Land governance and the politics of custom in contemporary New Caledonia

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Land governance and the politics of custom in contemporary New Caledonia. Elements of reflection

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Abstract - The land issue lies at the heart of New Caledonia history and politics, in the form of a long-term legal dualism of land tenure and citizenship, initiated with the settler colonisation, the creation of reserves and the invention of tribes in the late 19th century. This dualism is nowadays expressed in the guise of an asymmetric triad distinguishing customary land from public and private properties. The movement for independence in the 1970s has put land claims on the central stage. After 1984-1989 violent events, political tensions have been decreasing thanks to Matignon (1989) and Nouméa (1998) agreements. Land reform has been carried out by ADRAF, a state agency that has been playing a key role in adjusting land distribution between European and Melanesian communities and producing customary land. Parallel to this, a customary senate and cultural area councils have been built up following Nouméa agreement, completing the neo-customary apparatus originating in the colonisation. The politics of custom is thus constitutive of Caledonian land governance, through discursive practices mobilising and manipulating the past and institutionalising processes sometimes playing against the customary logic of negotiability (for instance by promoting devices such as the contested "customary cadastre"). In this contribution, I will review the current political debates and public choices revolving around land governance and customary principles and outline related research orientations highlighting converging elements between political and social sciences agendas.

I. OBJECTIVES AND CONTEXT OF THE STUDY

The overall issue this paper deals with regards the current conceptual and political debates revolving around land governance and related customary questions in New Caledonia. This contribution aims to identify and analyse the positioning of actors and institutions involved in this policy domain.

For this, I will rely on a study on the "customary cadastre" realised for ADRAF (Agency for rural development and land development) in charge of the land reform in New Caledonia.

This means that the results I present here do not draw on intensive ethnographic fieldwork but on two short-term assignments of 3 to 4 weeks each (Le Meur 2004). The field missions were carried out in 2003 and 2004 for ADRAF around the overall policy question of land tenure security. The focus was thus land tenure policy at large, not only customary land tenure. This is not unimportant, as we will see it in analysing the different viewpoints on customary land policy. Separating "customary" from "modern" land tenure makes no sense in a context of land redistribution and mutual definition of both domains.

The objective of the mission was at once "to support and to clarify what is at stake in implementing a land resources securing policy in New Caledonia". I will emphasise here the "clarifying" dimension of this work. Actually, the study was of an exploratory nature and dealt with the disputed issue of a "customary cadastre". The idea of surveying customary lands was launched in the late 1990s following the Nouméa agreement and the 2001 conference on "land tenure and development" organised by ADRAF (cf. Seminar proceedings 2001). But the supporters of this project did not completely realise what implications the debate could eventually have and how they actually could do this. At this stage (October 2003), I had to review the "state of the art" in terms of situated political discourses and emerging policy models.

Beyond the context of this work, it is noteworthy that the terms of the policy debates – customary cadastre, land tenure security, customary authorities, identity and development – raise questions that are as well as research questions currently debated: How to identify and describe land property rights? What are the moral principles, knowledge and historical trajecto-

ries underlying land claims and land policies? How can one interpret the "link to the land/earth" (*lien à la terre*) formalised by the 1998 Nouméa agreement and the 1999 organic law as "constitutive of the Kanak identity"? What legitimacy and powers has the neo-customary institutional apparatus stemming from this agreement? What form of citizenship and land tenure in a dual legal system? These public policy issues should be part of any research agenda paying attention to social change and contemporary reconfigurations of actors and institutions in New Caledonia.

However, the convergence observed between policy and research questions is in no way a sort of confusion of both social fields. They have their own partial autonomy and way of functioning. Anyway, when policy makers raise questions "good for thinking" for the research, it is worth having a look. This is especially relevant as regards policy aiming at recognising customary rights or law. Assier-Andrieu's anthropological thoughts on law and society can be useful here: "When one 'recognises' a custom or a use, is it a matter of identifying latent norms or of decreeing new rules? Is it the work of an ethnographer or of a legislator?" (1996: 51).

Beyond the expertise context of this work, this linkage offers an opportunity to mobilise concepts, methods, and materials from my own research activities on land issues in West Africa, activities partaking in the collective enterprise of the IRD research unit on "Land regulations, public policy and actors' logic"[2]. By the way, this cross fertilisation was also an explicit demand on ADRAF side[3].

This paper has thus a hybrid nature, presenting the results and analysis of a short-term exploratory expertise and outlining research hypothesis and perspectives.

II. CONCEPTUAL CLARIFICATIONS

1. Governance

The concept of governance is used in a non-normative way, without any World Bank connotation. It is conceived of as a descriptive concept of "emergent pattern or order of a social system, arising out of complex negotiations and exchanges between 'intermediate' social actors, groups, forces, organisations, public and semi-public institutions" (Rose 1999: 21). N. Rose rightly adds that in this context, "state organisations are only one – and not necessarily the most significant – amongst many others seeking to steer or manage these relations" (id.). Furthermore, he differentiates governance from governmentality. "The analytics of governmentality regards "the way in which certain aspects of the conduct of persons, individually or collectively, have come to be problematized at specific historical moments, the objects and concerns

[2] See as examples of the research unit collective production Chauveau et al. (2004), Colin et al. (forthcoming), as well as the panel on "Land governance in Africa and the social embeddedness of property" I have organised for the AEGIS conference on African studies (SOAS, London, 28. June-2 July 2005).

[3] See Le Meur (forthcoming) for the study of a West African policy of customary rights recognition.

that appear here, and the forces, events or authorities that have rendered them problematic (*ibid*.: 20; see Foucault 2004).

Such a non-normative approach of governance thus allows taking account of public policies and state interventions without any over- or under-estimation of their impact. What is to be described and analysed is the interplay between actors and institutions around norms, values and material and symbolic stakes and what type of social order or disorder these interactions generate.

2. Custom

Custom is another tricky notion. It is a polysemic concept referring to law, local practices and the politics of belonging.

Custom as the backside of law

One can understand custom as referring to the legal field, but in a paradoxical manner, as the backside of law. According to a diachronic viewpoint, custom belongs to the pre-legal world. In this evolutionist framework, law is deemed to replace custom for the advancement of humanity and civilisation. The substitution can follow different paths however and law is constructed as well against customs as by picking up elements of them – those apt to be civilised – and codifying them.

From a synchronic perspective, custom as the backside of law constitutes what we could call the paralegal world, all what fells outside the legal realm. The codification of this dualistic conception lies at the heart of the colonial enterprise. This legal dualism is also present in the current debates around autochthony and the claims for indigenous rights that have developed for some times in the Pacific world and beyond (cf. the custom as "underlying law" in the 1975 Papua-New Guinea constitution). We will come back in the conclusion to the complex linkage between land relations as property relations and historical and mythical identity relations.

Local practices, concepts, and authorities

When we consider customs from a local point of view, custom is rather a matter of practices, concepts, institutions, and authorities. In this respect, the link to law becomes secondary or changes of nature. But this does not imply that the ambiguities pervading the notion are removed.

Let us consider first the notion of custom as a set of "local uses". One can distinguish two meanings of the local uses, either consciously involving two persons linked by a convention or being 'located' above individual wills, as a repertoire of rules (we are closer here to the idea of customary law).

Furthermore, empirical studies have shown that the "customary logic" (when solving disputes for instance) is made of fluidity, negotiability, it is anchored in "oral cultures" (however possibility of using informal 'papers' within the customary framework). Furthermore, customary law is intrinsically linked to politico-legal authorities in its mode of functioning. It is not an abstract charter of laws and decrees, rather a way of – and a frame for - negotiating claims and reasserting legitimacy. In doing so, customary "jurisprudence" leaves a room for change and

the incorporation or creation of institutional innovations, although it seems to keep a flavour of continuity. Customary institutions play the typical role of institutions as analysed by Mary Douglas, encoding information and organising remembering and forgetting (Douglas 1987: 47, 69 et sq.).

Identity politics

Institutions are a matter of identity too. It is particularly the case with custom when it comes to the interaction between the different meaning of custom, as legal concept, social practice, an set of institutions within a specific political context, such as the New Caledonian one. Custom refers to a past, be it a mythical or a historical one, and to a knowledge over this past. This language of the tradition helps define, reproduce and also contest identities as well as outlining projects for the future. In this respect, it has a moral and intergenerational dimension.

3. Land

Land has a central position in these processes, as embodying and expressing these temporal links through territories and boundaries, politico-legal institutions and social relations. I will follow here Chris Hann's extended definition of property:

"It therefore seems desirable to stretch the definition of property beyond the conventional anthropological formula, which proclaims simply that property relations are social relations. The word 'property' is best seen as directing attention to a vast field of cultural as well as social relations, to the symbolic as well as the material contexts within which things are recognised and personal as well as collective identities made" (Hann 1998: 5).

In the New Caledonian case, studies have highlighted a twofold pre-colonial duality. The first one opposes the earth chief to the political chief (often a stranger). The first is perceived as a "moral and political authority without direct link to the allocation map of farmland" (Bensa 1992:121; cf. Leenhardt 1937, Guiart 1963). This point is linked to the second dimension of land dual nature, namely the land as identity constitutive factor and productive medium. Both functions are clearly differentiated in local discourses and the former is attributed a higher value[4]. Due to this asymmetry, the bundles of rights (Benda-Beckmann et al. 2003, Colin 2004) are often neglected, more evoked than described, both in policy discourses and research analysis (see Sillitoe 2000: 75-90 for Melanesia, Crocombe 2001: 295-321 for the Pacific area).

III. HISTORICAL CONTEXT

These notions have to be placed in the historical context of New Caledonia as a settler colony on the long run and, on a shorter term, with regard to the movement for independence that has

4 See Bensa (1992: 128) : "Les tertres, les habitats des ancêtres et les itinéraires, de par leur fonction identitaire, sont dissociés des espaces vivriers qui les entourent".

put land claims on the central stage in the 1970s. After 1984-1989 violent events, political tensions have been decreasing thanks to Matignon (1989) and Nouméa (1998) agreements.

The objective of this section is of course not to reconstruct the whole process that has led to the construction of an almost complete customary institutional apparatus parallel to the state/territory one. It is rather to pinpoint elements influencing the current situation and debates regarding land and customary politics.

1. Inventing and institutionalising custom

The history of New Caledonia is structured by its function as a settler colony. The legal and institutional apparatus constructed over the 150 last years bears the hallmark of this choice.

Most of the texts underlying the current legal dualism were issued in the first decades of the colonisation. They organised the creation of the tribe as a legal entity (1867), the definition of the "indigenous property" or reserve as inalienable (1868), the policy of delimitation or *cantonnement* (1875), the native code (*code de l'indigénat*, 1887).

The invention of an indigenous collective land right is a colonial production exerting effects on the long-term. This invention took the form of a legal dualism that "distinguishes the European area, governed by the French law (state estate and private owned land basically held by the European and assimilated communities) and the Melanesian area, ruled by a derogatory special status (reserve land and GDPL)" (Merle 1998: 97). We can discern this dual structure behind the current division of land in three sections (customary, public – state, territory, provinces, communes -, and private). Customary lands are still unalienable.

Although mainly created in the XIX century, the customary institutional apparatus is still valid and has been completed in the 1990s. In the meantime, reserve lands have paradoxically become the starting bases for Kanak political claims since the 1950s and independence and land claims have narrowly intertwined since the 1970s.

After the Matignon and Nouméa agreements, the territory has been divided basically on linguistic criteria in customary zones that do not superimpose on administrative boundaries. The customary councils of each zone are attributed an official function in the clarification and interpretation of customary rules (Nouméa agreement, 1.2.2) and intervene in case of disputes around the interpretation of customary "*procès-verbal de palabre*" (organic law, art. 150). The customary senate (replacing the New Caledonia customary council) is composed of 16 members (two for each customary zone) must be consulted for all domains related to the Kanak identity (identity marks, individual customary status, customary land).

The GDPL institution (*Groupement de droit particulier local*), created in 1982, allows land allocation to a group of persons recognised as a legal entity (*personne morale*), be it a clan, a tribe, a group of clans. Since 1998, GDPL belong to the customary domain.

Furthermore, the position of ADRAF, a state institution, as the main operator of the transformation of private or public land into customary land puts it de facto at the centre of the customary apparatus[5].

[5] Land dualistic status influences the land development and public infrastructure policy too, as it creates patches of discontinuities – the customary domain - across the territory as far as these policies are concerned.

2. The politics of land reform

Facing a new radical movement for independence in the 1970s, the French government responded with the launching of a land reform policy in 1978. It took different organisational forms (*Office foncier* 1982, *ADRAF territoriale* 1986, *ADRAF d'Etat* 1989) that favoured different modalities of land redistribution, respectively the clan property, the private ownership (a kind of "counter-reform" in 1987-88), GDPL that are nowadays the main form of land distribution. With the Nouméa agreement, GDPL land, originally included in the private land domain moved in 1998 to the customary domain. This was done for reasons of consistency between the status of the person and the status of the land. It was also a matter of restoring the balance between private and customary land. According the 1999 organic law, ADRAF will be transferred to the government of New Caledonia (along modalities to be defined).

Land attributions (1978-1998)

	Territoire **(1978-82)**	***Office foncier*** **(1982-1986)**	***ADRAF territoriale*** **(1987-88)**	***ADRAF d'Etat*** **(1989-98)**	**Total**
Autochthonous reserves extension	19 094				**19 094**
Clans	6 877	2 081			**8 958**
GDPL			576	71 116	**71 692**
Individuals, companies, local communities			8 768	18 022	**26 790**
Total	**25 971**	**2 081**	**9 344**	**89 138**	**126 534**

(source: ADRAF 1998)

Evolution of land categories (1978-1998)

Categories	**1978 (ha)**	**%**	**1998 (ha)**	**%**
Kanak land	**167 788**	***10%***	**276 516**	***17%***
- Autochthonous reserves	161 788		180 882	
- Clans property			8 942	
- GDPL			71 682	
- Melanesian ownership	6 000		15 000	
ADRAF stock			**24 673**	***1%***
Non-Kanak private land	**402 471**	***25%***	**295 851**	***18%***
State, regions and communal estate	**1 062 441**	***65%***	**1 035 644**	***64%***
Total Grande Terre	**1 632 700**		**1 632 700**	

(source: ADRAF 1998)

IV. THE CUSTOMARY CADASTRE DEBATE

The sample of interviewed persons is strongly biased toward land policy actors at the province and territory level: political parties representatives, member of the congress, territory government, fiscal administration, customary councils and senate, ADRAF staff, researchers.

What we have thus is an overview of the positions of these different actors as regards land policy and especially the issue of a customary cadastre. Past and existing experiences in this field were also discussed and gives background information and keys to current discourses.

Two preliminary remarks here:

1. The debate was strongly polarised around the cadastre issue and did not consider the question of use and administration rights that can superimpose on the same plot of land. This can result from a methodological bias (interviews with policy-makers and not land users) or from the dual conception of land highlighted by anthropologists that tends to separate the political and identity dimension of land tenure from its productive uses.
2. The debate is underlain by the very idea (or ideology) of cadastre. In the interviews, we have repeatedly talked of limits, boundaries, and markers, without any questioning of this geometric conception of space as a homogenous and bounded one. Let us note however that pre-colonial territorialising processes of power and kinship have also produced boundaries (although their nature was modified by the colonisation).

1. Heterogeneity, inconsistencies, common points

The term of customary cadastre – even in the form 'cadastre of customary lands' – is ambiguous, perhaps contradictory and its polysemic nature was already highlighted during the 2001 seminar on land and development[6]. The classical definition of a cadastre (Simpson 1976: xxxvii) can be used as a sort of marker here:

"A public register of the quantity, value, and ownership of the land of a country compiled for the purpose of taxation".

As we will see, although the geometric and proprietary nature of the cadastre has often remained unquestioned as if it was taken for granted, the constitutive link to taxation and economic value was absent of the debate (or shifted toward rent and proprietary issues).

Discourses about customary cadastre have revealed highly heterogeneous and contradictory, often fraught with internal inconsistencies. Moreover, a systematic elaboration was lacking. This means that opinions were often expressed with regard to a specific issue or objective, without any attempt to explore and analyse the consequences arising from them. It is also difficult to attribute a viewpoint to a specific actor or group. We don't have the PALIKA or UC or RPCR or customary senate model or perspective on the topic. This has already been observed at the local level regarding land policy options of the pro-independence political movements (Naepels 1998: 295).

[6] "La notion de cadastre est parfois perçue avec des finalités différentes: fiscalité, identification stricte des parcelles dans l'objectif d'un projet économique, délimitation de zones d'influence des chefferies…" (2001: 156).

The clan as relevant unit of rights and territories recognition

One common point regards the relevant unit or level of land rights recognition and mapping: for many informants, it is the clan and not the tribe or the household. The tribe is suspected to have lost its pre-colonial "purity" or to be a colonial product, although it has been the basis for early land claims (reserve extension policy) in the 1950s and a model of Kanak socialism in the 1970s. Clan definition and membership seem taken for granted (although clan organisation and land tenure was the subject of legal texts, 10/12/1981 and 15/05/1980). This has methodological implications:

1. It assumes the historical stability of the clans making possible to take directly into account the pre-colonial referent. This position is not devoid of strategic views: it bypasses the troubles of 1860-1870, and thus the elements of discontinuity in the history clans, such as changing political alliances and disruptions in the clans' geography.
2. It "forgets" the diversity of clans, especially in demographic terms, whereas the issue is manipulated within the firstcomers/latecomers debate (*accueillants*/*accueillis*) (The former can for instance stress the historical precedence to compensate their demographic inferiority.)

Back to the past or looking to the future?

The customary logic is strongly influenced by the past, the knowledge of it and the ways of performing it. There is no surprise to observe that history is a focal point for discourses on a customary cadastre. The main issue is about to which date one must go back; the most frequent answer is the 24th September 1853 (less frequent: 1878 and Ataï's revolt). As already said, this choice avoids taking account of the changes, troubles and displacements that have accompanied the colonial conquest during more than two decades.

One can see there a concern for social peace. It has also an impact on the very conception of land tenure and land relations, by occulting the central place of mobility in the pre-colonial history of land, settlement and politics. It contributes to the static and proprietarist bias observed in the current discourses on customary land tenure.

An alternative way of dealing with history is to evacuate it from the cadastre debate. This viewpoint is associated with a strong scepticism as regards the very possibility to discover the real position of all clans at the time of the conquest.

Another way of dealing with the present is to use GDPL attributions as a starting core for implementing a cadastre of the customary lands. Actually, ADRAF when dealing with land claims combines several temporal points of reference, from the long history of clan mobility to the strength of recent political claims, and the current spatial and political positioning of the claimants.

2. Underlying logic

Beyond contradictions and inconsistencies, the analyse of the collected fragments of discourses on land and customary policy highlights nevertheless contrasting options or underlying logic event thought they can merge into actors' opinion and often remain implicit and non-systematic. One must take care of not confusing here objectives and opinions as expressed by

informants, categories reconstructed by the external outsider and the use of these arguments as discursive resources in the political arena.

Identity politics

The customary cadastre is seen as a tool for reasserting an identity- mainly a Kanak identity -, for putting "the law of the land" (*le droit de l'endroit*) on the centre of the debate (see Monnerie 2003, Pipite 2003). The link to land (or earth) as constitutive of an identity is strongly expressed by the Kanak[7]. Moreover, it has been incorporated into the Nouméa agreement that states (first line of the point 1.4): "The identity of each Kanak is first of all defined in reference to land".

This identity logic emphasises historical markers, such as toponyms, clans' names and genealogies, as intrinsically partaking in the customary cadastre and founding (or rather proving) the legitimacy of claims over land. At the same time, discourses tend to downplay the crucial element of the pre-colonial mobility in reconstructing the past.

The identity politics argument is also used to discredit its supporters: land rights and cadastre must be secured for the sake of economic development and public interest, it is not a matter of politics…

Land tenure stabilisation

The focus is here on land tenure itself and especially on the open-ended nature of land claims that can continuously re-emerge in the current context: "a file is never closed". The cadastre is conceived of a tool for stabilising recognised land rights and stopping, reducing or canalising land claims (or domesticating them: for instance by recognising and neutralising bounded historical or ritual sites). Behind (or beyond) this objective, we can discern a concern for social peace or possible "reconciliation".

These objectives underlie different options as far as the concrete form of the cadastre is concerned (integral customary cadastre or customary land cadastre).

The objective of land tenure stabilisation is often fed by strongly entrenched stereotypes, such as the one of the (invented) indigenous collective ownership and of its intrinsic inability to adapt to modern economy. (We are back to the crude versions of modernisation theory of the 1950s-1960s…).

In all cases, the accent is put on ownership, be it clan, tribal or collective, without trying to make difference within the bundle of administration and use rights.

Economic logic

This discourse insists on the need to secure investments or rather investors bringing important development projects (shrimp farm, mining activity, cattle breeding, coffee plantation, etc.).

The term "economic logic" is preferred to "productive logic" as I did not get discourses around the securing of rural producers or advocating for Kanak farmers. The decline of Kanak

[7] However, the issue should not be restricted to Melanesian identities and extended to other News Caledonian communities (what is the Caldoche conception of the link to the land?), as V. Strang (2004) does for White settlers in Australia and A. Abramson (2000) proposes it for the Indian Fijian community.

horticulture and the failure of coffee production are absent (Djama 1999) and we are back here to anthropological analysis stressing the secondary position of land productive uses in customary justifying and legitimising discourses (Bensa 1992).

Rent-seeking logic

There is no normative connotation in the use of this expression to qualify discourses and options about customary land policy. The expression characterises strategies of income tapping without productive contribution thanks to monopoly or power positions.

The argument of the rent is of course used as far as the mining issue is concerned, in form of compensations and royalties claims (see Horowitz 2002). It combines with the political and identity register as a re-appropriation of mineral resources. Interestingly it involves too new external discourses, actors (brokers, experts) and arenas for negotiating rights and rents.

As regards land, the rent-seeking argument is embedded in the firstcomers/latecomers distinction (*accueillants*/*accueillis*) and rephrased according to a proprietary conception. The firstcomers become landowners and the latecomers land users who should pay a land rent. One important issue regards the modalities of rent distribution (land rent or mining rent) in terms of accountability, legitimacy and level of decision-making. The debate is basically about the public/private boundaries and the opposition between rent and taxation.

3. Emerging models of customary cadastre

The various arguments collected in the interviews are sometimes combined and often remain implicit. We can nevertheless identify several models of customary cadastre. The objective of this section is to present them and to analyse their possible implications if they were to be implemented. (Informants have generally avoided or neglected developing the implications of the opinions they have expressed.)

Four patterns can be constructed from the interviews:

(1) Cadastre "on demand"

It is a non-systematic operation aiming to survey a specific territory to respond specific objectives, generally revolving around an economic project.

(2) Customary land cadastre

This model is the closest to the letter of the Nouméa agreement. It is restricted to the customary domain. Beyond this, the concrete modalities of the operation remain unspecified. For instance, the level or unit of land rights registration and recognition can be homogenous (the clan for instance), or differentiated according to local contexts and social demand.

Integral customary cadastre

Some informants propose to extend the customary cadastre to the whole territory, and thus beyond the boundaries of the current customary domain. They diverge on the type of final product, more precisely on the nature of the validation the document would receive: would it be a legal tool or only a historical document?

(3) Historical customary cadastre

From a historical perspective, the questions of the unit and level of recognition is not relevant: it is not a matter of political choice but of historical evidence. What could be contested is the date of reference: the French conquest (1853), Ataï's revolt (1878), or even Cook's arrival 1774)?

A true historical approach implies a debate around tribal boundaries and political boundaries shaped during the colonial era, which could be a tricky enterprise.

Regarding validation, two options are to be explored: a pure historical validation according scientific criteria of good research (disagreements on interpretations and missing data are acceptable), an intrinsic customary validation requiring the solving of disagreements. It raises the question of the legitimacy of customary authorities and procedures (*procès-verbal de palabre*?).

(4) Legal customary cadastre

This option is the one that departs the most radically from the Nouméa agreement. Its conflictive potential is great too (although the argument of social peace is used by tenants of this option). Interestingly, it raises the question of the bundle of right held by different actors on the same area.

Different options are possible: (1) the limited recognition of ritual places and "easements" without opening debates on the European private ownership; (2) the conversion of European private ownerships into leasing contracts.

The following table summarises the logical relations between the different options identified so far.

Mode of rights recognition / *Area*	**History**	**Current situation**
New Caledonia	Option 3, 4 ▲	*1* ▼
Customary land	*2* ▲	Option 2
Area defined for a specific project	*3* ◄►	Option 1

▷ A customary cadastre of the whole territory that would consider the current situation cannot not take account of the public estate and of privately owned land, and thus falls back to the option 1 (*arrow 1*)

- ▷ A cadastre of customary lands based on historical data must not forgive that mobility has pervaded the whole territory, not only the present customary land. One must add this is not a logical contradiction, rather a political one (*arrow 2*).
- ▷ A negotiation around a specific development action will probably launch claims anchored in the past and one will have to arbitrate between past and present (*arrow 3*).

V. CONCLUSION: BACK TO RESEARCH HYPOTHESIS

The exercise carried out in the latter section is interesting in that it allows grasping the underlying logic of actors' discourses on the customary cadastre. It has a prospective dimension too. The shortcomings are clear too. The analyse of discourses must be related to the political practices of the actors interviewed as well as to local levels of negotiations around access to and control over land.

A few elements emerging from this study are nevertheless worth noting. They could feed further research as well as public policy debates.

The customary cadastre against the customary logic?

The objective of producing legal documentation based on a historical argument tends to reify history if history is conceived as the unique point of reference. The objective is to find the right version of the facts: who are where and when?

Customary uses of the past are different. Genealogies (in the customary sense) are occasions to perform and actualise social positions and hierarchies. They cannot be anchored in a unique historical frame of reference as they express current relations in the legitimising language of history. Conflict solving processes also imply flexible uses of the past as well as legitimate customary authorities. The logic of the cadastre is centred on an "objective" documentation and tends to ignore the mutually constitutive link between rights and authorities. "The process of recognition of property rights by a politico-legal institution simultaneously constitutes a process of recognition of the legitimacy of this institution" (Lund 2002: 14)..

Neo-customary institutional apparatus and nation building

The last point leads us to the question of the neo-customary apparatus progressively constructed over 150 years. The articulation between the different levels of customary institutions (chieftaincy, customary councils, senate) and with non customary institutions (communal and provincial authorities, ADRAF) must be analysed (and perhaps clarified).

Furthermore, the policy of strengthening customary institutions in a process theoretically leading to independence raises question about the link between custom and nation-building, the "politics of kastom" studied in other Pacific countries (Keesing & Tonkinson 1982, Foster 1995).

The question of the rents is related to the issue of independence, nation building and control over resources. The rent-seeking argument pervades many discourses about land rights, autochthony, historical mobility of the clans and tribes, mining resources, economic develop-

ment, and it conflicts with the notion of taxation, which can be seen as constitutive of state construction. The rent-seeking argument is also probably linked to the strong fragmentation of the geographical, social and political landscape in New Caledonia. It raises questions of resources redistribution, decision-making processes, political legitimacy of customary and non-customary authorities, and the definition of public spheres and public affairs.

Mythical lands and jural lands

We have already noticed different forms of dualism regarding land: customary land versus non-customary (private/public) land, land as identity factor versus land as productive medium. We have also highlighted different orientations regarding time, emphasising either the past or the present, sometimes the future.

Abramson's distinction between mythical lands and jural lands might be useful here to analyse the customary land policy in New Caledonia. Mythical land relations are characterised by a close connection between land, people and their combined past, they imply relations of identity and belonging (intergenerational continuity) and must be ritually reproduced. They are defined by sacred centres and diffuse or absent boundaries. Jural lands are founded in a split between the owner and the owned, the transferability of land rights and clear-cut legal boundaries. Discussing the complex relations between mythical and jural land, Abramson distinguishes four sorts of articulation (Abramson 2000a: 17): "(1) the jural dominance over mythical lands; (2) the mythical embeddedness of legal boundaries; (3) the dominion of mythical systems over jural realms; and (4) the mythical embeddedness of jural practices".

In the case of Fiji, a customary cadastre was achieved under the British rule on the basis of the identification – actually rather invention or re-creation – of traditional land and social units (*mataqali*) with clear-cut legal boundaries. However, "ritualised relations with the embodied ancestors, rather than relations with the disembodied bureaucracy, continue to this day to dominate and frame local understandings of land distribution and ownership" (id.). This approach is interesting in that it incorporate into a common framework devoid of dualistic and culturalist connotations, land conceptualisations crafted in the course of specific historical trajectories and colonial and post-colonial policies and contexts.

The debate around the customary cadastre in New Caledonia is organised along this dialectic of mythical and jural land, of history and law, of past and present. The integral customary cadastre claims the dominance of mythical land over western legal concepts while restricted codification in relation to specific economic projects abolishes or domesticates the reference to history. Between these extreme versions, working on genealogies, toponymy, clans' names and mobility history can result in different policy options.

Finally, the link to land inscribed in the organic law as constitutive of the Kanak identity gives rooms for plural interpretations and implications. Anyway, custom is here to stay as a central operator of governmentality, of the government over time, persons and resources (Le Meur 2005).

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