

LAND TENURE IN THE COOK ISLANDS^{1/}

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As in other parts of Polynesia, the indigenous land tenure system of the Cook Islands was intimately related to its social organization - so much so that a knowledge of the social system is an essential pre-requisite to the understanding of the system of land tenure.

The social system was segmentary in structure and had a strong patrilineal bias. Each minimal segment consisted of a single household headed by an elder (metua). It was joined with other related households to form a minor lineage under a subchief (rangatira or komono) - that elder among them who was senior by descent. Related and contiguous minor lineages were in turn connected to form a major lineage under the headship of a chief (mataiapo) - ideally the "first-born of the first-born" from the lineage founder. Finally major lineages were united for certain purposes under the leadership of the high chief (ariki), whose rank was paramount and whose descent was traced from the gods. Particular land rights lay with the respective groups at the various levels of segmentation.

Land rights held at the tribal level were relatively few. In peacetime there was a right of access throughout the tribal territory, provided known pathways were used and the activities were legitimate. The high chief, as head of the tribe, could impose a customary prohibition (ra'ui) on the use of particular produce throughout the tribal area in

^{1/} The atolls of the Northern Cook Group, which account for 14% of the total land area and 15% of the population of the whole Group, have tenure systems which differ in some significant details from those of the rest of the Group and have been omitted from this analysis.

order to conserve it for a time of shortage or a forthcoming feast. He could require that foodstuffs from tribal lands be provided for certain tribal ceremonies. Some lands belonged to the tribe as a whole and were the special responsibility of its high chief. These were the meeting places (koutu) of the tribe, and its religious centre (marae).

Each major lineage occupied a block of land known as a tapere. The tapere was almost invariably wedge-shaped - the boundaries beginning as defined points on the outer reef and running inland to enclose an ever-narrowing strip of land until they converged at a point in or near the centre of the island. As a result of this pattern of division and of the generally uniform topography of the islands, each major lineage had access to every category of soil type and land surface that the island had to offer - from the (usually) mountainous interior where forest products were collected, through the fertile valleys where the major food crops were grown, across the rocky coastal strip (makatea), to the ubiquitous lagoon and fringing reef.

In most instances the occupying major lineage was divided into several minor lineages, and the various lands were subdivided among them. Once so allocated the rights of the major lineage were limited to three - a symbolic right to regard the whole tapere as its own, the right of reversion in the event of any minor lineage becoming extinct, and the right to participate in deliberations involving the tapere lands as a whole. The lands were allocated among the minor lineages in such a way as to ensure that each had an adequate share of all the major categories of land and was thus virtually self-sufficient in so far as subsistence was concerned. While the lagoon waters were usually not divided within the major lineages, particular minor lineages had exclusive rights to fish weirs which they had constructed. Within each minor

lineage there were further subdivisions among the various branches (kiato) and within the component households (kainga tangata) of each of them. The whole of the lands were not so divided, but generally only the taro swamps, cropping lands, and areas planted with the more valuable trees.

The rights of any individual in the lands of any group were dependent on his membership of or relationship to that group, and his social status within it. An individual's connection with any particular portion of land and with the minor lineage or segment of it to which that land was allocated fell into one of the following four categories.

Firstly, there were the rights of persons who lived in a lineage and derived their right directly from some other person (usually their father) who also belonged to that lineage. These we will refer to as primary members of the lineage. Primary members held primary rights to the land - i.e. they could plant and harvest as of right.

Secondly, there were the rights of persons who had been primary members of a lineage but had subsequently (usually in the event of marriage) left to join another lineage. Their connection with their lineage of orientation was still recognized on certain occasions (particularly in the event of feasts in connection with life crises) and they could return to that lineage if due to death of the spouse or other misfortune they wished to do so. Sometimes when a high-ranking woman married out, her lineage set aside a special portion of land for her personal use, but with this exception, her right to actively use the lands of her born lineage was contingent on her return there or on their express permission. The same applied to a man who married uxorilocally. Such persons will be referred to as contingent members of the lineage, and their rights to the lineage lands will be referred to as contingent rights.

Thirdly, there were the rights of the children of contingent members of the lineage. Such children had the right to participate in certain activities in the lineage of that parent, and could expect support and assistance from them in times of crisis. Adoption was very common, and the most common direction of adoption was back to the lineage of that parent who had shifted her (or his) residence at the time of marriage.^{1/} We shall refer to such persons as secondary members of the lineage concerned, and will speak of their rights to its land as potential rights, for while it was generally accepted that they would be admitted to that lineage if they wished to join it, and could thereby gain primary membership of it, they did not under normal circumstances plant there while residing in another lineage. To a lesser degree, the children of secondary members of a lineage were themselves secondary members, and they also had a potential, but markedly weaker, right to the land. They will be referred to as distant secondary members. In the event of dire necessity there was no limit to the lengths one could trace secondary affiliations of this sort, but in practice they were seldom revived to the extent of exercising land rights.

Fourthly, there were rights of persons who resided in a lineage but were not primary members of it. Most significant, of course, were the wives of primary members, whose connection with the lineage was conditional on the continuation of the marriage, or the approval of the lineage if the other spouse died. Also there were in some cases refugees, captives, or others who resided with the lineage but who had no close kinship connection with it. These persons will be grouped together as

^{1/} If adopted back one thereupon usually became a primary member of the lineage of adoption.

permissive members of the lineage, as persons holding permissive rights to its lands. Such rights could not be transmitted and their maximum duration was accordingly the life-time of the holder.

The advent of the Europeans resulted in major demographic and social adjustments. With the exception of the fact that women came to be accepted as title-holders, there were no significant changes in land custom, though there were marked changes in the relative incidence of particular means of acquiring land rights. Largely by a process of uxorilocal marriages the port lineages became larger and those in the more isolated villages became relatively smaller. By the process of reversion, the rights of groups which died out in the epidemics fell to the holders of the higher titles who thus accumulated relatively large tracts. By encouraging uxorilocal marriages to their women, and judicious virilocal marriages with their men, the high chiefs were often able to acquire sundry junior titles and consequently the lands that went with them. The relative power of the high chiefs over the land was thereby enhanced and was reflected in increased demands for tribute from the lower social orders. There was some leasing of vacant land by the high chiefs to Europeans, but both the indigenous people and the mission opposed foreign settlement and permanent alienation was prohibited throughout.

In 1901 the Cook Islands were annexed to New Zealand. The New Zealand Government established a Land Court on the lines of the New Zealand Maori Land Court with the aim of making such lands as were not actively used by the islanders available for European settlement and increasing production from the lands used by islanders by individualizing title and "freeing" the commoners from the control of the chiefs. The former ambition was never realized and by 1910 that part of the policy

had been abandoned. The Land Court set about investigating title to the various lands, but due to there having been long periods without any judge, only about half the total land area of the group has been investigated to date. Owing to a misunderstanding by the Court of the significance of lineage affiliation in determining ownership of and succession to land rights, it awards title to all the children of a previous owner with the result that excessive fragmentation of title has occurred. Moreover, as equal rights are thus awarded to persons who are not primary members of the lineages concerned, and as the social status of the leaders of the various segments is not recognized by the Court in relation to land rights, there is no effective leadership of these rapidly increasing and heterogeneous groups of "owners" of each section. As may be expected, the work of the Land Court has not resulted in the increased per capita output of primary produce which had been hoped for.

In 1946 a scheme was introduced whereby a co-owner could be granted exclusive rights of occupation to a particular portion of the lands in which he held rights, for the purpose of planting long-term cash crops. Unlike the earlier changes in the tenure system which were imposed without consultation, this change was brought about after considerable discussion with indigenous leaders. At the time of its introduction it was supplemented by a scheme of agricultural credit together with technical equipment, skilled personnel and organized marketing facilities. This innovation has resulted in land under the scheme being the most intensively and productively used in the group, and while it takes up less than one per cent of the land area of the group, production from it now constitutes the largest single source of primary income and brings in approximately fifty per cent of the total income from agricultural production. The success of this scheme and the method of its introduction and implementation provides a pointer to the pattern of future agrarian reform in the Cook Islands.