

## Overlapping Claims and Private Property: Introduction

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**O**ne day of the conference was devoted to presentations and discussion about the role of law in organizing the exploitation and management of natural resources, particularly land, water, and forests. Conference participants focused on instances of apparent mismanagement: good farmland left unplanted or converted from subsistence agriculture to uses benefiting the already rich; rivers polluted by deforestation and agricultural chemicals; and forests destroyed or replanted in eucalyptus. We discussed the human suffering that resulted from such mismanagement: conflict escalated in rural communities, small farmers lost their lands, and forest dwellers, including tribal minorities, were evicted from their homes and forced to give up cultural traditions. We explored the role of state laws and legal institutions in creating, ameliorating, and possibly solving the environmental and social problems associated with capitalist economic development and nation-state centralization.

Just as many (but not all) traditional Southeast Asian polities were organized around the concept of divine kingship, rather than that of the secular nation-state, so, too, rights to use land or natural resources were often derived by fulfilling obligations to a ruler, patron, or leader of a kin group, rather than held as private property by individuals. Traditional rulers, including sacred kings, local potentates, village headmen, respected elders, and household heads, allocated resources to subjects who used them to fulfill their social obligations. Secular nation-states, in contrast, protect the privately acquired property rights of citizens—at least in theory if rarely in fact. In traditional centralized polities where religious and political influence radiated from sacred centers, a sacred king's or patron's power to allocate land-use rights correlated with the loyalty of his subjects: It was strongest near the center and dissipated at the edges, where populations thinned

and peoples' loyalties shifted. Secular nation-states, in contrast, claim to provide equal protection of private property rights throughout their legally demarcated territories.

And just as efforts to create unified, bounded nation-states from overlapping sacred kingdoms and autonomous tribal groups led to the recognition of cultural and religious pluralism within state borders, so, too, state efforts to impose and protect private property led to the recognition of alternative forms of communal land tenure. But the recognition of plural and overlapping tenures usually elicited a different reaction from state builders than did the recognition of religious plurality. Secular nation-states tend to treat religion as a private matter (even if individual believers do not). As a result, liberal ideology offers the possibility of creating a secular state in which each person can enjoy the right to practice his or her religion. But the founders of Western liberal states did not treat property holding as a private matter subject to personal or group preference. Bourgeois rulers, particularly during the 19th century, deliberately tried to abolish remaining forms of "feudal" tenure, which they regarded as impediments to economic progress. In overseas colonizing ventures, bourgeois imperialists tended to define individual rights in property as a basic human trait, casting those who did not recognize such rights as less than human. During the discussion period, for example, Suvit Rungvisai observed that Southeast Asian rulers in the 19th century, faced with the prospect of being called savages by colonizing Europeans, had to create at least the illusion of private property if they hoped to escape invasion and domination.

In postcolonial times, Western-trained economists and development experts have continued to advise the governments of developing nations to abolish forms of communal or group rights in land. Advisers who would never think of telling Southeast Asian governments to require a single religion seem to think nothing of advising them to institute a single and uniform standard of property holding: private property. Such experts often seem to treat private property as a simple matter of ensuring that every piece of land has a single legal owner or is under the direct jurisdiction of a government agency; they often forget the controversial history of, and complex legal structures that continue to govern, property ownership in Western nations.

One confusing result of the stress on private property is that all other forms of land or property holding tend to be grouped together under the imagined opposite of private property: "commons," or communal tenure. The tendency not only obscures the differences among various ways of recognizing and enforcing people's access to land but also suggests a simple contrast between private ownership and public availability. At one point in the discussion, for example, Anan Ganjanapan had to explain

the difference between open access lands that anyone could use and the type of community ownership that he advocated, in which a community controlled access to, and use of, its fields and forests.

Despite the advice of development experts and the efforts of centralizing nation-states, various forms of group rights to use and manage natural resources coexist, uneasily, with a concept of private property. Traditional forms of land tenure prevail in many rural communities, and forms of communal tenure continue to be reinvented by displaced peoples and by advocates of alternative development schemes. The papers and discussion concerning access to, and management of, land and natural resources reveal a fluid situation in which both ideas about property and the political power to implement them are actively contested. Nevertheless, many of the papers and most of the discussions were dominated by a sense of pessimism. Participants told many stories in which government efforts to distribute land more equally, secure the property rights of rural peoples, protect forests, or improve the lives of tribal minorities had unintended consequences opposite to those desired by their advocates. Capitalist economic development and legally enforced private property rights appear to work together as powerful forces to exacerbate the gap between rich and poor. But participants were not discouraged. Several identified the causes of misunderstandings and suggested ways of empowering local groups to shape national development policies. In the article that begins this part, Franz and Keebet von Benda-Beckmann explore how people in two Indonesian communities prevent state structures from dominating local conceptions of property rights and from disrupting local mechanisms for handling property disputes.

Part III on land and the natural environment is divided into three sections. The first concerns small farmers—their adaptation to changing circumstances and the plight of those who are threatened by development schemes and land-titling projects that disrupt their communities or evict them from their lands. The second section concerns forests—the causes and consequences of deforestation, the plight of people who live in the forests, and efforts to protect both forests and their inhabitants. The third section concerns shifting cultivators who are also tribal minorities; the focus is on groups in Thailand and the Philippines as they face pressure from governments and development projects to alter their traditional ways of life.