin for helping me to elaborate this argument.

Unlike achieved rank and warrior status, hereditary chieftainship on Epi is traditionally associated with ideals of peace and social order. It is said that, if the chief is of the correct 'bloodline', everything will be 'good' or 'straight' (Lemaya 1996: 78). Although, in recent decades, the village chiefs have instructed each clan to nominate their own 'chief' to help keep order, it is socially recognised hereditary chiefs who tend to be seen as the appropriate candidates to be village chief, and to represent the villagers on the Area and Island Councils of Chiefs.

The role of hereditary chiefs has been transformed, even strengthened, since the early colonial period, relative to other forms of traditional authority. The literature on pre-colonial leadership systems draws a dividing line through Epi between an area of hereditary chiefly titles to the Polynesian-influenced south, and the more relational 'graded society' system to the north (Blackwood 1981; Bonnemaïson 1984: 4, 1996: 201; Bedford and Spriggs 2008: 110).⁵ However, in practice this line was blurred, and both systems operated flexibly together on Lamén Island (Lemaya 1996: 77–8). On Lamén and in western Epi, grade-taking continued until its demise in the early twentieth century—a period of great depopulation and disruption due to labour migration. And, whilst Presbyterian missionaries at this time looked favourably on the apparently noble institution of hereditary chieftainship, they sought to stamp out the 'morally depraved' grade system (Riddle 1949: 57).

Missionaries appointed Christian men to take on leadership roles as 'elders' and 'chiefs', and in some islands appointed 'paramount chiefs' to oversee the whole island. People today relate how Supabo, an early convert from northeastern Epi, was chosen by the missionaries to oversee a redistribution of land across northern Epi in the early 1900s, including the boundary where Lamén Bay gardens meet those of adjacent villages.

He was the government of Epi. At the same time, he created some of the boundaries that exist today ... They didn't call him chief; they called him government of Epi. He was chief, but at the same time he was government (Village chief of Lamén Island, recorded interview).

From 1911, chiefs were given the role of 'assessors', working alongside government 'district agents' to oversee local disputes. Even after Independence, former 'assessors' continued to use this position to claim

⁵ The 'graded society' was a system in which individual men competed to join successively senior grades or ranks through the distribution of wealth items to other members of their communities.

authority and chiefly titles (Lindstrom 1997: 212–3; Rio 2007: 30–1). Thus the redefinition of the ‘chief’, as the occupant of a Presbyterian or colonial leadership role, has had a direct impact on the role of ‘chief’ in post-colonial Vanuatu (Bolton 1999: 3–4).

The position of chief as someone who presides over the land access of different clans also evolved in response to a remarkable historical series of ‘intimate inclusions’, whereby refugees and other incomers were incorporated into local kinship and exchange systems. During the dramatic depopulation of the late nineteenth and early twentieth centuries, depopulated clans, seeking to maintain their population and labour force, took in people from different parts of Epi who had been displaced by land alienation and tribal warfare. Lamén was known to be a hub for returned Queensland labourers (Giles 1968: 63; Docker 1970: 135), and like the Epi mainland, many current residents are descended from colonial-era plantation labourers and refugees from volcanic eruptions. Incomers, especially those from other islands, can be referred to in Bislama as *mankam*—a term which sometimes has derogatory connotations in contradistinction to the autochthonous *manples*. On Lamén today, such terms would occasionally arise in the context of land disputes, especially if the alleged incomers were seen as claiming the right to exclude other people from the land they occupied. However, due to a peaceful and inclusive ethic of respect for kin and neighbours, the word *mankam* is generally suppressed on Lamén.⁶

In fact, it is not those chiefs who claim that they are autochthonous to Lamén Island, but those claiming descent from long-abandoned mainland villages in Epi’s interior, who tend to contest control over land in Lamén Bay, based on conflicting claims to ‘chiefly titles’ on overlapping areas of land, as we shall see in the two case studies that follow. In the past, Li-Lamenu people cultivated land on Lamén Island, and claims to garden land in Lamén Bay derive variously from claims to descent from the mainland, victories in warfare, and the granting of land rights by mainland chiefs.

⁶ See McDougall (2005: 83) for a similar situation in Ranongga, Solomon Islands.

Exclusion and *Loa*: The Historical Experience on Epi

In this section, I outline how processes of state formation and the development of a legal apparatus served to protect rival territorial claims between the two colonial powers. Land law was introduced largely to uphold and formalise land alienation, and so *loa blong waetman* became synonymous with exclusion from land for Ni-Vanuatu people. In the anti-colonial movements that mobilised to contest land alienation, *kastom* was deployed as a salient symbol of opposition, and it retains undertones of resistance to exclusion today. This historical background is crucial to understanding the ongoing politics of land on Epi today, because these legal and political processes of exclusion, and the boundaries they created, continue to be retraced in 'intimate exclusions' between kin and neighbours.

The Nineteenth Century 'Land-Grab'

In the late nineteenth and early twentieth centuries, Epi was at the centre of 'one of the biggest land grabs in the history of the South Pacific' (Van Trease 1987: 26). Unhappy with an 1878 'non-annexation agreement' between the rival powers of Britain and France, New Caledonia-based businessman John Higginson sought to acquire large amounts of land in the archipelago with the ultimate goal of effecting French control. He founded the Noumea-based *Compagnie Caledonienne des Nouvelles-Hebrides* (CCNH) in 1882, and Epi was a major target for acquisition (Sope 1974: 12; Van Trease 1987: 26).

Barthelemy Gaspard was one of Higginson's two agents in charge of procuring land. Many of these transactions took place on board their vessel, the *Caledonienne*, without any land surveys, and islanders were told to mark a piece of paper in exchange for trade goods and alcohol. Often the purported vendor had no right to the land, or was unaware of the nature of the transaction (Riddle 1949: 69; Weisbrot 1989: 70). Distances and directions were recorded with a deliberate imprecision that allowed them to be stretched far beyond those originally indicated

(Scarr 1967: 183, 199–200; Sope 1974: 14; Van Trease 1987: 27–8).⁷ ‘Needless to say, these transactions were not worth the paper on which they were written’ (Van Trease 1987: 27). People on Epi today continue to relate such stories of fraud and coercion in colonial land transactions, and as Sope (1974: 7–14) argued, it is likely that local landholders would only have knowingly conceded temporary use rights to small areas of land, as was customarily practised, and not freehold title.

The CCNH became the Société Française des Nouvelles-Hébrides (SFNH) when the French government took control in 1894, and the French began to settle beyond Port Vila in much greater numbers from the late 1890s (Bonnemaison 1994: 50). The French concentrated their efforts on Epi, where land was split into blocks of 50 hectares to be offered to prospective settlers (Scarr 1967: 212–3; Van Trease 1987: 40). With a Joint Naval Agreement now in place to protect the ‘lives and property’ of settlers, indigenous people had few options for resistance (Van Trease 1987: 42). Even so, the Presbyterian missionaries on Epi, who were strongly against French annexation, were lending their voices to indigenous protests against the rapid land appropriation (Scarr 1967: 213n; Van Trease 1987: 40).

In 1901, a missionary in western Epi, Robert Fraser, recorded regular incidents between French planters and local villagers, which were published by the Presbyterian Mission Synod to expose France’s ‘secret plan’ for a settlement on the island. The missionaries claimed that the French were appropriating vast areas, including whole inland villages that had never dealt with French agents (Fraser 1900; Paton et al. 1901; Van Trease 1987: 40). However, despite having no official authority over land, the British naval commander gave tacit support to the French planters. ‘The forcible occupation of land on the strength of Gaspard’s swollen title-deeds was thus facilitated by the unofficial intervention of a body which was formally debarred from deciding land cases’ (Scarr 1967: 214).

In the same year, ‘675 male adults, including 106 chiefs’ on Epi signed a petition organised by Fraser,⁸ beseeching King Edward VII to annex the island for the British, stating:

7 Around the same time, the Australian-owned South Sea Speculation Company was purchasing Epi land in ways that were just as questionable (Van Trease 1987: 28; also Scarr 1967: 202).

8 With support from local missionaries, Epi and Efate chiefs had presented a similar petition intended for Queen Victoria in December 1891 (Anon. 1892).

There are many white men now coming to the New Hebrides, and at the hands of some of these—mostly Frenchmen—we have suffered cruel wrongs. Some have forcibly possessed themselves of our lands, which they have not bought, burnt down houses, shot our pigs, and harassed us in other ways. We wish to live in peace, but at present we feel no protection from such injuries, but we feel that under the shadow of your just Government we would have justice and enjoy peace (Anon. 1901).

With their continued appeals to the British Empire and Commonwealth of Australia to intervene (Paton et al. 1901: 4; Scarr 1967: 218–20), the missionaries played a part in bringing about the Anglo-French Convention of 1906, which led to the formation of the Condominium government (Scarr 1967: 218; Sope 1974: 15; Stober 2004: 14). But with French insistence, the burden of proof regarding disputed land sales was to fall on any challenger. Title deeds relating to the 600,000 hectares purchased before 1896 were very difficult to contest, and the half of these lands that had been acquired by CCNH agents in the mid-1880s were beyond dispute altogether (Scarr 1967: 224–6; Sope 1974: 17).

Resisting the Rule of *Loa*

Throughout the colonial period, people on Epi continually resisted the alienation of their lands, but the balance of 'justice' was very much weighted in favour of the colonial powers. It was a long time before the new government agreed on any legislative measures to deal with disputed land, and in its early decades, land alienation continued to proceed on what was effectively a lawless frontier. A Joint Court was founded in 1910, but was widely seen as inept and ineffective: the Court could only try 'infractions', not major crimes or land disputes (Scarr 1967: 232–3).

In April 1913, two French planters occupied some land in northern Epi that was under cultivation by islanders. When one of the planters attacked local people who refused to leave the land, they fought him and he was killed. The French struck back, and 20 Epi islanders were captured and taken to Vila, including Sam Miley, a leader of indigenous resistance against land alienation. The French pinned Miley with a range of charges, including collecting monies by threat, and attempts to persuade plantation workers to leave their employment (Scarr 1967: 234–40). Miley was tried in secret on board ship, without a hearing, and sentenced to an additional six months' imprisonment. Edward Jacomb, an English lawyer who encouraged indigenous people to resist the appropriation

of land by whatever means they could, considered Miley's treatment a 'travesty of justice' (Jacomb 1914: 126), and argued that the French were trying to prevent Miley from finding funds for legal proceedings against the planters.

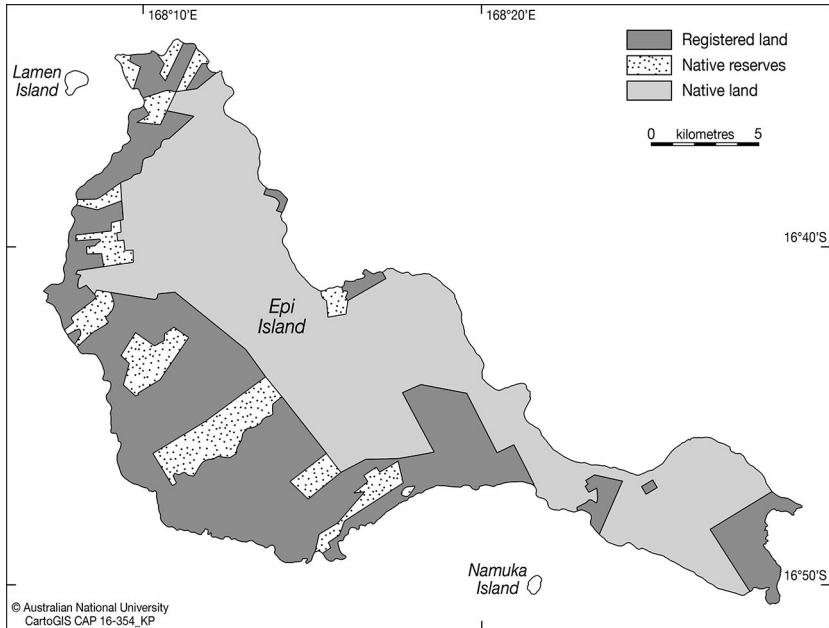


Figure 11.2 Registered land and 'native reserves' on Epi Island.

Source: CartoGIS, The Australian National University, based on a colonial map reproduced in Van Trease (1987: 2).

In 1914 the British and French agreed to a protocol that allowed for the extension of the Joint Court's powers to include land disputes, but even disputed titles would be upheld with a supporting survey and either recognised antiquity or three years' occupation (Scarr 1967: 249–51). It was only in 1935 that the Joint Court finally turned its attention to the 74 applications pertaining to Epi, most held by SFNH, but survey work was halted by hostility from Epi islanders (Sope 1974: 17). Twenty-one of Epi's chiefs had instructed the Court's Native Advocate to counter every one of the SFNH's applications, insisting that the purchases were illegitimate, but without success (Van Trease 1987: 86). The formalisation of the Epi claims was only completed in the 1950s, by which time 15 'native reserves' had been created on the island, including one in the northern part of Lamena Bay (see Figure 11.2). However, this was done with little regard to where people were living, the

quality of the land, or how much they required (Van Trease 1987: 80–7). As Sope (1974: 10–11) argued: 'In the judgement of many people the Joint Court was established to legalise land titles which were illegal by European as well as New Hebridean standards.' So it is hardly surprising that people on Epi came to associate *loa* with illegitimate exclusion from land.

Independence and the Rise of *Kastom*

From the 1960s, anti-colonial movements started to gather momentum, which revalorised and propagated *kastom* as a popular symbol to counter land alienation (Weisbrot 1989: 70). Many Li-Lamenu people were drawn to Nagriamel, a movement based on Santo Island that mobilised against further appropriation of land (Kolig 1987).⁹ After the New Hebrides National Party (NHNP) was formed in 1971, around half of Li-Lamenu people, mainly from one of its two main villages, withdrew from Nagriamel and joined the new party, encouraged by the Presbyterian Church of Vanuatu. The church made an official declaration of support for the nationalist cause when a resolution was passed at the 1973 Presbyterian Assembly in Tanna, when Li-Lamenu pastor Jack Taritonga was the moderator (Gardner 2013: 138–9; Van Trease 1987: 210).

In 1974, the NHNP produced a number of radical proposals for land reform, stressing the need to return land to customary owners (Van Trease 1987: 213, 217). But when the French intervened politically to prevent the NHNP from achieving the majority required to push through more extensive land reforms, the party resorted to advocating direct action, including the occupation and seizure of alienated land by its Ni-Vanuatu supporters. In 1977 and 1978, supporters of the NHNP, now known as the Vanua'aku ('My Land') Party (VP), set up roadblocks and occupied alienated land. Many VP supporters from Lamenu Island and the villages of northeastern Epi occupied the large French-owned Walavea¹⁰ and nearby Ringdove plantations and ousted the plantation owners, seizing their cattle and store goods (Van Trease 1987: 226–30).

9 A Nagriamel 'headquarters' was built at Merakup in Lamenu Bay, site of the second case study in this paper. This was later to be the site of a showdown between rival Nagriamel and NHNP supporters. When conflict grew between the two movements in the late 1970s, NHNP supporters in northern Epi (according to one of those involved) threatened the Nagriamel group, tore down their flag and burned their copra plantation.

10 The site of Walavea plantation is part of the second case study.

Independence was achieved in 1980, after the VP won a strong majority in the national elections of 1979. The Constitution of the new nation declared that all land belonged to customary owners and their descendants (Van Trease 1987: 238), but did not state how ‘custom ownership’ was to be resolved.

The proclamation that all land belongs to the custom owners is, in one sense, an appeal to *kastom* in its oppositional role, and a direct denial of colonial practices of land alienation and of colonial attempts to legislate or police land matters. But the proclamation also created a zone of abandonment by government, in the sense that highly variable customs and the difficulty of identifying custom owners can be glossed over as *kastom* and left alone, beyond state control (Rodman 1995: 66–7).

Meanwhile, the legal system for registration of land was still based on the colonial logic of the ‘Torrens system’, designed to ease land transactions by facilitating individualised land titling without any checks on existing undocumented claims, and thus difficult to challenge (Rose 1994: 208; McDonnell 2013: 9). This process allowed local people to register land and engage in legal proceedings in Port Vila, often without any prior knowledge or consent from other people using the land, as we shall see in the case studies to follow.

Case Study 1: Appeals to *Loa* and *Kastom*

I shall now discuss the first of the two attempts at ‘intimate exclusion’ in Lamén Bay that I mentioned in the introduction. This case study shows the legal mechanisms by which colonial boundaries and processes of exclusion continue to be reproduced. Furthermore, it reveals how the indeterminacy of the category ‘custom owner’ can be manipulated from the angles of both *loa* and *kastom* for personal benefit. As mentioned in court documents, the boundary of the area in question included an airport and—at the time of the original claim—the wharf used by a large commercial cruise ship, and thus was a potentially lucrative source of rental income. In this case, the self-proclaimed chief at the centre of the dispute exploited legal ambiguities to support his highly contested claim to ‘chiefly title’.

An Error of Judgement

This dispute stems back to a 2003 Island Court case between a family from nearby Paama Island, and Philip, who acted as a spokesman for four different Li-Lamenu clans. The claimant from Paama had produced a document relating to an 1886 land sale attributed to the infamous French CCNH agent, Barthelemy Gaspard. The claim extended from the northwestern point of Epi to the northern side of Lamenu Bay, a region named as 'Velague' and 'Bourgue' in the deeds. These names most likely referred to the areas known today as Vela and Purke, though the disputed boundary extends far from these stretches of shoreline, bearing the dubious hallmarks of Gaspard's hugely exaggerated land claims.

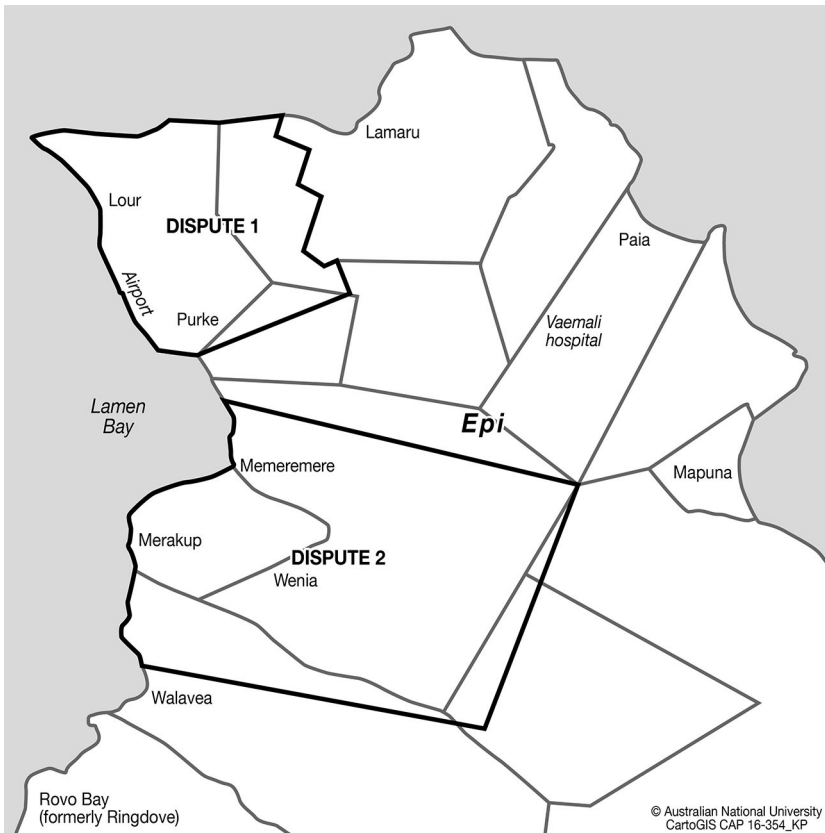


Figure 11.3 Two major land dispute boundaries, Lamenu Bay, c. 2012.

Source: CartoGIS, The Australian National University, based on claim documents.

The judgement from the 2003 Island Court case stated that, although the deeds of sale produced by the Paamese claimant appeared to support his claim that his ancestor was resident on ‘Velague’ land, this was not admissible as evidence for custom ownership, and considered the possibility that it might be based on fraudulent claims:

We have reminded ourselves to be mindful and conclude that such instrument ... is not a decision of a recognized Court that was in existence during the European settler’s era in these islands.

Island courts are bound to administer cases according to the ‘customary law’ of each island or region, so the criteria by which they adjudge cases are open to influence by those who can convince the judges of their superior place-based knowledge. The disputed land included the garden lands or residences of four different *nasara* that had cooperated in the 2003 court case, supporting Philip’s claim to be the chief representing one of the original four *nakamal* (communal men’s houses) that were historically located on the landscape, with their chiefs’ customary ordination stones. In this case the judge was convinced that proof of ‘chiefly title’ was required:

It is evident that there is a customary obligation for a Paramount Chief to allocate land to his assistants together with their boundary limits. As a matter of reciprocity a custom lease is normally paid to the Paramount Chief. This Chiefly system and the land tenure system are proved to be intertwined. Thus, any isolation or absence of these founding aspects to land would prove an invalid custom.

Accordingly, the judgement rejected the Paamese claim on the grounds that the claimant could not demonstrate sufficient knowledge of the place and its ‘custom’, such as knowledge of the chiefly system on Epi.

Furthermore, the Li-Lamenu counter-claims in this case, framed in terms of the ‘ideology of chieftainship’, also concealed disagreements about claims to ‘chiefly title’ and the way that these were manipulated to strengthen their case. Although in court the four *nakamal* supported Philip’s claim to be descended from a particular high-ranked chief, I later found out that there was an ongoing dispute between two *nasara* as to which could legitimately claim descent from this chief. One man told me that his and the other clans decided to go along with Philip’s claims in court, despite the fact that they rejected the truth of these claims, in order to give a united and consistent testimony. That is, by concealing internal

rifts and tensions, they could strengthen their claim to superior place-based customary knowledge, which would be difficult for any outsider to challenge. The judge was convinced and the judgement concluded:

it is this day adjudged that [Chief Philip] representative of the four (4) Nasara of the Lamenu Bay community is the rightful owner of the Velague and Bourge [sic] land.

Exploiting Legal Ambiguities

Although the Li-Lamenu strategy of concealing their differences to present a united front was successful in the short term, it had later repercussions. Some years later, when one of Philip's neighbours went to plant some crops near his house, Philip stopped him from doing so and threatened to evict him from the land, claiming that it belonged to him in light of the concluding statement of that poorly worded 2003 judgement. The neighbour told me that he had heard Philip was travelling to Port Vila, and suspected that Philip would try to register the land in his own name, so he phoned a friend at the Lands Department and advised him that the land was under dispute and not to be registered. Nevertheless, Philip had issued a number of eviction notices through a solicitor, ordering local residents off the land. Philip's threat to evict his close kin and neighbours can thus be seen as an attempt at 'intimate exclusion' (Hall et al. 2011: 145)—a process in which kinsfolk and social intimates may be excluded from land, which is often motivated by a desire for rent or resource income.

In 2010, members of the different clans that claimed land within the disputed boundary returned to the Island Court to request a 'judgement clarification' in respect of the 2003 judgement, this time addressing their argument to Philip and making it in Bislama, so it was clear to all. It stated that the land belonged to all four historic *nakamal*, and that each had equal interests. However, given that Philip's opponents have withdrawn their support for his 'chiefly title', and say that he fabricated his genealogy and oral history, this means that even this 'clarified' judgement is still highly contested.

Despite the formal 'clarification', the indeterminacy of customary law means that it could remain open to future attempts at exclusion, or else demands for payments from those occupying the land. The clarification said that residents who were 'non *kastom* owners' have the right to continue

to occupy the land provided that they make the ‘necessary arrangements such as leasing the land following *kastom* or law’, and ordered Philip not to threaten or disturb the people occupying the land unless his notice was ‘justifiable and follows law’.

Furthermore, this case illustrates the type of mechanism by which land exclusions today continue to reflect titles created in the colonial period. The boundary claim was originally based on a land purchase document from 1886—a claim that is likely to be fraudulent or exaggerated, given what is known about Gaspard. This document was later deployed to make a post-colonial land claim, despite the fact that colonial titles are supposed to have been erased at Independence. An Island Court decision served to retrace this colonial boundary, but this time through a claim of exclusive ownership by a local man against his own kin.

Case Study 2: Vested Interests

In Vanuatu today, those land disputes that threaten ‘intimate exclusions’ and evictions tend to be motivated by expected economic gains (Hall et al. 2011: 145) from commercial developments or from leasing the land. These are the disputes that would usually involve attempts to register and secure title to the land. However, many other disputes on Epi did not involve attempts at registration or leasing. Rather, they served as a means to settle political conflicts, aimed more at (re-)establishing social hierarchies between traditional authorities or groups than expectations of economic gain (Epstein 1969: 198; McDougall 2005: 6).

This second case study serves to demonstrate examples of both types of logic and motivation. Whilst the case was triggered by the threat of exclusion from an attempted registration and lease arranged with an expatriate investor, following the logic of exclusive legal title, the same tribunal was used to settle a hierarchical dispute between rival chiefs through a discourse of *kastom*. The chief who arranged the tribunal used a vision of a more ‘inclusive’ *kastom*—one opposed to exclusive legal principles—to defend his land against the lease. However, this model also served to confirm and reinforce his place in a local political hierarchy, and to help perpetuate the ‘ideology of chieftainship’ to legitimate chiefly authority over land.

Investors and Leasing

In Vanuatu today, attempts at exclusion are often motivated by the expectation of rent or lease payments, which are enabled by registration of the land, often through collaboration with expatriate 'investors' and with the complicity of powerful political figures (see Chapter 9, this volume).

This is illustrated in a case triggered when John P, originally from Lamén Island but resident in Port Vila, leased an area of land known as Merakup from his own father and brother. John P was a close work associate of an expatriate businessman based in Port Vila who is associated with a number of other land leases in Vanuatu, and it was rumoured that family P wished to subdivide the land for tourism in partnership with this businessman (Porter and Nixon 2010: 60–1; Farran 2011: 261).¹¹ I was also told that John P had used the colonial title number to register the land, again showing the types of process by which land boundaries created in the colonial era continue to be redrawn.

In 2009, Chief X, and other people in the village of Wenia, close to Lamén Bay, received a letter from a lawyer representing John P, which stated:

Our client instructs us that you and your immediate family members have been living on the land without knowledge and/or consent of our client who is the registered legal owner of the land.

As such, you are hereby given **Notice** to vacate the land within **twenty eight (28) days** upon the date of the receiving of this letter.

This came as news to the Wenia villagers, who were unaware that the land had been registered at all.

At the time of the dispute, Chief X was representative for Epi in the National Council of Chiefs (Malvatumauri). Thus he was well versed in land matters and well connected in terms of legal and political support. He was also in a strong position to navigate the complexities of *loa* and *kastom* to succeed in regaining control over the land. For Lindstrom (1997: 222–8), Malvatumauri chiefs represent the incorporation and codification of chiefly authority, and operate both inside and outside the

11 Family P had adopted the investor in a high profile ceremony in 2010, and this allowed him to run for election as Member of Parliament for Epi in 2011. His victory seemed to reflect a common disappointment with the failure of the post-colonial state to deliver 'development'.

state. In their mediatory role, Lindstrom argues, they serve to sanctify the state as upholding *kastom*, but in their role as authorities of *kastom*, they can also wield their power to oppose the legitimacy of state law. Chief X took the case to the Supreme Court in 2010, on the grounds that the land ‘had been registered by fraud or mistake’. He argued that family P had registered the land without the knowledge of other residents, ignoring the ruling of a 2007 area court judgement that indicated Chief X was in charge of the land. On this basis, the judge ordered that the case be transferred to a Customary Land Tribunal.¹²

The 2007 judgement was in fact the result of a long-running dispute over Merakup land between two neighbouring Lamenu-based clans from Ngalovasoro village—family P and family Q. The 2007 judgement indicated that both of these Li-Lamenu families had been granted separate areas of land by some chiefly predecessors of Chief X. Family Q supported Chief X in court, confirming that the small area of garden land they cultivated was granted to them by a historical agreement with one of Chief X’s ancestors. Those who supported Chief X’s claim said that family P originated from another part of Epi, and that Chief X’s ancestors had granted them garden land, but a much smaller area than the 115 hectares they had registered (Farran 2011: 261).

Chiefly Rivals

At the same time, Chief X used the opportunity of the Land Tribunal to defend his ‘chiefly title’ and claim over an adjacent area of land against rival claims by another Li-Lamenu man, James, a member of Y clan from Lamenu Island. James was claiming chiefly title as a direct descendant of a past chief of ‘Madoga’ land, but the boundary of his claim closely matched the boundary of the land claimed by Chief X.

The year prior to the tribunal hearing, James had staged an elaborate ceremony in which visiting chiefs from the villages of Varsu—a separate district in northeastern Epi—conferred a chiefly title on him. Then,

12 The Customary Land Tribunal process was introduced in 2001 through a recognition that state courts were not a legitimate location for the resolution of land disputes, which required local knowledge (Rousseau 2004: 76). However, it drew criticisms from chiefs and others who asserted that it contravened customary norms, such as the right of chiefs to take charge of decision making (Farran 2008: 97–8; Regenvanu, 2008: 65). The World Bank research team (Porter and Nixon 2010: 20n) found that Epi chiefs had initially resisted the idea of a Tribunal, but then in 2009 had formally requested one for Epi to address major disputes. Their request was initially refused but eventually granted.

shortly before the hearing, James held another impressive ceremony with the same Varsu area chiefs to open a *nakamal* newly built on the disputed land, and even tried to bring the hearing to this new *nakamal*, rather than the one at Wenia, where Chief X resided. These ceremonies were provocative political statements because Chief X was then involved in land and title disputes with the same Varsu chiefs who were supporting James. Chief X and the Varsu chiefs were of the same language group, and claimed descent and titles from long-abandoned villages in Epi's interior. James and Chief X told me, at the time of the dispute, that rival chiefs in the two districts were planning a series of meetings to try to resolve their disputes according to a 'chiefly structure'.

James and his family had been locked in another dispute with a family Z, belonging to another Lamenu clan, who were neighbours of his, and built a church close to James's house. In court, the members of family Z corroborated Chief X's statement that he had given them the right to work on the smaller area of land that they occupied, and said they had made two customary transactions to him in the 1980s. Thus we can see volatile relationships between different Li-Lamenu clans (P and Q, Y and Z), based on historic alliances and claims relating to 'chiefly titles' on the mainland.

Despite these conflicts, neither James nor Chief X ever threatened to evict the other groups occupying or cultivating the land. In fact, during the council meeting I described at the beginning of this chapter, James had stood up to speak in agreement with the Lamenu Bay chief, to say that they were all 'Christian' men and should trust each other to resolve the dispute locally. This suggests that James and Chief X were more interested in asserting rival claims to be the 'bigger chief', higher up in the social hierarchy, than to profit from leases or commercial development of the land.

Intimate Inclusions and Relative Exclusions

In an interview, Chief X told me that a big chief's role is to 'manage' the land and everything within it. He argued that Epi *kastom* does not permit exclusive legal claims, and it is the chief's responsibility to ensure that all the clans using the land, and their descendants, have enough land on which to subsist.

Today, many people do not want to do what *kastom* tells them. They say ‘The land is mine’, but no, *kastom* does not say that ground belongs to you. *Kastom* says that land is for all of us, but that you, the chief, must make sure that you manage the land well so that my children can eat from the land, and when they die their children will still eat from the land. It’s simple.

Chief X argued that, when it came to a land dispute, the claimant should not only demonstrate knowledge of genealogical connections, and customary landmarks and boundaries, but also prove where he is properly located in a ‘chiefly structure’. To prove that he is a ‘big chief’, a claimant must prove that he has a set of ‘small chiefs’ as his ‘clients’. Equally, if someone arrives from ‘outside’, the chief can allocate land to him, but the newcomer must recognise that he is ‘under’ that chief.

For this tribunal hearing, Chief X presented a list of eight points that he used as ‘proof’ that he was the ‘big chief’ of the land in question, and had control over the landholdings of four different Li-Lamenu families (P, Q, Y and Z) involved in the dispute:

I am a chief that has other chiefs below me, with all our ‘clients’, following the chiefly structure.

Following number 1, they have their own *nasara* and their stones.

I went through an ordination ceremony to take back my title Chief X, and I have a stone.

In 1988, Tarbumamele Council [the Epi Island Council of Chiefs] decided that [Z] family that work in Madoga hill must make a *kastom* [transaction] to me, because we gave them the right to work on that land.

Our ancestors gave the right to the [Y] *nasara* a long time ago, and they have already made a *kastom* [transaction] to us.

In 2007 Varmali Area Council made the decision that Chief X would take the [Q] family and show them their boundary.

We also gave the right for Epi High School to work on the land.

My ancestors gave a piece of land to the family [P]. I don’t know if the family [P] knows this or not?¹³

13 These statements have been translated from a document written in Bislama.

In the 2012 tribunal hearing, it was adjudged that Chief X was the 'big chief' in charge of the Wenia land whose boundary encompasses Merakup and Madoga (see Figure 11.4). Chief X was implored not to exclude those who were occupying the land:

Following this agreement, that you are the big Chief that oversees the Wenia boundary, do not endanger those people that stay under your care.

Thus, even though family P were deemed to be immigrants from another part of Epi, the judgement sought to protect their right to remain on the land, alongside the access rights of the other clans allocated adjacent areas.

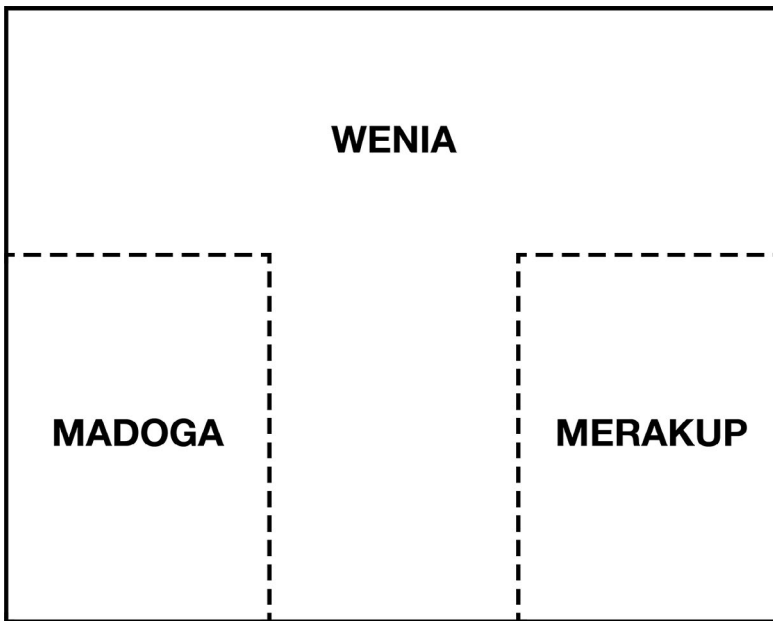


Figure 11.4 Model of land boundaries according to tribunal judgement.

Source: CartoGIS, The Australian National University, adapted from 2012 Land Tribunal judgement.

This version of the ideology of chieftainship takes the form of a layered model of overlapping land rights, where the 'big chief' maintains administrative control, alongside an inclusive ethic that all have rights to use some land. Gluckman (1963: 90–8) argued that, in areas of shifting agriculture, land tenure systems were likely to take the form of layers of different rights administered through a status hierarchy, and those rights depended on the fulfilment of obligations to others. Epstein (1969: 114–6) refined this concept to better fit the kinds of systems found

in Melanesia, whereby various overlapping rights and interests in land may apply through membership of a descent group, but also through ties of kinship with other groups, as well through interpersonal transactions. However, changing political and economic circumstances may be leading to a greater emphasis on exclusivity, at the expense of wider obligations and ‘interlocking reciprocal claims’, as Martin (2013: 35) observed amongst the Tolai people whose customs had previously been described by Epstein (1969).

The promotion of this layered model of land tenure can also be seen as a means for self-proclaimed chiefs to assert their positions in a political hierarchy and, in doing so, perpetuate and even strengthen the ‘ideology of chieftainship’. Although this may be more ‘inclusive’ in terms of allocation of access to land across kin groups, it can be exclusive in terms of restricting decisions about land to senior men, and the voices of women and younger people are often not heard in land debates (see Chapters 10 and 13, this volume).

Conclusions

The concepts of *kastom* and *loa* dominate the terms of debate about land exclusions on Epi today. *Kastom* and *loa* came to be conceived as oppositional terms articulating a history of mutual entanglement, a shifting form of ‘double movement’ (Filer 2014, following Polanyi 2001: 138), but the way that this is manifested is always contextual and contested. Due to Epi’s experience of historical land alienation, and the formalisation of land titles by the incipient state, state law often invokes bitter memories of the appropriation of land to support foreign commercial and political interests. It is little surprise, then, that people on Epi came to associate *loa* with exclusion and domination. Later, in the lead-up to Independence, *kastom* was reshaped and revalued as a potent oppositional symbol of resistance against land alienation.

The post-colonial period represents a further shift in the relations between *kastom* and *loa*, as attention has turned to the identification of ‘custom owners’. On Epi, the hereditary chief, as the personification of *kastom* and an arbiter of peace and social order, appeared as the natural figure to take control of the articulation between *kastom* and *loa*. However, this ‘ideology of chieftainship’ conceals the way in which the position of chief has been transformed, and even strengthened, through missionary and colonial influences. Furthermore, like any ideology, powerful actors can

manipulate discourses of *kastom* and claims to 'chiefly title' for personal gain. So *kastom* is not a straightforward articulation of autochthony or indigeneity against alien *loa*. Rather, each concept is able to take on aspects of the other according to the contexts and purposes of its deployment.

Attempts at 'intimate exclusions' of kin from land usually invoke claims of 'chiefly title' as 'custom ownership', but also legal processes of land registration and leasing, often motivated by the promise of economic benefits. Furthermore, boundaries created around land alienated in the colonial era have not been fully erased after more than three decades of independence, and can be retraced in ongoing land claims by senior men who use old title numbers and colonial documents to support their legal claims. Thus *loa* continues to be understood as a continuation of the logic and instruments of colonial rule, facilitating the dispossession of customary owners.

However, alternative and more inclusive discourses of *kastom* can act as effective political frameworks for resistance in denying the legitimacy of exclusive legal property claims. Popular moral narratives of *kastom* tend to give authenticity to those claims that demonstrate a peaceful and inclusive ethic, respecting people's interlocking claims to access land and subsistence security, as opposed to the exclusive land rights associated with state law and capitalist engagements (Carrier 1998; also Lea 1997: 12). The reassertion by councils of chiefs of a layered model of land tenure, which is embedded in social relationships and the 'relational economy', has remained the most compelling form of resistance against 'intimate exclusions' by safeguarding access to land by different clans. However, this model also serves to reinforce and perpetuate existing hierarchies, in which 'land' becomes synonymous with 'chiefs', and so often women and younger people can be excluded from decision-making processes.

Recent (2014) land reforms give good reason to be optimistic that the types of exclusionary processes outlined in the above case studies will not continue to be enabled by political and legal systems as they have been before (McDonnell 2016). Registration and leasing should no longer be able to take place without the knowledge and consent of the community. Perhaps this means that, in future, *kastom* and *loa* can become more conceptually aligned in the minds of Ni-Vanuatu people. And given the oppositional capacity of *kastom* to signify inclusive, consensual, peaceful and relational ethics against exclusionary or individualising processes in shifting political contexts, there may be potential for it to adapt to incorporate increasing community participation and strengthen the values of consensual decision making in future.

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