Land Problems in French Polynesia

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A land tenure system exists within a legal and social framework — social organisation, methods of individual and collective land appropriation, and land laws derived from them. Any economic system allows for some adjustment in the demand for land according to availability, and conditioned by economic, social and political forces. To what extent is the land system in French Polynesia responsible for the state of its agriculture? What characteristics should it have to facilitate the agricultural development planned by the local government? Before answering these questions, it is necessary to understand the history of land policy starting from the break with the past made by the proclamation of the French Civil Code at the end of the last century.

I am deeply grateful to the High Commissioner, Paul Cousseran, who introduced me to this subject from his own experience. I have also a deep intellectual debt to all those jurists and social science researchers, especially R. Calinaud and P. Ottino, who have contributed to a knowledge and solution of land problems in French Polynesia.

Historical Background to Land and Estates

A hundred years after France annexed the Pomare Kingdom and its dependencies in 1880, and more than thirty years after the suppression in 1915 of the codified laws and native jurisdiction of the Leeward Islands, Rurutu and Rimatara the legal land system of the territory is that of the French Civil Code. But there are still used two methods of appropriation, individual and joint ownership, which are incompatible with the spirit and letter of French law.

Almost all usable land in the residential zone in Tahiti, Mahina to Paea, with the exception of a few enclaves of former Polynesian dwellings, is individually owned; as is much of the southern coast of Tahiti and a few sectors of the peninsula, especially rural districts with a heavy proportion of inhabitants of mixed race (demi), such as Papara and Afaahiti; islands of tourist resorts such as Moorea and Bora Bora; much of Raiatea, Tahaa, and even to a lesser degree Tubuai, certain atolls of the Tuamou archipelago, and several of the Marquesas Islands. Land is owned jointly almost everywhere else. In the outer archipelagos, particularly Raivavae-Tahaa, although joint ownership does not cover most private property, it does affect practically all native islanders. How were individual and joint ownership established in French Polynesia?

“When in 1842, France established its protectorate on the Kingdom of Tahiti... land holdings were regulated by non-codified customs... an individual had no written deed to guarantee his rights, the actual occupation of the land being, in general, the source and proof of such rights. It was imperative that some order be made in this emptiness.” (Bonneau, 1965. p.3).

Apart from a concern for legal order, the Protectorate and then the Colony authorities were also responding to the economic context of the second half of the 19th century particularly the demand from industrialised countries for oils by trying to encourage land settlement for coconut plantations. To do this it seemed necessary to give Polynesians, who considered the land an inalienable family right, individual ownership. This was done by supplying them with deeds of ownership which could serve as a legal basis for property transactions. At the same time the administration set up the French mortgage system and began registering property rights and their holders without surveying the land itself. The Tahitian Law of 1852, established a procedure for the declaration of land titles and a register in which was to be recorded, on the declaration of the occupant, the name, owners, limits and approximate capacity of every property.

Though the system was simplified it was not acceptable to the subjects of the two last sovereigns of Tahiti. It was therefore necessary to wait for annexation, and the decree of 24 August 1887, which, in order to encourage claimants to come forward, stipulated that any undeclared land would become public property. With a few variations and improvements, especially in the Leeward Islands (annexed in 1889), this procedure was gradually extended to the entire Colony, although it was not until 1920-25 that it was applied to the east of the Tuamotu archipelago, and 1945 to Rapa, Rurutu and Rimatara.
The results of this policy were disappointing, although its essential socio-economic goals were reached.

"Delivered on the simple declaration of the parties concerned, with no serious control in the field..." (Bonneau, 1965, p.6) the deeds do not always offer sound guarantees as to the limits and capacities of the properties, nor for the identification of the owners. At the same time that ownership declarations were being registered, a systematic survey of all parcels of land should have been carried out. Public surveys, after a timid beginning under the Second Empire, were abandoned in 1906 when a hurricane destroyed the first documents. They began again following the proclamation of the decree of 9 August 1927. At present, surveys are still unfinished for the southern group of the Marquesas and in the Tuamotu archipelago, and should be updated. In view of Polynesian customs regarding transmission of names and lines of descendants, the precise identification of owners required qualified staff which did not exist at the time, and meticulous methods which were never used. Instead, a card index is kept of claims which were granted.

The administration granted many deeds between 1852 and 1980, and for many claimants they are, even today, the sole legal proof of ownership. However, the goal of increasing individual ownership has not been attained. Certainly many people claimed land in their personal name, but in the following generation many of these properties, instead of being subdivided, have become the joint property of the heirs. Other people, particularly in the Leeward Islands, made joint declarations and now therefore find themselves joint owners.

The deficient needs and the rapid growth of joint ownership did not however hinder the sudden increase in land transactions during the first decades of this century.

"The main fact of agrarian history in the 20th century, I have written elsewhere, is this stupendous transfer of rights which allowed for the establishment of white and part-white owned properties to the detriment of the native properties which were reduced to minimal proportions" (Ravault, 1972, p.23). A number of factors made this transfer possible. With subsistence agriculture, population increased slowly and there was little pressure on the land.

A number of sales contracts were ambiguous: the purchasers bought the ownership rights defined in the Civil Code whereas the sellers believed they were selling only the right of use.

There was systematic recourse to sale by auction and sale with option to repurchase, which obliged the recalcitrant joint owners to transfer their rights. The common use at that time of sales by auction explains why the problem of joint possession was not a great obstacle to the establishment of estates owned by the whites or halfcastes. It was quite easy to purchase shares in joint-owned properties from owners who lived there and were not making use of their land, or who did not live there, and then to ask the court to make allocations and to purchase the remaining shares through the court.

Until 1934 there was no control on property transfers between individuals.

Individual ownership was encouraged by the establishment of coconut plantations, which came to dominate the coastal plains, and the development of other exportable crops such as coffee and vanilla, which occupy available ground in the major river valleys and slopes. The initiative came from the popa (whites) and demi (part-whites), but Polynesians with cash needs followed the trend and neglected food crops, which by then were grown mainly on hilly ground which rapidly deteriorated. Stimulated by almost constant price increases until 1928, copra production increased rapidly.

Individual ownership was also encouraged by the concealed opposition between a middle-class, mainly of demi, who kept their links with the land but lived mostly in the city on the income earned by investing the profits of agriculture in business enterprises, and the majority of rural dwellers, who were dispossessed of most of their land inheritance and lived on the pittance they gathered from the cash economy.

The period of economic dynamism and social differentiation, in which the Civil Code was instrumental, was followed between 1930 and 1950 by three decades marked not only by stabilisation of land ownership, but also by a growing socio-economic crisis.

Joint ownership, the complexity of which has increased from one generation to the next, increased considerably. In Papeari during the thirties only 20% of the land in the district remained under joint ownership. In 1968, this proportion was slightly above 50%. Joint possession involved not only the original families who never divided their lands, but also the descendants of immigrants of mixed race who settled locally and became culturally assimilated.

This situation appears to be linked more to overall economic development than to the administration's land policies. Between 1930 and 1960, the administration continued to create conditions favourable to individual ownership by facilitating allocations, by attempting to avoid an excessive break-up of properties while carrying out the land survey, by creating a Department of Lands, and by setting up a genealogical index system open to the public. Against this tendency, in order to protect "native" property, by the decree of 25 June 1934 the administration required all real estate transfers between living parties to be officially
During this period there was a clear decrease in real estate transactions. But in reality, it was the overall socio-economic situation rather than the decree protecting "native" property that discouraged such dealings. There were no more coconuts left to plant except in the Tuamotu Islands. The Polynesians, who had become distrustful, were no longer sellers and, above all, the rural economy of the French in Oceania was approaching a crisis. Copra production, which had increased rapidly until 1936, gradually stabilized. Prices continued to decrease between 1929 and 1941, and reached their highest level at the end of the second world war, but between 1948 and 1960 the average FOB price levelled at about 26 francs. At the same time, between 1948 and 1962, the cost of living index increased by approximately 70 points, and the annual population increase (2.5% between 1931 and 1946) rose to 3.3%.

Agriculture in the Territory was in crisis. From 1955 onwards, large numbers of Polynesians, no longer able to continue living from agriculture, migrated to New Caledonia. The descendants of the landowners who created the plantations, still received their annual ground rents but no longer invested them. Inspector General Guillaume noted that from 1956 onwards, people speculated on the unearned increments expected from the development of the residential areas and city zones in response to the increase in tourism, which, in Tahiti, gave rise to a substantial overestimation of land assets.

Specialists (agronomists, lawyers) hovered at the bedside of the sick child. A project for the revival and diversification of agriculture, a "commission for the improvement of the land system" chaired by a magistrate, proposed measures to promote the joint ownership of land, but their report was not considered by the Territorial Assembly or the Central Parliament. A start was made on the implementation of plans for revival but the advent of the Centre d'Experimentation du Pacific (Atomic Testing Centre for the Pacific) in 1962 made all efforts null and void.

Over only a few years, the entire structure of the economy had been overturned. The traditional export economy was replaced by an economy of salaries. The rapid growth of the employment and salaries increases caused the decline of the traditional export crops. In the Windward Islands in particular, although there was still a preoccupation with agriculture, there was a progressive adaptation of production to the ever-increasing needs of the local market.

This historical summary makes two points clear. Firstly, the vigorous increase of individual ownership was related to the dynamism and interests of the middle class. At the end of the 19th century and the beginning of the 20th century, the Civil Code was the legal instrument for the establishment of an economy of agricultural exports and the importation of manufactured products, a simple trade economy of colonial exploitation. This economy was successful between the wars, but it collapsed after 1945 with the deterioration of trading terms and the increase of population. In the context of an economy of salaries and services, individual ownership rarely served to promote agriculture. On the other hand, the land as an object of speculation allowed the landowners, at least in Tahiti, to make easy money and the new middle class (civil servants, merchants, members of the liberal professions) to make potentially lucrative investments.

Secondly, in contrast, joint possession which consolidated positions in the rural area and especially in the outer archipelagoes appeared to be not only a relic of the past, but also a reaction to dispossession and an adaptation by the Polynesians to an economy in turmoil combined with an increasing population. It is interesting to note that it developed considerably between 1938 and 1960, after the great era of real estate dealings.

II. The Land Tenure System

Individual ownership and joint ownership fit into very different contexts. The land tenure system of the Civil Code is well known. The problem stems from joint possession which leads to indirect forms and rights of land use by the owners, governed, in the absence of clear regulations, by customary practices.

Joint Ownership

In a territory where the French Civil Code has the force of law throughout, joint ownership raises certain questions. Is it the mere total of "combined individual properties" as affirmed by several jurists who refer to the concept of absolute property rights as contained in the Civil Code? It would then be characterised "from a socio-economic point of view... by anarchy, insecurity and under-development" (Calinaud, 1976, p.3). Or is "true collective property used to attain a common goal"? These are fundamental questions, for over and above any legal appearances, they establish the problem of the origin and nature of the land tenure systems in French Polynesia. Can joint possession be considered merely as a "local" deviation of the Civil Code, or is it the expression of a specific land tenure system? Before proposing my own analysis, I would like briefly to consider the arguments of holders of the classic line of thought.
The Classical Interpretation

For those decreasing numbers who do not doubt the universal value of the principles contained in the Civil Code, joint possession is merely a matter of technical problems. A magistrate, without subscribing to the opinion, sums up their arguments in the following manner:

The scattering of the Territory, the difficulty of establishing the rights of everyone, the minimum costs entailed by any procedure, the necessity to have recourse to a land surveyor and an estate specialist, the indolence of the natives, interfere with allotments (Bonneau, 1965, pp. 8-9).

This analysis is based on facts which should not be undervalued, but it fails completely to take into account the socio-economic and cultural context of the problems relating to land estates. It is perhaps necessary to point out that:

- the Polynesians for a long time rejected the procedure of the *tomite* before adhering to it and thus making a break with the past (see Panoff, 1966);
- the administration’s policy, which had followed this principle until 1960, failed during the crisis in the colonial economy;
- the spectacular reduction of joint ownership over the last 15 years in the Leeward Islands, and in particular on Tahiti, followed social and economic change, proof that the technical obstacles hindering the allocation process are not insurmountable;
- on joint ownership, the rural Polynesian areas and especially in the outer archipelagoes is linked to an economic, social and cultural environment which has been relatively preserved.

Should this classical interpretation of joint ownership then be rejected out of hand? Of course not, for in the islands which have been the most affected by acculturation, in particular the Society and western Tuamotu Islands, the traditional basis of customary law has been severely jolted. Although this does not mean that all land owners wish to change from joint ownership, those who do are hampered by technical obstacles.

Customary Law

Although in all the archipelagoes I worked in, customary law is based on certain common principles, the operation of the land tenure system is not always satisfactory.

Precisely this inefficiency feeds the arguments of those who see joint ownership only as the result of a poor application of the French system.

The Goals of the Land Tenure System

Property documents (for example, the *tomite* and corresponding survey plans), and data relating to land use (the allocation of plots for different types of cultivation and rearing), show a discrepancy between the very general nature of appropriation of *fenua* (land) by groups of relatives descended from title-holders, and the very precise nature of property rights relating to the cultivation of plantations. The latter may be collective (in the case of coconut or coffee plantations), but in practice are almost always individual, in regard for instance to copra produced on a joint-owned coconut plantation. In the complex cultivation arrangements quite frequent in the Society Islands, a superimposition of rights on a single parcel of land can result in the allocation of various types of cultivation to different farmers. For instance, one can find a coconut plantation worked by the various members of one family group, while under the trees, bananas and taro are grown by others who hold rights. Except when the plantations are very old and the original planters have been forgotten (on coconut and less frequently coffee plantations), farmers almost always justify their rights by referring to two categories of complementary events: to the action of having planted the crops, attributed to them or their ancestors, or to a "deed" (or want of a better word) written or not, copied or not, which indicates the allocation of land as the result of a claim, a partition, the simple fact of occupation, a will, or indeed its purchase.

All these factors, which were apparent in all the islands I visited, prove that for Polynesians there is a fundamental distinction between what I will call collective control of the land (*fenua*), which is the prerogative of the descendants of the beneficiary of the original deed of allocation, and effective rights in the plantations held jointly or individually by the cultivators themselves or their heirs.

This phenomenon, which can be associated with a division of ownership, furnishes proof that the Polynesian concept of ownership as it is still firmly held is hardly compatible with that contained in the Civil Code as it is almost always interpreted in French Polynesia. What is the significance of this division?

In distinguishing two categories of land rights which correspond to two levels of appropriation, the Polynesians are evidently attempting to fulfill two different goals. There is no ambiguity about the second. Effective rights to the plantations allows people to satisfy the needs of the basic family units. With the development of a cash economy; these have become the cells of a consumer society, even in the most distant islands. No doubt there has been an adaptation of customs here, for it appears that agricultural work used to be carried out collectively by the members of an
extended family under the authority of the head of that family, who would then distribute the harvest between the basic family units.

The ethnologist Ottino (1971) has irrefutably demonstrated in his study on Rangiroa (the reach of which goes well beyond the context of the islands of the western zone of the Tuamotus), not that land has a social value, which was something already known (Panoff, 1970; Finney, 1973; Hanson, 1973), but how it has preserved that value:

“...In spite of the new economic conditions which radically modified the inter-relationship of generation and production, and made the conjugal family emerge at the centre of the extended family unit, the principles forming the basis of the extended family” continue to determine the ideas and behaviour of the Polynesians. What are these?

The undifferentiated character of the social structure allows anyone theoretically to be “related to one’s father and mother; one’s four grandparents, eight great-grandparents”, to unspeakable confusion of parental and marital ties to the extent that almost anyone may be a fetii with “the quasi-totality of the other inhabitants of the village and the atoll”, and many more islands too. Ottino demonstrates however that the various groups of relatives founded by descent “have a concrete existence only insofar as they coincide with one or more territorial units...” The collective control of land (joint ownership according to the Civil Code) and effective rights in it depend on the conditions of residence and a nucleus of residents cultivating the family property. Land ownership is therefore a determining factor of kinship: inherited land guarantees are perpetuity of the family unit, but territorial security can only be assured, in the context of residence, by actual use of one’s land rights.

The Socio-geographical Basis of Custom

Under customary law, to be a fatu (owner) in the widest possible sense of the term, one must be a isata tumu: one must have family roots in the area. That status is acquired in two ways.

It is necessary to be a member through one’s father and/or mother of a lineage issuing from a commo ancestor originating in a particular district or island, who may well be many generations back in time. But this condition in itself is not sufficient. One must also be integrated into one and/or the other of two social categories which are really localised segments of the vast social group formed by the descendants of that particular ancestor. Briefly, these categories are the restricted opu hoe which groups together very close relations... who are full, consanguine, uterine, or sometimes adopted brothers and sisters, who have been raised together, and the extended opu hoe which is a group of close relatives descended from the initial restricted group of brothers and sisters and the following generations, that of the children and the grandchildren.

The opu fetii is a category which can be defined as a former relative, more likely to be dead than living who gave birth to a group of now elderly brothers and sisters, represented by at least one surviving person, who forms the main element of an extended opu hoe. This ancestor is often at the base of the property rights.

In order to understand the mechanics of transmission of property rights it is important to point out that these social categories are not frozen. “With the passage of time and the disappearance of the preceding generations” (Ottino), the extended opu hoe is dissolved by the death of the last representative of the initial group of siblings. As many restricted opu hoe groups then come into existence as there are families of first generation descendants in that group. To these groups are added the following generations, so they in turn become the head elements of new extended opu hoe.

The reference to a common ancestor, and the fact that one belongs to a localised group of relations, has a precise meaning that I would like to show while analysing traditional family trees which are the basis for proof of ownership rights. Genealogical trees to which lists of land have been annexed, the parau tutu (customary wills) are transcribed in the futu tupa (book of the ancestors) which are kept by the family heads. In the past, at least for the Tuamotus, this preservation was ensured by the district councils which kept them available for those under their jurisdiction. In Rurutu and Rimatara up until 1945, genealogical knowledge was in the hands of the speakers representing the main family units who would intervene particularly in land matters, in local customary jurisdictions. These genealogies allow a person to examine his origins by direct or any other line back to the common founding ancestor at the base of the rights; and to prove in the same way that he belongs to a “residential line”, the continuity of which is ensured from generation to generation only by the descendants of those persons who are considered as residents.

These lists of names show quite clearly that the descendants of people who have settled elsewhere, following a marriage or adoption, are never mentioned if the absence is longer than two or three generations. Elderly people do not know or have no wish to know their relatives living elsewhere descended, for instance, from a brother or sister of one of their ancestors who travelled to other areas. They consider that those absent are incapable of belonging to one or other of the localised social categories described earlier, that they have broken off their family ties and, which comes to the same thing, have automatically forfeited their land rights. In
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regardless of residence and the genealogical depth of the kin groups to
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which can work effectively only at the level of coherent family groups.

The quality of taata tumu which confers "potential ownership" requires two conditions: a common ancestor as the basis of the right, and membership of a local group determined both by residence and by descent allows a person to make use of the right.

Patrilineal Estates and Land Groups

In all the islands where customs have been preserved, it is easy to identify the depth and spread of groups who control the land by counting the number of generations between the present inhabitants and the people who, according to them, are at the origin of their rights. In Takakoto, in eastern Tuamotu (Ravault, 1978, p.57), referring to the towmie of 1903 and 1919, it is noticeable that, if several of the titleholders are still alive, most of the present claimants are the children, grandchildren, and even the great-grandchildren (hina) of the original claimants. They are therefore close relatives or very close relatives. In Rurutu, an island where the land survey, made from 1950 onwards, caused a generalised partition of lands (De Bisschop, 1952), the land groupings are, as a rule, even more restricted. In the context of these groupings, the way property is transmitted varies according to the land tenure system, and must be understood before analysing the rules governing access to the land.

For the Civil Code, groups of joint co-owners are made up of all "qualified" descendants (those with legal capacity whose numbers increase with every generation) of a common ancestor who was allocated the title to a specific property. A person may therefore belong to several joint ownerships spread out territorially, and his or her property rights in the abstract shares in the property concerned cannot be questioned regardless of residence and the genealogical depth of the kin groups to which he or she belongs.

In customary law, the reality is quite another matter. The available documents (or oral accounts) which mention claims, distributions or wills made in the past, show that the same person may exercise rights in land previously attributed to his immediate ancestors on both sides, parents, grandparents and tupuna (earlier relatives), or to members of various opu hoe of different categories of relatives. He or she therefore not only has possible access, jointly with his or her own siblings, to the inheritance which was transmitted to them in the direct line, but can also by virtue of residence share in the inheritance of collateral branches which are no longer represented locally. In this case one may be dealing, in the sociological context of the extended opu hoe, with more distant relatives (uncles, aunts, cousins) who are also the trustees of the legal titleholder. If the holder of a right, living or dead, has no descendants at all, or none living on the spot, his land returns to resident members of his opu hoe. Over two or three generations, this results in the loss of the property for those absent, as customary land rights lapse through lack of use. For the Polynesians, therefore, the recorded allocations do not always have the value of definite property titles which the Civil Code confers on them. The rules relating to residence are as important as descent establishing a person's inheritance rights.

Effective Rights

If we use an analogy with the Civil Code, in customary law the originating members may hold three main categories of rights. These are the rights to use family lands, to reap the fruits of them, and to a certain extent to collect fees for their use. The resemblance goes no further. A distinction must be made in customary law between the rights attached to the forms of land use, and a right of control held by those who intervene within the various groups in the distribution of lands and plantations, and who play an important role in the system of property transmission. Here I shall describe the former.

Three main categories of rights, variable in content and duration, apply to different forms of land use.

The first is the right to build one's fare (house) on family land, and in particular on a "city lot" allocated for this purpose. Throughout French Polynesia, residential fenua are often occupied by the homes of various members of the extended family unit. Fenced in by white-washed walls in the Tuamotu and Austral Islands, or surrounded by shrubbery (especially in the Society Islands), these properties, occupied for generations by the lines of residents, testify to the permanence of the family group. The right of residence, over and above a man's mobility and the impermanence of the buildings, has a truly perpetual character.

The second is the right to plant food crops: tubers, vegetables, musaceae, destined principally for family consumption; and cash crops, coconut palms, coffee or vanilla plantations, which earn income. By
planning, a person obtains extensive rights, for besides the possession and use of the property, it is possible where perennial crops are concerned to entrust the operation to a third party who can transform or even destroy it. In the Eastern Tuamotus as well as the Australs, the Rural Economy Department staff were able to renew coconut and coffee plantations belonging to planters whose parents were still alive. Property rights to a plantation last in general as long as the crop: this can be less than a year for root crops, eight years or more for coconut palms. The duration of a person’s rights also depends upon the technical ability of the farmer to preserve the fertility of the ground, besides the fundamental requirement of residence. In Rurutu, several taro plantations have been operated by the same lineage for generations: the taro, a domesticated plant basic to everyday nutrition, is intensively cultivated with traditional techniques. Acquired rights may be transmitted to descendants as long as they remain resident. This does not apply to other tubers such as cassava and sweet potatoes, as their simple planting techniques allow them to be grown on the poorest slopes or plains, not entailing permanent occupation of the ground and consequent establishment of land rights of a particular user and his lineage.

The third is the right to participate in the profits of the plantations (coconut, coffee) set up by their forebears, reserved by the heirs of the farmer if he is known, or if not, by the heirs of the previous titleholder, which is frequently the case in the Tuamotus. This right to harvest is collective, but in practice it is always individual, following a property allocation and it can be transferred to a third party in the case of temporary absence. But the beneficiary, unlike the planter who retains rights to the results of his efforts for his entire life, may not himself destroy the plantation as he individually is using a right which is essentially a collective one. The life-span of perennial crops is a factor attaching farmers to the ground but only if they bring an economic benefit, which is rarely the case in the present economic situation.

Access to Land

For a member of any particular lineage, the means of access to effective ownership are extremely complex, depending on residence and on the nature of the right of use involved: does he want to create a plantation or to obtain land already planted? They depend also on his genealogical position within the various land groups which control the lands or plantations he wishes to obtain.

To give as clear an account as possible of the diversity of situations I encountered, I will use precise examples taken from a particular “model”, taken from tomite and survey records in Takaro, Ahe and Rututu. Figure 1 shows two opu fetii (I and II) originating from couples whose forebears were considered to be the definitive titleholders of the rights now held by their descendants. They proceeded with an initial allocation of the land amongst themselves (through the tomite for example), amongst their children and some of their grandchildren (Generations 1 and 2), of whom several today have two generations of descendants themselves. Originally this distribution was uneven: the elders of Generation 1 benefited most, while their resident childless brothers and sisters, or non-resident siblings married or adopted elsewhere, received less.

In the opu fetii I, all of Generation 1 having disappeared, the allocation of property rights covering residential sites and the fenua planted by the tane of I, by his resident children and by A1, who today is a very old man, was made between the sole local representatives of the opuhoe originating from A, D, and E.

D, who was the last survivor of Generation 1, besides land distributed to him by the tomite, took control of the lands claimed by childless B, and by C, whose descendants were all absent. He allocated the lands involved between the descendants of A (A1, A2, A3), D1 and EF1 (still alive at the time) who already had the use of the lands given to them by their own parents.

This distribution will be temporary as on the death of EF1 with no local descendants, and in the absence of EF2 who was not living there at the time. A1 (the eldest member of the family) will take over control of the lands of the deceased and allocate them between the resident descendants of A and D, reserving for his own opu hoa the larger part of the cake. When EF2 returns to claim his rights, he will not have much trouble in recovering the lands claimed by his father, but he will not be able to obtain any of the fenua amui of his uncle B and aunt C.

When D of Generation 2 in his old age settles permanently in Papeete with one of his children, the same thing will not happen as he has been careful to have his son return to the fenua to ensure the guardianship of his property.

In the opu fetii II, the situation is even simpler. H, the sole survivor of his opu hoa (Generation 1), considers himself the only “owner” of the family lands, as well as those attributed in the past to his deceased siblings who have descendants on the spot.

Each group of siblings and their descendants now have properties to be allocated between the various family cells composing the group. The rights to be employed, and ways of obtaining access to the land depend on the social status of the persons involved and the form of land use.

In principle the rights are equal among the older group of...
siblings, as each person, on division of the area by one of the elders, obtains according to his/her needs (number of children etc.), a portion of fenua (perennial plantations plus land to be developed) which is inherited through direct or collateral descent. Each person is master of his own part of the inheritance and it cannot be taken from him as long as he continues to use the land or if it is exploited during his lifetime by one of his descendants, for example D1 who acts in the name of his father. Each time the inheritance is increased, for example by the death of EF1, or reduced, for example by the return of A3, a redistribution has to take place. In the first case, especially in the poorest islands, the eldest child is most likely to take the available plantations (Ravault, 1978, p.66). In the second, a returning family member will be unwelcome, especially if he has been absent for a long time, but he has satisfied. Properties left unused or not yet distributed, a frequent situation in the Australs, will be controlled by the senior heir, who must agree to any fresh distribution of these lands.

In the Tuamotus as well as the Australs, a certain number of lands appropriated by highly extended family groups are the object of conflicts between various branches. These are generally fenua of vast dimensions without any great economic interest (coral soil, slopes etc.). Having never been used, they supposedly belong to distant tupuna. In Rurutu, when the survey was made, a certain number of fenua were attributed to persons long since dead. Their localisation is the result of very old distributions.

Members of restricted opu hoe who no longer have direct rights through living forebears (D2 of Generation 3, and Generation 2 adults of opu fetii II) are in a more precarious situation as they are not fatu mau, "true owners" according to the expression used in the Tuamotus. Their right to this categorisation is rarely disputed, but is reserved to the members of the eldest generations. In this case, D1 and H who are the first to obtain the inheritance of their deceased siblings may, in principle, make use of the land as they wish. In fact, they must respect the earlier appropriation where the land has been continuously occupied. This is the case for G1 and G2 who divided their father's land between them. But if heirs return to the fenua to claim their inheritance rights from a deceased party who never lived there (D2), they must give them lands where they can reside and plant, but may refuse them access to the perennial plantations. In the Tuamotus there are family members deprived of any access to the land. In the Australs where there is no lack of land, such occurrences are probably very rare. Finally, it should be pointed out that minor children's rights (11 and 12) are held by an elder who quite often has adopted them.

Members who still have living forebears with rights are not "owners". Nevertheless, depending on availability, they may ask for land
from their direct forebears (A1), or failing that from other members of the family (D2 from D1 and to A1). The latter, however, must give priority to their own descendants. The opportunity to build houses or to plant crops cannot be refused them. The planting of perennial crops or the harvesting of productive plantations for the payment of a fee which in general represents 50% of the harvest, is subject to the residence of the holder of the "harvesting right" and the economic interest in such venture, variable from one archipelago to another.

In Rurutu and Rimatara where significant areas are not developed and where coconut and coffee plantations are few and mainly for family use, access to land ownership does not pose any problems. In the eastern Tuamotu archipelago where copra is still in most of the islands the only source of revenue, the same is not always the case. The resident owners lease to their relatives of the younger generations only those lands that they do not want or cannot use, for instance because of their age, to make copra. I have even come across a few examples of fathers who have refused their own children access to their plantations. Those best off are the farmers who look after the family lands on behalf of their parents who reside in Tahiti (see fig. 1, D1), and who frequently have other sources of revenue besides copra and so content themselves with a symbolic fee to prove their rights.

**The Land Tenure System**

This analysis of the customary land tenure system, makes it apparent that the rules which grant a person ownership essentially ensure the continuity of the territorial settlements of family groups, and the elimination of non-residents. Priority of inheritance in the direct line is also ensured although there can be succession by collateral lines when effective rights are no longer used. They also enable a family member, whilst his parents are still alive, to acquire transmissible property rights to the lands he has planted. Insofar as these rights concern the crops and not the land they are temporary, but if they are made use of continuously, within the same lineage, they tend to become perpetual.

In this system, the role of the elders is clear. Within the extended *opu hoe* they control the rights no longer used because of departures and distribute them between different groups of siblings of the same level and within their own group. This authority, necessary for the system to function efficiently, can involve privileges. During such distributions, it is tempting for elders to appropriate for themselves the vacant *fenua*, especially if in the past they were given to persons who left no descendant (*fenua amui*). These privileges place the system in jeopardy.

The distribution of property attributed to the key ancestor becomes confirmed over time, when at level 3 siblings with their now descendants, classified as "third blood" (second cousins of the hina generation) are too distantly located to cooperate. The choice is twofold; either the last representative of the preceding generation (A1 or any other surviving elder) by a *parau tutu* gives his blessings to previous distributions while distributing the *fenua amui* under his control; or else the various groups of siblings concerned proceed with the distribution amongst themselves, often causing conflict. They then set themselves up in various autonomous land groups.

**Alterations to Customary Law**

The land tenure system just described applies to all of the geographically distant and isolated islands, the eastern Tuamotu group, Rurutu, Rimatara, and the Marquesas. These have preserved their socio-ethnic purity (eastern Tuamotus), or assimilated other ethnic elements, and so up to now have conserved their traditional social structures and communal institutions, enabling them to react in a specific manner to the colonial transformations. There is no doubt that the collective control of land associated with the exercise of individual effective rights, a consequence of the spread of a cash economy, is an adaptation of traditional institutions to modern times.

People in the Society archipelago, western Tuamotu group, and Tubuai from the beginning of the 19th century onwards had strong ties with the outer world. Economic contacts resulted in an increase of inter-island schooner traffic and the establishment of trading posts, and in a multiplication of marriage alliances with the *popaa* and *demen*. The customary land tenure system underwent marked modifications both in its operation and in the form of property rights. In the eastern Tuamotu group, the *tomite* procedure which was made obligatory by the colonial authorities, merely constituted a step in the customary process of transmission and distribution of property. Elsewhere it was the beginning of a process which could have resulted in the progressive paralysis of the traditional system, and the establishment of a joint possession situation related in some aspects to that of the Civil Code.

From the time of the first land allocations, and much later, joint ownership rights were questioned. Some Polynesians, constrained by various provisions of the Civil Code, or influenced by its individualistic approach, acted beyond the rights of use and possession given them by custom and, using prerogatives reserved until then for their elders, disposed of their heritage by alienation or by legacies to people, often enterprising Polynesians, who were not always close relatives (members of the extended *opu hoe*) or residents. In doing so, they not only became
conscious or unconscious creators of individual ownership, but also were largely responsible for the progressive paralysis of the customary system. Abandoning the traditional principles of distribution and transmission of property weakened the authority of the elders. Divisions were no longer carried out under customary law, and it was no longer possible to maintain joint possession at the level of the opu hoe or socially coherent kin group. In each generation, rights on the contrary became more and more spread out as the joint owners were obliged to refer to the title-holders to justify their rights.

The weakening of fellowship between feti, which is the consequence of this extension of land groups, can involve two main types of conflicts.

In the first, residents are opposed to non-residents, who may be tempted to ask for a legal distribution. This happens fairly often in the Society archipelago. Or they may claim their share of the harvest, which occurs less frequently. The residents are unlikely to give them satisfaction by adhering to the concept of ownership contained in the Civil Code, for it is not in their interests to accept the amputation of their inheritance and to grant non-residents effective rights refused them by customary law.

In the second case, the residents come into conflict among themselves over working on jointly owned properties. Annual crops are rarely an issue for the rights they give rise to are not long-lasting, but the same does not always apply to perennial plantations. There are two possibilities: either different branches of the same family are unable to reach agreement on the distribution of rights and the fenua are either occupied by force or deserted when the conflict becomes too bitter. Or else a modus vivendi, which normally reflects only the relations of force, is established between the families involved. Each one then has a certain number of fenua which, depending on the kind of plantations concerned (coconuts in the Society and western Tuamotu Islands, or coffee plantations in the Australs (Tubuai)), are worked in different ways. In the first case, each of the titleholders is allowed to harvest the crop periodically for a number of years. In the second case, the plantation is open to all at a given date, but each person harvests the coffee for himself and according to his ability. A means for distributing the harvests “in time” is substituted for the customary distribution “in space”. Instead of each titleholder becoming responsible for a parcel of land as long as he resides on it, the result is a de facto joint ownership situation like that of the Civil Code. As nobody wants to work for anyone else this discourages all land investment.

The Land System and the Special Case of Rural Leases

For several decades, officials responsible for development were mainly concerned with the problems of joint ownership. Recently, especially since the administration’s document regulating rural leases to allow the development of modern agriculture, a significant debate has started about the status of farmers who are not owners. This is particularly important in the Society Archipelago, where land is often formed under leases. These may be written or spoken agreements by which the holder of land rights transfers their use to an outsider. The terms of the lease cover the area of land made available and the particular forms of its use, the legal conditions of use — farming, share-cropping — the period of the lease and the fees payable.

The rights given under a lease vary according to the property system covering the land concerned. In the individualistic and exclusive concept of the Civil Code (Ravault, 1972 and 1974), the lease covers “the ground and everything above it” (houses, plantations) which in the case of indirect farming constitutes the usable unit.

In the case of joint ownership, the crops are the issue and not the ground. Depending on the type of joint ownership one is confronted with (customary law joint possession, or joint ownership of the Civil Code type), the consequences of this break-up can be quite different.

In the first case the land is distributed by area, and the leasehold can be considered, regardless of the standing crops, as the unit of use. It can be transferred by the holder of the rights on condition he occupies the land. With this proviso, which is related to the basic nature of the land tenure systems involved, a person finds himself in an individual ownership situation like that provided for in the Civil Code.

When in the second case, where the customary divisions are no longer carried out, and all rights are held jointly, the definition of the leasehold depends on the type of land use that has evolved. Each new planting constitutes a unit of use, whatever the complexity and nature of later improvements that may have been made. If the crops concerned are annual ones, perhaps replanted two or three times on a slope (a faapu on a slope), the rights created become extinct very quickly and the property returns to the family inheritance. If combined cultivations are concerned, as for instance in the dominant agricultural landscape of coconut palms, bananas and root crops, over time the short-term crops progressively disappear while the coconut plantation persists for several decades. This will be managed on a rotation system by the heirs of the planters. The holder of the right to harvest can transfer his rights to a third party, whether a relative or not, while another title-holder can plant fehi or taro underneath the coconut trees. A plurality of cultivations can correspond
therefore to a plurality of individual or collective rights of use, direct or indirect. In such conditions, as there is no longer any unified use, the analysis of land use and subsequent identification of crops to be leased must be made by a meticulous analysis of the agricultural landscape.

The fees and duration of a lease are agreed by the two parties. The type of land use allowed by the lease depends on the agricultural activity, whatever the ownership system may be. It is possible to distinguish crops bringing in revenue (copra, vanilla, coffee) from those destined to feed the family.

In the first case, an owner will sign a lease with a market gardener who sells almost all of his harvest. This type of lease, found increasingly near the large residential market places in Tahiti, Moorea and Raiatea, becomes more like tenant farming each time the lessee gets authority to cut down the coconut palms on the leased property. Or the owner will sign a share-cropping lease (the price varying with the quantity and value of the harvest) with a lessee who runs the coconut, vanilla or coffee plantation.

In the second case, there is a kind of lease found only in the Territory which could be considered "caretaking", in the strict sense, as the user does not pay fees of any sort. This applies to all types of plantations (sunken taro plantations, faatapu on hill slopes, crops growing under coconut palms etc.) within the context of Polynesian joint ownership, as well as the important demi estates dedicated to copra and intensive farming. The owners are often absent and content themselves on their visits with presentations of a bundle of taro, a stem of bananas, a suckling pig etc., which the share-cropper caretakers consider simply as gifts.

The price charged leasehold rights varies. The Chinese in Tahiti who practise "mountain truck farming" pay very little; but on the plains, because of speculation, land rentals can sometimes reach exorbitant rates.

In share-cropping, the calculation of the respective shares of the owners and the lessees is fairly strictly defined. When an owner grants a farmer land that has already been planted with coconuts or coffee for example, the rule is to split the harvest fifty/fifty. When he leases land to be developed (by planting vanilla, for instance), the tenant receives 75 to 80% of the harvest produce. The work involved in establishing the plantation and wages for workers when the flowers are "married" etc., is responsible for this better rate.

In the absence of a written contract mentioning the terms of the lease, the custom is to take into account the duration of plantation (faatapu). This involves the distinction of cultivations with short or average vegetative cycles (root crops and vanilla essentially), and plantations (coffee and especially coconut) which can produce for several decades.

In the first case, the initial lease which must allow the farmer to harvest a matured crop is of variable duration: a few weeks for vegetables, several months for sweet potatoes, one year for watermelon, three years for vanilla etc. The lease is then tacitly renewed, expiring in reality only when the returns have become ridiculously low. Quite often the farmer abandons the plot of land before the ground becomes barren. The owner, on the other hand, recovers land that brings in a fair return. Whatever the case, the duration of the lease does not depend solely on the crops grown but on the technical capacity of the farmer to maintain the fertility of the land as long as possible. Except for a few cases (swamp taro, vanilla), this is not easy in traditional agriculture.

In perennial agriculture there is no precise rule — all depends on the mobility of the farmer and especially on the will of the owner who, if he wants to, can hire a share-cropper for a single copra or vanilla harvest. Where joint ownership is defined by the Civil Code, "rotation" makes leaseholds less secure.

Whereas joint ownership represents a form of resistance and adaptation to the colonial system, the establishment of the system of leases just described was encouraged, on the legal level, by the lax character of the Civil Code. In the absence of any regulations, this favours land owners to the detriment of the farmers who are left with no legal status. On an agricultural level it was encouraged by the existence of intensive agriculture characterised, save for exceptions like the division of taro plantations, by archaic techniques and mediocre production, which similarly privileged people holding rights to large areas. On a cultural level, these two factors are closely linked by the importance placed on the social and professional mobility of men.

This lease system conveys perfectly the relationship of domination established between the beneficiaries of the development of a trade economy (the half-caste middle class and joint land right holders), and the Polynesian farmers who find themselves deprived of land and unsupported by custom.

This system of land tenure is particularly backward in regard to rural leaseholds, and is responsible for the poor results of the territory's agriculture.

III The Land Tenure System and Agriculture

For the past few years, especially the five year plan begun in 1971, the government of French Polynesia has tried to devise and pull into operation an agricultural development programme.
One goal of this programme was to allow land improvement by initiating structural reforms in areas as diverse as professional organisation, cash flow, and the land tenure system itself.

Another was directly to promote agricultural improvement. In the Society Islands the means used included the development of crop and animal production (vegetables, fruit, eggs, milk, meat etc.) for local consumption and to a new start (mainly in the distant archipelagoes) for the export of such products as coffee, vanilla and, of course, copra by assuring an improvement both in the existing plantations and in the plant stock, which almost everywhere was at the end of its life span.

Such a programme has a two-fold objective, economic and social: to increase agricultural productivity to satisfy local demand, permitting a reduction in the economic deficit; and to increase the standard of living of the farmers who contribute to stabilising the rural population in their own districts and islands. The results unfortunately have not been up to expectations.

Agriculture is in decline. In the Windward Islands available statistics on commercial production, obtained from the market in Papeete, show that traditional cultivation of musaceae, root crops, and uru (breadfruit) is maintained, while copra, coffee, and vanilla have lost almost all importance. Elsewhere, subsistence agriculture persists, but the main export products are going through a particularly serious crisis. The coffee plantations of the Australs and the Marquesas Islands have been abandoned or are under-exploited: exported in part until 1964, coffee no longer satisfies even local demand. The vanilla plantations which contributed significantly in the past to cash revenue, especially in the Leeward Islands, have almost been abandoned and the export of dried coconut plantations, which has not been revitalised except in the eastern and western zones of the Tuamotus and the Tubuai. Copra production, after a temporary burst in 1975, in 1978 reached its lowest point since the end of the war, with less than 13,000 tons.

Agriculture is also characterised by the difference which is tending to deepen, between the productive capacity of agriculture for the open market and for local demand. Production of vegetable and animal foodstuffs is concentrated essentially in Tahiti and to a lesser extent in Raiatea, Hauhine (melons and watermelons), and in Tubuai (vegetables, especially potatoes), and cannot really take off, in spite of progress made since 1971.

The insufficiencies of Territorial commercial agriculture can be summed up in a few figures. Its place in the Polynesian economy of fifteen years ago was essential but now it has become of hardly any importance: 6.73% of the Gross National Product (GNP) (Institut d’Emission d’Outre-Mer, 1976, p.11). The value of local commercial production (retail price) has never reached 25% of that of imported foodstuffs. For the first time in 1977, its share of the total value of imports reached 22%. That same year, the "covering rate of imports by exports (essentially agricultural) was only 5%..." (S.E.R., 1976, p.6).

Can the land tenure system of French Polynesia be held responsible for such a situation in view of the other constraints on agricultural development? A land tenure system will increase production while improving the standard of living of the farmers, in a cash economy only if it ensures the security of leaseholds. The appropriated lands must be identified and demarcated; the holders of land rights must be known, whether they be individuals or groups; and a person must be easily able to give proof of such rights.

In addition, something must be done to enable farmers to initiate projects of a size appropriate to their work potential and their needs and in a site favourable to that particular agricultural activity. There should be sufficient legal control of the land to allow techniques to be improved and investments to be agreed. And finally, farmers should be able to make a fair profit from their labours.

The land system in French Polynesia does not fulfil either of these conditions.

Security of Leaseholds

Neither civil law nor customary law gives sufficient guarantee of ownership or ensures the legal security of leasehold tenure.

The deeds of ownership delivered by the administration do not always give sufficient guarantee with regard to the limits and content of land as well as an identification of the owners. Under such conditions, the services of the Land Registration Department are restricted, and as Coppenrath (n.d., p.1) has pointed out, the mortgage system which is personal can “only fulfil its goal on the condition that deeds giving the lay-out of a given piece of real estate be perfectly drawn up and contain precise and full information on the identities of the parties.”

Not only land in joint ownership is involved here, and the insecurity is not only legal. The thirty-year leasehold guarantees a “purchaser of real estate against the claims of an heir of a joint owner unknown until such time” (Coppenrath, n.d., p.1), but it does not protect a person from encroachments by the descendants of the seller who consider, often quite rightly, that the property rights were not always transferred correctly. On this issue, the Teva Nui Association made some “absolutely shocking discoveries” (Tauhiti, 1978, p.16). It is useless to
point out that these facts feed the bitterness of the rural population towards the demis and the administration, and that they form the basis of court cases which in no way encourage the exploitation and development of the land.

Legal provisions do not ensure the security of the leaseholds, and neither does customary law. This is only to be expected when it has lost its substance. A co-owner who takes the risk of working land appropriated by a social group larger than the extended opu hoe may find himself in conflict with the most distant feiti. The "stealing" of copra harvests is often at the best of a great deal of litigation in the western Tuamotu and the Leeward Islands. However, one should not exaggerate its significance: there can be such other reasons for under-worked coconut plantations as the poor purchasing power of copra. Panoff (1964, p.125) pertinently noted that land conflicts which form a "highlight in social life" most often concern land of no great economic value. This remark is true of the Australs, but does not always apply to the atolls of the Tuamotu archipelago where all the fenua planted have an economic interest.

Another factor of insecurity of land development is the possibility of non-resident co-owners claiming under the Civil Code the part of the copra or coffee harvest which customary law refuses them. Most of the time they do nothing about it or they content themselves with a symbolic fee. Even where custom has been most altered, the principle of residence continues to influence their behaviour, if only because the products in this case have a low marketable value. Would this be the same if the island products were suddenly greatly revalued?

In the most distant archipelagos (the eastern Tuamotu zone, Rurutu, Rimatara) where the traditional social structures have been preserved, such conflicts are rare for the way in which customary law works and has not yet changed profoundly. However, at the present time there no longer exists locally any centralised organisation to preserve traditional documents and make them available for consultation. In Rurutu the registers of customary jurisdiction which were kept up to 1945 were destroyed by cyclone Emma in 1970. In the Tuamotus, the "district books" in which land deeds were preserved have disappeared. At present, family members who are not elders have much trouble in obtaining the genealogies preserved by their elders, and consider therefore that they do not have access to all the land they could have rights to.

In Takakoto, some properties have been claimed by several family groups only because certain genealogies have been manipulated. If these conflicts do not degenerate, it is only because on an atoll which is entirely used, the rights of the occupants remain the strongest.

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**Conditions of Access to Land and Agricultural Activity**

Both the provisions related to the methods of acquisition and transmission of land, and those that define the content and duration of land rights are unsatisfactory and neither the Civil Code nor customary law in the socio-economic context of French Polynesia allows a person access to land to farm under satisfactory conditions.

Present structures of land tenure are characterised firstly by a quantitative distribution of individual or joint-owned properties ("potential" rights) which is particularly inequitable.

Because of the failings of the system of registration of land rights, there are no overall statistics available on the matter, but the little precise information available corroborates the impressions obtainable through actual knowledge of the land and the examination of aerial photographs available for the Society archipelago.

The partial 1956 census of properties of more than 50 hectares made on the basis of areas registered for the survey plan gave the following results (Guillaume, 1956, Appendix III, p.4):

<table>
<thead>
<tr>
<th>Tahiti</th>
<th>Moorea</th>
<th>Raratapu</th>
<th>Tahaa</th>
<th>Huahine</th>
</tr>
</thead>
<tbody>
<tr>
<td>26.5%</td>
<td>20.8%</td>
<td>46.4%</td>
<td>50%</td>
<td>19%</td>
</tr>
</tbody>
</table>

Locally, in Mahéra-Moorea in 1966 and in Papeari-Tahiti in 1968 (Ravault, 1967, p.75; 1977a, Appendices I and II), the division of property gave rise to a distinction between what Dumont (n.d., p.5) has called "latifundia" and "microfundia".

**Table 1**

<table>
<thead>
<tr>
<th>Properties</th>
<th>Total</th>
<th>Size &lt;5 ha</th>
<th>Size &gt;50 ha</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>96</td>
<td>86</td>
<td>16.7%</td>
<td>62.6%</td>
</tr>
<tr>
<td>Joint owned</td>
<td>66</td>
<td>49</td>
<td>13.8%</td>
<td>59.9%</td>
</tr>
</tbody>
</table>

These figures show that joint ownership diminishes the effects of land concentration while aggravating the consequences of micro-ownership. This distribution is the result after several decades of evolution of the interplay of property transactions which took place during the first part of the century, and of subsequent evolution which saw a good number of the more important estates appropriated by default and fall into joint possession and, conversely, a certain number of individual and joint-owned properties broken up by the practice of distribution.

This distribution is fundamental to the structure of land tenure.
minority of land owners (mainly demis and popaa) concentrate in their lands an important proportion of available land, while the majority of other title-holders (essentially Polynesians) are reduced to a bare living. In the case of joint ownership, one can note an unequal distribution of property rights at the level of potential group rights as well as at the level of effective individual rights. It has already been pointed out how, by virtue of the principle of residence, localised branches of the same family could recover land left vacant by branches which had migrated elsewhere; but in general the eldest branches would give themselves the better part of the cake. Within the same group of resident siblings, the distribution of effective rights, over two or three generations results in further inequities.

The principle of residence, in conjunction with rights of descent encourages a concentration of ownership and constitutes an effective monopoly. But it is necessary to point out that those who monopolise the land are residents capable of developing it themselves while the owners of latifundia appropriated individually are most often absentee.

Secondly, the structure of tenure is characterised by a parcelling of property, more typical of joint ownership than of individual ownership, especially in the Tuamotu Islands.

Individual ownership, quantitative distribution and parcelling of land are connected phenomena dependent on land history. The microfundia are not operated not because they are broken up, but because their size renders difficult their use for agricultural purposes. In spite of transfers (distributions, sales) which may have affected them, large or average properties provide valleys, and plateaux land in the plains, for various agricultural purposes and may be worked under suitable conditions.

Guillaume (1956, Appendix III, p.6) considered that the subdivision of properties was not pushed very far because of the joint ownership of the land. In fact, apart from large plots which have no precise attribution within the group because of their low economic value and are consequently no longer occupied, the customary practice of generations never to regroup paternal and maternal inheritances has led to subdivision on a large scale in the most utilised areas: the residential zones and taro fields of the Australs, and the coconut plantations of the eastern Tuamotus. A high level of intermarriage, a situation prevalent in the outer archipelagoes, also increases this subdivision. In Tatakoto where the surface area is approximately 600 hectares, claims broke up the atoll into more than 2,500 plots. As groups hold land in each of the three sectors, there are farmers who make copra in ten or more plots spread all over the atoll. In the high islands, where the more numerous population is spread out over several districts, the inconveniences of subdivision are less significant. Distributions are often carried out by taking into account the parents' residence: one child will go to live in his father's village, another to his mother's village.

The third characteristic of the land tenure structures is the high frequency of absenteeism which applies more to individual than joint ownership.

In Maharepa in 1966, 67.1% of land appropriated individually belonged to absent persons, 99.6% of whom lived in the residential zone. In Papeari in 1968, land absenteeism was not so widespread. Among individual owners, it applied to only 37.1% of title-holders and 29.8% of areas concerned, but in urban areas it reached 89% (see Appendix I).

Absenteeism developed over time. Copra revenues made the land initially an instrument to obtain the economic and social success which could be realised only in the city. The crisis of the colonial economy, more apparent after the end of the second world war, discouraged investment in agriculture. During great economic changes of the last few years, land became a tool of speculation. In Tahiti, Moorea, Raiatea, and even in Taaha, a new form of absenteeism developed: the plots of "developed" estates (see Appendix III) were acquired by members of social categories who, along with the traditional mixed-race middle-class, made the most out of the economic expansion: merchants, civil servants, members of the liberal professions, well-to-do pensioners. An analysis of the authorisations for real estate transfers for the past ten years shows that rural people rarely purchase land and, when the case arises, have no possibility of purchasing property they have used under joint possession before it has been allocated to their non-resident feiti.

Under joint ownership, absenteeism is far less common, whether it concerns land groups as a whole or individuals who are owners of effective land rights (participation in the harvests of perennial crops).

In Papeari in 1968 (see Appendix II), only 18% of the district's property groups were not represented locally and they held only 3% of the district lands. The majority of owners lived in the rural world and were related to families who had settled in the district. In the Leeward Islands and the Australs, a precise analysis would certainly give comparable results. In the less populated central and western Tuamotu the figures would be much higher. Absenteeism at this level is due mainly to economic factors.

Among individual holders of effective property rights, absenteeism is related primarily to the increasing economic importance of cash crops (copra, coffee), and secondly to the extent to which customs have changed. Absenteeism is not very widespread in Rurutu where copra, coffee and vanilla are limited. This is not the case in Tuamotu. The
Following figures for Ahe and Tatakoto show the distribution of owners receiving income from copra, according to residence:

**Table 2**

<table>
<thead>
<tr>
<th>Residents (R)</th>
<th>Non-residents (R)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Working the land</td>
</tr>
<tr>
<td>Ahe</td>
<td>18</td>
</tr>
<tr>
<td>Tatakoto</td>
<td>12</td>
</tr>
</tbody>
</table>

In Tatakoto, besides a certain number of temporary absentees who granted share-croppers the use of their land, there was a fairly large number of elderly people who controlled land “kept” for them by younger relatives. In Ahe, where customs have not been so closely followed, a few non-residents share in the copra revenues.

It must be pointed out that, in both cases, absenteeism is fairly high but has no great economic significance since the fees paid remain very low.

**The Effects of Property Structure on Forms of Owner-farming**

In the Society archipelago, the property structure is characterised by an extremely unequal distribution and a high degree of absenteeism. This is responsible for a very clear predominance of indirect owner-farming, unless the land is used for speculative development or simply left idle.

For instance, in Maharepa-Moorea in 1966 (see also Appendix V), the distribution of forms of owner-farming by geographic areas (in percentages of plots operated before) was the following:

**Table 3**

<table>
<thead>
<tr>
<th>Form of Owner-farming</th>
<th>Plain</th>
<th>Valley</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct owner-farming</td>
<td>35.6</td>
<td>16.8</td>
</tr>
<tr>
<td>Indirect owner-farming</td>
<td></td>
<td></td>
</tr>
<tr>
<td>by lease</td>
<td>10.3</td>
<td>11.6</td>
</tr>
<tr>
<td>by caretaking</td>
<td>50</td>
<td>37</td>
</tr>
<tr>
<td>by share-cropping</td>
<td>9.2</td>
<td>94.6</td>
</tr>
<tr>
<td>Undetermined</td>
<td>0.7</td>
<td>-</td>
</tr>
</tbody>
</table>

Share-cropping of coconut and vanilla plantations predominated everywhere. Caretaking is common in valley cultivation, but the leasehold remains tenuous.

Under joint ownership, depending on environmental factors and the economic and socio-cultural context variable from island to island, the distribution of forms of owner-farming depends mainly upon the ultimate agricultural activity.

In Rurutu which has conserved an agriculture essentially oriented towards food crops (taro, manioc etc.), direct owner-farming and caretaking of lands belonging to residents, or locally represented property groups, prevail. Coconut, coffee and other vanilla plantations are farmed by their owners, except when they are abandoned for more remunerative employment provided by the government or local commune. Absent holders of harvesting rights never make their presence felt. Only a few elderly persons with no cash income give their land over to share-croppers.

The following was the situation in Papeari in 1968:

**Table 4**

<table>
<thead>
<tr>
<th>Form of Owner-farming</th>
<th>Plain</th>
<th>Plain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct owner-farming</td>
<td>71.4</td>
<td>70</td>
</tr>
<tr>
<td>Indirect owner-farming</td>
<td></td>
<td></td>
</tr>
<tr>
<td>by renting</td>
<td>18.1</td>
<td>16</td>
</tr>
<tr>
<td>by share-cropping</td>
<td>3.8</td>
<td>6</td>
</tr>
<tr>
<td>by caretaking</td>
<td>6.7</td>
<td>8</td>
</tr>
</tbody>
</table>

In Papeari, the development of wage-earning related to the Atomic Testing Programme can explain the decline in export crops and the near-disappearance of share-cropping. Only food crops destined for family use and sale in the Papeete market are still grown, mainly by owner-farmers.

In the Tuamotu Islands where copra is the main source of cash, the situation is completely different as the cases of Ahe and Tatakoto showed in 1977.

**Table 5**

<table>
<thead>
<tr>
<th>Form of Ownership</th>
<th>Direct owner-farming (A)</th>
<th>Share-cropping (a)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tatakoto</td>
<td>28</td>
<td>107</td>
<td>137</td>
</tr>
<tr>
<td>Ahe</td>
<td>17</td>
<td>110</td>
<td>127</td>
</tr>
</tbody>
</table>

These figures reflect the social structure. On both of these atolls, the farmers represent only a minority of people interested in the operation of the coconut plantations.
In the past jurists and agronomists have emphasized the advantages offered by individual ownership as compared to joint ownership. This opinion should be considerably modified in view of the socio-economic context.

According to the Civil Code, "ownership is the right to make use of, and dispose of things absolutely", that is, to make no use of them, to make extensive use of them, or make use of them for ends other than agriculture. In a country where a number of owners, when not speculating, remain attached to the forms of land utilisation inherited from the colonial period (extensive coconut plantations and rearing), the concept of absolute control as contained in the Civil Code is an obstacle to agricultural development. It must be pointed out that, because of competition from imported products etc., the present economic context is hardly favourable to agriculture and property investment involves a risk that only a minority of owners have taken. The majority prefer to lease their land to planters at high rates, the latter concentrating on cultivations that satisfy the needs of the local market. Or they entrust their coconut plantations to share-croppers who cannot alter the ultimate form of the plantation. In the context of a colonial economy, the Civil Code contributed to the creation of a class of particularly disadvantaged farmers with neither status nor true control of the land.

Within the context of joint ownership, the main criticisms made by agriculturalists are on the level of maintenance and renewal of the plantations. According to them, in short term cultivation, joint ownership is not a hindrance because the farmer gains during the year from the effort he has put into the task of cultivation. However, "it does not encourage one to improve the ground, or to take advantage of manuring which would mainly profit the successors to the land. In the case of perennial cultivations... no co-owners... appear to want to give themselves the trouble of caring for the plantations, the benefit of which would go to their successors. Even more serious, none of the co-owners wishes to make a decision to renew the plantation or regenerate it. This decision can only be made by all of the interested parties. This amounts to saying that a jointly owned property is automatically deprived of the benefits of property improvements." (Report on the agricultural policy of the government, 1963).

In the archipelagoes where customary spatial distributions give their beneficiaries extended rights which cannot be contested as long as they reside there, such criticisms are ill-founded. The success of regeneration of the coconut plantations in some of the atolls of the eastern Tuamotu zone, and the creation of a certain number of new coffee plantations in Rurutu and Rimatara, are proof of this. Apart from the economic context, the main obstacle to agricultural progress here is not the land tenure system but the conservative outlook which characterises all rural societies, especially when elderly persons are called upon to make the essential decisions.

On the other hand, these comments sum up the inconveniences of joint ownership for agricultural development on islands where customary law has lost its influence. The system of joint ownership explains the difficulties encountered ten or fifteen years ago by the Department of Rural Economy in encouraging the renewal of coconut plantations (central and western zones of the Tuamotu Islands), and the regeneration of the coffee plantations (for instance in Tubuai and Raivavae), even when its initial persuasion was successful.

In a traditional agricultural system, hardly preoccupied by the idea of production per unit area, except for a few crops (swamp taro and vanilla), which involve simple methods suited to local harvesting techniques, joint ownership does not significantly hinder production as long as the security of the leaseholds is ensured at opu hoe levels, which in any case is not supposed to provide for a high standard of living.

In subsistence production, involving traditional complex agricultural combinations of perennial plantations (coconut and vanilla) with short term cultivations (musacae and root crops), the Polynesians especially in the Society Islands, do not see the advantages of a land tenure system which while authorising the superimposition of effective rights, allows several farmers to use the same space. The harvesting of joint-owned coconut and coffee plantations requires only a minimum of upkeep necessary to collect the products and is the same everywhere regardless of the system of ownership.

IV. Reform of the Land Tenure System

I have tried in the main report, without formulating any value judgements, to analyse the land tenure systems of French Polynesia and to show how they may influence agricultural activity. Without going into detail about land tenure arrangements, the adjustment of which depends on the skill of legal experts, I would now like to point out what the main basis for land reforms in the rural world ought to be, taking into account the government's goals for agricultural development within the market economy.

The reform of the land system considered here, is not an agricultural reform. The government has no intention of reconsidering rights of ownership by initiating a redistribution of unused or under-worked latiundia. The idea is to encourage the major landowners to develop
their properties, or to allow for them to be farmed by third parties under reasonable conditions. The solution of the problem of joint ownership can be found only by acknowledging the situation as it is and by attempting to adapt it.

Reforms of any kind are difficult to promote in French Polynesia for any legal document, which inevitably is of general application, and must be adapted to correct failings in the land tenure systems of very different socio-economic regions. Joint ownership of the Civil Code type common in the Society archipelago and the western Tuamotus, and the cause of innumerable conflicts, has not much to show for it in comparison with customary joint ownership which continues to function normally. In these conditions, in the local context, the establishment of an effective reform requires the following.

New legislation needs to take into consideration existing structures while being aware of their evolution and change. This means that on the other hand, without disregarding the "potentialities" of metropolitan law where it is applicable, it may be necessary to innovate. In particular, I cannot see how joint ownership could be organised in a territory where the co-owners are dispersed geographically, merely by substituting majority rule for unanimity. The reality of residence which is fundamental in customary law must be taken into account. It is not easily compatible with the Civil Code but it is a move in the direction of the desired goal: the creation of a truly rural population.

On the other hand, it is not possible to find an appropriate solution to problems purely and simply by reverting to tradition. The Polynesians in this sphere have not always behaved as they might have been expected. Everywhere, including the distant atolls, they aspire to the comforts that technological civilisation can bring to their lives, though not necessarily adhering to all the values provided by such civilisation. It is not desirable to break the cohesion of groups of siblings who constitute the basic unit of society, particularly in the archipelagoes. But it is not by basing this cohesion on the authority of the elders that the future smooth operation of the land system can be ensured. This authority, because it is so often accompanied by privileges, is more and more frequently contested by the younger people.

In applying any new legislation, the responsible authorities should adopt a realistic attitude which takes into account the situation existing in the various archipelagoes. It is urgent to find a solution to the problems posed by joint possession in the Society Islands and the western part of the Tuamotus. The same does not always apply in the distant archipelagoes. In certain atolls of the eastern part of the Tuamotus, customary joint ownership is not yet a hindrance to the regeneration of coconut plantations. In Rurutu, joint ownership is not responsible for the abandoning of the coconut and vanilla plantations, nor for the feeble extension of the new coffee plantations. In one place the increase in the number of wage-earners is the cause, in another the weak purchasing power of copra brings with it the risk of a rural exodus in the near future. At the moment, the improvement of rural economy depends to a great extent on the effects of more extended technical assistance to farmers, on a reorganisation of inter-island transport, or on control of production prices, than on the reform of the land tenure system. Evolution and change are unavoidable and one must provide for their consequences by immediately setting up appropriate legislation if serious disruption of the fragile socio-economic balance of rural societies is to be avoided.

There should be similar reasoning in regard to land leases. To grant the non-owner farmer, working on joint-owned land, a legal status before settling the problems inherent in the ownership system, is putting the cart before the horse. However, in Tahiti, Moorea, and Raiatea, favourable conditions for setting up such a statute already exist. There are many unused or under-worked individually-owned properties for which the writing of leases poses no serious legal problems. A number of planters, stimulated by the proximity of an expanding urban market, are committed to a path of change. The technical staff of the Department of Rural Economy can come in with maximum effectiveness.

The government's goals for agricultural development will be achieved in the short and medium term only if the agricultural potential of the land is determined within the context of a Territorial development plan. Especially in the Windward Islands, if the situation is left to itself, agriculture will be driven from the coastal plains by residential development, pleasure parks and tourist amenities. In the Leeward Islands and especially Huahine, the systematic purchase of joint ownership shares by foreigners who wish to become individual owners clearly shows that, in the present situation, joint ownership does not always sufficiently ensure the preservation of property for agricultural purposes.

The government's goals will be achieved only if those involved in cultivation and stock-raising are allowed to carry out their farming in a reasonable manner, profiting from the fruits of their labour. This applies to non-owner farmers as much as to joint owners. In all of French Polynesia, regardless of the land tenure system, the responsibility for the work is always left in the hands of individuals: the basic cell for rural development, taking into account an evolution which has been underway for some time, remains the elementary family unit.

A certain number of steps to encourage production, especially of a fiscal nature, will also have to be taken. However, these provisions...
FRENCH POLYNESIA

will have positive results only if land rights, especially in regard to joint ownership, are thoroughly reviewed.

A Review of Land Rights

"If one wants to reach a method of organisation for management of jointly held land which is rational and above all efficient and if, as I shall point out, one desires to set up property taxation or organisations of the SAFER type, it seems indispensable to have initially a completed and closed list of the joint owners concerned..." (Calinaud, 1975-76, p.34).

In order not to delay the launching of the government’s projected development operations indefinitely, I would like to propose that the verification procedures for land rights be linked with the establishment or rather, in the majority of cases, with the revision of the land survey. This should be done as a priority in the islands or the sectors where government has concrete development projects. It is useless to survey the interior of islands which are not or never have been used and therefore are of no economic interest. Neither can I see why one should proceed with surveying of certain sparsely inhabited islands while a revision is imperative in certain of the high islands with real possibilities for development. Finally, I would like to point out the existence of recent aerial photographs which are available in the Territory and which would facilitate operations considerably.

In France SAFERS are “Land Development companies and rural organisations established to buy up land or agricultural estates which have been freely put on the market by their owners, as well as uncultivated land destined to be returned to their owners after eventually having been developed.

In the communes and sections of communes which would be chosen, a jurist (not necessarily a magistrate but above all someone familiar with the situation) and a land surveyor, who would be assisted by two locally resident representatives, could proceed with the inquiries necessary to obtain a deed of property and the corresponding parcel plans. This operation should be announced in advance through the usual channels, and non-residents with claims to put forward would be invited to make them on the spot or to have themselves represented. After a certain period, the ordinary civil jurisdiction would rest in the last resort on the validity of the property deeds.

On the basis of established documents which should be regularly updated, a real estate index system could be organised. On these documents could be indicated all deeds bearing on the transmission of property. The genealogies established during the investigations could also be annexed; a copy of the files would then be preserved at the main administrative centre of the commune.

Property Conservation

By establishing in 1974 “protected agricultural zones”, the Territory has provided itself with the necessary tool for “conservation or agricultural improvement” of inherited land. But as the Social and Economic Committee pointed out in 1978, “four years after the creation of this legislation, only one agricultural zone has been created on the motu of Huahine (and) another agricultural zone is being created in Papara.”

The various inquiries and administrative procedures required to obtain this kind of classification ought therefore to be simplified, if possible. There already exists a spontaneous method of organising space (concentration of urban and tourist sectors, localisation of latifundia and microfundia, distribution of the main land utilisation forms), perfectly distinguishable in aerial photographs which would well facilitate this work.

It is doubtful, as the French example shows, that the creation of protected agricultural zones is an efficient weapon against speculation. As Dumont (n.d., p.33) suggests, in order to “moderate the price increase on agricultural lands”, one could look into the creation of SAFERS so that, by adapting them to the local context, and by the use of public credits, land acquired could not only be reassigned but also, contrary to what is happening in France, be leased. To set up such a structure the survey would have to be terminated and a statute adopted for the non-owner farmer.

The Status of the Farmer

A land reform essentially has two sets of provisions. The first relates to rural leases which are already being considered by the Territorial authorities. The second relates to joint ownerships, still only a proposal, which ought to be approved by the French legislators. In view of the complexities of the problems involved, this is considered here in greater detail.

The suggested system of rural leases provides for long leases (9 years) and their renewal, to allow the lessee the chance of reaping the fruits of his work and investment. It also provides for the right of pre-emption and the right to indemnification on departure, each time the lessee has contributed to the development of the property. This indemnification can be an encouragement to reinvest in agriculture.
It also provides a codification of rental fees (in share-cropping, "the part coming to the lessor... cannot be higher than one third of all the produce sold"), allowing each party to make a legitimate profit out of his contribution to agricultural activity.

Such provisions, which at the present time especially in the Society archipelago concern individual ownership more than joint ownership, could be applied to the whole territory immediately solutions can be found to the problems posed by joint ownership.

For some time now, the sole policy of the administration and jurists has been to consider that co-owners should be allowed access to individual ownership by facilitating distribution. It would be better to make a change.

However, this does not mean that access to individual ownership should always be discouraged, especially, for example, in the case of the large estates, owned by demis, where the parceling following legal distribution does not compromise the existence or prohibit the setting up of viable agricultural operations. However, in the traditional world and especially in distant archipelagoes, joint possessions should be obtained and made functional since they are a factor fundamental to social stability and the preservation of property. Contrary to what took place in rural leases when the Civil Code was used, it will not always be possible to do this by adapting French legislation to local reality, but customary law, properly adapted, can be used as a legal instrument in the service of development.

In order to do this, it is necessary to acknowledge the right of the co-owner to his plantations, even and especially if this concerns perennial cultivations, and to make this right transmissible to his heirs. It should be noted that local jurisprudence (Calinaud), has taken a considerable step in this direction by assimilating this fundamental, element of customary law with certain usages of pre-revolutionary France ("surface rights") which the Civil Code never abolished. For more security, a statute should be adopted by the legislature.

Customary distributions should be legalised wherever they exist among socially coherent groups of relatives (restricted or extended opu hoe), and joint ownership by more extended groups should be discouraged.

A "system of consultation and decision" (the legal form of which is to be determined) should be created which, in substituting itself for a birthright subject to challenge, would have a triple function: assigning, lands to be developed, renewing exhausted plantations, and settling disputes initially privately.

The existence and efficiency of this structure would be subject to the following conditions. A deed of constitution ought to be made by some of the co-owners representing perhaps "half of the property rights", and opposable by the other co-owners. The managerial centre would be established in the section of the commune where the titleholders have the most land.

The formalities for convening meetings have been established, decisions would be made by the majority of those present, those opposing being able to bring the dispute before an itinerant judge or a communal jurisdiction which would rule on the matter in the last resort. In a territory where kin groups are geographically highly dispersed, such an arrangement is necessary if decisions made are to be effective.

Steps to Encourage Production

In a territory where useful agricultural areas are limited and most property is under-worked, two categories of measures to encourage development could be planned. The first would be to require owners of undeveloped land or land left abandoned for more than five years either to develop it or to lease it within a period of two years.

The second would be fiscal. A tax on undeveloped rural properties has existed in the Territory since 1958, but it has never been collected. The State Council, in a ruling on an appeal brought by one of the first persons so taxed, considered that this tax contained a certain number of technical imperfections which were an obstacle to its being applied. It would be desirable to remedy these imperfections. A precise survey is not necessary to localise the latifundia which have not been developed. Dumont (n.d., p.29) has shown that a "land tax... is a factor essential to agricultural development... the primary basis for the take-off of an autonomous, self-supporting development," but this assumes close technical surveillance, public business organisations supporting a network of cooperatives, and high prices which already exist in French Polynesia. The collection of a land tax would require a revision of the cadastral plan.

Another form of taxation, which would discourage land speculation and be easy to determine, could ultimately be charged on profits made on the sale of plots of land.

These are some of the steps which, if adopted, could contribute to an improvement of local agriculture, on condition of course, as Calinaud has pointed out (1976, p.65), that "concrete development projects" are available to begin with. It is hardly sufficient merely to change the judicial context in order to modify the socio-economic situation.
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