

Well-Rooted? Land Tenure and the Challenges of Globalization

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WELL-ROOTED? LAND TENURE AND THE CHALLENGES OF GLOBALIZATION

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Abstract

There is increasing pressure in the developing world to implement reforms that will facilitate more efficient land use and capital investment through the use of Western-style surveys, ownership and title registration. Proponents of traditional land systems have opposed these Western reforms by arguing for land's cultural and social importance. This article is a historical exploration of this issue within the context of contemporary globalization. The changing attitudes towards land tenure practices are traced through an examination of the published materials of the United Nations, its agencies and member nations. Historic and contemporary examples illustrate the difficulties of preserving traditional land systems in the face of economic and political integration.

In an increasingly crowded world experiencing fierce competition for resources, the issues of property ownership, tenure and rights are vitally important. Questions of land use and tenure have been especially crucial in the developing world, particularly in Africa and Asia, and to a lesser extent in South America. Many of the neo-colonial nations, including the United States, Canada, Australia, and New Zealand have also been grappling with these issues as aboriginal peoples charge governments with misuse and misappropriation of native lands and the questionable extinguishment of native rights to land and other resources. Questions about property entitlements around the globe – past, present, and future - form a complex set of related issues, which, when examined closely, reveal many different interests and arguments: economic, political, humanitarian, ethical, religious, legal, social, and cultural. The process of global integration, or globalization, plays a large role in these issues surrounding tenure and property rights.

One of the most striking features about globalization and its effects is its homogenizing tendencies. The forces of globalization that are working to remove barriers that impede global trade, capital flows, and international co-operation are seen by some as positive, as paving the way for a global community where all have equal opportunity to satisfy their basic needs as well as some of their wants. Others, however, struggle to counteract the creation of a global society which will submerge cultural identities, especially on a local level. They would seek to maintain the uniqueness of local and regional communities. Although some advocates of globalization might agree that cultural differences are to be preserved and celebrated, their acquiescence to such a notion is, in many cases, merely paying lip service to those different cultures. The idea of cultural diplomacy, or displaying cultural sensitivity, may be just that, a display to divert attention away from globalization's tendencies to dissolve the structures that distinguish and

maintain cultural identity, especially through economic and political channels. The potential for resistance and conflict is definitely apparent in land tenure and land ownership issues. Even more compelling however, is the subtlety of the ways in which market forces in particular affect land tenure, even when it remains under traditional arrangements. This, in many ways, may further undermine the efforts to preserve those traditional land tenure arrangements.

The materials produced by the United Nations and its various agencies, particularly the Food and Agriculture Organization and the International Labour Organization, and the investment policies of the World Bank are indicative of the tensions between preserving traditional land arrangements and pressures to adopt Western land tenure principles. The materials indicate that communal ownership and traditional land ownership arrangements can continue in those countries with indigenous peoples. They neglect however, the fact that the proposals made for land registration and titling fundamentally alter those arrangements. Land is not just a commodity but is also a cultural artifact, imbedded within the social arrangements of many peoples and an intrinsic part of many belief systems. Even if traditional arrangements are incorporated into land laws, the introduction of Western-style survey, titles and registration can remove much of the flexibility, which is the core of the traditional systems, as well as change the way that land is used and perceived. This change occurs because the land titling and registration system is designed to provide secure tenure and title, two requirements for a viable land market, in which land is treated as a commodity or security.

Secure title and a functioning land market have been linked to furthering economic development and overcoming poverty in many developing nations. It has been suggested that one of the answers to the problems of poverty in developing countries is to give legal title to property, in recognizing possessory claims in terms of Western property rights. There has been

much support for such a solution from many organizations offering financial and technical support because it seems like a simple and straightforward process for those used to Western property structures. What has not been given adequate attention, though, is the myriad of difficulties in actually implementing such a system especially where cultural understandings of property and land use differ.¹ These are the same problems that have continued to hamper land reform efforts for decades: competing claims and usage, historical claims, unclear boundaries, lack of technical expertise in surveying, inadequate registration administration, lack of personnel trained in conveyancing law, shortages of money to build and support land registration and titling structures, different cultural understandings of land and property, and so on. While it may be correct to point to the need for clear property rights as one way to overcome barriers to development, the solution is not so easily implemented, as has been found by those working for decades in land reform.

At issue with regard to land reforms and land tenure today are two competing principles which are not always mutually compatible: providing people with the ability to support themselves at a reasonable standard of living, and providing the tools for preserving cultural identity. The changes to land systems to allow for secure tenure and a land market are often linked to the use of new agricultural technologies designed to increase food production. Such changes, however, often pose a threat to traditional ways of life. A balance must be found between technology and the need to feed an increasing population, on the one hand and to protect or preserve culture and cultural traditions on the other. Some would contend that scientific and technological innovations are the only known means by which the population of the world can achieve a reasonable standard of living. Science and technology provide solutions, the problem is that their benefits have not been shared among everyone.² However, the belief has

persisted that such technology needs to be implemented under certain conditions and circumstances, as in the issue under discussion here: land tenure. This is partly because of the need for money to make use of new innovations in agriculture, for example, and the need for secure tenure to obtain investment capital.

What follows is an examination of the attitudes and actions expressed in various documents produced by UN agencies, by NGOS (non-government organizations) and by member nations of the UN, in terms of the changing aspects of land tenure, and pressures both for development and for cultural protection. The impact of their policies and the pressures of larger globalizing forces are evident in the ways that land tenure and use is being approached. What is particularly clear has been the overall homogenizing influences on land tenure and property rights around the world.³ More recently, even though there are attempts to protect and legally enshrine indigenous and traditional systems, such efforts are superficial and only nominally protect such rights. Cultural diplomacy is being used in order to make it appear that reforms are designed to preserve and protect traditional systems. At the same time, the changes introduced will ultimately bring those systems, and the land, into the modern land market and encourage the implementation of new systems of agricultural production and land use to maximize productivity. In effect, reforms would preserve only a shell of the traditional system.

In order to address these issues and understand the inherent incompatibility of some traditional land-holdings systems with Western understandings of property, this paper will first examine the attitudes governing post-World War II land reform. This section will highlight the ways in which Cold War mentalities put political and economic considerations first in land reform programs. The second section examines how growing awareness of social disparities in the 1960s and 1970s, along with concern for environmental conditions changed the way land

reform was considered. Notably, the goals remained the same as those of the immediate postwar period: to put people on family-sized farms with secure long-term tenure. The third section deals with the growing concern over the cultural survival of many indigenous peoples. Efforts to preserve traditional land-holding systems have emphasized the tremendous difficulties in integrating such systems into political and economic spheres which are based on Western legal principles. The historical example of the experiences of the Maori with British colonial administration in New Zealand demonstrates how problematic the lack of understanding between different systems can be. At this juncture, it appears that trying to preserve traditional systems may be impossible as the last section on implications for the future suggests. The efforts of cultural diplomacy to preserve these systems will be unsuccessful partly because traditional systems have already been changed too much by economic and political pressures.

Land Reform: Cold War Strategy

Even a superficial attention to cultural differences in the way land is viewed, used and divided is a relatively recent occurrence in land reform efforts concerning the developing world. After World War II, and during the Cold War, land tenure was seen as one way to facilitate the intentions of political ideology. American foreign policy was strongly based on a fundamental belief in the superiority of their domestic history, including Frederick Jackson Turner's frontier thesis. Americans have considered that it was their mission to bring democracy to the rest of the world and that land reform in the style of the American frontier was a key element.⁴ It was understood, within the Turnerian view, that the homesteading experience and the establishment of much of the population on family-owned and operated farms was a democratizing influence and thus provided a foundation for a democratic political system and a capitalist economic system. Consequently, Americans were advocates of such systems being implemented elsewhere

to add to the strength of the West's position in the Cold War and to effect economic development.⁵

The advocacy of private ownership by the pro-capitalist forces was matched on the other side by the efforts of the Communist governments to put lands under state ownership and to create state-run communal and collective farms. In order to minimize the 'risk' of Communism spreading to other nations, land reform was encouraged by the United States, both in policy and in practice. In a U.S. government report on the Philippines, for example, it was argued that the conditions of tenant farmers were such that political unrest and instability were almost inevitable. Land reform, as understood by the United States and its democratic allies would not only reduce the inequalities that were causing unrest among tenant farmers, but help spur greater productivity by providing incentives for farmers to work harder and to make greater investments in their farms. Moreover, "that tenants seek to become owners of the land they cultivate is prima facie evidence against their adherence to, or their understanding of, the basic principles of communism."⁶ The answer was to implement land reform by eliminating tenant farming wherever possible, establishing family-sized farms, providing for security of tenure and clear property rights, and regulating those tenants and landlords who would remain.

The same analysis surfaced in a document produced by the United States Department of State in 1952 entitled *Land Reform – a world challenge*. Land tenure was again linked to political stability. More importantly, private ownership was associated with democratic ideals and democratic strength, as well as providing a basis for economic growth. The report reiterated that the United States should take the leadership in supporting and guiding land reform, in terms of establishing privately-owned family farms throughout the world. Through both its own and international agencies, the United States provided aid and technical assistance to support those

countries which sought to implement land reform as part of development programs that had American sanction. Although the reasons cited included equality and development, there is little doubt that a Cold War economic and political strategy was behind the impetus to increase the influence of United States in the developing world. Nor is there any doubt that many Americans conceived of development purely in terms of a triumphalist interpretation of their own nation's settlement history.⁷

The influence of the United States in the UN and its various agencies was unmistakable. Although there was debate over the appropriate form that land tenure programs should take, controversy was diplomatically muted, especially in the discussions of the Economic and Social Council of the United Nations. The strength of the pro-democratic and pro-capitalist forces was such that land reform resolutions passed both by the Economic and Social Council and the UN General Assembly advocated reforms to assist the landless and those with small and medium sized farms.⁸ In the first edition of *Progress in Land Reform*, a report made to the UN, efforts to “strengthen the institution of family-farm ownership” were praised. It was also noted in the same document that attention was being given in India to protecting people living under tribal and communal systems, those who were “incapable of looking after their own interests.” For these people, efforts were being made to assist with new settlements in reserves, in other words, to educate them in Western forms of cultivation and ownership.⁹

The United States was not the only world power promoting private land holding. Great Britain offered experience in facilitating the move from traditional systems to modern understandings of land use and cultivation. Britain's imperial heritage had taught its administrators and academics a great deal about cultural understandings of land, and that led them to adopt a more moderate position. The British recognized that land reform, as advocated

by the Americans, was neither easily nor quickly achieved, nor a panacea for political unrest or conflict. In the early post-war period, Britain still had a number of trust territories and was actively working to divest itself of remnants of empire. A section of the East Africa Royal Commission Report made to Parliament in 1955 carefully outlines the advantages of working within traditional structures and with indigenous authorities in order to move people into a more modern land cultivation and ownership structure. Such advice was, in many respects, a modern version of a late nineteenth century doctrine of indirect rule.¹⁰ There is no doubt that the British were active proponents of individual tenure, and believed in an accompanying growth in agricultural productivity. They were, however, more circumspect and gradual in their approach and could offer more experienced technical help on land tenure reforms.¹¹

A Cure for Social Inequalities

Along with political concerns about helping to build stable, democratic nations and capitalist economies, more humanitarian reasons for advocating land reform arose in the 1960s and 1970s. A growing awareness of the inequities in the developing world between the rich and poor influenced many who singled out land reform to solve the problems of extreme social differences. This shift in thinking was clearly outlined in the World Bank Sector Policy Paper *Land Reform* (1975) although the World Bank's policy of only assisting national land reform programs, rather than directly implementing such changes, remained firm.¹² It was suggested that individuals and families, if given enough land on which to raise food for themselves or to sell to meet their needs, might pull themselves out of dire poverty. The growing awareness of the inequalities of many land distribution patterns, and the problems they were causing for many of the poorest people, also contributed to pressure to implement land reforms that sought to redistribute land to give people enough to at least maintain a subsistence level.¹³ The link

between funding for agricultural development and related projects, like irrigation, and tenure has also continued to be an important one. The World Bank in particular has been very careful to investigate land tenure practices, their stability, the success of efforts to reform land tenure and the implementation of surveying and registration systems before investing money in infrastructure development such as irrigation systems.¹⁴ They became even more stringent about such investments after some projects encountered serious difficulties because of unresolved land tenure questions.¹⁵ As a result, the World Bank, the Food and Agriculture Organization (FAO) and the International Labour Organization (ILO), along with several international and powerful NGOs, have studied the benefits of land redistribution and titling and registration in some detail.¹⁶

One of the major considerations in land redistribution and the granting or selling of individual title is the perceived greater productivity of small farms as compared to large plantation-type agricultural units or large land-holdings divided into small share-cropping or cash rent tenant parcels where security of tenure is low for those working the land. It has been argued that sharecropping provides little or no incentive for farmers to increase productivity either by higher value inputs or by greater labour. This increase will only be siphoned away through higher rents. In addition, tenants, especially where their long-term tenure on a plot of land is in question, and where competition for land available to rent is high, will have little interest in ensuring that the land remains productive in the future. Sharecroppers, and those with insecure tenure, it has been alleged, will look for whatever short-term gain they can achieve. Crop rotation patterns, fallow, irrigation, and fertilization that could help maintain long-term productivity and sustainability are not, so it is said, a part of sharecropping or tenant farming in many cases.¹⁷

Private ownership of small farms, or at least, stable long-term lease arrangements, is said to stimulate greater productivity for several reasons. The farmers have a long-term interest in the productivity of the land, and will be disposed to introduce techniques like crop rotation and fallow land. They will also be more willing to make capital investments such as irrigation and drainage, and to employ higher-cost inputs, such as fertilizers and higher-yield seeds.¹⁸ Even more importantly, as emphasized in many of the reports and recommendations, security of tenure, especially through ownership, makes it easier for farming populations to gain access to credit in an economic system that is based largely on the Western market economy. Secure title means that property can be used as collateral to gain credit to purchase land, to make capital improvements, and to buy better quality inputs, thereby further increasing productivity.¹⁹

Equality of access to credit is only one of the reasons why NGOs, along with the UN agencies involved in development, favour land redistribution. It is argued that redistribution will help to make more families self-sufficient, and even give them the ability to raise food for sale at market as well.²⁰ If farms remain labour intensive it will also help to relieve the burden of unemployment and underemployment in many regions. This argument is one reason that the ILO has often supported land distribution projects since its creation. Most importantly, it is argued that it is a fundamental human right to have access to a means of livelihood and self-support. Land redistribution has been seen as creating such opportunities.²¹ In one report, the World Bank cited Latin America as a region where extreme inequalities in land distribution contributed to high rates of unemployment or underemployment.²² Land redistribution was not considered as effective, however, in regions where there is severe overcrowding and distribution of land would result in parcels too small for people to work efficiently to make a living. The option of providing a small plot to supplement another job has been proposed for these areas.²³ Of

particular interest have been proposals to assist women to make a living for themselves and their children by giving them a small piece of land or a small loan to buy a piece of land to cultivate. Not only has it been suggested by various organizations and individuals that this will assist women, especially single women, to earn a living, it will also give them a measure of equality in society. However, in order for this to be successful the land laws in a particular jurisdiction need to uphold a person's right to own property in her own name, which she can manage, and decide how and if she wants to dispose of it.²⁴

While land reform advocates preach their gospel of land redistribution as a remedy for inequalities and poverty, their contentions have not gone unchallenged. There have been arguments against some redistribution plans, and supporting evidence that land redistribution is not always the cure it is purported to be.

Firstly, small farms which tend to be labour intensive get most of their productivity from that labour, and are not as productive as they might be if more capital was committed. They may simply not be big enough to warrant such investments, and so cannot always reach economies of scale. It has been widely held that small family farms are the most efficient, but there is increasing evidence that this is not always the case.²⁵ If chronic unemployment or underemployment is a problem then small family farms may provide a good solution, but if regional food shortages present difficulties, this setup may be more problematic because of the relative inefficiency of small farms.

Secondly, if land distribution results in the ownership of small plots by many people, over time there will be a rationalization of farm size according to market conditions if the land market is functioning freely and fully. Those who are more successful will have the capital and

credit to buy additional plots and add to their farm size. Those who are not successful will once again become landless.

Thirdly, land redistribution is a problem in regions where the population is too large to allow everyone to have a viable plot. Population pressures are reducing the land available for new settlement and force the land under cultivation to be used much more intensively. Many of the lands coming under cultivation are marginal and are susceptible to environmental degradation. Intensive land use has even greater potential to destroy the land's ability to sustain long-term cultivation, while environmental degradation takes its toll on the ability of the land to produce enough food. Thus, sustainability of the environment is an important concern for those considering such land redistribution schemes, especially in marginal or environmentally-sensitive agricultural areas.²⁶

Finally, the lack of political willingness and co-operation is a major obstacle to the successful introduction and implementation of land reform projects. Many governments in developing countries either find most of their support from large land owners or the leaders themselves are from that elite whose power is based upon landholdings. Resistance from these national and local elites may prove very difficult to overcome since they often are part of or hold a great deal of influence within the state.²⁷

If it is to be successful, one of the prerequisites for a land distribution or redistribution project is clear title and the demarcation of boundaries, whether distributed to owners or tenants. This undertaking is enormous for many countries where such practices are new. They frequently have neither the expertise nor the experience to begin to carry out surveys and registrations of title. Redistribution projects are often abandoned after a short time, or are introduced so incompletely as to render them unsuccessful, because of the expense and time that such projects

require. The lack of government infrastructures to uphold property rights seems ultimately to be a deterrent to long-term investment.²⁸

There have been some successful land reform plans, carried out with the help of the developed Western countries, especially in Asia. These were not so much the result of redrawing of boundaries, but of the transfer of ownership of small tenant farms from large landholders to those who worked the farms. This has generally been acknowledged as a success story in the reports prepared for the World Bank, although many of the modern reports are the product of one author. In most cases, these reforms did not involve the physical redistribution of land. The reason for the success probably lies in the fact that tenant farmers became owners of the same land they had previously rented. The transition process was easier than if they had been moved to different areas. Moreover, the farmers had added incentives to increase the efficiency of their farms and to ensure long-term productivity.²⁹ In its 1995 *World Development Report*, which focussed on labour, the World Bank highlighted East Asia as providing good examples of how to achieve high employment, including among other things, active promotion of the institution of the family farm, especially owner-operated farms.³⁰

Cultural Diplomacy in Land Reform: A Square Peg in a Round Hole?

Although concerns about equality of access to land and credit and the ability to make a living are still very powerful currents in many international organizations working in the fields of economic development, lately there has been a growing awareness and acknowledgement of the success of traditional land holding and management structures in the developing world. More recently, there has been strong support expressed for preserving traditional structures and some of their perceived advantages.³¹ For example, it was once believed that nomadic land use was inefficient. Those whose lives had been centred around following their herds were pressured to

abandon the nomadic lifestyle and take up cultivation, a change that was once viewed as more productive and efficient especially in terms of land use.³² Now, however, shifting patterns of land use between various communities are recognized not only as efficient, but also as demonstrating good stewardship and management of the land and other resources. For example such patterns may allow for grazing and cultivation on the same piece of land at different times of the year.³³ There are also arguments that some traditional tenure systems allow for guaranteed access to at least a small piece of land for even the poorest, and that under these structures, landlessness is virtually non-existent.³⁴ The issue of reinstating and enforcing traditional systems raises, however, a number of questions and problems.

Recognition and study of these traditional understandings and uses of land has helped create a better awareness and knowledge of these systems and to overcome some of the myths rooted in imperial history. For one thing, these systems vary from place to place, and are not static. Because land is often imbued with spiritual, religious, cultural and social meanings, it can be intimately linked with self and group identification. Unlike the Western concept of land which generally views it as an economic commodity or as a piece of capital to be exploited for profit, tenure in many traditional systems is more closely linked with usage or is symbolically important. Frequently, indigenous forms of tenure are based on need and use, or cultural significance, and tenure can overlap between uses. This concept has been difficult for many Western analysts to grasp because it does not fit neatly into their ideas of land ownership. Western ideas allow for only one owner who has the right to use the land in whatever manner he or she wishes, and to control the use of the land or the resources there by others, for example, whether it is leased to someone for cultivation, or a right to fish or hunt is granted. Even more critically, overlapping tenure does not easily conform to Western property rights and systems of land

registration, especially in a Western-based capitalist economy where land is a saleable commodity and routinely used to secure loans. Overlapping tenure has the potential to so confuse a title that it would be nearly impossible to sell the land or use it as collateral to secure credit in a functioning capitalist land market.

This issue has been brought to light in detail in the examinations carried out in New Zealand as a result of historical claims by Maori based on the Treaty of Waitangi. Overlapping claims and confusion between tribes, and among individual claims within tribes has demonstrated this clearly. The failure of Europeans to recognize or acknowledge overlapping claims when they extinguished Maori title to lands was a direct result of the British (and Western) understanding of property ownership and property rights. Very often, one Maori would sell a piece of land for personal gain or profit, for which he or she (there were influential women in Maori communities) was only one of many owners. Other Maori who had a claim were overlooked by the British officials and private individuals negotiating the land transfers because they neither understood Maori social and authoritarian structures nor the Maori understanding of land use and ownership. The result was that many Maori who had legitimate rights to a particular parcel of land in their own society, lost those rights when, under British law, it was assumed that *all* aboriginal rights were extinguished when only *one* right, in Maori society, had been transferred.³⁵

The Maori position, however, was somewhat different from that of many indigenous peoples today in the developing world. The Maori land structures, especially in the early nineteenth century were largely intact; those indigenous people who today seek to retain their traditional systems in a more culturally-sensitive atmosphere have not been as insulated. In some instances, the impact of imperial power has greatly changed those traditional systems which

seem, on first glance, to be largely intact. Depending on the time period, the imperial power and its relevant colonial policies, the strength of the indigenous peoples to resist (or adapt), the type of land organization in place and its similarity to Western systems, the type of land use envisioned by the colonizers and the need to introduce new systems to facilitate that land use, the traditional system can, in fact, be significantly altered. The presence of imperial power often had the effect of causing a reorganization in the local land use and power structures, in response to colonial markets and government pressure. Moreover, even if the imperial policy did not seek to alter the structure of land use and power, the colonial presence alone was often enough to cause a breakdown in traditional structures. In particular, doors were opened to future Western influence, particularly economic predominance, through the introduction of cash economies and manufactured goods. Trade directly or indirectly with Western nations may also have had the effect of changing the value of commodities and thus changing the focus of the activities of these peoples in order to gain wealth and prestige. While some traditional systems successfully adapted themselves to incorporate cash economies, they may have lost the features that made them work efficiently prior to contact with the Western nations.³⁶

More direct imperial influence did indeed change land tenure practices and understandings, as plantations were established and in other cases, large land-holdings were created with tenants to cultivate the land. In areas where resources were actively sought by the Westerners, there was considerable pressure to adapt land tenure practices and land laws to match that of the Western world. Individual ownership, cadastral survey, land registration, and so on, were implemented by Western-controlled governments to facilitate the functioning of a land market. Key to this was providing a secure property title with which to gain credit for the benefit of their nationals who were seeking to gain from regional resources and to signal their

superiority over indigenous peoples and systems of land use.³⁷ In other cases, Western land practices were introduced to secure political strength and to create economic stability, for example, the United States' efforts in creating a democratic bloc during the Cold War.³⁸ As a result of the influence of imperial powers very few countries provided for the continuation of land rights for indigenous peoples, or created a functioning policy for protecting those rights.³⁹ Internally, the elite and politically powerful in some nations may also continue to resist providing for traditional land structures because of their dependence on Western land structures for power and wealth.

In trying to recognize the presence of traditional forms of tenure and resource use and to understand the ways in which they had once operated, various solutions have been proposed. One of the most serious proposals is to recognize existing patterns and to reinstate them where they have disappeared, and then to imbed those structures into law.⁴⁰ In terms of what here is called cultural diplomacy, this is a good idea, and one that is potentially achievable. Most importantly, it appears to be a sensitive way to handle the issue, especially in light of the past treatment of indigenous peoples and their lands. Traditional systems, where they are still pretty much intact, may prove themselves adaptable enough to withstand the pressures of the market economy and maintain equitable structures. Indigenous peoples may draw on the wisdom that is imbedded in some of these cultures and their knowledge and ability to use the land sustainably. However, at this juncture it may be too little, too late.

Whether those traditional structures are still largely in place and functioning or not, the processes by which it is proposed they be protected are not entirely external to those structures. In other words, it is not simply a case of isolating those structures; the very means of protecting them will have an effect on the internal operations of land use and ownership. At the very least,

the integration of traditional land-holding and use patterns into modern economies can mean introducing a radical change. Increasing international trade, the presence of large transnational businesses, and the overwhelming presence of cash economies means that the terms of economic integration of these communities change considerably. And indeed, most of them already have seen major changes, both in the way their local economy functions and in the value of local economic resources. The process of adaptation may mean that the traditional structures will break down so completely as to cease to exist, or to become largely ineffective, as has already been seen historically, particularly in colonial North America.⁴¹

In order to prevent this breakdown and to protect these systems from other outside pressures, some suggest that traditional land-holding structures and resource management systems be codified, and incorporated into legal systems.⁴² This attempt is further evidence of the increasing power of Western concepts of property and authority. The ability to define a parcel of land with distinct survey lines and then to describe what it contains, and then to specify the laws regulating the people and the resources within it, creates order in that space. Whether for a political body or for economic interests, this demonstrates that there is an organization and order in that place and thus the place becomes knowable. It is no longer empty or unknown.⁴³ Codifying those systems not only gives authority to those systems but also gives power to the political and judicial bodies that have jurisdiction over them.⁴⁴

Although codification seems an obvious solution, it includes a whole new set of issues that need to be addressed. For one thing, as imperial powers have found in the past, it is very difficult to overcome the cultural differences in attitudes towards land use and possession. Again, the example of the Maori and the Treaty of Waitangi is a good one. Those negotiating and writing the treaty worked very carefully to try and understand the concepts of both the parties,

the understandings of various terms and phrases, and the nuances of trying to express the same meanings in two very different languages. Despite their efforts, the treaty's resolutions and its interpretations are still being debated.⁴⁵ Words and phrases cannot be simply transferred from one language to another, nor can Western concepts be applied to traditional concepts that merely look similar. The process of codifying these systems and translating into words and laws concepts that have only existed as understanding is incredibly difficult. These systems can be much more complex than Western notions of property rights and ownership, particularly when they involve overlapping claims of use. Very often external views of those traditional systems fail to recognize the internal structures which make the system work, and if the system is to become a successful codified one, those internal structures must be included.

Nonetheless, a process of bridging the different cultures must occur because many of the national governments have been set up by Western nations, are often run by Western-educated nationals, and, as one report argued, the experts called in to help are trained in Western law. There are additional challenges in trying to ensure that the local customs are put precisely into the law so that a judge, unfamiliar with those customs, can resolve disputes within the traditional systems.⁴⁶ The process of codification also implies that clear boundaries around the areas affected by these systems can be identified, surveyed and mapped, thus giving added strength to the preservation of those traditional systems.

Another advantage to codifying traditional land use patterns may be that by so doing, there is a process of empowering the people involved, particularly by securing their rights to that land. The meaning of putting these land claims and structures into written form and being able to show them on maps should not be underestimated. The Western insistence on 'paperwork' as proof is very powerful, and the enshrining of these systems by putting them on paper is an

assertion that they are recognized by authority and will be very hard to remove. They become real and defensible in a Western culture when they are set into language and thus preserved.⁴⁷ The reverse of this, of course, is that by acceding to Western notions of land tenure, the people in the traditional arrangements have, in essence, also given up some power. The use of language to communicate understandings and usage of land also demonstrates that Western influences and power have become paramount. When language is used to incorporate traditional structures into Western-influenced legal systems, they are in fact demonstrating the superior position of Western law.⁴⁸ The process of merely imbedding these traditional systems in the law will be difficult especially if it is to be done without altering those systems.

No matter how carefully these systems are codified into legal systems, there remains a strong likelihood that that process will change them in fundamental ways. For one thing, imposing surrounding boundaries and registering a communal title for the contained lands has already altered the traditional structures. Historically, these may have allowed for an informal flexibility of those boundaries as the needs of the community and their relations with other groups around them changed. More importantly though, the problem of adapting such systems into larger systems which are largely based on Western law structures, namely cadastral survey and land title and registration, is that the two are, at some basic levels, incompatible. One is based on flexibility, often according to need, which is determined by many factors. The other is based on viewing land as a marketable commodity that is most efficiently used when a fully-functioning land market is in place. Attempts to match traditional systems of land tenure with Western concepts of tenure, boundaries, ownership rights and responsibilities in law removes an important, indeed, crucial aspect of the traditional systems' effectiveness and efficiency – their flexibility and adaptability.

Whether land is held by individuals, communities, co-operatives, companies or the state, surveying and registration imply a rigid system of land division, ownership and use, albeit with a type of flexibility provided by a land market. This does not allow for the flexibility and the changeability featured in some traditional organizations of land ownership and use.⁴⁹ These limitations will affect these communities in two different ways. First, imbedding traditional forms into law may take away their ability to adapt to changing economic and political conditions; preserving the 'traditional' system may come at a price for people within the structure who are restrained because of the constancy of printed language and the written law.⁵⁰ They will have to remain within the 'traditional' structure, as it is set into the law. The protection of the 'traditional' practices suggests that the land will become inalienable. Second, a rigidity is transferred to those traditional systems when they become imbedded in law. Land is surveyed, divided into finite and distinct parcels that are then distributed, and maps and descriptions are recorded along with the names of the owners of that land. Accompanying the ownership of the land and the right to use it, the owner (whether individual or corporate) also has certain prescribed rights and duties which have to be followed, such as property taxes, zoning regulations and restrictions on rights to water, minerals. Ultimately, imbedding traditional systems into legal structures potentially could expose the land to the market and the market economy as well as increasing the value of that land. Even though its introduction into the Western legal structure might make it eligible as an economic commodity, there may be restrictions on its potential division or sale. Inalienability would, in turn, affect the use of that land as collateral and the possibility of capital investment because it restricts the ability of a creditor to seize the property and sell it in the case of default. The importance of a functioning land market to access credit was shown in a 1993 study of Ghana, Kenya, and Rwanda. The lack

of a functioning land market in those places along with the inability of creditors to seize collateral promptly are deterrents to the use of land as collateral for credit.⁵¹

The adaptation of these systems to Western legal structures also has the potential to create additional pressures within the local structure itself. For example, is the land to be used for producing food for locals, or for cash crops? If the latter, how are the proceeds of a cash economy to be divided? If members want to leave, are they entitled to a share of the wealth of the community? If so, how much and in what form is it to be allocated? Local indigenous communities will also have to make decisions regarding the purchases of inputs, capital investments and long-term improvements. How, therefore, can laws and traditional governance practices be structured so as to allow for local autonomy and the continuance of traditional systems, while ensuring that corruption and undesirable inequalities do not flourish in these systems? Moreover, what about inequalities that may have traditionally existed within such structures?⁵² Outsiders must be careful not to put such a romantic gloss on these systems that they lose sight of inherent disparities in terms of power and wealth.⁵³ These are not easy problems to overcome without fundamentally altering those traditional systems. In the meantime, they continue to lose influence in the face of larger market and political pressures, and in turn, cultural and social pressures.

Pressure for economic development is very strong.⁵⁴ A case study described in the World Bank's *World Development Report 1999/2000* illustrates this effectively. In Jakarta, there are a large number of residents in the inner city near the harbour, in *kampung*s, who have possessory rights to the land. These residents can strengthen their ownership claims by paying property taxes and thus having their squatter claims recognized by officials, except for one problem. Those same officials often refuse to receive tax payments, because they do not want those claims

strengthened. Lands that are held in mere possessory right are sold for considerably less than those with secure title. This situation, it is reported, has hampered urban redevelopment in valuable areas near the harbour since it does not allow for a free-functioning land market. The people who live there cannot sell to developers, as long as they lack clear title. Moreover, the lack of jobs in the area means that most residents commute long distances to work in the suburbs. It was proposed that the city ask the *kampung* residents to cede their lands to the city voluntarily and be moved into public housing in the harbour area. Another solution was for the city to give the residents full title, let them sell their property and move closer to where they can find employment.⁵⁵ In the case of the *kampungs* of Jakarta, economic pressures are driving the move to convert informal possessory title into a marketable right. It is assumed that as soon as that title is cleared, owners will sell in order to improve their economic situation, notwithstanding any cultural or social links they may have to that property. This is consistent with the principles of the market economy, yet it also shows how the recognition of traditional or squatters' rights can lead to the destruction of traditional land holdings and land holding practices.

One of the reasons cited for imbedding traditional land tenure into legal systems, and providing indigenous peoples with clear tenure and title is to allow for a free-functioning land market. The idea of a land market is, however, in some ways, fundamentally opposed to the traditional practices of land tenure and ownership. Once title is secured, the value of the land may rise considerably, yet how much thought is given to the effect of that increase on the people and relationships within the traditional structures? In those places where the land is held communally, what will be the response to traditional leadership? Will there be pressure to move to modern selection processes? Will the members also begin to press for individual title of their share of the land in order to use it themselves or to be able to sell it and use the money for other

purposes? It presupposes that there will be a desire to sell and buy land (mostly to allow for the market to put the land into the hands of those who will use it most efficiently) and that that land market will be a cash one. Such thinking stands in contrast to traditional means of transferring land. Transfers often took place as part of social and cultural events such as marriages, and treaty negotiations. Territory could also be lost or gained through violent conflict, or a result of changes in population.

Again, the example of the Maori in New Zealand demonstrates the ways in which indigenous power structures were affected as individuals became involved in a land market with the British. Many powerful Maori, often tribal chiefs, used land sales to improve their position in the complex rivalries in Maori society for *mana*, a Maori concept of status and power. Having European settlements within their territories raised their status and increased their influence. As stated earlier however, the Maori individuals with whom land deals were made often had only a partial right to the land. Through land sales, these individuals could establish good relations with the British who settled on their territory and so could increase their trade with the British to obtain items that would further add to their status and power.⁵⁶ This increased the power of certain individuals in Maori society in a way that had never before been possible. In much the same way, consideration must be given to how contemporary land reforms will affect internal power structures in traditional structures.

The provision of credit must also be addressed when considering the integration of traditional land structures into law. As mentioned earlier, the need for secure tenure in order to use land as a means of gaining credit is often cited as a major argument for land titling and registration. In order for land to be accepted as credit however, there must be a land market in place and the creditor must have the right to claim and sell the land promptly in the instance of

default,⁵⁷ which cannot happen if the land is inalienable, and thus protected against sales. In mid-nineteenth-century New Zealand, this was the position of many Maori. Europeans could borrow capital against land rights with relative ease. The Maori could not because their tenure systems could not be quickly and easily translated into familiar legal forms that would satisfy potential creditors.⁵⁸

It may be even more difficult for an individual to gain credit using communally owned land as collateral. This difficulty, in turn, may increase the pressure to divide such arrangements into individual segments and titles.⁵⁹ Thus, the argument for allowing continuing traditional land rights and claims may be a contradictory one. Continued pressure to increase productivity and land use efficiency (often with the use of credit) further pushes individuals, communities, and developing nations to adopt a Western attitude towards land use and tenure. The rationale behind protecting traditional land rights and structures, along with cultural and social arguments, is often that traditional structures encouraged self-sufficiency, and good resource management. That rationale comes under question in a market economy where forces seek not just self-sufficiency but to maximize production or income. Thus, the community which traditionally produced all or nearly everything it needed and bartered its excess, and whose land structures reflected that arrangement, may now find itself under pressure to switch to one or two cash crops for sale on the larger market and then purchase everything it needs from outside sources. This new economic arrangement may no longer be compatible with traditional structures, and so pressure to alter those structures to fit within a capitalist market economy grows.

The increasing external debt load of many developing nations is putting additional pressure on their land reform agendas from international agencies and lenders. Among other things, secure land tenure is viewed as one of the prerequisites for efficient farm production and

for foreign investment.⁶⁰ These nations will be obliged to implement a land system which is modelled on those of the West in order to promote development, and reduce uncertainty about their ability to service their national debts.⁶¹ The World Bank clearly indicates the importance it puts on clear title and a fully-functioning land market as a means of increasing economic production and development, and to reduce income disparity. Its publications are adamant about this even while acknowledgement and support are given to some traditional systems of land tenure and management.⁶²

Conclusions & Implications for the Future

The strength of Western political and capitalist influence is apparent throughout most of the world, and even genuine attempts to preserve traditional systems of land tenure are impeded in fundamental ways because of that influence. In controversies about land and property ownership, the forces of globalization seem to be paramount. It appears at this point that forces of economic and political integration and the pressure to create land as a marketable piece of property in a fully-functioning land market are stronger than the forces which would try to impede, alter, or stop that process in the developing world. Because of those pressures, often appearing in the guise of the need for development and greater efficiency, one may question whether traditional systems can truly adapt to the new forces in place or whether they are undergoing a transformation that is more complete.

If the political and economic pressures are pushing towards a homogeneous end, what about the possibility of counter-measures to preserve traditional land ownership patterns and corresponding land and resource management structures? It seems perhaps that the call for returning to or securing traditional land tenure arrangements is part of a phenomenon of growing “localism.” Securing some sort of local or community identity, or preserving that identity may

perhaps be a way to counteract the forces that would dissolve differences. One might apply Benedict Anderson's idea of national 'imagined communities' instead to real local communities. He suggests that the idea of nation is one where there is a sense of imagined community, imagined because it is virtually impossible that all elements of the population will know each other. The political entity becomes a community, Anderson argues, because it is socially contrived or constructed, through language, cultural symbols and the past. In the case of the traditional community structures under discussion here, it is likely that they have existed as a true community, but the potential loss of that identity is great. The movement to preserve land structures and to set outside boundaries is a way to delineate an identity, not just define a piece of land. Anderson cites, in a later edition of *Imagined Communities*, the example of three constructed artifacts of national identity: the census, the map and the museum.⁶³ By attempting to preserve the outward symbols of traditional land ownership and the social structures of a community to manage resources, there is an attempt to create artifacts of a traditional system, a smaller version of Anderson's nation. Whether those social structures are truly traditional is perhaps less important than the assertion of identity, as different from those outside those boundaries. One can draw on a map the boundaries of a reserve, count the number of people who live within, and point to certain features as traditional. It seems that this may be what is going on in the movement to preserve traditional land forms, with aid from sympathetic outsiders: an attempt to preserve an artifact from the past and to reconstruct it in ways to allow it to survive, although in a very changed environment.

The process of adapting to or adopting Western forms of land tenure and property rights is a global occurrence, it has been on going for centuries, and even now is spurred on by the forces of economic development and aided by organizations like the UN and NGOs. It is evident

that land tenure and property rights, at a basic and fundamental level, are indeed well-rooted, a significant element of the transplantation of Western influence to the rest of the world both political and economically. However, the changes that are being made to understandings of property and tenure are more than just economic or political, they are at the centre of culture. Despite attempts to preserve local land tenure practices, the evidence certainly suggests that the forces of globalization are working to submerge local identity. While some might argue that culture is a means for self-identification and that cultural characteristics are less susceptible to compromise than political and economic systems, they have failed to realize just how far political and economic infrastructures are intertwined with culture, giving expression to it and altering it.⁶⁴ Land tenure and use is just one example of how cultural and social characteristics and beliefs can affect the political and economic use of land, and conversely, how changing the tenure and use of land can alter cultural and social structures.

The question then arises, what might happen when market forces encounter resistance from those who would preserve traditional land arrangements as part of their cultural expression. Indeed, it has been suggested that future global conflict will arise from the contradictory tensions of the forces of homogeneity and those that would seek to maintain their uniqueness.⁶⁵ Just such conflict already seems to resonate in the current debate over land tenure. Traditional systems are fighting for survival in face of market forces that seek to make land tenure the same around the globe in order to facilitate the smooth functioning of markets. Is it possible, as many are trying to demonstrate, to incorporate traditional systems into a larger capitalist economy? The demand for homogeneity in order to improve efficiency is certainly nothing new, the Romans sought it to rule their vast empire, it was a goal of the British during much of their imperial era to streamline administration of their colonial territories.⁶⁶ More recently, it was part of the Cold War strategy

of the USSR and the United States to solidify and strengthen their respective influences. Is cultural diplomacy, in making attempts to assist communities to preserve traditional, local structures, all that effective, even when it is sincere? Or have these efforts come too late with too little power in the face of market and political pressures? Is it an effort to appease those who would attack the homogenizing forces?

What is at issue, though, is more than just a conflict between the forces of economic globalization and those who would seek to preserve traditional and indigenous systems. There is another pressing matter, one with more practical concerns: that of sustaining a growing population with a finite resource base. Are market forces the best determinants of production efficiency or is there a need for intervention to ensure sustainable production and growth? All these questions, both practical and conceptual, need to be worked out in order to understand just how ideas of property and ownership will be dealt with in the future. These are not just issues of political ideologies or economic structures; they are constructions of the relationships between individuals, between communities and with the land and resources. Nor are these new questions, the processes of changing tenure practices and relationships have been in place for a long time and are much stronger than is usually acknowledged. There is a need to understand the more subtle aspects of globalization and the reactions to such processes. Land tenure can offer one window through which to glimpse the ways in which globalization forces are affecting parts of the political, cultural, social and economic lives of people in unmistakable ways and how people are reacting to those changes.

¹ Hernando de Soto, *The Mystery of Capital* (New York, 2000).

² Michael Adas, *Machines as the Measure of Men; Science, Technology and Ideologies of Western Dominance* (Ithaca, 1989), p.15.

³ It will be noted that there is a distinct lack of discussion here about land reforms and policies in the former Communist nations of the U.S.S.R. and Eastern Europe. The principal reason behind this is that such a topic is important enough to merit a separate treatment. In particular, the preliminary evidence from the material of the World Bank in particular suggests that a different approach has been taken with regards to these countries. It seems to be assumed that because these are European countries and have the same cultural roots as Western Europe, that the state-owned farms and co-operatives will be dismantled and individual tenure will be reinstated. That particular emphasis has run into road-blocks in terms of the speed and ease with which it has been implemented. See the various World Bank Country Studies of former Communist countries, along with Karen Brooks *et al. Agricultural Reform in Russia: A View from the Farm Level*, World Bank (Washington, D.C., 1996); IMF, World Bank, Organisation for Economic Co-operation and Development and the European Bank for Reconstruction and Development, *A Study of the Soviet Economy*, Vol.3 (Paris, 1991); Zvi Lerman *et al. Land Reform and Farm Restructuring in Ukraine*, World Bank (Washington, D.C., 1994) and Csaba Csaki and Zvi Lerman, *Land Reform in Ukraine; The First Five Years*, World Bank (Washington, D.C., 1997).

⁴ For several viewpoints on the development and history of American foreign policy, see Michael Hunt, *Ideology and U.S. Foreign Policy* (New Haven, 1978); Ernest Lee Tuveson, *Redeemer Nation; The Idea of America's Millennial Role* (Chicago, 1968); Daniel Bell, "The End of American Exceptionalism," in Nathan Glazer and Irving Kristol, (eds) *The American Commonwealth –1976* (New York, 1976), pp.193-224; Stanley Hoffman, "The American Style: Our Past and Our Principles," *Foreign Affairs* 46 (1968), 362-376; Robert Endicott Osgood, *Ideals and Self-Interest in America's Foreign Relations* (Chicago, 1953).

⁵ Walter Rostow, in particular, influenced the nature of support and aid from the United States to encourage economic development. He emphasized the need for a country to begin capital formation in earnest, as a crucial step towards economic 'take off.' For traditional, or pre-modern societies increasing agriculture production beyond domestic needs provides the key to capital formation conclusion. "Leading Sectors and the Take-Off" in Walter Rostow, (ed) *The Economics of Take-Off into Sustained Growth* (London, 1963), pp.13-14, 20-21; see also his *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge, 1964); For a more contemporary discussion of the post-WW II modernization theory, see the epilogue of Adas, *Machines as the Measure of Men*.

⁶ Special Technical and Economic Mission, Mutual Security Agency, United States of America, *Philippine Land Tenure Reform; Analysis and Recommendations*, (Manila, 1952), p. vi.

⁷ U.S. Department of State, *Land Reform – a world challenge*, (Washington, D.C., 1952); Mutual Security Agency, *Philippine Land Tenure Reform*. See also H.S. Truman's Inaugural Address, 1949, his Fourth Point, quoted in Walter Rostow, *The United States in the World Arena*, (New York, 1960), p. 256.

⁸ UN Economic and Social Council, Resolutions 370 & 371(XIII) September, 1951; UN General Assembly, Resolution 524 (VI) 12 January 1952; UN Economic and Social Council, Resolution 512C (XVII) 30 April 1954; UN Trusteeship Council in February 1951 established a Committee on Rural Economic Development of Trust Territories, Resolution 305 (VIII). *Progress in Land Reform*, Fourth Report, (New York, 1966) in Annex II, contains "Texts of Recent Resolutions of

the United Nations General Assembly, The Economic and Social Council, and the Food and Agriculture Organization Concerning Land Reform”, pp.167-178.

⁹ *Progress in Land Reform*, First Report, UN, (New York, 1954), p.173. The continued influence of American Cold War policy was evident in later editions of *Progress in Land Reform*. For example, in the Fourth Report, there is considerable criticism of collective and state owned farms, pp. 72-73, 135-136, 161. The FAO was also active in promoting land reform that emphasized ownership of family farms. See for example: Bernard O.Binns, (ed) *The Consolidation of fragmented Agricultural Holdings*, FAO Agricultural Study No. 11, (Washington, 1950); Erich H. Jacoby, *Inter-Relationship Between Agrarian Reform and Agricultural Development*, FAO Agricultural Study No. 26, (Rome, 1953), and Kenneth H. Parsons, *The Owner Cultivator in a Progressive Agriculture*, FAO Agricultural Study No. 39, (Rome, 1958).

¹⁰ This British imperial policy was a way to influence without the additional costs of military presence or administration. Tim Parsons, *The British Imperial Century, 1815-1914* (Lanham, 1999).

¹¹ *East Africa Royal Commission 1953-1955 Report*, Reprinted, 1966 (London, 1955), See especially Chapter 5, and Conclusions; *Progress in Land Reform*, First Report, pp.177-179.

¹² *Land Reform*, World Bank Sector Policy Paper, p.11. For a larger discussion of the evolution of the World Bank's policy on land reform see J-P. Platteau, *Land Reform and Structural Adjustment in Sub-Saharan Africa* (Rome, 1992), pp.12-20.

¹³ James M. Boughton and K. Sarwar Lateef, (eds), "Introduction and Overview", in their *Fifty Years After Breton Woods; the Future of the IMF and the World Bank* (Washington, D.C., 1995), pp.1-20; IMF Fiscal Affairs Department, *Should Equity be a Goal of Economic Policy?* Economic Issues No. 16, (Washington, D.C., 1998), p.3.

¹⁴ Shawki Barghouti and Guy Le Moigne, (eds) *Irrigation in Sub-Saharan Africa; The Development of Public and Private Systems*, World Bank Technical Paper No.123, (Washington, D.C., 1990), pp.55, 74, 84; Daniel Hillel, *The Efficient Use of Water in Irrigation; Principles and Practices for Improving Irrigation in Arid and Semi-Arid Regions*, World Bank Technical Paper No. 64, (Washington, D.C., 1987); see especially Chapter 7; *Land Reform*, World Bank Sector Policy Paper, (Washington, D.C., 1975) The United States, in 1979, clearly outlined a policy whereby technical or financial assistance would not be provided if real efforts at land reform were lacking, U.S. Agency for International Development Statement “A.I.D. Policy on Agricultural Asset Distribution: Land Reform,” (Washington, D.C., January 16, 1979).

¹⁵ *Land Reform*, World Bank Sector Policy Paper; J-P. Platteau, *Land Reform and Structural Adjustment in Sub-Saharan Africa: Controversies and Guidelines*, FAO Economic and Social Development Paper 107, (Rome, 1992), pp.12-20.

¹⁶ For example: E. Eckholm, *The Dispossessed of the Earth: Land Reform and Sustainable Development*, WorldWatch Paper 30 (Washington, D.C., 1979); C. Whittemore, *Land for People: Land Tenure and the Very Poor*, Oxfam (Oxford, 1981); F. M. Mifsud, *Customary Land Law in Africa; with reference to legislation aimed at adjusting customary tenures to the needs of development*. FAO(Rome, 1967); ILO, "World Employment 1996/1997; Employment and

economic reform in developing countries" 26 Nov 1996
 <<http://www.ilo.org.public/english/bureau/inf/pkits/emp4.htm>>.

¹⁷ World Bank, *Knowledge for Development; World Development Report 1998/99* (Oxford, 1999), pp. 76-77, Box 5.3, p.77; World Bank Country Study, *El Salvador; Rural Development Study* (Washington, D.C., 1998); Henry Bruton, section on Sri Lanka, *Sri Lanka and Malaysia; The Political Economy of Poverty, Equity and Growth* World Bank Comparative Study (Washington, D.C., 1992); Whitmore, *Land for People*, p.8.

¹⁸ World Bank, *World Development Report, 1990* (Oxford, 1990), p.59; World Bank, *The State in a Changing World; World Development Report, 1997* (Oxford, 1997), p.31; Inderjit Singh, *Tenancy in South Asia*, World Bank Discussion Paper No. 32 (Washington, D.C., 1988), pp.52, 62; Whittemore, *Land for People*, p.3; ILO, "World Employment 1996/1997."

¹⁹ World Bank, *Knowledge for Development; World Development Report 1998/1999*, p.124; World Bank, *Agricultural Credit; Sector Policy Paper* (Washington, D.C., 1975); Eckholm, *The Dispossessed*, p.15. Bromley and Cernea, *Management of Common Property*, p.45-47 concede that secure long-term tenure is necessary for investment, but argue that there is no reason why land should be collateral. They criticize the reliance on land as collateral for encouraging the privatization of property, but they do not offer reasonable alternatives for accessing credit.

²⁰ See for example, Eckholm, *The Dispossessed*, p.20; Whittemore, *Land for People*, pp.1-2; Hillel, *Efficient Use of Water in Irrigation*, Ch. 7.

²¹ *Progress in Land Reform*, Second Report, UN, (1956), p.180; ILO, "World Employment 1996/1997"; Eckholm, *The Dispossessed of the Earth*, p.5; World Bank, *Workers in an Integrating World; World Development Report, 1995* (Oxford, 1995), pp.3-4; World Bank Country Study, *Review of Colombia's Agriculture and Rural Development Strategy* (Washington, D.C., 1996).

²² World Bank, *Workers in an Integrating World*, p.4.

²³ World Bank Country Study, *Colombia's Agriculture*, pp.7-9.

²⁴ Daphne Topouzis, "The Feminization of Poverty," *Africa Report*, (July/ Aug 1990), 60-63; Oxfam "Oxfam GB's work on Gender and Development" <<http://www.oxfam.org.uk/policy/gender/lgender.htm>>, UN, "FWCW Platform for Action Women and Poverty," <<http://www.un.org/womenwatch/daw/beijing/platform/poverty.htm>>. Claire Whitmore, in an Oxfam publication, quite rightly points out that individual ownership is not always as equitable as it seems to be, especially in regards to gender. She uses the example of land registration in Kenya: with its introduction, women who had held rights previously lost their land because the principle of individual ownership was tied to giving that title to the male head of the household, *Land for People*, p.27.

²⁵ World Bank, *Knowledge for Development*, p.77; Inderjit Singh, *Small Farmers in South Asia: Their Characteristics, Productivity, and Efficiency*, World Bank Discussion Paper, No. 31, (Washington, D.C., 1988), pp.33-34. The contradictory nature of evidence concerning productivity is pointed out with regards to Africa in Uma Lele and Manmohan Agarwal, *Smallholder and Large-Scale Agriculture in Africa: Are There Tradeoffs Between Growth and Equity*, MADIA Discussion Paper No.6, World Bank(Washington, D.C., 1989).

²⁶ The concern over environmental degradation and sustainability really became important as an issue in the 1970s, as evidenced in the World Bank's 1975 *Land Reform Report*, which sought to sum up its past experiences with land reform and to present a policy for its role in future land reform and related projects. Susan Hanna and Mohan Munasinghe, (eds) *Property Rights and the Environment: Social and Ecological Issues*. (Washington, D.C., 1995).

²⁷ Kevin M. Cleaver and W. Graeme Donovan, *Agriculture, Poverty and Policy Reform in Sub-Saharan Africa*, World Bank, (Washington, D.C., 1995). Quite often, the system is merely weighted to favour the elite, as in the case of Peru, where it was found that the high costs in registering property are prohibitive to all but the rich, World Bank, "How popular participation improved property rights and dispute resolution in Peru," *The State in a Changing World; World Development Report, 1997*, (Oxford, 1997), p. 101, Box 6.1; World Bank Country Study, *Colombia's Agriculture*. In Egypt, land reform was a signal of the demise of the old royal family and aristocracy, Bent Hansen, *Egypt and Turkey: The Political Economy of Poverty, Equity, and Growth*, World Bank, (Washington, D.C., 1991).

²⁸ World Bank, *The State in a Changing World*, pp. 31-41; Catherine Farvacque and Patrick McAuslan, *Reforming Urban Land Policies and Institutions in Developing Countries*, World Bank (Washington, D.C., 1992), p.v; Inderjit Singh, *Tenancy in South Asia*, pp.7, 39; World Bank Country Study, *El Salvador; Rural Development Study* (Washington, D.C., 1998).

²⁹ Inderjit Singh, *Tenancy in South Asia; Small Farmers in South Asia; and Land and Labor in South Asia*, World Bank Discussion Paper 33, (Washington, D.C., 1988).

³⁰ World Bank, *Workers in an Integrating World*, pp.3-4.

³¹ World Bank, *Development and the Environment; World Development Report, 1992* (Oxford, 1992), p.94; Shelton Davis (ed.) *Indigenous Views of Land and the Environment* World Bank (Washington, D.C., 1992), Introduction; Cleaver and Donovan, *Agriculture, Poverty in Africa*, pp.8-9.

³² United Nations, *Progress in Land Reform*, Fourth Report, pp.54-57.

³³ Susan Hanna, Carl Folke and Karl-Göran Mäler, "Property Rights and Environmental Resources" pp.15-29 and Carl Folke and Fikret Berkes, "Mechanisms that Link Property Rights to Ecological Systems", pp.121-137, in Susan Hanna and Mohan Munasinghe, (eds) *Property Rights and the Environment; Social and Ecological Issues* World Bank, (Washington, D.C., 1995); Bromley and Cernea, *Management of Common Property Resources*, pp.33-40; World Bank, *Development and the Environment*, p.94.

³⁴ See for example Box 4.6 "Land tenure systems in Sub-Saharan Africa -the case of Rwanda" in World Bank, *World Development Report, 1990*, (Oxford, 1990), p.66; Whittemore, *Land for People*, p.15.

³⁵ For an excellent discussion of the issue of the Treaty of Waitangi claims and their historical background, see Allan Ward, *An Unsettled History; Treaty Claims in New Zealand today* (Wellington, N.Z., 1999). John C. Weaver has examined how land became property in the western sense, specifically in terms of its construction in the minds of British colonists, in the New Zealand context, "Frontiers into Assets: The Social Construction of Property in New Zealand, 1840-1865," *Journal of Imperial and Commonwealth History*, 27 (1999), 17-54.

³⁶ As rightly pointed out by Eric Eckholm for the Worldwatch Institute in *The Dispossessed of the Earth* p.23, the conditions of culture, politics, and ecology are widely varied among the nations of the developing world. He goes on though, to say that dominant land tenure practices among many of those nations impede agricultural and social development. This is, of course, the fundamental problem, balancing older traditional systems with the changes necessary to improve agricultural production and guarantee basic human rights.

³⁷ A number of books and articles have been devoted to the subject of European attempts to establish superiority. See for example, Edward Said, *Culture and Imperialism* (London, 1993). New Zealand: Weaver, "Frontiers into Assets"; Ward, *An unsettled history*; James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century*, (Auckland, 1996), pp.117-246. North America: Richard White, *The Middle Ground; Indians, Empires, and Republics in the Great Lakes Region, 1650-1815*, (Cambridge, 1991), Marshall Harris, *Origin of the Land Tenure System of the United States*, (Ames, Iowa, 1953); Ruth B. Moynihan, "The Patent and the Indians," *American Indian Culture and Research*, 2 (1977), 8-18; Robert J. Surtees, *Indian Land Surrenders in Ontario, 1763-1867*, (Ottawa, 1984), Sidney Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*, (Toronto, 1998). South Africa: Richard Elphick and Herman Giliomee, (eds) *The Shaping of South African Society, 1652-1820* (Cape Town, 1979); Christopher Saunders and Iain R. Smith, "Southern Africa, 1795-1910" in Andrew Porter (ed) *The Oxford History of the British Empire; The Nineteenth Century*, Vol.III (Oxford, 1999), pp.597-622.

³⁸ For example, it has been argued that Western economic forces after WW II asserted a great deal of pressure on Japan to become more like Western society, and in terms of land, this meant surveying, title registration and property taxes. The World Bank, "Reform under External Threat: The Meiji restoration in Japan," *The State in a Changing World*, p.150, Box 9.3. The same sentiments were expressed in U.S. Department of State, Land Reform – a world challenge and Mutual Security Agency, *Philippine Land Tenure Reform*. The argument for "widely shared land ownership" as a means to help create and sustain "political and ecological stability" has continued to be a strong one, Eckholm, *The Dispossessed of the Earth*, p.24. However, Eckholm, in the same paper, chastises the United States for only actively working for land reform when it was politically expedient for them to do so: in their struggle against Communism, pp.38-39.

³⁹ World Bank, *Development and the Environment*, p.94.

⁴⁰ Bromley and Cernea, *Management of Common Property*, pp.33-40, discuss the example of the Eastern Senegal Livestock Development Project, and the World Bank's reinstatement of common property structure and creation of a local management structure. Cleaver and Donovan, *Agriculture, Poverty and Policy*, point to projects in Côte d'Ivoire, and Burkina Faso, p.15. In Davis, (ed) *Indigenous Views of the Environment*, there are articles on the Quichua of Ecuador, the Maasai in Kenya, the Samburu, also in Kenya, and Tribal Filipinos. See also publications from the International Work Group for Indigenous Affairs (IWGIA), in particular, Marcus Colchester and Christian Erni, (eds) *From Principles to Practice; Indigenous Peoples and Protected Areas in South and SouthEast Asia*, IWGIA Document No. 97 (Copenhagen, 1999).

⁴¹ Arthur J. Ray, in *Indians in the Fur Trade: their role as trappers, hunters and middlemen in the lands southwest of Hudson Bay, 1660-1870*. (Toronto, 1974) argues that although they adapted in the early period, ultimately the concentrated economic thrust of the fur trade was

disastrous for North American Natives. The ecological changes that are part of the introduction of new economic and cultural systems can also have a major effect on the ability of traditional systems to survive under new environmental conditions, as has been shown in historical contexts, see for example, William Cronon, *Changes in the Land; Indians, Colonists, and the Ecology of New England* (New York, 1983) and Alfred W. Crosby, *Ecological Imperialism; The Biological Expansion of Europe, 900-1900* (Cambridge, 1986).

⁴² Bernard O. Binns, *Cadastral Surveys and Records of Rights in Land - An FAO Land Tenure Study*, FAO Agricultural Studies series, No.18, (1953).

⁴³ Michel Foucault, "Questions on Geography" in *Power/Knowledge; Selected Interviews and Other Writings, 1972-1977* (New York, 1980), p66-67; "Space, knowledge and power: an interview with Paul Rabinow" in P. Rabinow (ed) *The Foucault Reader* (Harmondsworth, 1984); "Of Other Spaces" *diacritics* (1986), 22-27.

⁴⁴ There has been considerable discussion of the role of surveying and mapping to bring order and create a codified knowledge of space, especially with regards to the British colonial claims. D.Graham Burnett, *Masters of All They Surveyed; Exploration, Geography and a British El Dorado*, (Chicago, 2000); Matthew Edney, *Mapping an Empire; The Geographical Construction of British India, 1765-1843*, (Chicago, 1997); Roger J.P. Kain, *The Cadastral Map in the Service of the State: a history of property mapping*, (Chicago, 1992). For an intriguing examination of how surveying and mapping the physical land can create a nation, see Thongchai Winichakul, *Siam Mapped: A History of the Geo-Body of a Nation*, (Honolulu, 1994).

⁴⁵ Ward, *An unsettled history*. The British experience of South Africa also demonstrated the difficulties in trying to understand and incorporate older systems into one comprehensive legal system, as they tried to come to terms with Boer land systems as well as those of some of the indigenous peoples who still held land, Elphick and Giliomee, *Shaping of South African Society* and Saunders and Smith, "Southern Africa," pp.577-622.

⁴⁶ Mifsud, *Customary Land Law in Africa*, p.14.

⁴⁷ See Benedict Anderson, *Imagined Communities; Reflections on the Origin and Spread of Nationalism*. 2nd edition, (London, 1991), pp.39-45.

⁴⁸ Michel Foucault, "Two Lectures", *Power/knowledge; selected interviews and other writings, 1972-1977* (Brighton, 1980), pp.92-108.

⁴⁹ David L. Benan, *et al.* note the flexibility of the land holding system in Nigeria, where rights are based on local consensus, *Nigeria and Indonesia: The Political Economy of Poverty, Equity and Growth*, World Bank Comparative Study series (Washington, D.C., 1999), p.139; Folke and Berkes, "Mechanisms that Link Property Rights", pp.121-137, discuss the feedback sources within common property systems that allow for responses to changing conditions.

⁵⁰ Anderson, *Imagined Communities*, pp.44-45.

⁵¹ World Bank, *Knowledge for Development*, p.124, p.152.

⁵² David Seckler, "Private Sector Irrigation in Africa" notes an instance in Africa where the irrigation project had a potential of further assisting those who had land. The problem of income disparity was solved by giving each family a right to an equal share of water, so that those with

land bargained for the purchase of water from those who did not have land, in Barghouti and Le Moigne (eds) *Irrigation in Sub-Saharan Africa*, p.32.

⁵³ Mifsud, *Customary Land Law in Africa*, pp.38-39; Whitmore takes a particularly rosy and generalized view of traditional African structures, *Land for the People*, p.15.

⁵⁴ World Bank, *Land Reform*, p.11; Farvacque and McAuslan, *Reforming Urban Land Policies* pp. v,vii; World Bank, *Knowledge for Development*, p.29, Box 2.2; World Bank, *Entering the 21st Century*; *World Development Report 1999/2000* (Oxford, 2000), pp.134-135.

⁵⁵ World Bank, *Entering the 21st Century*, p. 147, Box 7.1.

⁵⁶ James Belich, *Making Peoples*, pp. 152-155,197.

⁵⁷ World Bank, *Knowledge for Development*, p.152.

⁵⁸ Weaver, "Frontiers into Assets" p. 19.

⁵⁹ World Bank, *Knowledge for Development*, p.124.

⁶⁰ See for example, World Bank, *World Development Report, 1990*, pp. 42,58; *The State in a Changing World*, pp.31-32; *Knowledge for Development*, p.29.

⁶¹ World Bank, *The State in a Changing World*, pp.32-41.

⁶² World Bank, *World Development Report, 1990*, pp.42, 58-59, 64; *Workers in an Integrating World*, pp.3-4; *Knowledge for Development*, p.124; *Entering the 21st Century*, p.136; Boughton and Lateef, *Fifty Years After Breton Woods*, p.13; IMF Fiscal Affairs Department, *Should Equity Be a Goal*, p.3.

⁶³ Anderson, "Census, Map and Museum" in *Imagined Communities*.

⁶⁴ Samuel P. Huntington, "The Clash of Civilizations?" *Foreign Affairs*, 72 (1993) reprinted in Patrick O'Meara *et al.* (eds) *Globalization and the Challenges of a New Century*, (Bloomington and Indianapolis, 2000), pp.3-22.

⁶⁵ Benjamin R. Barber, "Jihad vs. McWorld," *The Atlantic Monthly* (March 1992) reprinted in O'Meara, *Globalization*, pp.23-33.

⁶⁶ Eric Stokes, *The English Utilitarians and India* (Oxford, 1963).