

# Chapter One

## Customary Land Tenure and Registration in Papua New Guinea and Australia: Anthropological Perspectives

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In 2005, the mechanism of indigenous customary land tenure was again under assault in both Australia and Papua New Guinea (PNG).<sup>1</sup> It was claimed that communal customary land tenure was impeding economic development; that it was inconsistent with the exercise of individual autonomy and freedom in a liberal society, and that it was an archaic base upon which to build and develop a national economy in the modern world. Steven Gosarevski, Helen Hughes and Susan Windybank (2004: 137) thus asserted: 'communal ownership has not permitted any country to develop. In PNG, where 90 per cent of people live on the land, it is the principal cause of poverty.' Since 2004, comments by such persons as member of the National Indigenous Council Warren Mundine, Prime Minister John Howard, and Senator Amanda Vanstone<sup>2</sup> have all advocated that communal landownership was acting as a brake on wealth creation in Australian Aboriginal communities.<sup>3</sup>

The notion that communal customary landownership is an impediment to economic development is not a recent one. As Lund (2004) demonstrates with respect to customary land tenure in Ghana, colonial authorities there actively promoted the development of private property rights in land, seeing an 'evolution' from customary communal land tenure to individual property as being necessary and desirable. In the African context generally, Besteman (1994: 484) says that government interventions in customary land tenure regimes have stemmed from arguments linking customary tenure arrangements with low agricultural productivity. To this end, many African countries have pursued the path of 'individualisation in the form of title registration programmes, either freehold or individual leasehold on state-owned land' (ibid). Yet in the case of

<sup>1</sup> For example, Brown and Ploeg (1997: 513) record Hasluck's (1960) policy position as being one that advocated individual as opposed to communal land titles.

<sup>2</sup> See Bradfield (2005) for citations and summaries of these comments reported in the Australian national media.

<sup>3</sup> The intellectual *fons et origo* for these comments are located in de Soto's (2000) book *The Mystery of Capital*.

Somalia, contrary to the link made between economic development and private ownership, Besteman shows that individual land registration has led to a 'concentration of ownership, speculation, and decreased agricultural productivity' (ibid: 503). Drawing on Channock's work, Lund (2004) notes a paradox — that while colonial authorities in Africa began their rule convinced of the superiority of their understandings of property in individual terms, individual property rights were not looked on favourably by the end of the colonial period.

The recent debates concerning private property ownership in PNG and Australia have also drawn responses providing evidence contrary to the notion that the individualisation of property rights amongst their indigenous peoples would constitute an economic panacea to current problems. In relation to PNG, Jim Fingleton, one of the contributors to this volume, edited a collection of papers demonstrating the health and vigour of entrepreneurship in PNG based on customary communal landownership (Fingleton 2005). In Australia, an Oxfam commissioned report found no evidence to support the idea that individual landownership is a necessary pre-condition to economic development on Aboriginal land in the Northern Territory, and drew on the Aotearoa/New Zealand context to demonstrate that 'individualising title can actually compromise sustainable economic development on indigenous land' (Altman et al. 2005: 5).

As the African studies referred to particularly indicate, recent concerted efforts to overturn remaining customary land tenure regimes must be placed within the broader historical development of world capitalism, and indeed colonialism. However, our goal in this volume is not in the first instance to make a case for the protection of customary land tenure *per se*, but to understand the mechanics of the translation process in which non-Western cultural and social forms are incorporated and regulated by Western legal and statutory bodies. While the chapters in this volume<sup>4</sup> all apparently describe episodes within an ever-expanding 'culture clash' between indigenous peoples and Western governments or capital, our conclusions will be provocative — that in a fundamental cultural sense, 'the customary' is a *product* of the expansion of state and capital formations, rather than foreign or external to it (Weiner 2006; Weiner and Glaskin 2006).

As neighbouring countries linked by a colonial past as well as by more recent political and economic developments, Australia and PNG share commonalities and differences with respect to customary land registration. Lakau (1997: 537) and Fingleton (this volume) remind us that the primary instrument of customary land registration in PNG, the *Land Groups Incorporation Act 1974 (LGIA)*, arose

<sup>4</sup> This collection had its genesis in a conference held in Brisbane in 2000, entitled 'Problems and Perspectives on Customary Land Tenure and Registration in Australia and Papua New Guinea', organised by Laurence Goldman and John Bradley of the University of Queensland.

from one of the recommendations of the 1973 Commission of Inquiry into Land Matters that was established during the period of PNG self-government preceding independence.

It is for the most part only since independence (1975), and to an increasing degree in the past few years, that the people of Papua New Guinea have developed claims to land expropriated by missions, previous administrators, private individuals, and development groups ... Local people now seek to reclaim their land and resources or demand new compensation for land and resources formerly granted to administration, mission, or companies (Brown and Ploeg 1997: 512–3).

Even though indigenous claims against land alienations go back to the early 1900s in PNG, and local Papua New Guineans acquired the opportunity to seriously contest land alienation in the 1960s through the Public Solicitor's Office, as the papers in this volume attest, much landowner registration in that country has been specifically elicited in response to mineral exploration and other recent development projects. In his chapter, Fingleton discusses the East Sepik land legislation of 1987, which was prompted by 'a new "reality" — modern demands being put on people's customary land'. As he says, such laws are 'an attempt to channel the response to that new reality'.

In Australia, the Commonwealth *Aboriginal Land Rights (Northern Territory) Act 1976* granted communal inalienable freehold title to Aboriginal groups in the Northern Territory who could demonstrate traditional ownership according to the criteria set down in that Act. While most other Australian states also had some form of land rights legislation, the first and only nation-wide land rights legislation, the Commonwealth *Native Title Act (NTA)*, only came into existence in 1993. This legislation followed the High Court's Mabo decision<sup>5</sup> that Aboriginal or native title existed and could be recognised within the common law of Australia (an issue which presumably was never in doubt in PNG). Yet in Australia, similarly to the PNG situation, many Aboriginal groups have been required to lodge claims in response to mining or other development on their country (following the issue of Section 29 notices). Nor is there any real doubt that the legal mechanism of native title is at least as concerned with identifying and codifying Aboriginal land interests in order that development may proceed, as it is with recognising pre-existing Aboriginal rights.

The main theme of the volume is thus to show that legal mechanisms, such as the *LGIA* in PNG and the *NTA* in Australia, do not, as they purport, serve merely to identify and register already-existing customary indigenous landowning groups in these countries. Because the legislation is an integral part of the way in which indigenous people are defined and managed in relation to

<sup>5</sup> *Mabo & Ors v Queensland (No 2)* (1992) 175 CLR 1.

the State, it serves to elicit particular responses in landowner organisation and self-identification on the part of indigenous people. These pieces of legislation actively contour the indigenous social, territorial and political organisation at all levels in these nation-states — or at least in the way that indigenous people present them to the wider society (Weiner 2000, 2003, 2007).

One of the significant features of the current Australian government's strategy with Aboriginal Native Title and Land Rights is to assert that this process will have an end — at some point, all indigenous interests will be mapped, accounted for and ultimately compensated for in some way that will historically draw a line under the era of indigenous struggle for recognition of customary ownership. But if local regimes of property are brought into being by enduring relations of structural asymmetry between the State and 'indigenous interests', then the struggle for land rights will always be poised against such state agencies. It is a defining condition of the State, rather than a finite episode in its evolution.

Those anthropologists who have been working in settled Australia, where dispossession and removal to Reserves and Missions were common experiences of Aboriginal people throughout the nineteenth and twentieth centuries, have confronted the crucial role that Norman Tindale's (1974) tribal map plays in the formation and recognition of native title claim groups. Tindale's map and his collection of genealogies now serve as the resource with which most native title claim groups in settled Australia begin the process of identifying their ancestors and their traditional country. For many families who have experienced severe impairments to the transmission of cultural knowledge across generations, Tindale's identifications of people, tribes and territories become highly authoritative. Because the entire continent is wholly divided into parcels of discrete tribal territories, there is an attractive and compelling completeness and lack of 'fuzziness' in Tindale's scheme. Notwithstanding the authority which Tindale's map is typically given by various parties involved in native title in Australia, its authority has been brought into serious question by many anthropologists working on this subject.<sup>6</sup>

Recent advances in mapping wrought by satellite and computer technology will have a profound effect on the future of customary land registration. The difficulties in mapping sacred sites that the Central Land Council has encountered in the past, as described by Elias in his chapter, will be greatly ameliorated. National Native Title Tribunal president Graeme Neate observes that in the United States, the Intertribal Geographic Information System Council was recently set up to promote 'tribal self-determination by improving management of

<sup>6</sup> For example, in a recent native title decision the judge noted that 'Professor Sutton devoted considerable effort to reanalysing Tindale's surviving fieldwork data from his 1933 expedition to the Mann and Musgrave Ranges in order to refute the latter's hypothesis' (*Jango v Northern Territory of Australia* [2006] FCA 318, at paragraph 223).

geographic information and building intertribal communications networks' (1998: 2). The Global Positioning System will serve to calibrate to a single Cartesian system for *all* territorial information, Western and non-Western, and will provide the empirical basis for what Burton (1991) has called the 'cadastral landscape'. Drawing on the established legal sense of this term, Burton intends it to mean 'the end result of dealings in land; it is the cumulative record of legal decisions — arising from customary or state law — in the formation of the cultural landscape' (ibid: 197).

Mapping indigenous ownership of land is part and parcel of a more general attempt by Western governments to define and 'manage' their own internal indigenous relations to land. In his chapter, Jorgensen draws on Scott's (1998) discussion of legibility: the State's implementation of its plans requires legibility, and for those affected by such plans, recognition is reciprocal to the requirement for legibility. Recognition of customary landownership creates such legibility, identifying the groups that have to be considered at any given time in relation to land, and mapping their interests onto the landscape (Weiner 2004). In Australia at least, a significant part of this exercise under the *NTA* includes clarifying the areas where indigenous landowners do not have to be dealt with, either because their native title has been extinguished, or because they have been unable to demonstrate that it continues according to the criteria of recognition in the *NTA*, and its interpretation by the judiciary in litigated cases.

At the time of writing (2006), Western Australia is considered to be in the midst of a resource boom that is significantly fuelling Australia's current economic growth and prosperity. Resource extraction and development on such a large scale is inevitably contingent on accessing land, much of which is currently under native title claim. The issue of customary land registration in PNG and Australia, then, is inexorably slanted towards the requirements of the resource industry to deliver the financial benefits of extractive projects. With the exception of Martin's chapter on the Tolai and Glaskin's chapter on Bardi and Jawi, all case studies in this collection proceed under the shadow of some large-scale resource project in which the landowners are involved. And as Fingleton and Weiner point out in their chapters, the registration of landowning groups in PNG is not so much oriented towards the management of *land* but to the management of *resource rents and incomes* to indigenous landowners. The local landowners of the petroleum project area in PNG have, from the inception of the land group registration process, never really construed the Incorporated Land Group as having anything to do with ownership or management of customary activities on land. In this respect, landowner registration has very little to do with empowering customary control and management of land, but a great deal to do with eliciting 'the validation of *landowner consent*', as Filer says in his chapter.

The idea of the 'corporation' is a pervasive theme in this collection (see also Sullivan 1997). The corporation is the form that modern indigenous customary groups (if one can call them that) must take according to the legislation; it is also a technical term both legally and anthropologically (for example, Radcliffe-Brown 1965); and it embodies some of the most central tenets of democratic and managerial culture that comprises the modern Western polity (Weiner 2003). In PNG and Australia, registration of indigenous customary land is only partly about securing 'land rights' for indigenous people — it is also about creating a managerial and legal capacity for them through various processes of *incorporation*. Identifying in some anthropological sense customary landowning groups is thus only half of the problem. Both the *NTA* and *LGIA* are as much oriented towards specifying the obligations, functions and conduct of such groups for the purposes for which they have been formally and legally registered. But as Weiner says in his chapter on the incorporation of Foi land groups in PNG, it is often 'wrongly assumed that the *internal* affairs and composition of landowning social units are both practically and ontologically prior to their external relations'. These groups are, after all, brought into being in order to make decisions concerning actions that take place on customary land. Customary landowners are usually less interested in acquiring legal certification of their landholdings than in entering into what Filer (this volume) identifies as 'social relations of compensation' with government and developers (see also Filer 1997).

There is a significant difference in the ability of PNG and Australia respectively to fund, manage and administer the effects of procedures for registering and supporting indigenous corporations. With respect to native title claim groups in Australia, Mantziaris and Martin (2000: 186) have noted that the paperwork, accounting and administrative responsibilities demanded of a native title group far exceed the capacity of communities characterised by 'high levels of residential mobility, poor literacy, and poor understanding of formal legal and administrative processes'.<sup>7</sup> Edmunds (1995) makes the important observation that increasing governmental and administrative support for indigenous people within Western states has served to increase the degree to which indigenous persons can act autonomously, and attenuate the strength of 'customary' obligations that kinsmen have to each other in indigenous societies. Applicants are therefore less dependent upon the support of indigenous kinsmen or other political bodies within the indigenous community. In Australia, this is one factor that has led to an increasing tendency for larger quasi-'tribal' native title claim groups to fragment into constituent extended families. In short, the availability of state support for the maintenance and functioning of indigenous landowner groups has often had the opposite effect.

<sup>7</sup> These same conditions have created the conditions for widespread abuse and manipulation of the royalty delivery system, also based on the incorporation of local landholding groups, in the petroleum project area in PNG.

If 'customary law' and 'customary social groups' are elicited as responses from indigenous people to pressures placed on them by the state and developers, then we should be aware that different conditions and stimuli will call forth different versions of 'customary' and hence different versions of 'customary groups'. In her chapter, Glaskin discusses the outstation movement among Bardi and Jawi of the Dampierland Peninsula, Western Australia, which encourages the formation of small and separate residential incorporated groups, while the requirements of the *NTA*, in which the same people are also involved, requires them to make claim to land and sea on behalf of a much larger category of rights holders. Both require a specific form of corporate group to manage rights in property. Applications for outstations in this area have largely, though not entirely, been lodged by single, patrilineally composed estate groups. In contrast to these lower-level landed groupings, recent court decisions in Aboriginal Australia have focused on more encompassing groups said to constitute the 'society' of native title holders, this being understood as that society from which the laws and customs giving rise to rights and interests in land flow, and which is held to have continuity with the normative society that existed at the time of colonisation. In some cases, this has meant that courts have recognised regional configurations of more than one socio-linguistic grouping or 'tribe', based on similar realisations of shared custom, social interaction, and shared occupation of a larger territorial domain.<sup>8</sup> Such strategies, foreshadowed in the Miriuwung Gajerrong (Ward) Full Federal Court decision, have been used to characterise the recent Wanjinia (Neowarra) and Alyawarr native title claims.<sup>9</sup>

In their chapter, Memmott, Blackwood and McDougall describe the active design of the *prescribed body corporate*, the legally prescribed body that holds, manages, preserves and transmits native title. The *NTA* allows that such bodies corporate can be based on either customary or non-customary laws of governance and composition. In Australia and PNG, we witness what Filer (1996: 69) has called 'the incorporation of the local community through the adoption or imposition of bureaucratic management methods'. The legal mechanism of incorporation is not a neutral organisational and administrative template: like the mythologies that indigenous people bring to bear in the face of their own explanatory challenges, it is a systematisation of core components of personhood, autonomy, consensus and will in Western culture. As such, the language of incorporation, so widely adopted by indigenous communities in their

<sup>8</sup> However, in *Sampi v Western Australia* [2005] FCA 777, the determination of the Bardi and Jawi peoples' claim (to which Glaskin refers in her chapter), the judge held a converse view: that Bardi and Jawi people had not constituted a single 'society' at the time of colonisation, but instead were two 'societies' at that time. Given the implications of this decision for Jawi people in particular, this determination is currently being appealed in the Full Federal Court of Australia.

<sup>9</sup> *Western Australia v Ward* [2002] HCA 28; *Neowarra v State of Western Australia* [2004] FCA 1092; *Alyawarr, Kaytetye, Warumungu, Wakay Native Title Claim Group v Northern Territory of Australia* [2004] FCA 472.

confrontation with governments and companies over control of resources and land, has been the most effective agent of their own sociopolitical transformation. Whether a truly indigenous form of the corporation — something anthropologists took for granted in Radcliffe-Brown's hey-day but which seems far more perilous a proposition now — can emerge from this conjunctural arena is only one of a number of questions that an anthropology of indigenous communities in Australia and PNG will have to closely attend to now.

By the same token, different statutory bodies charged with protecting and promoting differently-situated 'traditional' interests in land can often be at odds with each other, as Levitus makes evident in his absorbing account of negotiations over the early Coronation Hill gold mining site in the Northern Territory and the contested positions taken by the Northern Land Council and the former Aboriginal Sacred Sites Protection Authority. While anthropologists have conventionally been involved in describing the holistic nature of social life in small-scale societies, the complex legal framework in which indigenous people have to register different kinds of rights fragments and compartmentalises their various interests in land.

Neither the *NTA* nor the *LGIA* stipulates a specific form that a customary landowning group must take; the two pieces of legislation are notable for their lack of specificity in regards to the nature of indigenous sociality. Both demonstrate a lack of awareness that the units of social affiliation or membership and the units of property ownership might be different things in both PNG and Australia (and by implication generally in indigenous 'communal' society worldwide). It is not just 'groups' that are brought into being in this intercultural process, but the very notion of 'custom' itself. While Western law can recognise varying degrees of non-Western customary law, it draws a line at what it considers 'repugnant' to the common law. In a Land Titles Commission hearing of 1998, the Chief Commissioner Josepha Kanawi and her co-commissioners (both men) found that the asserted practice of allowing a woman to pass on rights in land in a situation where there remained no other adult men in the clan, was consistent with the avowed constitutional promise of PNG to promote equity and equality among all its citizens — including women (Kanawi et al. 1998). Therefore, even though it was not a traditional custom, the Land Titles Commission went 'against' tradition in order to promote 'change'. The very opposite has occurred in Australia, where the courts have not legitimated any marked degree of socio-cultural transformation in Aboriginal society and have employed a static and over-literal sense of the 'traditional' (Glaskin 2003a). This is the case both in terms of the basis on which claims to native title are evaluated, and in terms of the kinds of native title rights and interests that may be recognised. The latter have tended to be confined to so-called 'traditional' rights to hunt and gather, to conduct ceremonies and protect places of significance, and so on. They have to date explicitly excluded commercial rights to resources,

even over land where ‘full exclusive possession’ determinations of native title have been made (Glaskin 2003b). This significantly curtails Indigenous Australians’ capacity to generate their own wealth from land that has been ‘recognised’ as traditionally theirs, but this is not generally articulated in those discussions in Australia suggesting that communal customary landownership is an impediment to Aboriginal economic development.

Most of the contributors to this volume have had experience both as academic and consulting anthropologists and have taken seriously the relation between these two areas of anthropological practice. The consultant anthropologist must not only manage the translation between Indigenous and Western lifeworlds, he or she must also negotiate the divergent expectations of developer, government and indigenous community, as well as the often structurally conflictual relationship between Law and Anthropology. In his chapter, Laurence Goldman, long-time ethnographer of the Huli people of the Southern Highlands Province and currently Manager of Community Affairs for the PNG Gas Project, makes a strong case that the role of the anthropologist is not just to passively annotate the traditional structures of indigenous project landowners, but to actively design and configure special-purpose units and groups that will best serve their own interests and those of governments and developers. He found that Huli social organisation, which is not based on a unilineal descent rule, does not lend itself to the registration of discrete, non-overlapping units of property holders. Instead, he devised a system of spatial ‘zones’ within the Hides gas project licence area which preserved the historically and socially regnant configuration of most enduring social and political alliances, ‘conceived as loosely drawn territorial areas in which an aggregated set of clans and clan sections resided which sustained long-term relationships based on intermarriage and exchange’. The Ipili of the Porgera Valley, as described by Golub in his chapter, evince similar characteristics — ‘the focus ... was on regional embeddedness and connections with — rather than divisions between — different areas of settlement’ The Ipili do not even have a word for ‘clan’. Rather, like the word *ruru* for the Kewa of the Southern Highlands Province, the Ipili term *yame* refers to any group of people, at any level of organisation, who coalesce for any reason, and thus can refer, among other things, to a cognatic grouping at any level of inclusiveness.

Golub and Jorgensen both make the point in their chapters that in the absence of identifiable ‘clans’, the system will inevitably manufacture them. Because of the theoretically unambiguous manner in which it can allocate people to discrete social groups, unilineal descent as a social recruitment mechanism has been in effect endorsed as a ‘most favoured indigenous institution’ by the legal establishment in both countries. Anthropologists have in both countries had to argue strenuously against the applicability of unilineal descent in certain cases,

not always successfully.<sup>10</sup> Needless to say, unilineal descent lends itself more readily to the conditions of legibility required by the state than other mechanisms of group recruitment and attachment to land, such as those of the Australian Western Desert (Sutton 2003: 140–4).

Introducing his chapter, Burton draws attention to what this has produced in both cases — a serious disjunct between the necessity to identify the property owning unit on the one hand, and to officially endorse some unit of indigenous governance and self-management on the other. Thus, as Filer suggests in his chapter, the question can be raised ‘whether land boundaries are more or less substantial, flexible, or porous than group boundaries’. Martin, in his chapter on contemporary Tolai land tenure in East New Britain, and Elias, in his chapter on Warlpiri relations to land and heritage protection in the Tanami Desert, also confront this major anthropological discrepancy that has emerged in legislation designed to recognise customary entitlements to land: a failure to distinguish between laws and customs pertaining to territorial group membership and those pertaining to the exercise of property rights. In Australia, Sutton (2003: 111–34) has described a ‘dual structure of traditional land tenure’ in which there is a distinction between underlying and proximate title to land — that although individuals and local descent groups assert immediate control of any given territory, the wider group recognising shared custom is the source of customary entitlements that are recognised by the ‘jural’ Aboriginal public. This means, among other things, that where local organisation is that of estates or clan groups, the higher level grouping has mechanisms for succession to deceased estates, so that the underlying title to those estates is not lost when they no longer have living members. The courts of Australia, since the *Yorta Yorta* High Court decision,<sup>11</sup> have more or less taken on this distinction, concluding that native title claims in Australia must be located at the level of underlying title — the wider ‘society’ within which members of lower-level groupings, such as clans, recognise they belong. In PNG, however, where perhaps a similar distinction could be drawn — although ethnographically it has received scant attention — no landowner would ever agree to relinquish control of clan land to such a putative entity. Such entities never had political functions in traditional PNG society (at least not in the interior).

An examination of the Torres Strait also provides an important contribution to the consideration of these issues. The islands lie between the Australian mainland and PNG, are considered part of Australian territory, and gave rise to the *Mabo* decision that established the existence of native title in Australia. In his chapter, Burton discusses the ways in which proximate titles have been handled in Australia and PNG, with his discussion of native title focusing on

<sup>10</sup> For example, see *Jango v Northern Territory of Australia* [2006] FCA 318.

<sup>11</sup> *Members of the Yorta Yorta Aboriginal Community v State of Victoria* [2002] HCA 58.

the islands of the Torres Strait. The tendency in Australia has been for the courts to resist recognising the discrete property rights of smaller units or individuals as constitutive of native title, instead keeping native title tied to the level of encompassing linguistic, territorial and cultural unity. Burton argues, however, that for the Meriam people of the island of Mer in the Torres Strait, the Mabo determination has given the Meriam ‘something that they did not want in the form of the *forced collectivisation* of traditional land’. Many Australian anthropologists have pointed out that the concept of the ‘tribe’ has been a mainstay to theorising about the nature of the Aboriginal polity for anthropology’s entire history.<sup>12</sup> Merlan (1998: 149) has pointed out that ‘in recent times, the “tribal” level and other forms of organisation have been elicited from Aborigines, and given greater concreteness and fixity than they previously had, as part of a wider project of management of Aboriginal affairs’.

Not only are non-Western social groups over-simplified in legislation; so is the range of different indigenous relations to places themselves. Aboriginal people in general did not see ‘places’ in isolation. Sites were always linked to other sites, because when the landscape was originally created by ancestral beings, it was the result of a purposeful *movement* over terrain and through the landscape. Sites that are linked as points along the journey of a single creator being thus have a mythological connection and coherence rather than a purely spatial or geographical one. Present-day communities whose territories are linked in this way are ‘related’ in the sense that they have important and recognised social obligations to each other, particularly in religious terms. But when economic development takes place on indigenous land, developers inevitably focus on sites of development as discrete and unconnected. They wish to negotiate over rights to particular sites in isolation from the range of other sites to which they are connected in traditional and mythological ways. As Elias describes in his chapter, developers therefore have difficulty in understanding the spatial and genealogical distribution of interests in particular sites, and also the range of different connections that often include people located at some distance from any particular site.

As the preceding discussion demonstrates, the registration of customary land tenure has a number of complexities. Not least of these is the kind of groupings for which the recognition of landownership takes place, the relationship between the landowning groups thus recognised, and the exercise of proprietary rights and interests in land or waters by individuals and groups that may not fall within these statutory definitions or be a consequence of their application. Thus Filer’s chapter, which examines the ‘interaction of law, policy and ideology in the social construction of “land groups”, “land boundaries”, and “group boundaries”’ in relation to resource development in PNG, has as one of its conclusions that the

<sup>12</sup> For example, see Sutton (2003: 42–3, 46, 92–3) for an overview.

‘ideology of landownership also conceals a real variety of “local customs in relation to land”’.

In his chapter, Fingleton opens his discussion by referring to the ‘protests, riots and police killings in Port Moresby which accompanied the World Bank’s attempt to promote customary land registration in 2001’. Customary landownership is of considerable significance to indigenous people, and responses to government proposals for ‘recognition’, and indeed to indigenous demands for recognition, will vary significantly according to the terms upon which such recognition is offered or sought. In Australia, Aboriginal people talk about fighting for their country, for the recognition of their pre-existing ownership of the land, and the right to control what happens on their country. As the contributions to this volume demonstrate though, the recognition of customary landownership is located within complex matrices of colonial history, government policy and legislation, ideology, indigenous property rights and relations to land, indigenous responses to requirements for customary land tenure registration or ‘land reform’, and economic development or large-scale mineral extraction on which the wealth of nations may considerably depend. The Indigenous and the ‘Western’ are thus defined against each other, and the articulation of each includes the other in its foundation. The struggle for recognition of customary land tenure is as much a moment in the development of Western social economy as it is an historical trope for indigenous peoples of the world. In bringing this collection together, we hope to make a contribution to the understanding and analysis of this conjunctural field.

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