

## Foreword

Anthropologists 50 years ago would probably have regarded a collaborative presentation of essays on indigenous land tenure in Australia and Papua New Guinea (PNG) as a dubious undertaking, if not a category error. Aboriginal and Melanesian systems were functionally distinct, one adapted to the needs of a hunting and gathering economy, the other to sedentary horticulture. Going back another 50 years, such a conjunction would have been intelligible only if its purpose was to exhibit lower and higher stages in cultural evolution. As the authors of the present volume are not motivated by a desire either to overturn functionalism or advance evolutionism, what brings them together in common cause?

An important clue is to be found in the curious fact that the *Native Title Act* of 1993, passed by the Federal Government on behalf of the indigenous people of Australia, grew directly out of a High Court action by three Torres Strait Islanders whose ancestors probably came from PNG and whose people traditionally lived as subsistence cultivators. In the course of documenting the denigration of Aborigines in colonial legal history, Justice Brennan made it clear he would have no sympathy with any attempt to represent the plaintiffs as belonging to a higher level of native society than any that existed on the mainland (Bartlett 1993: 27). His colleague Justice Toohey acknowledged significant cultural differences between the two peoples but insisted that the principles relevant to a determination of interests in land were the same (ibid: 140).

Although the Mabo decision was the first positive determination by the judiciary of the rights of native Australians to land at common law, it was heralded by political and legislative forerunners in PNG as well as Australia. In the early 1970s, government inquiries were carried out independently to consider the issue of land rights in two Commonwealth territories — the Commission of Inquiry into Land Matters (1973) in PNG, and the Aboriginal Land Rights Commission (1973) in the Northern Territory. Two Acts of Parliament ensued shortly afterwards: the PNG *Land Groups Incorporation Act 1974* and the Australian *Aboriginal Land Rights (Northern Territory) Act 1976*.

It need hardly be said that the consequences of this legislation for the intended beneficiaries were profound. Less conspicuous, though no less profound, were the side-effects on the practice of anthropology. Whereas in the first three quarters of the twentieth century investigations of traditional land tenure in Australia and PNG were pursued at a leisurely pace, in response to the needs of an academic discipline, in the last quarter they were more often carried out under contract and under pressure in the context of indigenous land claims or externally-financed resource exploitation. While I am a relic of the old order, all the other contributors in this book belong to the new.

My interest in customary land corporations began while I was an undergraduate at Sydney University. In 1952, two years before I enrolled in anthropology, A.R. Radcliffe-Brown published his collected essays and addresses under the title of *Structure and Function in Primitive Society*, which enshrined unilineal descent as a key principle in the occupation, ownership, and use of land in pre-industrial social formations. In his first article on Aboriginal social organisation, *Three Tribes of Western Australia* (1913), he identified the primary territorial group in the Port Hedland region as a patrilineal clan. In his seminal treatise, *The Social Organization of Australian Tribes* (1931), he argued that the patrilineal clan formed the basis of landowning corporations throughout the continent.<sup>1</sup>

Radcliffe-Brown was professor of anthropology at Sydney University from 1926 to 1931. Scholars attracted by his theoretical approach after he returned to England, particularly E.E. Evans-Pritchard and Meyer Fortes, emerged as leading exponents of descent theory in the analysis of African societies. In Aboriginal and Melanesian ethnography his abiding influence dominated the research agenda throughout the 1950s, particularly following the establishment of anthropology at The Australian National University. Most of my contemporaries regarded themselves in some sense as 'British structuralists'. One of the most thoroughgoing applications of the school's doctrines was carried out by my teacher M.J. Meggitt, who first consolidated descent theory in the Australian desert and then planted its flag in the New Guinea Highlands (Meggitt 1962, 1965).

While post-war anthropology was thus preoccupied with the documentation of indigenous corporate culture, post-war native policy under the direction of Paul Hasluck (Minister for Territories) viewed communal ideologies as barriers to the assimilation of individuals into the workforce and lifestyle of Western civilisation. As time passed, the pragmatic and philosophical assumptions underpinning this approach came to be regarded as repressive by indigenous activists as well as members of the Australian intelligentsia, and by the end of the 1960s the policy had effectively given way to demands for autonomy and self-determination. Of particular significance was a mounting support for land rights. The rejection of communal title by Judge Blackburn in the Gove case of 1971, followed by the election of a Labour federal government in 1972 and the approach of Independence in PNG, all helped to mobilise administrative and legislative machinery in the desired direction. As we have seen, two progressive Acts were passed in the mid-1970s, one by the Somare government in PNG and the other by the Fraser government in Australia. The principle architects were C.J. Lynch and A.E. Woodward respectively — both lawyers of liberal inclination.

<sup>1</sup> Neither of these two publications was included in *Structure and Function in Primitive Society*.

While the essays in the present volume take for granted that the land legislation in question was intended for the protection and benefit of the indigenous peoples, the authors situate themselves as observers of troubled waters downriver from the confluence of the two streams I have traced in the preceding paragraphs. Anthropology, in its classical Radcliffe-Brownian form, provided the administration with a single-criterion, unambiguous model of the customary land corporation, admirably suited for registration and incorporation into the modern world of commerce and capitalism. Unfortunately, it is now apparent that in many parts of Australia and PNG patriliney is unlikely ever to have been a sole exclusive principle of recruitment to land groups, and that in some places it was barely acknowledged.

Scepticism began in PNG somewhat earlier than in Australia. In 1962, John Barnes, an Africanist trained in the best traditions of British structuralism before migrating to Australia, drew attention to recurring reports from the New Guinea Highlands of non-agnates comfortably embedded in patrilineal descent groups (Barnes 1962).<sup>2</sup> Fieldwork over the next 25 years continued to undermine classical descent theory by demonstrating a range of strategic and opportunistic considerations, besides patriliney, that contributed to the composition of groups in the contexts of production, exchange, marriage arrangements, and warfare (Wagner 1967; Strathern 1968; Kelly 1977; Modjeska 1982). Reviewing this material in 1987, Daryl Feil concluded that 'social structures in the Highlands contain many interrelated elements, the relative emphasis of a single feature, say patrilineal descent, being only one and not necessarily the dominant one' (Feil 1987: 125).

In Australia, anomalies began to appear during the 1970s, particularly in the findings of Fred Myers (1976) in Central Australia and John von Sturmer (1978) in North Queensland. Among the Pintupi of the Western Desert, admission to landowning groups depends mainly on conception at a particular site, or close cognatic links to individuals of previous generations conceived there. Cognatic kinship is likewise important among the Kugu-Nganychara of Cape York, but the basis of site ownership is not conception but male dominance through which an individual comes to be acknowledged as the 'boss' for a particular camping location. In both cases incipient patrilineal tendencies may appear but are regularly submerged by other considerations. In the Northern Territory a variety of departures from the classical patrilineal model emerged in the course of land claim research subsequent to the proclamation of the *Land Rights Act*, most conspicuously the recognition of matrilineal descent as a ground for ownership status. In a review of evidence of this kind from widely separated parts of Australia

<sup>2</sup> During his first visit to PNG in 1960, John Barnes met a Land Commissioner in Rabaul 'who had been taught by Radcliffe-Brown that land was owned by patrilineal descent groups and was finding such groups all over the Gazelle Peninsula' (personal communication).

(Hiatt 1984), I concluded that 'patrification has been accorded an undue pre-eminence in the definition of landownership, at the expense of other cognatic links (especially matrification) and of criteria such as putative conception-place, birth-place, father's burial place, grandfather's burial place, mythological links, long-term residence, and so on' (Lakau 1995: 98).<sup>3</sup>

Given that anthropological orthodoxy was not seriously challenged in Australia until after the *Northern Territory Act* had been passed, it is noteworthy (not to say surprising) that the term 'patrilineal' does not appear in the wording. The landowning group is described merely as a 'local descent group'. In the early hearings the Land Commissioner was persuaded that patrilineality was implied in the definition; subsequently, faced with continuing pressure from claimants to include matriliates in the list of registered owners, he felt free to interpret the wording literally (and therefore more flexibly).

Patrilineality is likewise not specified by PNG's *Land Groups Incorporation Act*, whose preamble states that the purpose of the law is 'to recognise the corporate nature of customary groups and to allow them to hold, manage and deal with land in their customary names'. A recurrent criticism in the present essays is that, despite the broad ambit of the legislation, the government and its agents have represented patrilineal descent groups ('clans') as the appropriate bodies through which indigenous people should protect and pursue their interests in relation to modern commercial enterprises. In areas where criteria other than patrilineality have been traditionally recognised as valid alternative grounds for land group affiliation, non-agnates may be excluded from membership through lack of officially required patrilineal credentials. In some places where patrilines did not exist traditionally, the people have 'invented' them on the understanding that the government and the developers require them for the purpose of distributing royalties.

The guiding principle of the Commission of Inquiry into Land Matters was that land policy 'should be an evolution from a customary base'. In that case it is obviously important to get the customary base right, and the present volume makes a timely and valuable contribution in that direction. There can no longer be any excuse for imposing a rigid anthropological dogma on people for whom it was never valid; or worse, tempting them to invent fictions in order to conform to it. But the issues discussed in the book raise a more radical question: to what extent will the current preoccupation with cementing customary institutions into the foundations of political economy in PNG and Aboriginal Australia in fact impede further 'evolution' or even bring it to a halt? Any society that treats

<sup>3</sup> Writing generally of PNG a decade later, Andrew Lakau noted that, although inheritance is through patrilineal or matrilineal descent, individuals in competition for scarce resources in land and survival resorted to various other recognised credentials, such as 'affinity, adoption, birthplace, conception place, father's or mother's birthplace, mythological links and so on' (ibid).

its traditions as sacrosanct and not subject to inquiry, criticism, revision, or rejection must sooner or later confront the consequences of stasis.

Several essays raise the question whether capitalist development is compatible with the perpetuation of communal landownership. The issue is currently the subject of public argument in both PNG and Australia; and, while no one seriously expects a consensus to emerge on the basis of either economic facts or moral values, it seems necessary in the interests of clarity to distinguish among the kinds of benefits ownership might confer. Where legal title confers rights to royalties in respect of natural resources (minerals, petroleum, forests), justice would seem to require equal distribution within the incorporated customary landowning group. It might even be argued that the appropriate landowning group in such cases is one of maximal proportions (such as a tribe rather than a constituent clan). But where legal title confers the right to transmit the products and improvements of human labour by inheritance (for example, to descendants), pragmatism probably dictates a system of individual ownership. There is no need to assume that the two forms are mutually incompatible: the principle of leasehold with payment of rent makes it possible for communal and individual ownership to coexist within the same community.

I commend the essays in this volume to all concerned with the social and economic future of the Indigenous peoples of Australia and PNG. Combining professionalism with humanism, they seek to protect the land reforms of the late-twentieth century against over-zealous traditionalism as well as against a dissipation of cultural and natural resources in the name of modernism.

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