The Common Property Resource Digest

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Greetings from **The Commons in an Age of Globalization**, the 9th Biennial Conference of the IASCP. People from around the world are gathered in a small city of amazingly comfortable meeting tents on a golf course, surrounded by antelope and warthogs. The elephants only come at night. We are having a wonderful meeting and there will be a full report in the September Digest.

This issue of the CPR Digest presents our first **Regional Beat** from the **Pacific Region**. Once again we have combined the Regional Beat and the CPR Forum into a single segment. This time the theme is indigenous property rights. We start off with an introduction by Regional Editor *John Sheehan* and then go to excerpts from three papers given at the Pacific Regional Meeting of the IASCP last September. The first paper, which is acting as the CPR Forum Commentary, is from *Eric Sambourin* and *Philippe Pedalahore*. They describe the learning processes and new rules being formulated around indigenous management in New Caledonia. The second paper is from Lynne Armitage, who takes us to Papua New Guinea and the legal developments there on the interface between customary and alienated tenure systems. Then *Ali Memon* and *John Selsky* share their impressions of how neo-liberal ideology is driving resource policy in New Zealand with implications for indigenous rights. Finally, *George Cornell* describes his reaction to the New Caledonia situation from the perspective of the North American Indian experience.

The emphasis on the region is carried on by a Practitioners' Profile. *David Brunkckhorst* recounts some of the experiences of the Tilbuster Commons, a new kind of common property institution emerging from the creativity of the people in the Pacific Region.

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The Inaugural Pacific Regional Meeting of the IASCP

John Sheehan
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Pacific Regional Digest Editor, June 2002

The Inaugural Pacific Regional Meeting of the IASCP held in Brisbane, 2-4 September 2001, was important in that it provided the attendees with an opportunity to exchange views on the issues being encountered by common property researchers and practitioners in the Pacific region. The delegates were drawn not only from the Pacific region but also from South Asia and South-East Asia, showing support within the region and adjoining regions for meetings focusing upon regional common property rather than global common property issues.

It was evident early in the Pacific Regional Meeting that two major topics were seen by the attendees as having significance for the region, namely forests, and the recognition and management of traditional or indigenous lands. Indeed, the focus on indigenous property rights and interests was so profound that then IASCP President Susan Hanna observed in her closing address that the gravity of such issues had reinforced in her mind the need to press forward with the regionalisation initiative.

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Pacific Regional Editor

John Sheehan

The three selected papers from the Pacific Regional Meeting by Lynne Armitage, Ali Memon and John Selsky, and Eric Sabourin and Philippe Pedelahore, focus on the issue of indigenous property rights in Papua New Guinea, New Zealand, and New Caledonia respectively. The papers provide a snapshot of the issues surrounding the dominant form of tenure in the Pacific Region, a form of tenure which has received scant attention to date. Customary land tenure is a unique form of property rights in the region that should receive respect.

Whether land mobilization in the PNG context will ultimately succeed depends on both the economic imperatives experienced by the traditional land owner groups and the reform of administrative and legal structures. Whether the distinctive bicultural polity of the Maori and Pakeha societies is preserved will be largely decided by the interaction between resource management legislation and the need to secure settlement of Maori Treaty rights over land and other natural resources. Whether traditional Kanak land management approaches achieve an accommodation with the dominant market economy will ultimately be decided by the interplay of colonial and post colonial value systems.

All of the above demonstrate the varied nature of common property issues in the Pacific Region.

REGIONAL BEAT

Pacific

CPR FORUM

COMMENTARY

Indigenous Land and Collective Tenure Systems in New Caledonia

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Some original forms of collective land tenure experience have emerged from the process of redistribution of some indigenous land to Kanak communities in New Caledonia. These systems aim to develop a new balance between traditional Kanak customary land management methods and legal mechanisms enabling the Melanesian groups to get a foothold in the dominant market economy model.

Evolution of Melanesian Land Tenure Systems

Before being claimed by France in 1853, New Caledonia had been occupied by Melanesians for some 3000 years. Melanesian society was grouped into lineages - descending from a common ancestor - which exercised their influence over their original home area.

For arable land and neighbouring forest areas, tenure arrangements followed the rule of the 'first occupant'. This lineage 'homeland' not only sustained their gardening production and hunting and fishing activities, but was also an identity factor and a strong link to the common ancestor.

The colonial period (1853-1930) dispossessed the Kanaks of most of their land in order to construct penitentiaries and later to endow European settlers.This plundering of native land was accompanied by forced population displacement and the restriction of the Melanesians to reserves formed of clans grouped into villages called tribus or tribes.From the legal standpoint, the reserves remain the incommutable, inexpropriable, untransferable and inalienable property of the 'tribes' to which they have been allocated.

The introduction by the colonial power of local native authorities was superimposed on and/or superseded the traditional leader's role in resource and land management.This deep disturbance of the geographical distribution of the population, of the customary zones of influence and of the traditional powers over land management would make the unequivocal determination of the legitimate customary landowner a complex matter

Since 1978, in response to Kanak land claims, efforts have been made to redistribute some of the land plundered by colonisation. Between 1978 and 1998, 150,000 ha, or about 10% of the total land area of the main island, were purchased using public funds from private owners and public land holdings. In all, some 126,000ha, 106,000 (84%) of which went to Kanak communities, were thus redistributed: 24 % for extending native reserves, 8 % directly to various clans and the main part (53%) to GDPL.

These redistributions in favour of groups expressing land claims, i.e. clans or tribes, were widely connected with a new land tenure status specific to New Caledonia, the 'Special Local Law Group' (GDPL). This status was designed to reconcile the requirements of customary law, as applied to individuals, and those of ordinary law, as applied to property, and thus to form a bridge between Kanak society and society as a whole, as expressed by Roman Law. The GDPL was designed to pursue the prime goal of offering a structure to receive and manage land. Recognised as having legal status, it also gave traditional structures of authority a way of becoming involved in the economic area.

It required the payment of a land tax and authorised the leasing of landed property. However, the use of the GDPL as a structure for developing economic activities is limited because of the lack of articles clearly stating the rights and responsibilities of its members.

Similarly, it should be noted that credit organisations were and still are reluctant to lend funds to these hybrid structures. These limits explain why the establishment of an Economic Interest Group (GIE) often supplemented the GDPL, where the GDPL was firmly involved in market-oriented production activities, mostly livestock farming and tourism.

With the Nouméa Accord in 1998, recognition was given to a colonial reality and a customary land system. Three kinds of ownership are now recognised: private property, public land and custom land. This last provision and the related mechanisms, such as leases, custom land survey, guarantee fund, etc., is the beginning of legal integration of custom land into economic development projects following the example of the GDPL.

Recent Experiences in Collective Kanak Land Management

However, while the GDPL status resolves some problems in order to allocate and develop native land for housing, agriculture or livestock, it also produces various difficulties.

A first contradiction appeared between the political wish for production-oriented land allocations and the basic underlying motive for the Kanak claims, which were more linked to a reparation for damage caused by colonial plundering and a return to land as a foundation for identity.

The second contradiction was linked with a political requirement for collective management of attributed areas. In fact, collective production systems, particularly for cattle farming, did not relate to any Kanak practice or tradition. Horticultural work and the division of produce are in fact managed at the family level.

Interesting prospects have nevertheless emerged from these experiments. They can be analysed in terms of collective learning procedures and the formulation of new rules, in particular through the updating of Kanak reciprocity practices. For example we can observe the conversion of tribal GDPL into clan or family GDPL where management and benefits are shared by a more restricted circle than the large initial group.

There is also a trend towards reintroduction of GDPL land and goods, mostly cattle, in the tribe's communal space as a resource-sharing reserve for hunting, fishing or gathering activities. Investment in capital and work has become very low; cattle management is reduced to possible use in the case of an emergency or to meet a need in one of the families such as illness, bereavement, marriage, etc.

Since the Nouméa Accord, recognition of the native land system leaves the responsibility for management of land to the customary authorities, but raises many questions.

A first question is that of the legitimacy of individual or collective economic land development projects and the collective recognition of such legitimacy. The introduction of the prospect of obtaining financial income from customary land development projects, i.e. agriculture, housing, mining or tourism, requires a fresh look at the distribution of income and land tenure legitimacy issues. This difficulty is aggravated by the contradiction between the values of the customary system of reciprocity and the market-based exchange system. For the Kanak communities, even if food and cash crop management is carried out within a family context, land and natural resource management has remained a collective exercise, controlled by chiefs and Elders.

The debate about how to manage the land resource and what it can generate today go beyond the land issue and are closely related to the power distribution in progress within the tribes and their economic relationships.

The tribal chiefs and the Council of Elders still represent important power structures within the tribes. Their legitimacy and their responsibilities, which had already been destabilised during the colonial period, are at the present time having to face the demands of dominant market economy model and some demands from other forces in the tribes such women's groups, youth groups, and local wage-earners. Such negotiations and the related experiences generate collective learning processes about the market economy and public policy implementation.

Conclusions

The Kanak world is now tackling various contradictory issues concerning its integration into a global world dominated by the market exchange economic model. Whether it wants to or not, the Kanak people has to face a double contradiction: colonial framework and economic duality. There is therefore still a form of coexistence between the capitalist type neo-colonial exploitation and the exploitation of Kanak producers due to their limited mastery of the contradictions between systems of reciprocity and systems of market exchange.

It is from this collective learning process and the ownership and assimilation of the emerging rules that the Kanak and multicultural Caledonian societies of tomorrow will emerge. They may well be more able than today's to manage the contradictions between communal and collective land tenure models and the individual ownership of the income generated by this resource. Local actors are devising the answers to these questions in their daily practices: they may need to draft new rules or update the old ones.

REGIONAL BEAT

Pacific

CPR FORUM RESPONSE

Papua New Guinea: Managing Customary Land Tenure

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Land resource management in Papua New Guinea (PNG) has been experiencing substantial pressure over the last few years in response to economic and social development and change. Customary tenure is the dominant form of tenure yet it has received very little attention as a resource which underpins such development. Over recent years, the economy has sought to manage the impacts of external influences, such as globalisation and a decline in commodity prices, whilst beset by many internal political upheavals.

Within the context of such structural readjustment, this paper examines the interrelationship between customary and alienated tenure systems, and their prospects in relation to appropriate management techniques.

Alienated Land Tenure (ALT) and Customary Land Tenure (CLT)

There have been many attempts to adapt the tenure system to more adequately reflect the needs of traditional owners, particularly where pressure for development is evident. Ori and Lakau discuss the failures of the existing system. Ori questions 'whether the evolving nature of customary land tenure can be incorporated into the existing administrative system in PNG.'

Table 1 presents a comparison of the two systems with particular reference to aspects of registration which may affect their potential for economic development.

If registration of title is considered as a system which records relevant features of land to assist with its use, management and control for the benefit of its owners, both ALT and CLT utilise elements of such systems with the essential difference being the former is written and the latter is oral. One of the impacts of this difference is that the oral form of recording title does not provide sufficient security for recognition by commercial lenders.

This has generated two main avenues for those traditional landowners who wish to access funds secured on their land. One is for title to be converted to a form that is acceptable to commercial lenders and the other is to fund development through non-commercial (invariably public) sources. Ori identifies the many attempts to mobilise customary land both prior to and post independence. However, with some few exceptions, the land conversion process has not met with much success.

Ori nominates five reasons that help to explain the landowners' reluctance to part with their traditional lands:

1. land is vested in the social grouping such as the clan, tribe and extended family

2. land boundaries are defined by natural features often with traditional significance

3. land rights are recorded by memory through oral record

4. land rights are inherited through the lineage or by succession.

5. The concept of inalienability prevails, prohibiting the sale of land with ownership vested in the clan.

Despite the length of tradition, the capitalist system is inexorably infiltrating the traditional economic and social mores of the country. The landowners are themselves seeking to respond to such changes whilst protecting their traditional values and this is nowhere more evident than in areas of high commercial activity.

Table 1: Registration Systems Compared

Characteristic	Alienated Land Tenure	Customary Land Tenure	Comments
Role of registration	To provide a system which records relevant features of land to assist with its use, management and control for the benefit of its owners		Essentially the same intention for both systems
Form of registration	Paper/computer based records; held in a Register of Titles	A self-reliant system; all details known and held by owners	Oral basis of CLT records are not recognised by market-based mortgage lenders
Security of title	Title is guaranteed by government	Security of title is maintained by the landowners	CLT not recognised as providing sufficient security or recourse in the even of non-payment of borrowed funds
Land tenure conversion system	Not applicable	Lease/leaseback - administered by Lands Dept.; presumption of agreement from all owners	Concerns by some owners over loss of control
		Owners form an incorporated land group; generates a freehold title under the ALT system	Original tenure expunged; 'alienation' results

Source: author 2001

Prospects for the future

Although the needs of the market and of the customary titleholders both require a system which conforms to their essential requirements, their is no evidence to conclude that these needs can only be accommodated through the continued dominance of the ALT system whenever there is interaction between the systems. It is therefore appropriate to consider what options are available to fulfil the basic requirements of both systems. Many of these revolve around aspects of control and security, and should recognise and avoid the pitfalls of previous proposals which have failed to gain grassroots support.

The Ahi Land Mobilisation Policy (Table 2, next page) provides one example. It has been developed as a vehicle through which customary land of the Ahi tribe in the Lae district can be administered. The Ahi Local Government Council and the Morobe Provincial Government have adopted the policy for and on behalf of the indigenous Ahi people 'to protect and use their land in more meaningful development'.

While it is recognised that land mobilisation has had a very chequered history in PNG, the impact of economic change and opportunity and the high level of involvement in the market economy of the majority of decision makers in a number of land owner groups suggest that the will may exist to achieve the desired outcomes. Whilst Lakau (1991:123) represents the view that administrative and legal reform are required to enable mobilisation to occur, the economic imperatives of landowner groups will drive their will to operationalise the process. The land will be mobilised despite the comprehensiveness of the land tenure system's procedures, not because of them.

For Further information

Armitage LA, Bannerman SO and Ogisi F, (1998), 'Land resource management and customary title in Papua New Guinea: issues and prospects', in Al-Dabbagh M and Buschenhofen P (eds.), Proceedings of the 2nd Huon Seminar Resources for Science and Technology in Development, PNG University of Technology, Lae, PNG; pp.194 - 204.

Lakau AAL (1991), State acquisition of customary land for public purposes in Papua New Guinea, Department of Surveying and Land Studies, Papua New Guinea University of Technology, Lae, PNG, 124 pp plus appendices.

Ori RL (2000), 'Customary Land Mobilisation for Urban Development; a case study of the Lae Urban Strategy Plan', unpublished dissertation, Department of Surveying and Land Studies, Papua New Guinea University of Technology, Lae, PNG, 26 pp, plus appendices.

Table 2: Aims of the Ahi Land Mobilisation Policy

1. To protect the customary land from illegal occupation and use by non-Ahi people.

2. To determine the future of the illegal settlements on Ahi customary land and repossess the land for proper development purposes.

3. To set proper guidelines for land use and ensue that the traditional customs of the Ahi people are followed in terms of acquisition and permissive use of land.

4. To determine the right of ownership and, in accordance with custom, who should preside over the land at the clan level.

5. To determine who has the right over use of customary land and who can use the land on a permissive basis.

6. To recognise that the Ahi Customary Land is prime land for further expansion of Lae City because it falls under the physical planning zone.

7. To ensure that the land is utilised for meaningful developments and the benefits go back to the indigenous Ahi landowners either directly or indirectly.

8. To facilitate avenues for relevant assistance that may be given by all levels of government in PNG or any other donor agencies.

9. To facilitate developments on DA-A by the Land Development Corporation of Lae or the Lae Chamber of Commerce and Industry.

REGIONAL BEAT

Pacific

CPR FORUM RESPONSE

Contesting Indigenous Property Rights In a Post-colonial Society: A New Zealand Perspective

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New Zealand's Resource Management Act (RMA) was part of wide ranging structural and policy reforms which began in the mid 1980s and continue to evolve. Those reforms were based on a neo-liberal ideology and signified fundamental shifts in the workings of the country's political economy, including a new rhetoric of government non-intervention in the economy and mobilisation of the traditional ethic of private property. The groundbreaking RMA was enacted in 1991 with high expectations as an instrument to promote sustainable management policy objectives in a property owning, market based democracy. A commons perspective on the management of resources such as water, fisheries and wildlife has been at most an implicit assumption and not an explicit framework for informing theory or a tool for guiding RMA practice. In this brief paper we argue how a commons perspective can assist in understanding indigenous rights issues in natural resource management in the New Zealand context.

The Challenge of Managing Common Pool Resources in New Zealand

A discourse of property rights grounded in neo-liberal ideology has proved powerful in shaping public policy in New Zealand since the mid 1980s. This discourse has encouraged and enabled private property owning interests (e.g., farmers, corporations) to assert the dominance of individual private property rights over collective (community, common-property or public) rights and to claim de facto proprietary rights over resources to which rights are not clearly defined. For example, the government's aggressive corporatisation and privatisation strategy has transferred a number of publicly owned natural resource assets (e.g., forests, fisheries) to private ownership, with important implications for their sustainable management.

These claims have been contested by other users, including some Maori. Two recent examples include establishment of private marine farms along the coastline; and conversion of sheep grazing properties to dairy farms. If the resources in these examples are viewed as common pool resources, then the assertions of private property rights may be interpreted as new enclosures of the commons e.g., the public coastal marine space is enclosed through its occupation by marine farming applicants; and dairy farmers capture river quality by externalising some environmental costs of dairying. Similar to 19th-century Britain, these modern day enclosures have led non-dominant stakeholder groups to respond by asserting de facto rights to some of these enclosed resources. These assertions have led to growing competition and conflict between stakeholder groups in both urban and rural areas. The state has found it difficult to adjudicate such conflicts under the RMA, the main statute for resolving environmental conflicts. The state tries to adjudicate on technical grounds, but the problems are more deep-seated, i.e., related to property rights claims.

Historical Antecedents & Contemporary Land Ethic

New Zealand operates as a distinctively bicultural polity between Maori, the indigenous peoples, and Pakeha, the peoples of European heritage. Maori peoples comprise

approximately 12% of the NZ population. Some are organized in tribal groups, which give them collective voice in policy and legal matters. Other Maori, predominantly urban dwellers, are not affiliated with a tribe. "Pakeha" is a Maori term in common parlance denoting New Zealanders of European heritage. This bicultural identity is enshrined in the nation's founding document, the 1840 Treaty of Waitangi. As members of a post-colonial, property owning capitalist society, the majority of Pakeha New Zealanders have historically been vigilant about private property rights and their legal protection. The ethic of private ownership and the alleged right to do what one wants with one's land is deeply embedded, particularly in the rural society. The source of that ethic can be traced to the mid 19th-century Land Wars between the Crown and various Maori tribes, which led to confiscation by the state of land and other natural resources owned by Maori. The state played a pivotal role after the Land Wars in opening up this land for Pakeha settlement and farm development. Fundamental to this process was the assignment of private property rights on a freehold or leasehold basis on the condition that land was cleared and brought into production. Government coupled this assignment of rights with provision of subsidised infrastructure services such as transportation and agricultural extension and research. The traditional pre-colonial Maori economy and society, built primarily on communal foundations, was marginalised as a consequence of this process of dispossession. Until the Waitangi Tribunal, a quasi-judicial advisory forum for adjudicating Maori Treaty claims, was established in 1975, there was no effective forum for the Maori to assert their property rights guaranteed under the Treaty. This new forum was accompanied by a gradual change in public sentiment and that of the Courts to accord greater regard to aboriginal rights.

The country's natural capital of common pool resources was commodified and progressively depleted to produce primary products for overseas export markets and to accumulate financial capital. Farmers, foresters, fishers and miners were often given economic incentives by the state to harness these resources in a manner consistent with Hardin's 'tragedy' thesis. That is, New Zealand's rich bounty of CPRs such as water, wetlands and fisheries were often treated as de facto open access resources because rights to these either were not clearly defined or were not effectively enforced by the state. The long-term changes associated with the process of land settlement and development have had wide ranging negative impacts on the health of common pool resources. As early as the 1930s destruction of wetlands through drainage, loss of biodiversity including native fish habitats, water pollution, proliferation of pests and weeds, pesticide poisoning of the countryside and soil erosion were becoming visible. These changes had a detrimental impact on important sources of Maori livelihood.

The RMA as a Policy Instrument for Managing CPRs

Reluctantly the Pakeha majority are now being forced to come to terms with the dissonance between their clean-green mental images of the country's environment and the progressive depletion of its common pool resources. The lead up to the RMA was characterized by several years of delicate, complex negotiation and compromise among various stakeholders, and signalled the stirrings of new attitudes.

Yet, no one has examined the efficacy of the RMA in terms of commons concepts. Doing so entails viewing the resources covered within the ambit of the Act as CPRs, and viewing the Act itself as a commons institution designed to identify property rights arrangements that would produce an efficient and socially desirable allocation of environmental goods and bads. These views are plausible because the central purpose of the Act is the sustainable management of natural and physical resources. The Act focuses the assignment of property rights based on predictable effects rather than on uses as under the previous regulatory regime. It provides an integrated framework for managing all natural resources (land, air, water, coastal space and geothermal) except minerals. That framework is supported by rational and streamlined procedures for environmental planning and decision-making distributed carefully among central, regional and local governments.

The RMA makes a fundamental distinction between how land is managed and how water and air are managed based on property rights. The Act stipulates that a landowner can undertake any activity on his/her land unless there are restrictions prescribed in a plan approved under the Act. In contrast, the presumption with respect to water and air is that no one is permitted to use these resources for a particular activity unless that use is authorised in a plan approved under the Act. This distinction recognises that land in New Zealand is predominantly privately owned and accords supremacy to private property rights. However, de jure this is not the case with respect to water, air and amenity resources.

The RMA and Indigenous Property Rights

From the Pakeha perspective, the long festering resource ownership and management claims related to the Treaty of Waitangi were a significant policy issue in the wide ranging policy reforms during the 1980s. From the Maori perspective, issues related to the ownership and control of natural resources have been at the heart of contentions with the Crown dating back to the 1850s. The Treaty of Waitangi guaranteed to the Maori ownership of these

resources and, by implication, a major voice in their management. The resource management and local government reform initiatives during the 1980s were not successful in traversing wider constitutional issues relating to Maori ownership rights (e.g., proposed reforms to empower iwi (tribal) authorities as a form of local government to manage iwi owned resources were abandoned half way during the RMA negotiations). Hence, the scope and the new institutional arrangements of the RMA are limited to "recognising" Maori values and increasing Maori "participation" in decision making. Maori claims through the Treaty settlement process are adjudicated on an individual-tribe basis. A major Treaty settlement of fishery claims was negotiated on a pan-tribal basis.

Debates amongst the Maori are ongoing about the role of iwi (tribes) and hapu (sub-tribes) in communally owning and managing resources under their control and in exercising rights of consultation as a Treaty partner under the RMA. For example, the consultation rights accorded to Maori under the RMA have enabled some iwi and hapu to secure sole tribal rights to resources such as harvesting eels (a traditional food source) in glacial lakes in the South Island. These rights were secured as part of the renewal of RMA resource consents for hydro power generation by privatised electricity companies. There are comparable communally based Maori initiatives to rehabilitate and manage traditional seafood gathering places in the coastal marine environment under the Fisheries Act.

On another front, some Maori tribal authorities have been active alongside dominant commercial players in using the RMA to acquire property rights over common pool resources in the coastal marine environment. For example, a very large proportion of the recent flood of applications for marine farming in the South Island have come from the powerful South Island based Ngai Tahu tribe. Environmental concerns forced the government to impose a moratorium in 2001 on the granting of such applications. This has been challenged by the Maori because they were not consulted under Treaty obligations.

Conclusion

The RMA is underpinned by the assumption that private-property regimes are preferable to common-property regimes as the basis for natural resource management. The viability of the former assumption rests on secure and unambiguous property rights. The success of the quota management system for allocating and managing marine fishery resources in New Zealand is seen to attest to the success of the private property regime for managing common pool resources. However, we believe that it is more realistic to view the RMA in terms of the common-property regime because, apart from land, the property rights to many common-pool natural resources are defined commonly, or de facto, as much as they are legally, and they may be locally contended. Since the RMA was enacted, numerous instances have emerged of contention and litigation over access, withdrawal and even management rights to these resources. For this reason, implementation of the Act has been controversial. The primary objective of the Maori has been to secure settlement of their Treaty rights over land and other natural resources. During the last decade they have used the RMA as an important forum to achieve this objective, parallel to the process of tribal and pan-tribal Treaty settlement.

This is an abbreviated and modified version of a paper presented at the first IASCP Pacific area conference, Brisbane, September 2001, as "A commons perspective on the Resource Management Act: A turning point for resource management in New Zealand?".

CPR FORUM RESPONSE

New Caledonia and the American Indian Experience

George Cornell

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Eric Sabourin and Philippe Pedelhore's article, "Indigenous Land and Collective Tenure Systems in New Caledonia" certainly forces me to think about the parallels between the Kanak and the historic experience of American Indian Tribes. The authors raise important issues of traditional land tenure systems and leadership and how those systems were acted upon by colonization as Kanak groups were eventuallly displaced from historic land uses and rights of occupancy. Additionally, Sabourin and Pedelhore speak to the formation of reservations for these peoples and the filing of land claims seeking reparations for governmental wrongdoing. At the center of all of these issues, is the interpretation and application of western law to indigenous peoples as they move into the "modern" world. The resolution of these issues requires innovative strategies and models that are continuously evolving so as to address customs and traditions as well as facilitating participation with market economies. These are universal concerns to indigenous peoples worldwide that have been victimized by colonial patterns that are all to familiar.

The issues of the Kanak are almost identical to those faced by American Indian Tribes. There are differences; the clan basis for Kanak land management and the later formulation of tribes tied to the reservation system while American Indian Tribes incorporated numerous clans but the tribe was the primary political unit. The similarities are uncanny though. The formation of reservations, the imposition of leadership structures, and the legal basis of land claims are clearly outcomes that these diverse cultures share as a result of the

colonial experience. How respective governments have dealt with these realities is also fascinating.

The purchase of public and private lands for redistribution to indigenous groups in response to land claims is something that is incredibly rare in North America. Native land claims in the United States have been settled monetarily and there has been little interest in aiding Indians in making the transition to a more productive interaction with the market economy. Indians have been left to their own devices more than not. This has resulted in significant underdevelopment of tribal economies until very recently. Currently, about 1/3 of tribal governments are using gaming and tourism to counteract this situation while others still struggle with high unemployment and inadequate health care. Large scale purchases of public and private lands to expand reservations, with 8% of those lands going to clans to promote customary land management practices, is an exciting step in maintaining indigenous sovereignty as well as clan/tribal customs. It's an experiment that deserves to be watched and commented on. The same goes for the creation of the GDPL's (Special Local Law Groups) which have received 53% of the newly purchased lands that will be used by indigenous people. These organizations will be responsible for hammering out some of the concerns of competing interests and facilitating the administration of tribal/clan lands and individual and communal uses. At issue is how best to create an environment that will allow the Kanak to more effectively interact with the market economy and derive the benefits from it that do not undermine clan/tribal priorities and customs. That brings to my mind the "self-determination" that has been frequently talked about in North America but rarely actualized.

As Sabourin and Pedelhore remark, there are some "interesting prospects" here with respect to the individual and collective use of redistributed lands. This really is a remarkable case study. The policy that underpins the initiative is clearly progressive and responsible in relation to what has transpired in North America. We know the outcomes there. Continued land cessions by Native peoples to governments signaled the political and cultural decline of once great nations. Only in rare instances has that policy been reversed and lands returned to indigenous peoples.

The land redistribution program in New Caledonia is an important international model for reparation efforts tied to indigenous land claims. The program promotes cultural integrity and revitalization as well as supports accomodation movements related to market economies and emerging business activities. It is an important development that will serve as an intellectual model as well as a practical and legal model for indigenous peoples who will press their causes around the world. Furthur studies and commentary would be particularly interesting to identify emerging issues and action related to the progression of land redistribution among the Kanak. I look forward to reading about the progress of this interesting development and experiment.

PRACTITIONER'S PROFILE

Tilbuster Commons "Beyond the Boundary Fence" in Rural Australia

David Brunckhorst
Institute for Rural Futures, University of New England

What does your program do?

An innovative group of landholders have merged their land, stock and resources to run an enterprise known as Tilbuster Commons based on the age old common farming systems in Europe. The members involved in Tilbuster Commons have undertaken to investigate the viability and sustainability of a modern grazing commons and to develop a transferable model. Tilbuster Commons is located in a valley on the New England Tablelands of northern New South Wales, Australia.

The Tilbuster Commoners share collective values and a vision for a sustainable future and want to undertake restorative grazing, environmental rehabilitation and monitoring across the landscape (a small, First-order stream sub-catchment) that they own. To facilitate this process they have notionally separated their "private title" from the resource base so that collectively, they can use and manage the entire resource base of the valley in which they all have a long-term interest for the future. There are four families involved in the commons. Each member family retains title to their property and the Tilbuster Commons company leases the entire resource base. All resources (land, water, equipment, labour) and stock are managed collectively as a single enterprise. Landholder members (commoners) as directors of the company make the collective decisions and undertake the management. Each has been allocated shares based on an agreed land and livestock value with profits distributed through dividends.

How is your group funded?

The group has obtained public and private funding to kick-start the project. Research, monitoring, GIS and action-learning elements are supported by the University of New England's Institute for Rural Futures with funding from Land and Water Australia, which is a research and development corporation that funds novel inter-disciplinary research into natural resources use and conservation.

What have been your most important accomplishments?

To deal with various land degradation, small farm size and socio-economic pressures typical of many rural areas, the

group developed a plan to address site by site problems within a larger scale strategy. Decision making and planning is undertaken collectively by the group through a structured communication process that incorporates planning for resource allocation, conservation and environmental works not limited to individual property boundaries. Geographic Information System (GIS) is used for planning and management of the whole resource base. This guarantees the continuation of the broader natural processes. For example sourcing sufficient stock water whilst maintaining the integrity of natural watercourses (by fencing livestock out) resulted in innovative solutions in which stock water was piped across all properties. This enabled the exclusion of stock and rehabilitation works to be undertaken on the creeks. With advice and assistance from resource management agencies the group has been able to undertake stream-bed and riparian rehabilitation.

Some of the Tilbuster Team - Photo Courtesy Author

The grazing enterprise has adopted the Holistic Management approach that includes a planned rotational grazing system across all properties with a single herd of goats and cattle. This provides economies of scale; increased rest periods for pasture recovery; and frees up time, labour and resources. The commoners sought to address soil degradation issues such as reversing the decline in soil organic matter and reducing soil compaction from long term conventional livestock and farming practices. This is being achieved through the long periods of rest associated with the planned grazing. Monitoring is indicating improvement in areas such as water quality, pasture and in the quality and health of livestock.

Benefits to date include:

More efficient use of land

Ability to allocate areas for conservation, ie creeklands and remnant vegetation without losing productivity

Economies of scale

Increased income for members

Improved risk management

Sharing and acquisition of knowledge and skills

Stock, pasture and water quality improvement

Ability to undertake environmental works

Freeing up time and resources

What have been your biggest hurdles or challenges?

Farmers in western nations are driven both by an individualist property rights system, which constrains their capacity for sustainable resource use, and by a political and economic system which demands more dollar profit. This is often to service ever increasing financial debt without accounting for externalised costs. Although accounting procedures incorporate asset scheduling for livestock, buildings and plant, there is no measure for land quality. Indeed, within our accounting systems, capital land value can be increasing, while land quality (including productivity and soil health) is decreasing.

Similarly the economically driven trend away from the family farm to corporate farm ownership, often by multi-national companies, appears to intensify this problem in Australia such agri-companies use land title as open access to resources by overusing them, re-selling and buying another. Changes need to be made to our accounting and taxation systems to reduce impediments for structuring and operating such innovative CPR institutions like Tilbuster Commons that contribute solutions to complex linked resource, social and economic issues.

What lessons have you learned that would be useful for other groups or communities involved in common pool resource management?

The Tilbuster Commons is demonstrating the merit of collective landholder action, not only in terms of the enhanced capacity to address environmental and economic issues, but also in rebuilding the sense of community that is being eroded from many rural places in Australia and around the world. It is building a very

wide range of practical knowledge on how to establish, build, maintain and monitor such 'new' CPRs in the context of complex realities of a modern federated nation!

It provides an approach to parcelling up private titles of adjacent farms that will be acceptable to farmers and their families is needed. In order to side-step individualist property rights without simply land "buy-out and amalgamation, this approach to 'designing' a CPR allows title to be retained (a culturally precious item). But it in bundling up a much larger collective resource pool with scales of economy and production benefits it requires application of the various principles for sustainable CPRs (as elucidated by Ostrom, MacKean, Berkes and Folke, among others), together with practical understanding and knowledge on how to do it. The project focuses on issues at a local level with a view to generating solutions of use by other communities, as well as land managers and policy makers, nationally and internationally.

What would you like to learn from or about the experience of other CPR groups?

The Tilbuster Commoners would appreciate contact and networking with any group doing something similar. The practical experience of other groups, especially how they have dealt with the many legal and tax impediments western nations seem to have invented to support the narrow individualist private property notion, but which is work against cooperative solutions and sustainability.

How can readers get in touch with you?

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