

Feminist Perspectives on Land Law

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age have ceased to travel temporarily or permanently' (*Definition of the term 'gypsies and Travellers' for the purposes of the Housing Act 2004*; ODDPM http://www.communities.gov.uk/pub/401/DefinitionofthetermgypsiesandtravellersforthepurposesoftheHousingAct2004PDF294Kb_id1163401.pdf) It remains to be seen whether the new measures will improve the situation.

Chapter 8

'Land doesn't come from your mother, she didn't make it with her hands'

Challenging matriliney in Papua New Guinea

Melissa Demian

Introduction

In November of 1969, A\$50,000 was paid by the Australian colonial administration to a number of 'landowners' in the Suan census division of Milne Bay District (now Province), Papua New Guinea, in exchange for timber extraction rights. The government patrol officer at the time, one John Balderson, noted in his annual report that there was some dissatisfaction amongst 'people belonging to one of the Clans holding full rights over the timber in question, but residing in another village at the time of purchase, thereby receiving no monetary compensation' (Balderson 1970: 9). He also remarked that one plantation owner¹ at the village of Maliwate expressed concern that he wouldn't be able to log because the 'real' owners of the land in question hadn't been paid (1970: 10). However, Balderson wrote that 'Overall satisfaction with the sale was expressed nonetheless, and the impression gained was that the payees are now waiting patiently for the Government's second move to see if it is as silly as its first' (1970: 10).

Twelve years later, in a report written as a result of a social feasibility study for the introduction of oil palm to the province, the anthropologist Michael Young noted that land tenure among the peoples of the southern mainland was remarkably 'insecure' in comparison with the island peoples with whom he had the most experience (Young 1981: 15). By 'insecurity' he meant the flexibility with which land could be transmitted. Although the default inheritance through the matriline, several mechanisms exist for obtaining userights and even 'permanent' transferral of land ownership through the father, or more precisely, from the mother's matrilineage to the father's. As one of his informants told him, 'We have *too many* ways of getting land' (1981: 15, emphasis in original). Young noted that the issue was not simply one of matrilineal versus patrilineal inheritance, but also one of mytho-historical relationships to the land. The Goodenough Islanders with whom he had worked before could be claimed to have a more 'secure' or 'stable' system of land tenure not only because patriliney and virilocality meant that the same lineage remained on the same land for generation after generation, but because

each patrilineage could claim its origin in a cave opening on that land. Origin accounts among mainland peoples such as Suau can be far more ambiguous, as I will illustrate.

When I first went to work in the area in 1996, I had been invited by a local activist and sometime politician named Matilda Pilacapo, who told me on several occasions that my job would be to record 'the matrilineal kinship'.² Her use of this phrase was clearly a shorthand reference to something more complex, and in true Papua New Guinean fashion she left it to me to work out what it was. My eventual conclusion was that she perceived Suau matriliney to be under threat, particularly as it pertained to the transmission of land rights. The threat in this case was the possibility of land being claimed through patrilineal ties, and perhaps even legally registered as such, although the cost of hiring a surveyor and filing a legal claim would have been prohibitive to most people on the Suau Coast. Her concerns, as I ultimately learned, were inflated but not baseless. The Suau Coast had been heavily missionised in the late nineteenth and early twentieth centuries, and was the site of numerous Australian-owned rubber and copra plantations to which people came from all over the region to work. Suau-speakers and their hinterland neighbours³ were thus exposed early and intensively not only to the property regimes of Europeans, but to those of people from non-matrilineal societies. While it could be argued that the former was more vigorously 'imposed' on Suau, the impact of the latter could not be discounted, if only for the way in which it enabled them to imagine how outsiders might perceive them, and in what terms they might or might not continue to differentiate themselves from those outsiders.

Suau belong to a matrilineal minority within the panoply of systems by which Papua New Guinean societies reckon descent and inheritance. Matriliney tends to be found among coastal and island peoples speaking Austronesian languages, while the majority of non-Austronesian language speakers on the mainland (and on some islands) reckon inheritance along patrilineal or cognatic lines.⁴ The culture area to which Suau belongs, the Massim, is, with two known exceptions, entirely matrilineal. Along with matriliney, Massim societies are anthropologically renowned for their elaborate mortuary sequences and their extensive networks for the exchange of prestigious wealth items as well as trade in everyday goods and consumables. But underscoring discussions of these and other phenomena is the notion that matriliney provides the 'blueprint' for a particular configuration of relations between men and women in the Massim, and the forms those relations are likely to take. In the latter half of the twentieth century, anthropologists were concerned to elaborate the ways in which matriliney contributed to the political and economic influence of women in Massim societies (Weiner 1976, Kahn 1986, Lepowsky 1993). Not unreasonably, all of these studies took as their object of analysis women's control over particular material forms, from food to valuables to land. For while it had to a certain extent been recognised

all along that Massim women enjoyed a more active role in the 'public sphere' than did women in most other Papua New Guinean societies, it was not until the dual emergence of feminist and Marxist thought in anthropology that matriliney was construed as playing a significant role in women's lives outside of their obligation to reproduce the lineage and their status as future ancestresses through whom property and identity would flow.

In fact, until the 1970s, the focus had for the most part been on the implications of matriliney for men. Matriliney appeared to present a peculiarly difficult situation for fathers, who were assumed to be torn between the interests of their children and those of their sisters' children, that is, their heirs (Richards 1950: 246). Later studies, notably those from Melanesia, suggested that fathers in matrilineal societies are not as conflicted about their obligations as previously accepted (Clay 1977, Battaglia 1985, Bolyanatz 1996, Sykes 2001). The imperatives of reciprocity through which fathers are compensated for their fathering work, provisions for particular property forms that fathers can transmit to their own children, and new obligations to the nation-state, all contribute to a picture of relationships in which fathers can quite comfortably distribute resources of various kinds among their children and their sisters' children. Too, the assumption that fathers invariably prefer to devolve property to their own children, and are only prevented from doing so by the demands of matriliney, has been called into question (Levine 1987), and the idea has even come full circle to meet its mirror image. Matriliney has now been conceived as promoting solidarity between lineages, rather than fission within them, by means of the 'dual role played by men: on the one hand, father and husband, on the other hand, mother's brother and brother' (Petersen 1982: 138). Far from the splitting or diluting of men's kin identity imagined in the 1950s, their identity is now thought to be doubled by the provisions of matriliney. Key to both images, of course, is the notion that kinship can be added or subtracted by the 'rules' of unilineal descent. With the addition or subtraction of kin relations is implied the addition or subtraction of property relations.

In the 1960s, an apparently new problem emerged: matriliney appeared to be on the verge of dissolution in the face of capitalism's inexorable advent (Gough 1961). If, as the theory went, matriliney was associated with 'abundance and unrestricted access to resources' while capitalism was associated with 'scarcity and restricted access to resources' (Poewe 1980: 342), then matriliney stood no chance of survival. Later assessments of the death-of-matriliney announcements noted that they were based on the modernisation theory prevalent at the time (Colson 1980: 359) which proceeded from the assumption, on the one hand, that capitalism would sweep all before it and, on the other hand, that it would reproduce the social forms which had produced it, namely, private property and patrilineal inheritance. Underpinning the second assumption was in turn the evolutionist sensibilities of Victorian anthropology, to which the association between matriliney and the absence of

private property can be traced. For Lewis Henry Morgan (and those influenced by him, most notably Engels), both kinship and resources were imagined to undergo incremental 'enclosures' progressing from a state of 'primitive promiscuity' to polygamous matriliney and finally to monogamous patriarchy, with the final stage accompanied by full-blown private property regimes (McKinnon 2001). The final two social and economic forms brought each other about because: 'In contrast to the maternal relation, which was thought to generate a natural form of social relation in the matrilineal gens (but one whose maternal communalism was inherently antithetical to ideas of individual property), the paternal relation was seen as incapable of generating any social form *until property was added to it*' (2001: 284, emphasis in original). A century after Morgan, social theorists still assumed that private property and matriliney were fundamentally incompatible; although that belief has been tempered by abundant evidence to the contrary, it still lurks behind the concerns of those who would 'preserve' matriliney from the depredations of capitalism.

So while reports of matriliney's demise have been greatly exaggerated, I was initially obliged, out of the absence of any ethnographic knowledge about the people with whom I would be working, to confront the problem as Mantla Placapi presented it to me in her coded manner. If people could now claim land through their fathers, what future was there for matrilineal kinship reckoning, and by implication, for the political and economic influence historically wielded by women in this quintessentially matrilineal corner of Papua New Guinea? My concern in this chapter is therefore twofold. The first is to question whether matriliney is most accurately defined as a rule of inheritance in Suau conceptualisations of it. The second is to ask whether, in the event that Suau land claims become as 'chaotic' as some predict they will, matriliney is itself actually under threat. The first concern obviously delineates the second.

Land, movement and precedence

Our *ulububu* (matrilineage) came from Ware Island. We came from Ware and later went to Suau. At Suau there is a little village called Gadawawi. There at Gadawawi we lived. That was our grandparents, our *ulububu*. At Gadawawi they lived until . . . they went to Pwa'in. They went to Pwa'in and then they went to Saga'afu and lived there. At Saga'afu they lived until they had children. There was a big death [epidemic?] there. Finally all the people at Saga'afu died, with one left who came up to Buhunu. At Buhunu that person lived, got married, and had one girl child. There was one girl child, and it went until that woman herself had a child. She also had one girl child. After that one girl child she gave birth again: a boy . . . They lived until they had another boy. They had another child. Giuwede. They had Giuwede. Then they had another, Waileya. Then they wanted to stay together, and they came down to the foot of Monalio River . . . They built

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a house and time passed while they lived there. Then they gave birth to Laukapore. After that they also gave birth to me. They bore Tauyabuna. There we lived and then later we lived at what's-it-called. At Puyuwa. Another hamlet called Puyuwa. There we lived until we lived at Daiyela. Later we lived at what's-it-called. Boboulo, a place called Boboulo. We lived at Boboulo until Misibibi came and gathered us together. The government. Misibibi came and gathered us together, in the mountains where we were all living at the time. We came here to Bwabwatiti. At Bwabwatiti we stayed together.

(Tauyabuna, ~70, recounting the history of his *ulububu*)

If you ask a person on the Suau Coast to tell you about his or her lineage, you will be regaled with a catalogue of places and people in the order that they were born. Tauyabuna's narrative shifts seamlessly between a progression from place to place and from sibling to sibling, each 'movement' between locations and persons denoting the passage of time. His own birth is embedded in a sequence of births and deaths of which the flow of time from past to present is constituted. As the oldest living member of his lineage, to whom younger members could come for accounts like the one I have excerpted, he was more than entitled to locate himself as an ancestor-to-be in his telling. The other siblings named in the history were all dead.⁶ The names of ancestors and the names of abandoned hamlets form a constellation of reference-points from which people can take their spatiotemporal bearings. As Küchler writes of New Ireland: 'In the absence of any emphasis on genealogy, the history of social relations is embedded in the process of mapping. Mapping is the product of place transmission which, together with the transmission of personal names and skills, effects the virtual reconstitution of social relations over time' (Küchler 1993: 96). Places and deceased people become nearly interchangeable in this conceptualisation, as they serve the same purpose of orienting the present generation in the history of its lineages.

What characterises all Suau lineage histories is that they are narratives of movement across the land (and sometimes the sea, as in Tauyabuna's history); the names of lineages are themselves place names, typically an 'earliest known address' for an apical ancestor. Lineages moved as a consequence of marriage, adoption, exile, kidnapping, warfare, and in the twentieth century, government intervention. The person identified as 'Misibibi' in Tauyabuna's narrative was Mr Vivian, a Resident Magistrate of the Australian administration in the 1920s, who is credited with having relocated entire lineages from the hinterland to the coast in order to render them more accessible to government patrols. This policy probably saw the relocation of the most people at any one time in Suau history, and gave rise to the emergence of villages which had not previously existed or had only existed as hamlets occupied by members of a single lineage. Land disputes in such villages are, needless to say, endemic. But the government relocations of the early

twentieth century were duly incorporated into the histories of the relocated lineages, a new kind of 'road' along which lineages might travel.⁷ There can be no doubt that the relocations exacerbated the already transient nature of Suau land claims, but they did not generate it. Mobility as a component of lineage identity is a product of the combination of matriliney and virilocality. It is granted, unsurprisingly, a distinctive moral value.

Stationary and mobile states mark particular phases in the lives of Suau people, and the movement of lineages may ultimately be affected by one of these phases. The elaboration of 'mobility ideology' on an individual level may be seen as reflective of movement through and claiming of land by lineages. Three elements of varying strictness: matrimony (non-negotiable), exogamy (often violated at clan level but never at that of lineage), and virilocality (normative but flexible), combine to produce highly mobile lineage populations which nonetheless place a heavy emphasis on identification with specific places. This is not as paradoxical as it might seem, although it does necessitate an ideological acknowledgement of principles of both rootedness and travel. These typically Austronesian concerns with origins and precedence (Fox and Sather 1996) are elaborated further at the level of birth order. Firstborn children (*tambagima*, 'leader'), whether male or female, are understood to be the 'bosses' or stewards of their junior siblings (*taumilita*, 'follower'), requiring particular respect from the junior siblings and their spouses. Married couples address each other by the names of their respective hamlets or lineages until the birth of their first child, after which they practise teknonymy using the name of this child. Firstborn children are often also the holders of lineage origin stories. In the event of the death of a firstborn sibling, authority transfers to the second-eldest, and so on down the 'line' of birth order. Sibling groups are thus metaphorically conceived as travelling single-file, which is the preferred spatial arrangement for people journeying from one place to another. Generations are also conceived in this way, as a woman might speak of her ancestors as 'the women behind me' and her descendants as 'the women in front of me'.

The special status of firstborn children is also condensed in the unique relationship they have with their fathers, to whom they are said to 'belong'. This relationship contains as much potential for the mobility of a lineage as does virilocality, for in both cases the land available for inheritance or usufruct is shifted from one location to another. A firstborn's 'belongingness' can, in certain cases, be expressed as an option to inherit land from the father's matrilineage rather than the mother's. The option is not always invoked, but remains as a latent relationship between a father and his firstborn child. It may be invoked if a firstborn son has no sisters, if a firstborn daughter prefers to stay on land belonging to her father's lineage rather than her mother's, or for other circumstantial and political reasons. The definition of this type of inheritance is not universally agreed upon, and a firstborn's land claim may be overridden by someone claiming the same land through

a female ancestor. But in this respect, a firstborn child can truly be said to 'lead' his or her siblings to a new home, should the option of inheritance from the father's matrilineage be exercised. It also creates additional tensions in a system of land tenure which is already laden with contingencies. The burden of firstborn children is to embody both principles of rootedness, in that they are usually the holders of lineage origin knowledge and authority over the disposal of their land; and mobility, in that they may or may not ultimately occupy and work this land. In the case of a firstborn woman, the issue is compounded by the fact that she may potentially claim identification with land belonging to her own lineage, her father's lineage, her husband's lineage, or any or all of these at different stages in her life! Firstborns are *par excellence* the creators of new 'roads' for their lineage to traverse, but each time a lineage moves, a renegotiation of old and new relationships must take place in order for the land on which the lineage resides to belong to that lineage.

What kind of landowner?

I refer to 'belonging' rather than 'ownership' throughout this chapter for a reason. I wish to maintain a distinction between the kind of relationship Suau people have historically had with land, and that implied by ownership, that is, the fee simple estate. Eighty-five per cent of land in Papua New Guinea is still held under customary tenure, which includes all but very small portions of the Suau Coast. As the Australian administration learned, and as oil palm and timber companies may yet learn, Suau land tenure is remarkably hard to pin down in such a way that 'landowning' individuals, or corporate groups acting as if they were individuals, may be negotiated with. Or rather, individuals claiming to be 'landowners' may readily be found, but it is guaranteed that at some point in the future their claim will be contested, either by lineages claiming to be the true owners of the land or by a member of that person's own lineage claiming to be the true 'boss' of the land.

'Boss' is in fact the preferred gloss offered by English-speaking Suau for their word *tamuwaga*. A *tamuwaga* is an elder member of a lineage who is resident on that lineage's land and, crucially, knows the lineage history including the means by which they came into stewardship of the land.⁸ A *tamuwaga* cannot order the members of his or her lineage to dispose of resources in a particular way, but can only cajole and persuade, either by means of meetings with individual lineage members or by mustering the entire lineage to confer together. The status of a *tamuwaga* is not even entirely secure if there are several senior members of the lineage who know the relevant history; sometimes the title is shared peaceably between them, and sometimes it is acrimoniously contested, particularly if there arises dissent in the lineage over how lands is to be used. But whatever a *tamuwaga* is, he or she is not a landowner in the sense of a person with absolute and exclusive authority to dispose of

a piece of land or its resources and reap their benefits. This ethnographic fact, along with the combination of matriliney and virilocality described above, makes for difficult negotiations with companies desirous of making a one-time deal with 'owners' of land who are acting in a corporate capacity. However many 'owners' may appear on the day of the contract signing, several dozen more are bound to appear in the following months and years, indignant that they have not been consulted or compensated.

Suau are themselves trying to come up with a solution to this problem. That they, or at least those who have had some education or other exposure to Euro-American property regimes, regard it as a problem was evident at a meeting I attended in December of 1999, in the village of Saga'aho. Several men in their thirties or forties, all educated to some degree, were convening a series of meetings to discuss the possibility of forming a company called 'Saeleu', a contraction of the names Duiduisae and Duidulieu, which Suau use to designate the eastern and western halves of the coast, respectively. Saeleu would be a logging company, they said. However, they did not want to repeat the experiences of nearby villages which had had unfortunate dealings with Malaysian timber companies who paid below the market value for logs, built shoddy roads that washed away with the next rainy season, and left behind scorched grassland.¹⁰ So the meeting organisers were travelling up and down the coast to try to get 'landowners' interested. 'Landowner' was an English word used liberally throughout the meeting; another was 'clan'. When I pressed one of the organisers to define what he meant by these terms, he said a 'landowner' was the oldest member of a 'clan', which is in turn, he said, 'one family, one *ulubui*'.¹¹

There seemed to be, in his account, some slippage between the notions of landowner and *tamuwaga*. *Tamuwaga* can just as easily be women or men, but there were three women present at the meeting, and roughly forty men. And the convenors sometimes appeared to use the terms 'landowner' and *tamuwaga* as if they meant different things. Clearly they do. *Tamuwaga* is a profoundly contingent office; one is only *tamuwaga* if one is appropriately placed at or near the top of the birth order, has been taught where the land boundaries are and the history of one's lineage, and is demonstrably committed to living on the land. Finally, it cannot be emphasised enough that *tamuwaga* do not own the land so much as they orchestrate its use. But 'landowner' carries the notion of fixity, of something that a person is, rather than something he or she superintends for the time being. Landownership is a crystallisation, a freeze-frame, of the ephemeral nature of *tamuwaga*-ship.

The convenors were also conversant in the language of 'the individual' versus 'the community', again employing the English words. Continuing with their negative examples of logging villages where all the money went into beer and other consumables, they stressed that they wanted a percentage of Saeleu's proceeds to go toward schools, churches and aid posts, with the remainder going to the 'landowner'. One of the convenors suggested

improbably, that those who withheld their 'community' percentage or wouldn't participate in the logging at all, couldn't send their children to the resulting schools. It was classic Suau coercive consensus-building: either we all do it, or nobody does it. Finally, they stressed their desire to pre-empt the land disputes that would invariably arise as a consequence of land bringing in money. They exhorted their audience to go home, hold meetings with their 'clans', and try to come to an agreement (*ma esega*, 'one mind') about the logging project so that discord wouldn't arise later. That they anticipated discord seemed both a reverberation of Balderson's wry remark in his 1970 report, and an acknowledgment that decisions to dispose of land in particular ways would without fail lead to contestations of who could rightfully claim to be the 'boss' of the land and its resources.

Matriliney tested: a land dispute

Rural land disputes in Papua New Guinea are not handled by the legal system, not even the village courts whose mandate is the maintenance of 'law and order' using a combination of statutory and 'customary' law (Demian 2003). They are instead overseen by land mediators, knowledgeable and often elderly local persons who are conversant with the history of the families resident on the land within their jurisdiction and, perhaps more importantly, with the way that devolution of rights to land is handled by their own society. They do not adjudicate, but can only mediate between disputing parties. If a dispute brought to them proves itself to be intractable, they can recommend that it be taken to a district court. Such a solution is, however, beyond the means of most rural people, and it has been my experience that Suau people at least are keen to settle in the course of a land mediation hearing. Suau land mediations are almost festive occasions, months in the planning, accompanied by feasting and prayers, and hosted at no small expense. A single land mediation hearing may cover several disputes and continue for over twenty-four hours without interruption (alas for the exhausted anthropologist).

The quotation in the title of this chapter came from a man present at a land mediation hearing at Duhumodawa hamlet in November of 1999. This man, a political activist,¹² divided his time between the village and the provincial capital, Alotau. My first encounter with him in 1997 involved a meeting not unlike the one just described, in which he proposed a downstream processing operation through which people would be able to sell their timber, already sawn, to contractors in Papua New Guinea. I was struck by the fact that at his meeting, he insisted on the presence of women and their consent to the proposed plans (which never came to fruition), although he explained to me afterwards that this was to ensure no witches would sabotage the business out of jealousy. The remark he made two years later at the land mediation was, however, somewhat surprising to me, as he had previously taken an idealistic conducting business in accordance with traditional values' line. 'Tradition'

apparently had its limits for him, however, and during the conclusion of the 1999 mediation hearing he exclaimed, 'Land doesn't come from your mother, she didn't make it with her hands. God made it in six days.' The land mediator presiding, a canny and eloquent old gentleman, appeared to agree with him by responding that indeed, God had made the world and distributed its lands amongst different people. But he then proceeded to spend the next dispute much as he had the previous one: in lecturing the youthful disputants about the ins and outs of matrilineal inheritance.

The mediator had opened the proceedings with a speech emphasising 'development' and the future; land belongs, he said, 'to our children, it's not ours'. He gave a condensed history lesson, from 'the time before' to the colonial era when missionaries and government 'gathered us together' from every corner of the province. He took pains to acknowledge that the mobility, voluntary and otherwise, ushered in by the colonial encounter made the land situation more complicated than it might otherwise have been. He listed the ways people might have come by their land, through bridewealth, other marriage-related payments, or in exchange for pigs and shell wealth. Finally, he urged people not to be petty, but to make their decisions in a way which would 'lift' the name of Buhutu, the hinterland people who speak a dialect mutually intelligible with coastal Suan and for whom he acted as mediator.

In the first dispute heard, Bina,¹⁵ a man acting as *tamwaga* for his lineage supplied a bit of history in which his grandmother from Mahmahina got married to a man from Magaya and went to live with him there. At Magaya there was a *mata'asi*, a large-scale feast for the exchange of wealth items through which lineages and their influential members would build on their fame and demonstrate their economic efficacy.¹⁴ So the grandmother went to her relations at Mahmahina, who supplied a number of pigs for the *mata'asi*. But the people of Magaya were not able to repay the pigs, so instead they gave the Mahmahina people a piece of land, Bunalele Panepane, and a stand of sago palms. Bina himself grew up at Bunalele Panepane. His family cleared bush there in order to plant gardens and coconuts; when Bina was grown and the coconuts mature he began to plant oil palm. When Galuboi, a Magaya man, returned from work at a commercial oil palm plantation, he too began to plant oil palm at Bunalele Panepane.¹⁵ Bina complained about this, whereupon Galuboi's nephew chopped down some of Bina's oil palm and damaged his house. The actions of the nephew were dealt with in a separate village court case, and Bina emphasised that he was not trying to re-prosecute that case¹⁶ but trying to resolve the dispute between himself and Galuboi.

Once Bina had finished speaking his sister spoke up to clarify that because their grandmother had had no children of her own,¹⁷ Bina was entitled to act as *tamwaga*. After some discussion with the land mediator over the precise relationship between the grandmother and the people at Magaya, which accounted for her obligation to supply pigs for the *mata'asi*, Bina suggested

that the unreciprocated pigs were ultimately the source of the present dispute, because of the substitution of land as payment for the pigs.¹⁸ He described the boundaries of the land his lineage claimed at Bunalele Panepane, and asserted that two of his Magaya uncles, that is to say his father's brothers, had walked the boundaries with him.

The land mediator reminded Bina that he could not claim all of Magaya, only the 'block' (an English term probably introduced by early twentieth-century copra and rubber planters) at Bunalele Panepane. He then mentioned that one of Galuboi's objections to Bina having planted oil palm there was that there were graves in the 'block' belonging to the Magaya lineage. Graves, like fruiting trees, are pre-eminent indicia of a long-standing land claim, as it is preferable to be buried on land belonging to one's own lineage. The land mediator chastised Bina for his thoughtlessness in planting oil palm over the graves, but said again that he had no power to grant land either to him or to Galuboi, and that they had to agree on a settlement between them. A second land mediator, who had been silent up to this point, encouraged the disputing parties to decide that the dispute had gone on long enough, to pray together, 'shake hands' and thereby arrive at 'one mind' together. Both mediators, in other words, didn't seem to think there was an especially complex problem before them, only a case of the non-recognition of a land claim which should in the course of the mediation become recognised. At that point Galuboi admitted that because his sister's son (his heir according to matrilineal reckoning) did not have any land on which to plant oil palm, he had cajoled Galuboi into giving him some – but the land given him was part of Bina's 'block' at Bunalele Panepane. Galuboi said that he was finished arguing, and implicitly blamed his nephew for talking him into a course of action that he now regretted.

The first land mediator then lectured both disputing parties, something he did frequently while presiding. He noted that Bina's paternal uncles should have shown both Bina and Galuboi the boundaries of the land given to Bina's grandmother, because, he said:

The people who came before us didn't know if the people to come after them would be few or many. These days education has made us all very clever. If a mother gives birth to a baby boy we know he'll marry a woman who is different from the family. But if she gives birth to a girl, then we know that she will be the 'boss' of the land. We should recognise that the children of our sisters will 'boss' the land. Our own children will not 'boss' because they are of a different kind.

The second mediator also ended with a lecture, saying that 'a woman's payment is land'. He did not mean that land is given as bridewealth, which it is not, but rather that marriage entails consideration of how future generations will divide up land between them. He exhorted the young men present to think carefully about how they would marry:

At Gelemalaiya [the village he was from] I have a lot of sons-in-law, but we cannot work their land. Their children will look for land one day. If you get married in your own village you must be of one mind and work together properly. You should marry a woman from your own place so that you'll hold onto the land. But if you marry someone from far away there won't be any land for her. So remember that a woman's payment is land. Because business requires land and education requires foresight.

Conclusions

The harangues by the two mediators suggest why they thought this dispute which should not have arisen, did arise. First, both referred obliquely to a problem felt by many contemporary Suau, namely, that the Suau Coast has experienced a 'population explosion' (the English phrase is regularly used) in the past thirty years or so. The rise in population and the artificial concentration of villages near the coast stemming from Australian government policies have combined to generate something previously unknown in the Suau material repertoire: scarcity. This has not yet spelled the end of matriliney, as has been demonstrated in other contexts, matriliney can respond to pressure on resources through the idea of ancestral interests in land which their descendants construe as a form of 'profit' (Pavanello 1995). Some Suau lineages have started to address the problem by reappropriating their historical territories in the hinterland, but these are frequently only accessible by foot, and so less desirable to younger people who value road and water connections to oil palm plantations, towns, and other villages. More often, what happens is that lineages arrive at *ad hoc* land-sharing agreements with each other, or attempt to make land claims on increasingly 'creative' grounds. The land mediators' reproof to Bina for trying to claim all of Magaya on the basis of the payment to his grandmother is an example of the latter strategy, although Bina did not pursue it very aggressively.

I attended a land dispute three years earlier in which a patrilateral connection was offered to account for a land claim, but this connection was rejected outright by the land mediators. One of the victorious disputants told me afterwards with evident amazement at his opponents' audacity: 'Those people tried to claim the land through their father. But the father is a completely different person.' Like the exhortations of the mediator in the case of Bina and Galuboi, who insisted that 'Our own children will not "boss" because they are of a different kind', this man was asserting that patrilateral claims were illegitimate on nothing less than taxonomic grounds. But the taxonomy, the 'kindness' of persons, was primarily, and perhaps exclusively, relevant in the context of land claims. I should clarify that I say this only because I have never heard a Suau person make taxonomic distinctions between people based on anything other than the inheritance of land; it is of course possible that they do so on other occasions. But their unerring attention to this point

when discussing or conducting land disputes is noteworthy. The effect conveyed is not so much one of matriliney separating people into heirs and non-heirs, as one of *land* separating people into belonging and non-belonging. I am not the first to offer such a formulation; some time ago de Coppet (1985) proposed that for 'Are'Are in the Solomon Islands, people mediate relations between lands as much as, if not more so than, land mediates relations between people. 'Are'Are do not posit the relationship in the crude one-way fashion that I have just done, but note that the trajectory of 'ownership' between land and people is never reducible to 'people own land' or 'land owns people'. Both forms are available at all times; which one is active and which one is suppressed at any given moment is a matter of expediency. And it is not only in Melanesia that the contingent nature of differentiation comes into play; Saul (1992: 359) has documented in a West African society the fact that debates over the matrilineal inheritance default arise only upon the deaths of wealthy and influential personages.

Suau people can and do attempt to claim land through their fathers. There are as I mentioned a handful of permissible ways to do so, although all presume a matrilineal default to which claims revert if none of the following conditions obtain. If a couple has only sons and no daughters, the children of the eldest son (*taubaguna*) can claim their father's mother's land — but the son cannot claim it himself. Alternatively, a person assiduously making contributions to events in the father's lineage, such as bridewealth and mortuary payments, would in so doing add (weight) *polohe* to the land, and might proceed from there to a land claim. Finally, one can adopt a child from one's father's sister. The lineage status of adopted children is elastic, but so is the status of the adopter in a few cases. Suau draw many metaphorical connections between children and land, and claiming a parental interest in a child may be read as claiming an interest in the land of that child's lineage. All of these strategies can, however, be overturned by a convincingly argued matrilineal claim, and some of them only 'stick' for a generation or two before control over the land is wrested back by members of the matrilineage to which it originally belonged. Matriliney is therefore not so much a 'rule of inheritance' as it is a constitutive configuration of persons, land, and identity which allows any one element to generate distinctions between any of the other two elements.

There is another factor to take into consideration, however. Land now has the capacity to generate money. Land planted in oil palm, cocoa or coconuts is taken more or less permanently out of horticultural circulation.¹⁹ And oil palm, currently the most lucrative but also the most ecologically disruptive cash crop, renders soil useless for any other purpose long after the palms have stopped producing commercially viable fruit. But oil palm is popular in the Buhutu region, and the small-scale plantations established by Buhutu appear to have generated a deluge of land disputes. Most people predict that with the dual pressure of population and cash cropping, the number of disputes is

bound to escalate. This concern forms half of the cautions voiced by the land mediators in the case described above. The other half stems from the increasing tendency of people to try to claim land by means other than the matrilineal default. Bina did not explicitly do this, although he claimed, somewhat disingenuously, that since his paternal uncles gave him control over Bunalele Panepane he thought they were his maternal uncles, that is, that he would inherit from them all the land at Magaya. The lectures from the land mediators indirectly reminded him that he could not make such a claim, that his paternal uncles had parceled out Bunalele Panepane to Bina's lineage strictly on account of the pig debt incurred at the *ma'asi*. He capitulated to this argument, but it was clear to everyone present that his half-hearted bid to claim all of Magaya was motivated by the fact that it was heavily planted in oil palm. Strathern (1999: 57) has noted that: 'Money has become visible [in the Papua New Guinea Highlands] all the time, a medium whose enabling capacities cannot be hidden.' Its mediations appear to be, I would add, one way: money is a latent capacity of oil palms, but oil palms are not a latent capacity of money. One form cannot be subsumed, even temporarily, by the other.

If capitalism and colonialism have had an effect on 'the matrilineal kinship', it is to be found both in the increasingly far-fetched nature of some land claims, and in the countervailing desire of people to be reminded of how things 'ought' to be, when they are exhausted from dealing with far-fetched land claims. While there have been signs of some accommodation on the part of Suau to make (exclusive, male) 'landowners' appear in order to conduct relationships with non-Suau commercial interests, we should not assume that these performances are anything more than that: performances. The performances have a value which is limited to particular contemporary contexts of life in a Papua New Guinea where resources in the form of money must be extracted from those who would extract resources in the form of timber, minerals, or whatever (Toft 1997). But for Suau, governance of land by matrilineages under the stewardship of their *tamuwaga* is still the default when no one else is looking, so to speak. Their compliance with the assumptions of exogenous agents is invariably followed by feuding over who can legitimately lay claim to the land; it is in these disputes that people have the opportunity to sort out the proper set of relations between land and people. Was the challenge of the theologically minded man at the land dispute a declaration that since divine authorship confers ownership (Delaney 1986), all land devolves through God rather than women? Is 'God made it in six days' an assertion that land should be held in common or that land should be devolved through men? He did not appear to assert either of these positions. Instead, I had the impression that he was asking the land mediators to be more forthcoming about the basis for any sort of land claim, full stop. In the time-honoured manner of senior Papua New Guineans being interrogated by their callow juniors, they declined.

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Notes

1 While Balderson does not specify whether this plantation owner was Suau or expatriate, the historical context would suggest the latter. Balderson himself is recalled with affection by Suau old enough to have known him; he was the last patrol officer posted to the Suau Coast prior to Papua New Guinea's independence in 1975.

2 She also apparently told my PhD supervisor that she 'didn't want a feminist, but someone who would get the job done'. Although the precise meaning of her expressed preference is still unclear to me, I can only hope that she was not disappointed with the efforts of the person she got.

3 I use 'Suau' to denote all members of the Suau language cluster on the southeastern mainland of Milne Bay Province, both coastal and inland. While this designation probably would not be acceptable to local sensibilities, which tend to emphasise the differences between speakers of the six (mutually intelligible) Suau dialects rather than emphasising their similarities, there is no readily available term to use in its place.

4 As the most internally diverse country in the Pacific, with over 750 vernacular languages spoken, Papua New Guinea represents a challenge to any attempt to generalise about its social organisation or cultural perspective. Consequently, it is in almost all cases more accurate to refer to Papua New Guinea 'societies' in the plural.

5 That is to say, in cases where 'lines' of any kind can be perceived in the first place. The 1960s saw a heated debate question the existence of unilineal descent groups in parts of New Guinea, which until then were assumed by anthropologists to be a nearly universal characteristic of 'tribal' social organisation. See Lawrence 1984, Wagner 1974, and Barnes 1962 for key instances of this debate.

6 Tauvabuna himself died in 1998. My field assistant, a member of the same lineage, asked for a copy of the cassette tape on which that particular interview was recorded, in case her family needed it in the event of a land dispute, as she was uncertain whether he had taught the entire history to anyone else.

7 The use of 'roads' as an idiom for relationships of various kinds is extremely common in Papua New Guinea. For Suau, roads (*eda* or *dobit*) are most often invoked to speak of marriage, although I have also heard people use them to describe social and cultural changes on the Suau Coast in general.

8 It is not uncommon in matrilineal societies for a father to be compensated for his work and nurturance on behalf of children belonging to his wife's lineage. Among Suau, a father is usually given a live pig at his child's bridewealth feast, and the

- firstborn child is understood to enjoy a special relationship with him, and should be given a name from his lineage.
- 9 The term *tamwaga* is used by a neighbouring language group to denote the 'manager' (note the gloss) of a clan's sea-going canoes (Macintyre 1989: 160) in particular, but also all the clan's valuable resources in general. Another cognate term from Vanatina Island, *tamwaga*, is glossed by Lepowsky (1993: 129) simply as 'owner'.
 - 10 It should be noted that the Suau Coast is heavily forested. Grassland, apart from being alien to the Suau conception of what 'land' should look like, does not yield anything in the way of subsistence resources that the forest does: material for houses, medicines, animals and birds for hunting, wild fruits, nuts and greens, shade for cocoa cultivation, swamps for sago cultivation. Grassland harbours only one type of edible animal (bandicoots), is difficult to clear for gardens, and attracts snakes.
 - 11 I have chosen to gloss *whutubu* as 'lineage' rather than 'clan' because it better matches the distinction anthropologists traditionally draw between these two terms. Both connote a common identity and a certain degree of shared substance, but are reckoned differently. A lineage is a group of people which can trace its descent more or less 'genealogically' to a known ancestor, while a clan is a group of people who claim a common ancestry or substance, but cannot necessarily demonstrate their precise relationships to one another or identify the ancestors through whom they are related. It is possible for a group to have both clans and lineages, as Suau do. 'Clan' has, however, become the popular term in Papua New Guinea for referring to all forms of common 'family' identity regardless of its origins.
 - 12 He called himself a 'nationalist' when I first met him in 1997. It is a term infrequently invoked in Papua New Guinea, and perhaps because of this, does not carry the negative connotations attached to it in many other parts of the world.
 - 13 I have substituted the names of the disputants' clan totems for their actual names.
 - 14 The last reported *mata zasi* happened over 20 years ago. It is not clear now whether the practice is moribund, or whether this length of time normally lapses between *mata zasi* which, by all accounts, require an extraordinary level of commitment and effort from lineages participating in them.
 - 15 There is a horticultural hierarchy in Suau, in which fruit-bearing trees (and, these days, 'money-bearing' trees such as cocoa and oil palm) are weighted more heavily than gardens in terms of significance to a lineage's land claims.
 - 16 See Demian (2004) for a consideration of the assiduous distinctions Suau maintain between litigating damage to property as opposed to disputing claims to property.
 - 17 This is not a paradox; the ancestress in question will have been a classificatory rather than a lineal grandmother. All members of the third ascending and descending generations from Ego are called *tubu*. All members of the fourth ascending and descending generations are called *walia*. Both terms always take an 'inalienable' possessive suffix, for example, 'my great-grandparent' would be *waliaga*. Bina used this term in reference to his ancestress, implying that she was at least four generations removed from him.
 - 18 Older Suau occasionally express dismay at the way the younger generations 'mix' forms of wealth, in contrast with the strict exchange regimes of the past in which a pig had to be repaid with a pig, a shell valuable with a shell valuable, and so on.
 - 19 I use 'circulation' advisedly, since the practice is to cultivate a swidden garden for about two years, and then abandon it for two to five years while cultivating other gardens. This practice of rotating garden sites also explains why people need more land for gardening than they would if they cultivated the same site year after year. (To do so would be a recipe for famine without the use of fertilisers, as soil on the Suau Coast is fairly poor.)

Unfair shares for women

The rhetoric of equality and the reality of inequality

Rosemary Auchmuty

Introduction

In the Law Commission's Consultation Paper on *Cohabitation: the Financial Consequences of Relationship Breakdown*, extensive consideration was given to the inadequacies of English land law's methods of dealing with informal shares in the family home (Law Commission 2006).¹ This Consultation Paper was, of course, concerned only with unmarried cohabitants. Divorcing married couples were taken out of the land law regime following the Matrimonial Proceedings and Property Act 1970,² which also recognised spouses who paid for improvements to the home;³ these provisions were extended to same-sex civil partners in December 2005.⁴ Prior to 1970, however, the courts had no clear power to adjust shares in the family home between married litigants.⁵ Where the home was legally owned by one party and the other claimed a share, all the courts could do was to identify *existing* interests under an implied trust. Married couples and civil partners in dispute with third parties, however, continue to fall under the land law jurisdiction. The Law Commission's proposals, which would impose a family law-style regime on separating unmarried couples, had nothing to offer these people.

This was by no means the first time the Law Commission had noted the shortcomings of land law in dealing with family home disputes. Throughout the 1970s the Commission was a strong advocate of statutory joint ownership of the matrimonial home⁶ and a Bill based on their draft legislation twice received a second reading in Parliament but failed to pass into law.⁷ It is often claimed that the failure of the movement for joint ownership, which would have brought England and Wales more closely into line with continental and American jurisdictions on this issue, was due to the fact that, after *Williams & Glyn's Bank v Boland* [1981] AC 487, where a mortgagee's possession of the family home was thwarted by the court's recognition of the wife's overriding interest, most matrimonial homes were put into joint names as a matter of course (Creney 2003: 141). This is undoubtedly part of the explanation, but an even more important reason was the strength of male resistance, especially in Parliament and the courts, to the idea of giving wives *as of right*