

Under this general and confusing label, we are concerned with the complex relationships which exist between categories of individuals and groups in reference to land, water and their respective products. These relationships can be analyzed in terms of sets of rights and obligations held by these categories of people with regard to the acquisition, exploitation, preservation and transfer of specific portions of terrain and products. Some of these rights and obligations are highly formal and have little practical bearing. Some are part of a well-established system of legal rules, while others have their foundations in de facto situations. Rarely do these rights in practice have an absolute or fully exclusive character. They are, in other words, subject to certain limitations and modalities which are contained in various principles of social organization, situational contexts, ethical principles and rules of etiquette. Such factors as reciprocity, gift exchange, attitudes towards food and labor, prestige and recognition contribute to give a special overtone to these rights and obligations.

In order to gain a complete idea of the

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complicated issues involved, an abstract enumeration or a static view of rights and obligations cannot suffice. To show their content and scope, their practicality and bearing, the range of entities and social personalities concerned, these rights and obligations must be viewed against a background of highly variable and varying activities and situations. These rights, held in reference to specific parcels of land, can simultaneously be the object of many activities: planting, harvesting, clearing, trapping, hunting, food collecting, building, passage, grazing, etc.; the particular situations and social context in which these activities are performed may differ according to occasion, person, purpose and time period. These rights are not merely concerned with exploitation, disposal of, or control over, land, but include also the sharing of products, the levying of tribute, the inauguration of economic activities, the performance of rites and the claim to settle disputes.

All peoples subdivide the land on which they live for particular purposes of exploitation and residence. This does not mean that all the land

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on which a given people live is actually subdivided, and most certainly not that there is only one way in which it is subdivided. In all societies there exists a set of minimal regulations which determine the nature of these subdivisions and the kind of groups or categories of individuals that are associated with them. The vast deserts and steppes inhabited by Arab or Persian or Central Asian nomads are not res nullius. These peoples have well-defined ideas about tribal, state, sacred and personal lands. They have and respect fixed patterns of movement and seasonal migration over well-known routes, which are conceived in such a way as to provide each of the groups associated with them with a complete range of seasonal necessities. The question is not whether or not they are more interested in the products than in the land that provides them; the significant point is that there are these recognized zones of land control associated with defined human groups.

The principles of land tenure are correlated with various interlocking historical, ecological, demographic, technological, socio-political, religious and psychological factors. The

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multiple ways in which these factors operate together or against one another render difficult any attempt at setting up types of correlations. Generally, in the societies studied by Anthropologists, everybody is entitled to obtain land for specific purposes of exploitation and residence. Individuals achieve this by a fairly simple method through membership and/or residence in local kinship groups, villages, bands, tribes, and less frequently through more involved contractual relationships such as purchase, pledge, loan, lease, clientship or service. Population density in these societies is for the most part low, and this enhances the possibilities for generalized access to land and resources. Landless individuals and groups are thus an exception. (Indeed in many societies land is the single most significant patrimony held by groups of people.) This does not, of course, mean that everybody holds equal title to, or equal amounts of, land, nor does it imply that everybody secures these rights in the same manner, under the same conditions, with the same implications. Even in societies where land is plentiful, marked competition for land and its resources

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may exist, which is often expressed in a rigid demarcation of certain boundaries, highly individualized rights in regard to some types of exploitation and concurrence of apparently multiple antagonistic principles of land tenure. Population concentrations within certain parts of an otherwise sparsely inhabited region, different qualities of soil and diverse seasonal necessities, local availability of specific animal or plant resources which are highly rated in the value of food systems and the religious significance attached to select stretches of land account for this situation. The presence of oases or permanent waterholes in desert country, forest galleries amidst poor savanna country, natural palmgroves in forest or savanna, alluvial soil or rich marshland, the occurrence of seals' breathing holes, etc. provide ample scope for intensive exploitation and rigid delineation of rights in an otherwise flexible and more loosely defined context.

There has been a tendency to correlate some patterns of landholding with the basic economic systems of food gathering, hunting, agriculture and pastoralism. Most of these simplifications

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have proven to be of little value. The greater portion of known populations are at the same time involved in multiple and complementary forms of land exploitation. If not, they are embedded in a broader community in which highly different economic activities are carried out by various populations which definitely influence one another's attitudes towards land (i.e., the many instances of complex contacts between pastoral and agricultural societies or those between Pygmies and Bantu- and Sudanic-speaking populations). But more significantly, these basic economies can and must be broken down into a wide variety of activities, patterns and technological components. There is no simple category of hunting rights; there are several methods of hunting (with bow and arrow, with dogs and nets and spears, with traps, etc.), which may imply participation of highly diverse categories of people and multiple forms of interaction. There are many kinds of animals hunted: some scarce and some very common; some royal or sacred and some not; some economically valuable and others not; some more nomadic, others rather sedentary. Again these features

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are not without profound effect on the principles of land tenure. Furthermore, the purposes of the hunt vary greatly, some hunting parties having a magic character or being connected with seasonal ceremonies or initiations; others are merely linked to subsistence. Trapping rights, which are but one aspect of hunting, have to be analyzed in terms of types of traps, durability, degree of specialization and nature of environmental alteration.

In different societies, individual rights in land, water and their products are most commonly secured through membership in tribes, bands, local kinship groups, villages; descent, residence, marriage and broader affinal relationships, friendships and political allegiance are basic criteria in establishing this membership. Contractual relationships based on gift, sale (often conditional), lesse, tenancy and pledge are most certainly present in many societies, but have many times not been correctly related to the broader social framework. It is clear that in the majority of societies, the bulk of land rights are secured through membership in local kinship groups but again, for a number of evident reasons,

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there is no way of drawing simple correlations. The very principles on which these groups are built up, their internal structure, the character of their connections with other similar entities within the larger community, their degree of permanence and the extent to which affinal and friendship relationships operate to shape residence patterns leave ample room for a wide range of patterns of rights in land and products. The nature of land control exercised by political office-holders makes the patterns all the more unpredictable. In politically centralized societies, kings or paramount chiefs may lay claim to all the land occupied by their subjects. This claim may be expressed by a continued manipulation of land, the giving and withdrawing of it being dictated by political necessities and whims; it may merely manifest itself in the levying of tribute on certain products, or in the right to settle disputes over land or to resume and reallocate unoccupied land. The claim may be purely theoretical and overshadowed by the chief's duties to ensure the fertility of land and everything living on it or by his obligation to

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see to it that everybody has sufficient land. In other politically centralized societies, chiefs and other subordinate political officeholders may have claims only to specific tracts of land or to vacant land; in still others, they have no claim whatsoever in land or their rights simply are similar in scope to those held by any lineage head.

The strictly structural and functional approach to the study of land tenure fails to account for a number of vital questions, the answers to which may be found in the ethnohistorical traditions of particular groups. Thus in many cases, peculiar features of land tenure result from the history of migration, of settlement and occupation of a given territory, from subsequent contacts between groups of similar and dissimilar cultures, from the internal history of segmentation, fission and fusion in local kinship and political units. Furthermore, different elements of folk taxonomy and linguistic classification dealing with land, water and products shed considerable light on the nature of rights and the entities with which they are associated in a specific social and

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geographical context.

In virtually all societies, various forms of communal, joint, familial and individual rights in land and its resources are intricately interwoven with one another. In many cases either the individual or joint aspects of these rights and obligations are emphasized, or are at least most clearly manifest, but this does not automatically lead to the absence of the other aspects. Thus in pastoral tribes, where grazing rights are normally vested in larger entities, such as the tribe itself, restrictive claims to certain pastures or wells are seasonally or permanently enhanced. In hunting and food gathering societies, where control over defined tracts of land is associated with bands or local kinship groups, certain forms of exploitation on smaller portions of the general domain are restricted to segments of bands or to families and individuals. In simple agricultural societies, where general control of a given land tract is vested in a local kinship group or in a village, individualized rights in fields, agricultural products, trees, trapping sites, etc. do exist.

Many authors, apparently without full

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ethnographic validation, have tended to stress the imprecision and casualness of the rules relating to control over land. The rules are precise and well-known, but they are multifaceted and flexible and can therefore be fully grasped only within the broadest possible framework of the above-mentioned interconnecting factors. We must realize that in any given society multiple systems may be simultaneously at work. The group controlling land for agricultural purposes is not necessarily the same as the group controlling it for hunting or trapping or food gathering activities, which again allow for differences in degree and nature of control in terms of their many technological aspects. In addition, within a given society it is not necessarily true, as is so often implied in the literature, that the same type of group at the same level of segmentation is necessarily associated with a given land tract. Nor can we exclude for a precise understanding of rules of land tenure such less frequently mentioned features as virgin vs. occupied and fallow land, geographical remoteness of parts of the estate, cyclic differences in quality and quantity of

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food supplies caused by variable amounts of rainfall, etc. To illustrate this point, among the Nyanga living in the East of the Congo Republic, the resident members of local clans are in direct control of the virgin parts of a well-defined territory (where several forms of hunting and food gathering take place), whereas segments of these clans and extended families control specific, not necessarily contiguous, tracts within it as trapping sites, fallow or cultivated land. Hunting and gathering rights are much less rigidly sanctioned for the most remote parts of the virgin tract than they are for the more accessible ones; in years of abundance, explicitly recognized by the Nyanga, great permissiveness is allowed with regard to the collecting of natural products and even the harvesting of cultivated ones. At all times, a few Pygmoid groups surviving in the country are permitted to take freely, but not overtly, certain species of cultivated bananas. All these and many other permissive types of behavior prevail in an otherwise rigid code of rules pertaining to land control.

The many tedious speculations as to whether

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or not ownership of land exists as a legal and philosophical concept are largely irrelevant since they are culture-bound and fail to account for the originalities of non-western thought-systems. The question is to be placed in a different perspective and can be solved only to the extent that we are willing to get rid of certain stereotypes, such as alienability or absoluteness, thought to be diagnostic elements of land ownership. A better grasp of linguistic concepts and folk classifications would greatly contribute to leading us out of this impasse. In some Central African populations, all rights pertaining to land and its products are covered by one single concept, which in the minds of the people means as much as "to be with . . .," and are therefore thought to be basically similar to one another in their legal implications. However, any given category of persons is always rigidly said "to be with" a well-defined entity, so that the scope of the rights, and the extent to which they bear, are fundamentally distinct. Thus women are said "to be with" crops, married men residing with their kinship group are said "to be with" gardens (or rather banana-groves), extended

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families residing on land traditionally associated with the local clan of which their heads are members are said "to be with" ndimo (land under cultivation and fallow land, which is also the object of intensive gathering and trapping), etc. The bearing of every right is well-circumscribed in a specific context, and the rights cannot be reversed. The connotations of "being with" are clear to these people; for the outsider they are understandable only in full reference to ties of kinship, marriage, residence and friendship, to ideas about solidarity, reciprocity and etiquette and to concepts about incorporation of labor that prevail among these people.

As regards the critical concept of land alienation, the transfer of certain rights is definitely a well-known phenomenon. However, in many instances, we are unclear as to the exact scope and content of the rights transferred. It is clear that in traditional subsistence economies alienation by outright sale of land is extremely rare. This is understandable since land is quite plentiful and the methods for using it securely are relatively simple and multifold; there also exists a series of alternatives for

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obtaining it. Furthermore, land is vitally linked with the perpetuation of groups of people, their autonomy, solidarity and cohesion. Most commonly the rights transferred bear on specific usages, are subject to many modalities (including reversibility) and operate within a well-defined social framework (e.g., transfers are restricted to certain categories of persons, excluding non-incorporated strangers). Transfers are either an exception or occur only in cases of dire necessity. It is also true that very often portions of land are not transferable at all because of religious values connected with them or because of their high productivity. Alienation of land through direct conquest or gradual peaceful expansion has, of course, been a widespread occurrence. Here again, the conquerors have not necessarily occupied all the land or claimed full title to it, and there has been a marked tendency in many societies to consider, as is often expressed in various ritual arrangements, that the ultimate title to the land remain with the original settlers.

Under conditions of socio-cultural and technological change, land tenure systems, which

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are so intimately bound to many facets of culture and environment, are due to undergo many modifications, but the outcome is unpredictable. Under the impact of new factors, such as increase in population, development of more intensive agriculture, cash cropping and money economy, the bulk of the rules of land tenure systems may be nevertheless perpetuated. A variety of responses can result from this. Rights in land may become more exclusive, litigation about boundaries and nature of title may largely increase, landlessness and tenancy may develop, rights of political office-holders may emerge more strongly, groups of people may be compelled to emigrate, etc. In this process the unity and cohesion of traditional land-controlling units may be disturbed or consolidated. Increased demand for land may lead to fragmentation of holdings and new concepts about alienability may emerge, with the corresponding uneconomic implications or conflict situations. Often traditional systems, when exposed to a multiplicity of new factors, have proven to be slow in adjusting themselves to the new necessities and demands. It is then that various legislative measures have had to be taken

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with regard to consolidation, resettlement, reallocation and redistribution of land and of people. Likewise, conflicts of law have paved the way to greater complexity of the problems involved and to difficult social situations, which have sometimes found only uneasy solutions. The creation of secure individualized title, the correlated registration of titles, the organization of successoral systems, and the introduction of new attitudes towards land, without a corresponding radical transformation of the social system, have proven to be very complex, producing many times insoluble problems in the traditional contexts. Entire populations, or sections of a population, have failed to recognize the validity of modern types of land transactions and land titles, and adjustments between widely divergent values and laws have been slow to come.

As far as problems of research are concerned, a theoretical precise framework for dealing with land tenure systems and a cross-culturally valid and applicable method of investigation are badly needed at all levels of descriptive and comparative analysis. It is particularly important that we get rid of some of the stereotypes about

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ownership and set up a well-founded system of terminology. Comprehensive anthropological descriptions of single land tenure systems which view them in a multifaceted way are still very necessary. In this respect, an exhaustive analysis of the linguistic concepts and taxonomic categories, which various peoples have devised in regard to their environment, their land, water and the products obtained from them, could shed new light on our methods and concepts. The exact connotations of such issues as alienation and other types of transfer, the precise scope of various forms of permissiveness and exclusiveness would have to be more thoroughly investigated and clarified. The exploration of land tenure has all too often been a subsidiary interest, casually treated and camouflaged behind a number of classic categories for analysis. There must be a distinctive, and hopefully rewarding, way of looking at relationships between groups and categories of persons with land, water and their products as a referent.

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BIBLIOGRAPHY

Biebuyck, Daniel (editor) 1963 African agrarian systems. London: Oxford University Press.

Crocombe, Ronald G. 1964 Land tenure in the Cook Islands. Melbourne: Oxford University Press.

Food and Agriculture Organization of the United Nations 1955 Bibliography on land tenure. Rome.

Food and Agriculture Organization of the United Nations 1959 Supplement to bibliography on land tenure. Rome.

Gluckman, Max 1959 The technical vocabulary of Barotse jurisprudence. American Anthropologist 61:743-753.

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Goodenough, Ward H. 1955 A problem in Malayo-Polynesian social organization. American Anthropologist 57:71-83 (and comments by Frake, Charles O. and reply by Goodenough, Ward 1956 American Anthropologist 58:170-176).

Herskovits, Melville J. 1952 Economic Anthropology. New York: A.A. Knopf.

Hoebel, Edward A. 1954 The law of primitive man. Cambridge: Harvard University Press.

Howard, Alan 1963 Land, activity systems and decision-making models in Rotuma. Ethnology 2:407-440.

Liversage, V. 1945 Land tenure in the colonies. Cambridge: Cambridge University Press.

Pospisil, Leopold 1965 A formal analysis of substantive law: Kapauku Papuan laws of land tenure. Pages 186-214 in Hammett, E.A. (editor), Formal semantic analysis. American Anthropologist, Special Publication.

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Sonius, H.W.J. 1963 Introduction to aspects
of customary land law in Africa. Leiden:
University Press.

White, Charles M.N. 1958 Terminological
confusion in African land tenure. Journal of
African Administration 10:124-130.