

Chapter Seven

The Foi Incorporated Land Group: Group Definition and Collective Action in the Kutubu Oil Project Area, Papua New Guinea

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In this paper I examine the genesis and progress of the Incorporated Land Group (ILG) in the Kutubu oil project area of Papua New Guinea (PNG). The ILG is a legal entity empowered by legislation passed in 1974 to give legal and formal recognition, protection and powers to customary landowning groups in PNG (see Fingleton, this volume). In the Kutubu oil project area, at the instigation of Chevron Niugini Ltd (CNGL), the previous managing partner of the Kutubu Joint Venture, the Foi, Fasu and Lower Kikori River clans became incorporated under PNG's *Land Groups Incorporation Act 1974 (LGIA)* and now receive royalty payments from the sale of petroleum. The ILG mechanism was employed by the developers in the belief that it would 'give powers to landowners so that they could manage their affairs in a businesslike way' and 'provide recognition of the land group [that would] enable the village landowners to act in a way that outside people and agencies must recognize' (Power 2000: 29). The advocates of the ILG mechanism asserted that 'the ILG constitution guarantees that decisions regarding clan resources are made by the correct authorities in the clan' (ibid).

But since the original round of ILG registrations, there have been numerous applications for new ILG status from subgroups within these original ILGs incorporated in the early 1990s. In 1998, 13 new Fasu ILG applications were lodged, all of them by subgroups within already incorporated clans. This proliferation is in the context of the most common complaint concerning these ILGs: that the income is not being satisfactorily shared by those members of the executive committee designated by the ILG to distribute its income. These new ILGs wish to have their own passbooks and receive their income payments directly.

The previous project operator, CNGL, interpreted this trend in two ways: as a sign that local clan leaders are dishonest, and as a sign that local people themselves have not yet sufficiently understood the nature of contemporary managerial procedure. They stop short of admitting the possibility that the clans

themselves are not 'customarily' either corporate or collective units that exist for the common interest of its members.

But the *LGIA* is based on a quite erroneous assumption of the communal nature of landholding and transmission within the Melanesian 'clan' and of its essentially 'collective' interest. As Evans-Pritchard reminded us — and this became a founding approach of the Manchester school of African social anthropology in the 1950s and 1960s — the whole concept of the segmentary lineage system around which the attributes of corporateness were first empirically examined was founded on the notion of enduring and regular structural relations of conflict and consequent group fission as the mode of societal reproduction. Acts of legislation such as the *LGIA* have not understood this aspect of social structural formation in PNG, resulting in problems such as those CNGL has encountered in applying the *LGIA* to customary 'landholding' units. The companies and government departments who have attempted to implement the *LGIA* have made an ethnographically indefensible apportionment of the 'political' to external relations among landholding units, and consequently see the resulting conflict and competition *within* them as adventitious and subversive of the 'customary' landholding units themselves. This arises from the tendency to assume that the *internal* affairs and composition of landowning social units are both practically and ontologically prior to their external relations.

The ILG and the Petroleum Industry in PNG

In the early 1990s CNGL undertook a census of all villages with clans who owned land in its Petroleum Development Licence (PDL) area and incorporated the recognised landholding groups at the same time. A total of 54 Foi ILGs were registered as PDL landowners with the aid of CNGL's Lands Department between 1992 and 1994.

In an unpublished paper circulated amongst CNGL and other petroleum industry and government personnel, Tony Power, one of leading architects of this process, stated:

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

to manage their affairs in relation to land and related matters (2000: 52, emphasis added).

The administrators trying to come to terms with the task of protecting customary PNG landholding units today are engaged in the same epistemological exercise that their structural-functionalist predecessors were during Radcliffe-Brown's time (Weiner and Glaskin 2006: 1–2).

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

Anthropologically, it might seem ironic that just as global industry is (re-) discovering the wisdom of Colonial Codification, anthropology has focused its attention away from the normative, the collective and the bounded in social life. In more recent years, a variety of theoretical developments have caused the pendulum to swing away from an acceptance of the collectiveness and corporateness of indigenous landholding units, and towards an understanding of the unstable, porous, nomadic, centripetal and fluid characteristics of such groups.¹ Yet the increasing contemporary struggle over control of land and resources has produced a movement in the opposite direction: towards some evolution of universal principles for the protection of property rights, and the codification and legal protection of indigenous customary law around the world. The present panoply of laws (increasingly subject to international codification and recognition, most notably through the United Nations and other international agencies) that define a wide range of indigenous customary institutions is consequential for the future of indigenous custom, practice and self-understanding. Although aspects of this have received relatively recent public exposure,² Australian anthropologist Kenneth Maddock put the matter succinctly somewhat earlier:

It is important to distinguish, in principle, between rights originating in modern statute law and rights having some other origin. Otherwise, *anthropologists will smuggle into their accounts a legal view that, intended to express a traditional reality, has been shaped in its original formulation*

¹ Sutton (2003) comments on the similar effects of Fred Myers' (1986) Pintupi ethnography on the interpretation of Australian Aboriginal group structure.

² Notably the Coronation Hill and Hindmarsh Island Bridge sacred site claims in Australia, the Ok Tedi pollution case in PNG, and the Exxon Valdez compensation case in Alaska.

and subsequent development by the exigencies of legal policy and reasoning (Maddock 1989: 173, emphasis added).

The first problem in PNG law is that nowhere does it contain a definitive definition of what a 'landowner' is. As Filer has convincingly argued in the PNG context, the issue of 'landownership' as such is largely an artifact of the recent mineral exploitation in PNG:

There is a sense in which Papua New Guineans have only *become* landowners over the course of the last 10 years ... the question of whether 'clans' exist as 'landowners' in the fabric of national identity is the question of how 'clans' *have actually become* groups of landowners claiming compensation from development of their own resources (Filer 1997: 162, 168).

The genesis of the concept of the landowner can partly be traced to the various preambles and explanatory addenda to the *LGIA*:

Developers of resources in PNG must by necessity involve the owners of land because all land where resources are located is privately and communally owned. Developers are concerned that the landowners in the project area fully support their project. In order for this to happen landowners must manage the physical, social and economic impact of the resource development. A critical element of impact management is the distribution of direct cash benefits arising from land use, royalties, and equity. If the impact of the project is so great as to destroy the social fabric then the security of the project will be greatly eroded. The ILG system is not just [an] exercise to distribute cash benefits. The ability to fairly distribute cash benefits, though important, is only one outcome of a successful ILG system (Power n.d.(a): 1).

This points to the second problem: there is a critical ambiguity in the above statement. Is, or is not, the chief function of the ILG system to distribute benefits from commercial developments such as petroleum extraction, mining and logging, or should it have some wider and more synergistic function with the traditional social units in PNG, specifically with respect to the protection of land rights and their customary form of transmission? Having worked with the Foi, both before and since the advent of the oil project, there seems no doubt in either my mind or theirs: the ILG is perceived solely as a petroleum benefit-receiving body, and all of the uses to which it has been put by the Foi (and other people within the petroleum project area) have been exclusively related to this function. It has not yet been put to use to attend to matters pertaining to ownership of land *per se*, as it was originally designed to do. PNG's Land Titles Commissioners made this same point in one of their judgments on a dispute about landownership in one petroleum project area:

The issues contested in the hearing is [sic] not only limited to customary landownership. There are arguments on public policy considerations, application of the *Land Act* and the *Petroleum Act* for purposes of settling claims of rights of parties owning land affected by the petroleum project (Kanawi et al. 1998: 11).

Rather than the ILG mechanism serving to legally 'modernise' the existing system of land proprietorship, the Foi and other oil project area peoples have employed it as the unit of political struggle over petroleum benefit sharing, much to the consternation of CNGL's External Affairs Office, the PNG Department of Petroleum and Energy and the PNG Department of Lands, which deal with landowner relations in petroleum licence areas.

The Proliferation of 'New' ILGs

Tony Power, who was working for the CNGL External Affairs Department when the initial registration of oil project area ILGs was first carried out in 1992, recently wrote the following account:

Since the beneficiaries are Incorporated Land Groups, vetting of lists that have developed since dividends began to be paid must be done to prevent possible fraud. In the early 1990's before there was any clear incentive to form new land groups all the population within the project area belonged to the original land groups assisted by Chevron to incorporate via the Land Groups Incorporation Act. All of these people were also censused and recorded in the Village Census Books. Nobody forced these village people to record their genealogies in this manner and hence it must be assumed that the original groups were for the most part accurate. Since the original land groups were incorporated a number of 'new' ILGs have emerged. As new groups will dilute the benefits to the original groups it is necessary to examine all new ILGs to see if they are justified. This could be done in the field by a team including Chevron, DPE and a Provincial Lands Officer, after consultation with the Registrar of Titles and PRK (Power n.d.(b): 1).³

As I have said, the ILG is simply seen by the Foi as a strategic device whose purpose is primarily political-economic rather than one of customary land management *per se*. Leaders among the Foi are using the creation of new ILGs to leverage additional shares of the petroleum revenue for their supporters since, as a result of the initial memoranda of agreement, each ILG owning land in the PDL area would receive the same share of the revenue, regardless of population size or absolute amount of PDL land owned. PDL landowners are also enhancing

³ PRK (Petroleum Resources Kutubu) was a company established by the State to hold equity in the oil project on behalf of the customary landowners.

their own support amongst non-PDL landowners by offering to make them 'PDL landowners' in a variety of ways.

An example of how this is working itself out can be found in Lower Foe. The leader behind the landowner company called Muiyoke Pty realises that he represents only a small population, and what is more, compared to the larger and more central Foi villages, he commands few educated, literate men who can help him form the core of an effective political and economic organisation. He thus uses Muiyoke to attract men from the more populous Upper Mubi. This is achieved by promising them that if they buy shares in the company, not only will they receive oil revenues, but by forming their own ILGs, through their shares in Muiyoke, they can become, by definition, PDL landowners. This is illustrative of a distributive mechanism that is not based on the assumed behaviour of the liberal sovereign individual who is viewed by many as the basis of the governance system empowered by the *LGIA* (Weiner 1998; see also Rowse 1998; Lea 2000).

In the same way that the *LGIA* requires (without enshrining) this autonomous, sovereign individual, the same urge that characterised early social anthropology — towards achieving a clear, unambiguous 'sharp-edged' definition of indigenous social units and their territorial property — is evident in the thinking behind the *LGIA*:

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

- That the two or more land groups have distinct land and do not have cross claims or interests in each other's land.
- That they followed their ILG constitution when dividing the original ILG.
- That they have the support of their ethnic group who recognize their separate identity.

Where new ILGs have no customary basis for division they would divide their original one share between them [emphasis added]. This is exactly what happened with the Foi beneficiaries for royalties. 24 ILGs representing 8 clans shared 8 shares of dividend ...

A primary consideration must be that recognition of new groups will dilute the benefits to existing beneficiaries. In that case any new groups would have to be approved by the existing beneficiaries. A mechanism will have to be devised to seek approval of existing beneficiaries by means of consultation at general meetings with the members of landowner associations or shareholders of companies. Once this vetting takes place a definitive list of beneficiaries can be recognized by DPE and forwarded to the Trustee (Power: n.d.(b): 1).

But the previous examples indicate that the ILG (as understood by its architects) has been uniformly misunderstood and misapplied by the great majority of ordinary Foi. By 1999, there were at least 48 cases requiring 'land group maintenance': that is, the alteration, re-registration, or splitting and new registration of previously incorporated land groups. In mid-1999, 26 original ILGs had been deregistered by the Lands Department in Port Moresby, and about 80 new ILGs had been registered claiming distinct and separate status (and separate petroleum revenues as well). Additional new ILGs were applying for and receiving ILG certificates from the Lands Department in Port Moresby in June 2000. The reasons given for these proposed alterations have been varied:

- groups fear that money has not been distributed equitably within the ILG and therefore wish to establish their own income stream and passbook;
- disputes have emerged over the land borders originally registered, and over the membership of groups already registered;
- there have been uncertainties as to the kinship and clan membership of component groups within the ILG;
- finally, and commonly, there were accusations of improper behaviour levelled at ILG chairmen.

At a broader level, regional leaders tried to register as many ILGs under their own political 'association' as they could, to claim as large a proportion of the fixed petroleum royalty as possible, and to enhance the appearance of their numerical support. In all of these cases, the codification of customary ownership of *land* figures hardly at all.

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

I have argued, however, that the fragmentation of Foi ILGs is consonant with more deep-seated oppositional behaviour that governed to a marked extent the shape of political life and the resulting composition of local residential groups in Foi and indeed throughout the societies of the petroleum project area (Weiner 1998). The company, on the other hand, has mistakenly taken the appearance and rhetoric of collective *action* as evidence for the existence of a collective *interest*.

The proliferation of 'splinter ILGs' represents the response to the pressure on the Foi system of pervasive social differentiation caused by the influx of petroleum revenues. The 'names' of Foi social groups, like those of their Daribi

counterparts, 'only group people in the way that they separate or distinguish them on the basis of some criterion' (Wagner 1974: 106). Usually, this criterion is territorial in the Foi case. Hence, subdivisions of clans are referred to as, for example, Mubiga So'onedobo ('the So'onedobo who live near the head of the Mubi River'), as opposed to Baibu So'onedobo ('the So'onedobo who live near Baibu Creek').

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

As Wagner has observed, these names are significant 'not because of the way they describe something, but because of the way in which they *contrast* it with others' (Wagner 1974: 107, emphasis added). These distinctions are for the most part contingent and emergent — they appear in the context of some specific incident of oppositional behaviour, and can easily disappear once that opposition is defused or brought to some resolution. Most often, Foi men of the same local clan find themselves in dispute over one issue or another — the division of bridewealth, the use of specific spots of land, accusations of adultery or theft, and so on. These can lead to factions emerging that look 'as if' the clan is fissioning. But such acts of fission are not necessarily either irreversible or even long-lived, though they can be both. They merely reflect the territorial fluidity of such groups, in a manner strikingly reminiscent of the way Evans-Pritchard described the Nuer:

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

and is only one of a series of political values, some of which are in conflict with it (Evans-Pritchard 1940: 149, emphasis added).

More generally, what Schieffelin (1976) calls the ‘opposition scenario’ in this part of PNG can have a more positive rendering — that is, the customary understanding that land boundaries and landownership are what neighbouring clans acknowledge them to be. In a judgement pertaining to disputed ownership of the Hides gas project licence area,⁴ and in one of the judgements pertaining to the Gobe dispute, it was recognised that ‘a land [sic] is said to belong to a group when the land boundary is acknowledged by the neighbouring clans’ (Kanawi et al. 1998: 17).⁵ It is this recognition of the *relational* aspect of property, and of land in particular, that leads Cooter (1989: 13) to contrast ‘market property’, appropriate to the non-kin-based societies of the modern West, with ‘relational property’, characteristic of the kin-based societies of nations such as PNG.⁶

The Local Clan Versus the ILG

There is thus a fundamental conflict at the heart of the ILG mechanism which crops up constantly. This conflict can be stated as follows: the *LGIA* was purportedly designed to enshrine the *traditional landowning group as a legal landowning corporation*. The purpose of this was to give *legislative protection* to the traditional landowning units in any given area of PNG. Take the following list prepared by Power under the heading of ‘Measurable Indicators of Incorporated Land Group Effectiveness’:

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

- Does the ILG have a recognized ‘custom expert’?
- Does the ILG recognize a ‘custom expert’ from another clan in the village?
- Does the ILG have a literate facilitator?
- Does the ILG have access to a literate facilitator within the village?

⁴ *Re Hides Gas Project Land Case* [1993] PNGLR 309.

⁵ The ‘opposition scenario’ can have the opposite effect as well — lines without genealogical connection have formed a single ILG by banding together in both the Gobe and South East Gobe licence areas. The Land Titles Commission opined that this was an improper use of the *LGIA* (Kanawi et al. 1998).

⁶ Of course all property is relational in the sense that things are ‘owned’ *in rem*, that is, only as against other people.

- Have any of these ILG functionaries ever attended a training workshop to help them develop their skills?
- How many outstanding land disputes over either ownership or use rights between resident clans are in the village?
- How many outstanding land disputes over either ownership or use rights are there with outside clans?
- Does the village recognize a Dispute Settlement Authority (DSA) empowered under the *Land Groups Incorporation Act*?
- How many times has the DSA met since the formation of the village ILGs?
- Does the ILG have a Minute book?
- Does the ILG have a corporate seal?
- How many formal decisions have been made by a given ILG in the last 12 months?
- Were these decisions recorded in a minute book, signed off by the Committee and kept for future reference?
- Does the Village Development Committee take an active interest in ILG functions, activities and responsibilities?
- Is there a formal member of the VDC responsible for ILG matters?
- Enumerate any ILG related activities pursued in the village.
- Does the ILG have any customary obligations to outside clans that should be addressed by the ILG Committee or are these obligations more on a family basis?
- Does the village have any permanent residents from other villages?
- Which ILG(s) has responsibility for managing these people?
- What land rights do these guest residents have?
- When did the guest residents first come to the village?
- What is the status of guest residents in regard to land management? (Power 2000: 99).

These questions invoke the Western terms of *corporation*. A corporation is a group that is legally treated as a single individual. The *LGIA* assumes that the landowning unit acts collectively in its collective interest. It assumes that the decisions that a landowning unit makes are similar to the decisions a corporation makes.

This is not the case, at least not among the Foi. It is not demonstrable that the local clan acts collectively to further the interests of the clan as a collective unit. What anthropologists such as Roy Wagner (1974), Marilyn Strathern (1985), Simon Harrison (1993) and myself have described as the 'givenness' of connection and obligation in PNG sociality has been mistaken by the architects of the *LGIA* as evidence of communal, corporatist ownership and decision making. If this is so, then the act of incorporation cannot protect the customary status of the local

Foi clan — it can only force it into new forms which can take on the functions that the *LGIA* assumes such units will undertake.

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

The [*LGIA*] actually spells out this relationship between land and group in the opening words: ‘*Being an Act* —

- a. to recognize the corporate nature of customary groups; and
- b. *to allow them to hold, manage and deal with land in their customary names and for related purposes.*’ [Original emphasis] ...

Thus the purpose of the Act is to empower groups owning land *communally* to manage their land. NB The Act does not narrowly confine itself to the aspect of managing benefits coming to the owners, though it clearly accommodates this.⁷

In their judgment on the Gobe dispute, the Land Titles Commissioners said that:

Where claims arise in that [sic] a certificate is issued under the provisions of the *Land Groups Incorporation Act* amount to title in land, such claims are not valid on the basis that [sic] the characteristics of the ‘title’ referred to in the provisions of Section 1 of the *Land Groups Incorporation Act* is [sic] not the same title to land ownership in that it [sic] relates to ‘title to name’ of the customary land owning group ... (Kanawi et al. 1998: 31).

And again:

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

Thus, insofar as the ILG is acknowledged by the Commissioners to have been utilised primarily as a unit receiving petroleum benefits, it must constantly work against what they perceive to be the interests of the traditional customary landowning group.

⁷ ‘Definition of Land Groups and Group Lands.’ Chevron Niugini File note A.P. Power 6 February 1998.

What is Customary Law?

Power has also written about what constitutes the 'law-like' in customary law:

The corporate nature of the land group makes allowance for a constitution to govern the management of the group. This is analogous to the constitution or articles etc of companies and business groups. A very significant weakness in implementation of the *LGIA* to date has been the failure of the groups to appreciate the importance of their constitution and hence their inability to manage their affairs accordingly. Thus when issues arise that could be dealt with by the group under the leadership of their management committee, the group fails to act. This leads to dissension in the group and moves to split up into smaller groups. Splitting into smaller groups may completely distort the responsibilities and effectiveness of the land controllers and should be avoided at all costs since it is totally contrary to the purposes of the Act (Power 1998: 39).

The intent of the audit of the Kutubu ILGs which I carried out in 1999–2000, and the policy of the CNGL Lands and External Affairs officers, was to make sure that the ILG program preserves the customary landholding units in the oil project area. However, to repeat, the *LGIA* is based on Western notions of property ownership and collective, corporate decision making that are not Melanesian principles as such. Therefore, the *LGIA* already works to some extent against traditional custom, by making a concrete 'thing' out of land and of the landowning group (Weiner 1998). But 'customary law is not a statement of practice. It is a normatively clothed set of abstractions from practice ...' (Hamnett 1977: 7). Bohannan says that:

Whereas custom continues to inhere in, and only in, these institutions which it governs (and which in turn govern it), law is specifically recreated, by agents of society, in a narrower and recognizable context — that is, in the context of the institutions that are legal in character and, to some degree at least, discrete from all others ... (1967: 45).

Law has the additional characteristic that it must be what Kantorowicz calls 'justiciable,' by which he means that the rules must be capable of reinterpretation, and actually must be reinterpreted, by one of the legal institutions of society so that conflicts within nonlegal institutions can be adjusted by an 'authority' outside themselves. (Bohannan 1967: 45–6).

I think the issue of justiciability and its relation to the work of 'interpretation' more generally is what is critical here — a point to which I return at the end of this chapter.

The Foi landownership system was highly flexible in traditional terms and groups varied dramatically in size, from the large clans of Damayu and Fiwaga

which had over 100 adult male members, to Kuidobo clan of Hegeso which in the 1980s had a single adult male. There simply were no guidelines or ideal parameters governing what a local clan 'should' consist of. Clans and individuals alienated land frequently and commonly, and gained exclusive ownership over new parcels of land constantly. It must also be repeated that no local clan was in any absolute sense disadvantaged over others in terms of access to all types of land.

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

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

Another important feature of the fragmentation of Foi clans through the ILG mechanism is that adopted lines are singled out, either for second-class status within the clan or for expulsion as outsiders. However, the process can work the other way around — the impetus can come from the descendants of immigrants themselves who use that justification of foreign origin to set up their own ILG. In either case, the *territorial* dimension of 'clan', that is, *local group* organisation is being eroded by the inextricable link between the ILG mechanism and the distribution of resource benefits. In either case, the full status of descendants of immigrants is subject to erosion of full clan rights. While it is true that foreign origins were never forgotten in the past, there was virtually no distinction in status within the clan because of it. It appears that the Foi are on the way to developing their own model of infra-indigeneity, whereby 'original' people are contrasted with 'immigrants'.

But the fact that PDL land is valuable in a way that traditional land was not means that the system threatens to 'set in concrete' a division of the clan into PDL and non-PDL landowners (Weiner 2001), although — as the example of Muiyoke indicates — there are indications that the Foi are indirectly redistributing even PDL land more widely. These points have already been summarised more effectively in the course of Cooter's earlier observations:

The courts that hear cases in customary law — village courts and land courts — are better placed than parliament to make authoritative findings about customary law ... Melanesian legal principles are to be discovered by deciding cases in customary law. The 'common law process', which

refers to the courts working custom into formal law, involves litigation, not legislation (Cooter 1989: 19).

The Fragmentation of Foi Clans

Many of the new ILGs at Lake Kutubu are the result of large clans such as Wasemi Fo'omahu'u Orodobo or the large Damayu and Fiwaga clans splitting into constituent subclans and lineages. These new applications are defensible in terms of population growth alone, which was the most common precipitating cause of clan fission. In Foi, *ira* ('tree') is the term applied to three generations of male descendants of a single man. Practically, it takes the form of a group of full brothers whose land is normally contiguous — in other words, they live near each other as well as being closely related. The ILGs that were audited at Wasemi were all 'trees' of the Orodobo and So'onedobo clans — the two biggest clans at Wasemi. I have previously identified the *ira* as the property managing and work-related cooperation group within the Foi social system (Weiner 1986, 1988a), and so there is nothing non-traditional about this kind of division — it merely gives formal ILG recognition to a unit that is already explicit and visible in the Foi social system.

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

A singularly appropriate feature of the *LGIA* is that it defines the land belonging to a landowning group not in terms of a discrete unbroken border, but in terms of a list of specific sites over which its constituents exercise what for all intents and purposes are the prerogatives of ownership. In this context, ownership is defined as control of access to the site or ground in question. Among Foi the local clan exercises a sort of nominal communal dominion over its territorial resources, but effective *ownership*, that is *control of access*, is always exercised by specific individuals or, at most, a set of full male siblings and their father (Weiner 1986, 1988a).⁸

The issue at stake is not just *control of resources* but also *the mechanism and locus of decision making at the local level*. As a result of there now being two social units, the ILG and the clan, clan-wide decisions concerning things such as bridewealth and ceremonial will be split off from decisions concerning resource management and distribution. It is an open question whether, in terms of

⁸ This is similar to Sutton's (1998) distinction between proximate and underlying title in Australian Aboriginal landholding practices.

traditional custom, the control of land was seen as distinct from all these other clan functions.

The local Foi group reached consensus not by convergence upon a common interest but by the temporary rhetorical abeyance of the fissive mechanism that really 'founds' group formation (Goldman 1983). In traditional times, the local clan rarely acted as a single unit, except ceremonially, as in bridewealth distributions for example. Land decisions were the affairs of those directly involved. Although disputes over land within the clan were commonly adjudicated, they did arise. Disputes over distribution of bridewealth were also common.

Some Comparative Observations and Conclusions

I wish to conclude by making the following observations:

- customary law cannot be made into justiciable law without turning it into something altogether non-customary;
- the landholding clan, at least in regions like the Kutubu oil project area, is neither solidary, corporate, nor bound by collective sentiment;
- but I agree with the architects of PNG post-Independence land reform that the relation to land is central to the PNG person's being and social identity.

As is the case with the Nuer, social units, though phrased in the language of consanguineal kinship, are also equi-primordially territorial relations. But land is only one part of what a local clan exists to 'control', or to put it another way, the allocation of rights to land is only one of the social conditions through which the clan is elicited as a social entity — for the most part, rhetorically. Yet this is what is required from an ILG by the local 'External Affairs' requirements of the resource companies, which tend to phrase their concern for achieving a manageable local decision-making process in terms of clear guidelines for the allocation of authority over land matters.

Wagner (1988: 60) has characterised the so-called solidariness of Daribi social units in the following way:

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

Bamford (1998: 30), writing about Kamea inheritance through clans, makes a similar and more general statement:

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

Smith (1974: 43) observed much earlier that:

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

And Evans-Pritchard (1940) originally observed that:

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

Finally, if we are to take the critique of the self-evidence of internal and external relations seriously, then neither can we long sustain the fiction that CNGL is *radically external* to the land groups themselves. Through its own attempts at educating landowners about the relevant PNG legislation, its own acts on behalf of the State in registering the ILGs in the first place, and its commitment to monitoring, evaluating and maintaining the ILG system in 'good repair', the company is a critical force for the transformation of group dynamics in the oil project area. The anthropological study of indigenous culture and society in a resource extraction environment cannot limit itself to the indigenous people as such. A complex, non-local 'culture' comprising government, resource companies, and local landowners is developing in every mining enclave in PNG, and this non-local and non-traditional culture deserves monitoring in its own right. In order to reveal this culture as an object of anthropological scrutiny, it will be necessary to view the PNG 'clan' not chiefly as an age-old and resilient feature of 'traditional' society but also as a strategically elicited form of social and political self-presentation in the highly charged intercultural encounters of PNG's resource sectors.

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