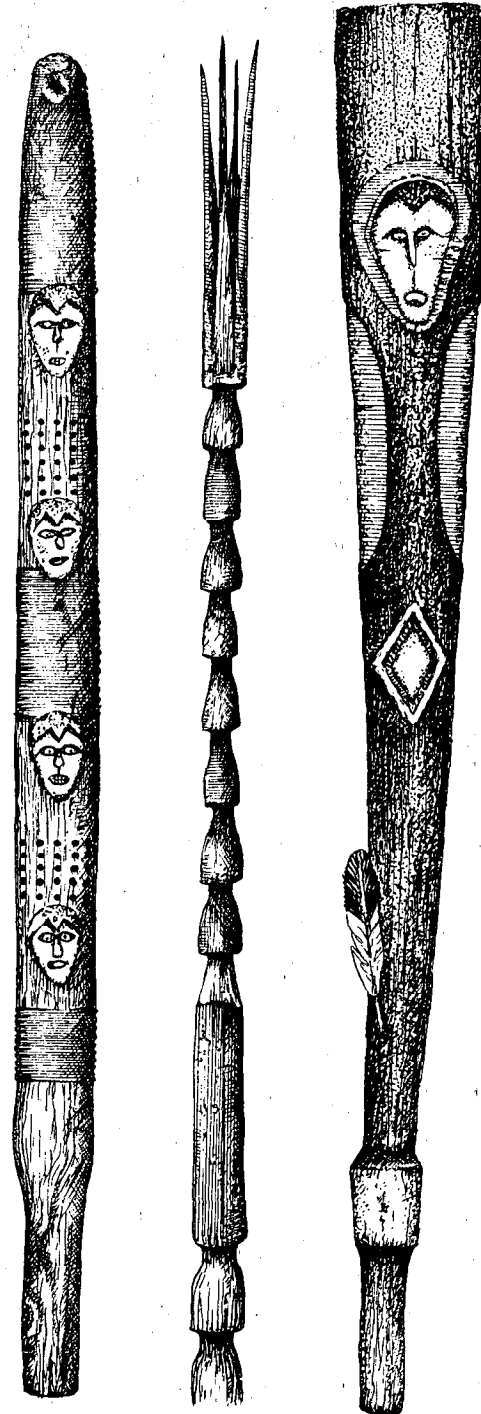


CONCLUDING REMARKS



Dance staves

Lines in the Water: Sea Tenure as "Custom Today" in Western Oceania

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Introduction

I work with Cultural Survival, a support center for indigenous peoples, with offices in the U.S. in Cambridge, Massachusetts. We are a non-profit, membership organization, founded in 1970. Our primary goal is to help indigenous peoples gain control over decisions affecting their resources, lives, and future. To this end, we carry out projects to support communities own self-development efforts and we have a complementary program of case studies, research, and publications. Our activities include a wide range of advocacy work on behalf of indigenous organizations, like some of the groups represented here, as well as assisting local communities in the quest to secure territorial rights and social justice, in legal and environmental defense, in economic development and acquisition of new technologies, and in solving resource management problems.

It's a privilege to be invited to address this gathering and offer some parting thoughts, meant to be shared more as "food for thought" than a summation of the findings of your many excellent papers. As I am a relative stranger to these kinds of proceedings in Australia, there was in fact no way to do justice to the diverse cross-section of papers and issues raised here. I would like to have incorporated more of your comments.

I have to say that I am deeply moved by the statements of indigenous leaders from Torres Strait and Papua New Guinea. I share their sense of frustration in trying to get conference speakers to more directly engage their social and environmental concerns, and provide answers they can take home. I hope to make my discussion more meaningful to Islanders by returning to the questions they themselves and various

papers have raised concerning the relationship of the sea to culture identity. This fundamental theme is found throughout the Torres Straits and in the surrounding region as well. I hope to also show how it has critical implications for devising future sustainable development plans.

Let me preface my discussion with a word about the conference agenda. Along with ecological concerns, the organizers, whether intentionally or inadvertently, have pushed a range of ethical and indigenous rights concerns to the forefront of what is ostensibly an environmental monitoring, baseline study, project. Judging from the program outline, they are not only hitching their plow to a more ecologically sane version of development but to a more socially aware and enlightened management program that would involve local people as more genuine partners. This is a very ambitious plan. It sounds fine on paper. It raises the stakes. But can the planners deliver? How far are they prepared to go?

I sense here a welcome inclination to try harder to accommodate the perspectives and needs of the traditional inhabitants of Torres Strait and their Papua New Guinea neighbors. Otherwise this might have been billed as another "technical workshop." The worthy aim of making it more comprehensive and opening it up, directly or indirectly, to the concerns of indigenous communities, paints some of the larger picture of the inter-connectedness of the region's peoples, landscapes, seascapes, and governments. Because both development and the processes of nature display a notorious disregard for geopolitical boundaries, both management authorities and indigenous peoples for once find themselves in the same boat: what good is creating protected zones or promoting local rights and self-reliance, if your neighbors are uncontrollably polluting, or overfishing?

Torres Strait has the "transboundary blues." The nature of marine management problems which have arisen in Torres Straits are relatively unique in that they involve issues of both sustainable development and social justice and equity among indigenous inhabitants of a maritime frontier. This is an elusive combination. There is the immediate task of figuring out how to proceed with the baseline study. At the same time there are the long-range, far more cumbersome socio-political issues and legalities of integrating Papuans and Islanders in a shared marine management framework which they can mutually uphold as legitimate and which works in their best interests.

These conditions present many difficulties in setting up an unambiguous agenda. Obviously some items are complementary and overlap, yet they tend to gallop off in different directions. Quite admirably, the organizers, have tried to address these incongruities and bring the human and physical environmental sides closer together. The danger I see is that you wind up "sort of" addressing the indigenous rights and welfare angle and sort of dealing with the environmental management end of the business, without fully doing justice to either. Finally, an even more encompassing, far-reaching agenda seems to be emerging: how to coordinate work on a broad multicultural and environmental front, dealing with everything from shipping, oil spill contingencies, marine mammal protection, food standards, to human migration, to figuring out how to link major conservation initiatives around the whole Torres Strait region.

So, where are we? I think in search of a common ground, some new, unifying conceptual framework, perhaps eventually tagged to a political program to help coordinate work on transboundary problems. This is a very tall order. No one seems to know quite how to proceed, though the potential exists for governments and environmental groups to develop a much better working relationship with indigenous peoples on issues of shared resource management. The extensive, time-series environmental monitoring that the baseline plan may require is a window of opportunity for cooperation, as is planning sustainable development.

There are some impediments in the search for more participatory, co-management approaches to resource management, but two especially stand out: at this stage consultative mechanisms to vitally involve local communities in the multiple levels and phases of resource management are practically non-existent. Moreover, there are few NGOs, grassroots or voluntary organizations to facilitate empowerment in this area, compared to the scope of activities elsewhere in the Tropics. Secondly, very few mechanisms exist to link indigenous management practices with official policies and scientific strategies.

Let me briefly run through some crucial aspects of property formation in the sea which have not been introduced in our discussions. Why bring up property rights in the sea? Aren't fishery and coastal zone management measures, and international treaties and the Law of the Sea conventions enough? It is often difficult to visualize how populations interact with their environments, but technology and economics aren't the only means. What mediates these systems are different kinds of property institutions that determine the values people assign to resources, along with actual physical access to resource zones including laws and regulations governing ownership and use rights. So I want to focus for a moment on the class of property variables which intervene between the physical environment and culture systems in question here. It is important to bear in mind that states have the option to manipulate property institutions to some extent for purposes of environmental management or to simultaneously improve the welfare of indigenous peoples. Or, I might add, to further marginalize rural communities through ill-conceived conservation programs.

The significance of customary territorial rights and arrangements for managing coastal seas was foreshadowed in Judith Fitzpatrick's and Jeremy Beckett's presentations yesterday which explored the relationship of culture and the sea among Eastern and Western Islanders. Marine property customary laws, use rights, etc. applied to the inshore sea are seldom part of the sustainable development discourse. In this connection, and in contrast with our extensive knowledge of tenure in land economies, the rights and ownership customs of maritime peoples have not been widely documented until recently.

I'm inclined to join the ranks of some fishery economists who argue that the lack of well-defined property rights in the sea, can contribute to its degradation and vulnerability to pollution and a host of other development excesses. Although, "tragedy of the commons" arguments about the perils of leaving valuable resources propertyless are open to numerous criticisms, there may be a lesson for us here. Open access is supposedly a reckless, dangerous state for a renewable resource, in that it gives individuals the incentive to shirk responsibility to the wider community and the environment. It presumes people act out of narrow self interest and have no reason to

conserve resources. The image of coastal seas as ownerless and in principle free access coupled with the view that sea life and resources are inexhaustible is truly a recipe for ecological disaster. On the other hand, instituting property rights which limit access, thereby internalizing the costs of over exploitation, should act as an incentive for conservation. Or so the argument goes.

Unfortunately, arguments to remove the destructive condition of open access by instituting property rights tell us very little about management choices in the Monday morning world if some classes of property systems might work better than others for certain management purposes. I am less pessimistic than some about our ability to develop effective property arrangements to strengthen marine resource management. I think exclusive home reef tenure systems in the Pacific have many strengths to recommend them. I also think, under certain conditions, Western economic models, so-called limited entry systems, protected area and biological reserve concepts have much to recommend them. The point is, they don't have to be mutually exclusive. Some hybridization might be possible. I will come back to this idea.

Exactly what is traditional marine tenure or sea tenure? Let me locate this question within the discourse about the meaning of "tradition" now taking place in Pacific societies.

Newcomers to Melanesia and Pacific studies in general are bound to hear and read a lot about, the Melanesian way, "custom ways," "kastom", or "island custom." In Pacific studies this is a household word almost as popular as "sustainable development" is among politicians. Islanders all around the Pacific are reported to invoke ancestral ways as political symbols to distance themselves from the colonial experience and reaffirm their unique identities. In doing so, sometimes they resort to the mythical past to reaffirm their relationship to territory. When Torres Strait islanders (or Solomon Islanders) speak about "home islands" and "homereefs" this can be taken to represent another variation on the pan-Pacific theme of "custom today." What is significant about this is the elevation of ancestral seas, not just land, to symbolize unity with group territory. To my knowledge, this aspect of reconstructing the past has seldom been discussed as a strategy to carve out new cultural identities in the present.

Yesterday Bob Johannes noted it is unlikely that the extent of group identification with inshore waters and associated ownership customs was considered in any detail when the TSPZ (Torres Strait Protected Zone), the Australia-PNG Sea Boundary Treaty, DOGIT (deed of grant in trust) legislation, and fisheries regulations were drawn up for Torres Strait. Yet these underlying customs could have a critical bearing on future marine management proposals. I don't think there is any question that notions of home islands, reefs, and seas, represent historically authentic connections of communities with their marine environments. What is very difficult to convey is that Islanders compacts with the sea are qualitatively different, something like a quantum jump removed from Western common property conventions and laws presently governing coastal waters, including those in Australia.

The kind of overriding sense of belonging to the environment is something Australians might associate more with Aboriginal mythology and land use than Islanders custom. However, there is strong evidence that a similar bonding occurs in maritime settings among Torres Strait Islanders and that this is a pattern perhaps many coastal groups in PNG share as well. Whether or not this union can be traced to origin myths,

supported by lengthy unbroken residence in a homelands place, or whether it expresses some new found "custom today" political ideology is not the issue. The point is this domain of custom retains the power to influence a wide range of cultural behavior in relation to the use of marine resources from who controls access to subsistence fisheries, to home reef fishing effort, catch sharing, to rituals of fishing and marine hunting, to food preferences, to sacred seaspace associated with burial rituals and the supernatural. Without exaggeration, we could say the sea connection is pretty basic to cultural survival.

Most folks have heard about the Law of the Sea Convention. But what about the "other law of the sea" that makes home reef economies endure in places like Torres Strait? Property domains, partitioned like land, in the sea? That sounds peculiar maybe something fishy. I remember in the late '60's when I started to do research on small boatfishing. I had a friend who went to work in the Santa Cruz Islands in the Solomons. I said: when you're out there, how 'bout checking out the question of property rights in fishing. (I'd come across some strange reports on this topic from Melanesia). Six months later I got a card saying, "so help me, I haven't turned up anything interesting for you on fishing rights. It's just like everywhere else: common property." Then a few weeks later a card came: "funny thing, a guy took me fishing the other day and we went around to all these octopus holes which he claims belong to him."

Time does not permit me to review the wealth of material on this topic for Torres Strait. Suffice it to say that sea tenure finds perhaps its greatest elaboration and most durable expression in Melanesia where "custom owners" still exert control over large stretches of rural land and sea territory.

Sea tenure is closely bound up with kinship, sharing, traditional law and authority, and other structures which shape cultural identity, so it encompasses far more than Western bioeconomic usages of fisheries or fishing "rights." Sea tenure is documented by named story places, as the underwater narrative of "Aukum's trip to Maza" recounted by Judith Fitzpatrick aptly illustrates. Sea tenure systems often designate portions of land and associated underwater features as off-limits, like Turn-Again Island, a place of awesome power, is for people of Maubiag. Finally, it is important to stress local sea tenure is not just an ancestral realm but part of living culture and peoples lives today. It is a knowledge system, enmeshed in social relations, constantly being updated and adapting to changing conditions.

I would like to try now to shed some further light on the significance of traditional sea tenure by considering what its relationship might be to sustainable development, and to relay some of my concerns about what the uncritical acceptance of sustainable development policies could mean for indigenous peoples.

In an article on the sustainable development crusade, a recent issue of *The Economist* notes: "never have so many politicians seized so quickly on one idea." To be against sustainable development is like being against "mom and applepie." (or mums, meat pies, and sausage rolls) or trees and clean air. And this is partly why groups from such opposite ends of the political spectrum as oil companies and "deep ecologists" are willing to jump on the bandwagon together in the name of sustainable development. I'm as pro-biosphere as anyone else. And in calling attention to what is sometimes a non-critical acceptance of this attractive concept, I'm not debunking environmental

concerns. Yet can we look to the sustainable developers to give us a program of social change? To help eliminate poverty? To enhance social justice, and promote cultural as well as biological diversity? From the indigenous perspective, I think these are legitimate questions.

Among the five criteria for sustainable development outlined in the opening address by the Chairman of the Great Barrier Reef Marine Park Authority, I would emphasize the third one on the list: social equity. Sustainable development fits very neatly with today's prevailing utilitarian ethic; sometimes it would seem to imply little more than simply learning how to manage natural resources more efficiently and cost-effectively. But this tells us very little about paramount questions of distribution who gets what? Who profits? From this consideration, perhaps a sixth principle akin to Australia's brand of multiculturalism could be derived: preserving cultural diversity, especially the ethnic identity and integrity of indigenous peoples.

Sooner or later, environmentally-sound development in Torres Strait and PNG, places still largely inhabited by indigenous groups, comes down to three important principles: firstly, biodiversity support programs cannot overlook local customs, economic needs and aspirations. Secondly, conservation programs cannot afford to ignore the property claims and institutions of local residents. Thirdly, there is mounting evidence that what local residents need foremost to sustainably manage their territories be they on land or sea is security of tenure. Recognition of community based and communal sea rights where tenure holders are encouraged to work out their own management practices is one way to ensure relatively equitable rights of access to marine resources at the local level. This approach will not work for all situations, but there are definitely precedents for it in the customary sea tenure systems of island Melanesia. My view is that sustainable development policy for Torres Strait waters cannot fail at least to consider whether patterns of indigenous sea tenure might work to help stabilize home reef economies, perhaps serving as a model for extended fisheries management, and protected area design as well. Whatever the form sustainable development takes for Torres Strait, the point is, it should not be something handed down. Islanders can and should formulate their own strategies, in their own voices and meanings.

Conclusion

Patterns of old lines and zones in the sea in Torres Strait, not just straight ones but wavy ones, too, may be tangled and blurred (and are still mostly transparent to outsiders). In fact, all the different kinds of imposed boundaries on maps I've seen makes the place look like spaghetti. But in some places, pockets or vestiges of what were perhaps long ago full-blown customary tenure systems persist. So what? Well, we might ask what would have already happened to fragile reef-associated habitats and valuable fisheries if territorial systems like this were not operating in places like the Solomons, Vanuatu, PNG, and Torres Straits. If sea tenure didn't exist it would probably have to be invented. In fact it is being reinvented as "custom" today in parts of Oceania, and in the form of "limited entry" restrictions in fisheries worldwide. I've presented the somewhat special case for community custody and territorial regulation of home reef economies, like those now developing in Torres Strait and PNG. I've emphasized the drawbacks of pursuing free access policies for managing tropical inshore waters, to which indigenous groups lay claim, formally or informally. I've

suggested the concept of sea tenure may have some bearing on untangling complex issues of transboundary responsibility for the environment in Torres Strait. Where does this perspective lead.

Let me turn to some final reflections on the meeting in terms of the home reef tenure perspective I've been developing with a short selection of questions and answers where I ask the questions and give the answers.

1. First, where does this leave Islanders in terms of the status of their sea rights? We have heard impressions and that's what I think they are basically anecdotes that customary sea tenure is in a kind of limbo or residual state in Torres Strait, that traditional boundaries have broken down (groups in Western Province, PNG, also supposedly fall in the "lapsed boundary" category). I'm very wary about over-generalizing and oversimplifying about this. I think it should be left to the groups in question to consider what future uses might be made of sea tenure. But as pressures increase on resources, and they inevitably will even on home reefs, I think Islanders are going to need more security of tenure, perhaps some kind of formally recognized exclusive control over their home reef systems. I feel it is absolutely critical for management not to do anything to undermine or interfere with longstanding home island/home seas customs. I think management should figure out ways to work around these systems, possibly using them as a foundation for more extended marine protection. Let's not be too disappointed about whether these systems were explicitly designed to enhance conservation. In some ways, making sea tenure practices run modern "management" tests is taking them out of context. Why not, instead, honor them in the arena where they belong in terms of our fundamental obligations to treat indigenous rights and aspirations for self-management with respect.

2. Second, where does this analysis leave management in with regard to its agendas, especially in terms of advancing the baseline study? In terms of implementing new, socially responsive programs, management's tasks and responsibilities are becoming increasingly complicated and I can only touch on a few ideas. Could Islander and Papuan customary sea tenure be strengthened or revived (if indeed it does turn out to be broken down) to enhance self-development and help control the kinds of management problems that exist today?

This question has been posed before and I'm not really prepared to go farther than raise it again here, perhaps as a proposal for a future study. In the meantime, it might be something worthwhile to bring up and get a reading on through the councils. There are now a number of anthropologists, biologists, geographers, and others who have expertise in this area who would be willing to help. From my experience with small-scale fishing elsewhere in the tropics, the worse-case scenario is trying to design management programs which are costly and impossible to enforce, where there are no indigenous claims, and no local commitment to sea territory. From a cross-cultural standpoint, this is why I feel Australia and other governments in the region could begin to entertain the idea that the customary systems within their borders are management assets in the long-term, not liabilities. To be sure, the disposition of property rights in the sea, concentrated in traditional enclaves like Torres Strait, and surrounded by all-citizen fisheries and inimical common property conditions presents state management with a major dilemma. You can ignore local sea rights issues, but they tend not to go away.

On the other hand, we know what a common fallacy it is to regard the sea as a safe dumping ground. The nature of the marine environment a liquid medium, where it is often hard to observe what goes on is in a sense conducive to environmental irresponsibility and lack of accountability. Which is maybe why managing marine resources requires extra precautions. Yet what if it were common knowledge and accepted that the sea, like the land and islands on the PNG coast and in Torres Strait was blanketed with customary property rights which had the force of law? Would governments and companies think twice about the transboundary repercussions of development projects? Maybe; maybe not. But it's a proposition to keep in mind in seeking strategies to improve marine conservation.

Just as Islanders may have to reappraise their custom of granting requests for visitors who want to fish on their homereefs, Australia may have to take another look at its declared policy of free access in its coastal seas. Like island custom, national fisheries statutes, founded in another time on notions of resource abundance and the idea that anyone should be able to have a "fair go," making a living from the sea, may be luxuries neither Islanders nor the country can afford in light of global expansion of maritime and adjacent land economies.

3. Third, do we have a take home message for Islanders or anyone else as to how to interpret the threats to people and the environment in Torres Straits and coastal PNG from mining in the PNG highlands? What the situation with the Ok Tedi mine has done is destroy the illusion of our separateness and make us contemplate the scale of regional interaction and development impacts. Perhaps like others here, I am struck by disquieting indications of environmental disruption caused by mining in PNG. However, I do not detect a consensus among the scientists in our midst of an environmental crisis of massive proportions building from Ok Tedi alone. Apparently, the numbers are still not in on Ok Tedi. Rather than alleviate my anxiety, though, this inconclusiveness is ominous. Also, it is not this project alone but the desperate overall "can't live with it, can't live without it" development dilemma that Ok Tedi has come to symbolize for PNG, that is most unsettling.

4. Finally, continuing the sea tenure as custom today theme of my talk, for the indigenous leaders here, I would like to close with a maritime metaphor: I say get your lines in the water if they are not there already; old ones and new ones. In terms of international conservation initiatives, conditions have never been more favorable than they are now for recognizing sea tenure principles as a basis for managing home reefs and future seafood economies. The alternative, as an Islander recently put it an edition of *Torres News*, is becoming strangers on your own shores and reefs, sharecroppers on someone else's fishing boats.

I suggest the baseline study organizers take a hard look at the terms of reference for sustainable development as this is being defined. Sometimes the concept seems a bit unwieldy and a far cry from the spirit in which indigenous peoples relate to and "manage" the natural world. Perhaps what is indicated is a little less of the Western management mentality, a different attitude towards the Earth, and a more compassionate understanding of the problems of indigenous peoples who are the traditional owners and residents of some of the world's most threatened habitats.