EVOLUTION OF LAND POLICY IN FRENCH POLYNESIA

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Land was always a matter of major concern in the former French colonies. From a social perspective, it presented an immediate and obvious antagonism between the first settlers and native populations. The main difficulty faced by French colonial administrations[1] was to calm the worries of the latter about possible deprivation and at the same time to satisfy the new arrivals' expectations for land.

Moreover in the French administration of the 19th century, it was widely recognised that simple and non-formalistic legislation on land which facilitated goods and chattels circulating freely and which provided guarantees to the purchaser and the creditor, favoured the development of new colonies. Therefore all the steps necessary (even the most radical) to achieve this result were considered.

Broadly stated the islands of the Polynesian archipelagos followed this general trend but, if the theory is clear, in the ordinary run of things its application was beset with difficulties. Girault commented that if

> French Colonial policy ... was generous [it was also] untested. It originated from an a priori concept which clashed with reality at every point. Our colonial legislation seemed like the work of well-intentioned but ignorant people. The colonies were endowed with truly liberal institutions, but the policy of assimilation which was practiced indiscriminately led to ridiculous or lamentable consequences - metropolitan France still had to learn.[2]

In French Polynesia, the law on land tenure did not enjoy an evolution equal to that occurring in other areas. This was due to a number of factors. Most significant was the ancestral land tenure structure which differed dramatically from the European one. Other factors included the formal and informal commitments of the French administration to the Pomare dynasty or to the annexed population, and also to the specific geographical features of these groups of islands.

In such circumstances, the French Protectorate administration faced serious difficulties in implementing French law as the sole point of reference[3] and these difficulties remain today.

1 On the French policy on land matters in all the French colonies, see A. Girault, "Legislation coloniale", tome 2, p 353; Sirey 1907.
2 A Girault, Tome I p 243, ed 1904.
3 M Panoff, "Un demi-siècle de contorsions juridiques. Le régime foncier en Polynésie Française de 1842 a 1892" 1966; Journal of Pacific History, pp 115-128.

In 1965, a judge noted:[4]

The land ownership system in French Polynesia is still a preoccupation; despite the efforts made in all domains by the Territorial Authorities, there is no spectacular amelioration in sight.

Since this period, the situation has not improved and to some extent it has even worsened. Basically, the difficulty lies in the uncertainty about land tenure and though, in principle, the French administration has developed a land ownership system which seems stable and not open to question, the theoretical position is far from the reality.

As R Calinaud pointed out[5]

the first period of contact between Europeans and Tahitians was characterised by the tentative containment of foreign settlement through the banning of sales of land, the regulation of leases and of trade more generally, and through the prohibition of mixed marriages.

By contrast, during the Protectorate and after the Annexation, the principle of freedom of land transactions was openly applied. Gradually, Polynesia evolved toward a more "Westernised" or "European" view of property rights.

Following the European Pacific discoveries of the 18th century, the missionaries and the European traders gradually took control of all Polynesian society.[6] This generated drastic changes, mainly on demography, economy, the breakdown of ancient cultures and religions, and more recently the development of social classes.[7] As far as land rights and titles are concerned, the French substituted different legal precepts in disregard of the fundamental and traditional land tenure system. The traditional system was unfavourable to colonial economic development, so the ancestral laws or those which followed the missionary legislation forced the disappearance of the native land system.[8]

I. THE TRANSFORMATION OF THE LAND TENURE SYSTEM IN FRENCH POLYNESIA

1. Concept of land tenure in the different archipelagos of the Tahitian islands before French settlement

In order to fully understand the rules of a people who practiced subsistence gardening rather than agriculture and who were both attached to the land and inclined to migrate, it is helpful to have an historical perspective of Polynesia.

4 Sixth Judicial Conference of the South Pacific, 1965, R Bonneau, Vice-President of the High Court of Papeete concluded his paper with these words.

5 R Calinaud, paper delivered at the IX Judicial Conference of the South Pacific, Papeete 21-24 May 1991 p 121.

6 One of the first steps was the foundation of the new Pomare dynasty. C W Newbury "The Administration of French Oceania - 1842-1906". PhD Thesis - Australian National University 1956.

7 P-Y Toullelan and B Gille "Le mariage franco-tahitien, histoire de Tahiti du 18iéme à nos jours" Editions Polymages-scoop, Tahiti, 1992, pp 7-67.

8 On the disappearance of the native jurisdictions, see Y-L Sage "Tahitian Courts in Tahiti and its Dependencies 1842-1945", VUWLR V 18 n 4 p 388. R Bonneau *Les Problèmes de la tenure des terres en Polynésie Française*, Papeete 1958.

In the early days, Tahitian society was based on the clan system, with different lineages sharing out the lands under the responsibility of elders.[9] On the high islands like Tahiti, specific circumstances favoured the rise of aristocracy, and the domination of the caste known as the "Hui Arii".[10] It appears to have been a specifically local phenomenon, characterised by the concentration of economic, military and religious powers in the hands of a few senior families who established their supremacy, and who kept themselves insulated from the rest of the population through taboos and a rigid caste system.[11] The use of violence was a prevalent feature of the social organisation and one of the main ways to acquire new lands.

As far as the economy was concerned, the original agricultural system developed and evolved differently in the different archipelagos, because the climate and the shape of each of the islands is drastically different.

The first discoverers in the early 18th century noted the existence of some characteristic features of ownership, as understood in European terms.[12] They were aware, for instance, of the existence of family ownership on Raiatea, Tahaa and Bora Bora islands. It was not a true individual ownership, such as understood in the Civil Code, but it was not collective ownership either. Each piece of land was owned by one family, identified by their temple or "marae" which indicated they were firmly rooted in that place. Moreover, whatever the model prevailing on the islands, (whether it was based on the "marae" or the "clan") the overall character of ownership was the same. Proof of ownership was provided by an accurate and systematic reciting of the genealogy that established the link between the individual and the ancestor who founded the "marae."[13] Therefore, any land claim was to be made through the reciting of a genealogy proper to a "marae".[14]

The same pattern prevailed in Tahiti and Moorea, but with some traces of the former clanship organisation. By contrast, in the Tuamotu Islands and the Marquesas, the territory of each island was parcelled out among a few extensive social groups.[15]

Huahine, interestingly, represented an intermediate case where the social structure bore the imprint of both the former division into 8 "Ati" (8 clans) and the aristocratic or "Hui Arii" domination that tried to supersede it. Thus, at Huahine ownership was organised on an individual basis following the same pattern as in Raiatea, but proof of ownership was based on the membership of an "Ati" as in the Tuamotu islands. Therefore, the management duty in respect of the property was fulfilled by an elder, whether he was the head of a particular family or of the wider group of the "Ati". He was the only one entitled to allocate the habitable land to different members, and at a later stage to make the crop assignments; he was not

9 P-Y Toullelan, "Tahiti colonial - 1860-1914", Publications de la Sorbonne, 1984 pp 106-107.

10 F Ravault, "L'origine de la propriété foncière des iles de la Société: essai d'interpretation géographique", Cahiers de l'O.R.S.T.O.M.; vol IX, n 11, 1971.

11 Edmond de Bovis, "Etat de la société tahitienne à l'arrivée des européens-1855-", Publications de la Société des Etudes Océaniennes (no 4) 1978, pp 30-35.

12 At first glance only. See F Ravault, "L'origine de la propriété foncière des iles de la Société: essai d'interpretation géographique", op cit.

13 Ellis, "A la recherche de la Polynésie d'autrefois", Publication de la Société iles océanistes, 1972 vol 1.

14 Panoff op cit pp 243-244. M Mead, "Social organization of Manua", Bishop Museum, Bulletin 76, Honolulu 1930 p 121. H Adams, "Mémoires d'Arii Tamai" Publication Société d'Etudes Océanienne, Paris 1964, p 2.

15 Known as "Ngati" in the former case and "tribes" in the latter case. Marcadé, "Historique et état actuel de la propriété foncière aux Tuamotus", Rotoapa, 21 March 1913, Archives de Papeete.

empowered to dispose of the land in the sense of the Civil Code. Translated in Western legal concepts, one might say that the elder only had the "*usus*"; the "*abusus*" and the "*fructus*" fell within the exclusive control of the group. In other words, he was the manager of a tenancy in common, the actual owner being the lineage.[16]

From a legal perspective, Polynesian title was hereditary, intangible, inalienable and not subject to prescription, the only exceptions occurring in the event of war.[17]

However, the meaning of the term "own" as used in documents relating the process, remains ambiguous. Legally speaking, the context clearly suggests that the occupants of a piece of land were merely those who happened to be there but those who were exercising their ownership right - in other words those who were clearly related to a "marae" or a specific group of persons. The explanation lies in the fact that, unlike French law which ignores the origins of property,[18] the Polynesian land ownership system has its starting-point in the time sequence of the whole chain of land transfers.[19] Formerly that was, and it largely still is, the foundation or the renewing of a "marae". To become a "fatu" (owner), one must first be "opu" (parent) - one must belong to a family group made of "opu hoe" (close relatives) and "opu fetii" (distant relatives).[20]

2. The conceptions of land ownership as applied in the different archipelagos of the Tahitian islands.

According to R Maunier, "Spiritual imperialism, religious imperialism, is the very first aspect of all colonial imperialism ... but it is also in religion that one must search for the genius of the first conquerors".[21] Western civilisation, which considers that there is no real improvement of a society without the diffusion of its values, did not limit its action to the teaching of material concepts, but also compelled the colonised people to accept new religions. The Christian religion had no direct connection to land tenure, but the missionaries changed the relationships between the land and the people. The concept of the land as a symbol of continuity and unity of the social group was superseded by a purely individualistic approach. By altering the customary notion of what was sacred, the missionaries considerably altered the concept of land tenure. Relationships to the land became something of only a legal and economic nature. It is only when land became material goods that it became the object of true property rights. Thus, when French colonisers took control of the Tahitian islands, the major modifications to the land tenure system had already taken place, and what was left to do was only a matter of the technical implementation of specific legal rules.

(i) The missionaries conception

The missionaries' influence was noticeable only in Tahiti and its associated Archipelagos and Leeward Islands.

16 Calinaud, paper delivered at the IX Judicial Conference of the South Pacific, op cit p 122.
17 R Cochin, L'application du droit civil et du droit pénal français aux autochtones des Etablissements d'Océanie, Thèse Paris 1949 p 28.
18 Under French law, land ownership is established by registered title or prescription. The English deeds system, could provide similarities with the Polynesian land ownership system.
19 R Calinaud, ibid.
20 F Ravault, "Le régime foncier de la Polynésie Française", O.R.S.T.O.M Publications, January 1979, Papeete.
21 R Maunier, "Sociologie Coloniale", Paris, Domat, T.II, p 97.

(a) In Tahiti and its associated islands

Under the constant pressure of the English missionaries, the Tahitian chiefs requested the missionaries to become the island's first legislators and to set up "the fundamental laws which should now govern the people and decide its misfortune or its bliss".[22] Accordingly, in May 1819, at the opening of the new royal church,[23] a code of laws (the Pomare Code)[24] was successfully promulgated.

The genius of the English missionaries was to let the Tahitians believe that the first code was actually drafted at the people's request. It is however clear that the English missionaries controlled the process. The first draft was prepared in English and was translated into Tahitian by a missionary.[25]

The new rules demonstrated the wish of the English missionaries to impose strict rules of conduct based on religious precepts, and also to keep control over the local chiefs and the Pomare dynasty.[26]

As far as the land tenure system was concerned, the banning of the sale of land first appeared in the Code in 1838. The principle that appears in articles 12 and 13 of the Code of 1842,[27] was a clearer prohibition on the sale of land. In the first Code, the principle was indirectly stated and never challenged because of the strict regulation of leases and trade, and the prohibition of mixed marriages.[28]

(b) Leeward Islands

The first code to be implemented by the missionaries in the Leeward Island was the Tamatoa Code.[29] It was presented by the missionaries to a general assembly consisting of the local chiefs and people representing all the islands of the archipelagos except Huahine. Subsequently the Code was unanimously accepted.[30] The 1820 Tamatoa Code[31] did not provide any clear rules on land tenure, but as in Tahiti, the underlying principle was the banning of the sale of land. If one compares the 1819 Code and the 1820 Tamatoa Code, no noteworthy differences appear.

(c) Huahine

As the result of a joint work of two missionaries[32] which was accepted by Teriitaria the widow of Pomare II, the first code of Huahine[33] was endorsed by the island's chiefs in March 1822 and amended in 1826. One of the major innovations of the 1826 amendment, was to institute the first structure for the registration of land and the drawing up of land titles (called "Tomite").[34] It is not possible to ascertain whether the registration procedure was used since there is no record available of any such title deeds. Moreover, as long as the

22 Morenhout, "Voyages aux iles du grand océan", Paris 1883, pp 480-481. W Ellis, 1828, French edition, 1972, Paris-Musée de l'Homme, p 550.

23 It was the biggest ever built church in Papaota-Arue. A Vernier, *Au vent des Cyclones, Puai Noa Mai Te Vero, Missions Protestantes et Eglises Evangeliques a Tahiti et en Polynésie Française*, Papeete 1986, p 29.

24 Amended in 1824, 1826, 1829, 1834, 1832 and 1842.

25 J Davis, *The History of the Tahitian Mission 1797-1830*, Cambridge 1961, pp 390 et seq.

26 W Ellis, op cit, p 587.

27 Also called, "Code Tahitien" or "Tahitian Code", Bulletin Officiel des Etats du Protectorat, 1842, p 167.

28 Articles VI of the 1842 "Tahitian Code".

29 The 11 May 1820. Also called "Tamatoa e te hue Arii no Raiatea". Territorial Archives of Papeete, ATPF 3543, B/4/44/341. It was amended in 1836.

30 Brochet. Introduction du Droit aux iles-sous-le-vent-Thesis 1952.

31 Also called Tamatoa and Teriimaevarua, Territorial archives of French Polynesia, 3544 B/4/44/341.

32 Barff and Ellis. Ellis, op cit p 580.

33 Also called, "Lois de Huahine en vigueur dans le royaume de Teriitaria, Hautia et Mahine".

34 Ellis, op cit pp 589-590.

transfers of lands were limited to the natives of the island, recourse to the registration procedure appears to have been of no use to the population.

(ii) The French conception

From the mid-1850s, the pressing demands of foreigners to acquire land or to get leases, the economic revolution which required the opening of land to market-oriented farming, and the incidental setting up of the Protectorate, combined to give new support for ownership and the systematic collection of deeds or titles that would cover all the land. Therefore the main goals of the new policy-making were to impose a colonial law system, by erasing all local specificities, implementing standardised statutes, modifying the ancestral land tenure system, creating title deeds and authorising a greater freedom for land sales.

As far as the colonial laws are concerned, "by saying that the land system of the Civil Code of 1804 presented certain disadvantages leaves one to suppose that it also contained some advantages. It would be more correct to say that the Civil Code is characterised by the absence of a land system, if by land system one means the organisation of a public record of land rights".[35] Effectively, according to article 1134 of the Civil Code, even an oral agreement binds parties.

Proceeding by stages, relative to the dispersal of the archipelagos and the economic interests which this represented, the colonial legislator enacted a series of laws which, despite their disjointed nature, were all motivated by the same idea: that is, the allocation of a specific owner to each block of land. One can however distinguish between the texts which were used for Tahiti and its associated islands, those enacted in the Leeward Islands and its dependencies, and those for the remaining part of the French colony.

(a) Tahiti and its associated islands

After the French Protectorate was set up in 1842, the existing land tenure organisation continued to operate for a while. It was only when the request by French settlers for new land became pressing that it proved necessary to reform the ancestral land tenure system.

The proclamation of the principle of freedom of transaction was one of the fundamental objectives of the new "guardians" of Tahiti.[36] Two years after the signing of the Protectorate document, this became law. The sale of real estate to foreigners was authorised by the Decrees of 26 January 1844 and 13 October 1845.[37] It was intended that there be a specific procedure to guarantee the security of such transactions. Ten days before a sale, the various parties had to inform the Director of the Domain, and the French Administration retained the right to control the transaction or to use its first purchase right on the land. The judge would sign the bill of sale to certify that the land belonged to the native seller. The Justice of Peace would carry out the same formalities if the seller were French.[38] This principle of freedom of transaction was confirmed by rule IV of the Tahitian Code of 1848.[39] It

35 A Ley, *The fundamental and dominial system and the economic development of the Ivory Coast*, Paris, 1972, p 274. (Thesis) Bibliothèque Africaine et Malgache - tome XVII. Librairie générale de droit et de jurisprudence.

36 The ultimate motivation was actually to favour European or half-caste settlement and the establishment of plantations.

37 Abolishing the previous prohibition of any transfer or lease of land as stated in the Pomare Codes. See BO 1848, p 61; Sage, op cit p 372.

38 Cochin, op cit p 75.

39 Loi tahitienne du 24 Mars 1852 sur l'enregistrement des terres du Protectorat, BD 1852. For further explanation about the Tahitian codes drafted either by the missionaries or Frenchmen see C W Newbury, op cit pp 351-371.

was therefore essential to know exactly who owned which land so that all transfers, including transfers by inheritance to another person, could take place properly.

Save for articles 12 and 26 of the 1842 Code,[40] which had existed since 1826,[41] the first text to deal with the identification of property and of ownership, was the "Decision of 3 May 1847, about land ownership". Its obvious purpose was not only to avoid the former controversies, but also to confirm public order and ownership rights. It was a sound policy to lay down a principle that was well-defined, far-reaching, and not open to question on account of its religious implications. The concept of public order was to be understood as the acknowledgment of the victory of Pomare and his supporters in Tahiti and Moorea, the triumph of Tamatoa at Raiatea and Tahaa, and the reinforcing of their parents' government in the other parts of the archipelago.[42]

The 1847 Decision was followed by the Tahitian law of 24 March 1852 which concerned the registration of Protectorate land.[43]

Basically, the aim of the reform was to provide the opportunity for all Polynesians to become individual owners by giving them unchallengeable written titles. That is to establish individual ownership as opposed to the former lineage ownership by means of prior written evidence as opposed to the oral tradition.

The 1852 statute almost duplicated the procedure implemented in the Huahine Code of 1820 by the missionaries.[44] Generally speaking, the procedure prescribed by these enactments consisted in recording ownership declarations ("Tomite") in land registry books made available in the districts, then in ensuring that they were publicised in the local government reports. Declarations of title to land were to be made in each district in front of a special committee and in the presence of the population.

Article 11 of the 1852 law also made specific provision for the continuity of the transcription of all subsequent transfers following the declaration of the interested parties in the presence of witnesses.

A distinction was also made in the 1852 law between private property and "Fari Hau" or land by privilege, the latter comprising a kind of "majorat"[45] to the advantage of the district chiefs and destined to assure them of "a means of existence in keeping with their elevated status".[46]

After the Protectorate Proclamation of 9 September 1842 by Queen Pomare, provision was made for the guarantee of the Queen's land and the people's land. Basically the Proclamation stated that the former royal domain would remain hers that the land tenure of her subjects would not be challenged by the French Administration.

40 They provided for a "Book of the Limits of Territorial Property".

41 At Huahine, one of the statutes of 1826 provided that "the boundaries of all the lands on the island should be carefully checked, along with the area and identification of each land and the names of the owners, and be registered in a book called the Book of Land Limits. A map showing the limits of the land, mentioning the owner's name, signed by the president of the court, and bearing the seal of the king, should be drawn up as a legal document entitling someone to own the land in perpetuity".

42 Calinaud, Paper delivered at the IX Judicial Conference of the South Pacific, op cit.

43 Laws 8 and 9 of the 1848 text applicable in Tahiti authorised foreign marriages but laid down that the Tahitian woman's belongings remained her own. Tribunal of Instance, Papeete 20.2.1877, BO 1868, p 31.

44 See supra note 32. The 1852 statute was deemed to apply to the Kingdom of Tahiti and its dependencies (Tahiti, Moorea), a great part of the Tuamotu Islands - the western and center parts - Tubuai and Raivavae islands.

45 Inalienable estate attached to a title and passed on with the title itself.

46 Chapter III, Law of 24 March 1852.

The Tahitian Law of 24 March 1852 was stronger and more precise on this point. It stated that, the private "Fari Hau" lands were to be registered in a separate register, held in duplicate: one in Tahitian kept at the Clerk's Office in the Court of Toohitu (native judges); the other in French kept at the office of the Director of Domains at Papeete.[47]

In 1857, the Tahitian Legislative Assembly entrusted the Queen and the Imperial Commissar with the responsibility of modifying the law of 24 March 1852 by simple order. It expressed the wish "that all necessary guarantees be given for the registration of land so that these registrations form legitimate and indisputable titles of ownership".

On 30 April 1857, a decree ordered the renewal of land registrations. Any person who made a claim had physically to identify their rights by placing stakes on the land and by appearing before the District Council in front of the assembled population, and if no protest was lodged against the claim and the witnesses' assertions, the District Council then recorded the claim in the minutes, of which one copy was published. The claimant became the definite owner after 3 months if there was no opposition. In the contrary case, the Justice of Peace aided by four Toohitus would give a final ruling on the matter.

On 22 November 1858, a 5 year time period was instituted (as of 1 January 1859) at the end of which no claim could be laid against an original registration.

In reality the law of 24 March 1852 and its subsequent amendments did not provide the expected results, as the native people rarely abided by the procedure or did so reluctantly. Consequently all the dreams about a land register never became reality. Actually the land book went into effect in 9 of the 17 districts in Tahiti, but even there it was only partially effective; it was not enforced elsewhere. Furthermore the copying errors in the registers were so numerous that they were never reliable.

It was against this background that the law of 6 October 1868 intervened to prohibit the registration of lands. The text of 6 October 1868 called for the registration of already registered lands, in seven new registers corresponding roughly to Tahiti and Moorea's seven territorial divisions. The provisions of the Law of 1852 for non-registered land were also re-enacted.

In an Ordinance in 1876, the 1868 provisions were made to apply to Tubuai and then to Raivavae, but the Tuamotu were not affected.[48] The 1876 law was mainly designed to regulate the amount of time allowed for opposing a registration declaration and to provide rules on how to establish reliable boundaries on land.

On 30 October 1877, because most of the land was not registered, another new set of registrations was once again put in place. The Law started by declaring the permanent nature of property titles acquired under previous

47 J Roucaute, *La réglementation foncière dans les établissements français d'Outremer de 1842 à nos jours*, 1951, Papeete p 9. On the Toohitu see, B Saura "Les codes missionnaires et la jurisdiction coutumière des Toohitu aux iles de la Société et des Australes", Papeete 1996, Univ Française du Pacifique.

48 As far as the Tuamotu archipelago was concerned, due to its specific geographical situation, it was necessary to enact an additional ordinance in 1874 to start up a new system in these islands. It stipulated that "the owner of the soil ... - is the person who legally acquired it or who has had a full, actual, bona fide and uncontested enjoyment of it for ten years. Also, the owner ... is the person who has planted coconuts on vacant and untilled lands, securing proceeds from them, if he has had peaceful enjoyment of the property for five years and no dispute has arisen". This enactment was not so radically new as it seems to be; in fact, it led to the private ownership of the pieces of land taken from the estate of the local tribes whose membership planters could claim in most cases. This innovation apparently went unchallenged and thereafter it was used as a basis for declarations of proprietary interests.

legislation.[49] Registration on seven registers and registration of previous transfers were abolished in order to simplify matters and, undoubtedly, because it was felt that this had been one of the reasons for the failure of previous legislation. Formalities imposed by the 1868 ruling were also deleted. Basically, all the claimees had to do was to make a simple declaration before the President of the District Council where the land was. This declaration once countersigned by the President of the District Council was then published in the Official Journal for a period of one year or six months according to the islands concerned. After this period, if no opposition was lodged, the declaration became a title of ownership. When an objection was raised after the court decision, the judgment was considered a permanent grant of title.

At the end of the French Protectorate, and despite this attempt at "over-simplification", the ownership of land was never in keeping with the wishes of the French coloniser.[50] One might have thought that by 30 December 1880, since Tahiti and her dependencies had been declared French colonies, the Metropole (France) would have been able to establish an efficient system of land law.

The French Administration was aware that the goals of the 1852 statute were still far from being achieved. Despite King Pomare V's declaration which expressed what appeared to the French colonial power to be the general feeling of his "subjects" with respect to all matters of land, namely the desire that questions of land be evoked by native tribunals only,[51] the government made a decree on 24 August 1887[52] which emphasised the pre-eminence of France in the French settlement of Oceania.[53]

The 1887 decree, which applied only to non-registered land or to land not supported by an authentic title or by a legally certified document, respected titles acquired under the previous system of law as well as the wish of King Pomare V.[54]

The main innovation of the decree of 1887 was in considering that private ownership operated over all the territory of the colony.[55] It was thus by means of a retrocession that each native inhabitant saw himself allocated his property after a simple declaration. "As a result of this imaginary taking over of property, all land unclaimed after one year, is deemed to be the property of the district".[56] The five-year prescription law under whose terms property was irrevocably acquired from a registered owner, was preserved. But of greater interest was the establishment of a new five-year period[57] declaring that "as from the promulgation of the present clause, proof of land ownership can no longer be made except according to French Civil Law".

49 Law of 24 March 1852 and Ordinance of 6 October 1868.

50 Roucaute op cit p 65.

51 Declaration of annexation made by Pomare V King of the Society Islands and its dependencies - June 29 1880. "... we wish also, to continue to leave all cases related to land in our own native courts' hands ..." For the full text see Sage, op cit p 388.

52 B.O. 1887, p 390.

53 Presented as "related to the drawing of land boundaries", the decree represented the affirmation of French control over the land matters.

54 One may note in Article 7, the option to benefit from the new legal provisions for "holders of previous titles". The fact that no one chose this option proves how little interest Tahitians had in legal formality at this time.

55 Cochin, op cit p 53; Brochet op cit p 47. Its provisions applied to Tahiti, Moorea, Tubuai, Raivavae, and to those districts in the Tuamotu where there was a registry. Twenty-six districts were involved and they correspond to the dependencies of the former Pomare Kingdom. Similar provisions were extended in 18 November 1893 to two atolls in the north and later on, in 28 June 1918 to twenty-two atolls in the eastern and north eastern parts.

56 Arts 1 and 2, para 2. See Roucaute op cit p 11.

57 Para 1 of art 2.

It was only with the decree of 24 September 1895 that the method of land ownership as conceived by the Civil Code could be said to have applied in parts of French Polynesia. The Law of 10 March 1891, which abolished the native court system in return for a life annuity of 6000F for Prince Hinoi Pomare,[58] accentuated the influence of the French legal concept of land ownership. However, the general spirit of the decree of 24 August 1887 was maintained. In addition to its individualist conception, the implementation of the French Civil Code deeply modified the pattern of succession. The passage from the concept of birthright, which was deliberately inegalitarian and implicitly recognised by the English missionaries, to egalitarian succession should have resulted in the splitting up of family property. However, division after inheritance was practically never requested so that from generation to generation, though the parcel of family land did not change or changed only a little, the candidates for a portion of the land increased. This inevitably made subsequent divisions illusory or almost impossible.

Since the enforcement of the provisions took a longer time than expected, the deadlines were extended, and the last decisions of the Tahitian High Court on litigation arising under this procedure were handed down as late as 1932.[59]

One can regard the decree of 25 June 1934 as having the same goal.[60] It was apparently designed to improve the state of property ownership in the territory, and to protect the family patrimony of natives. It also modified the successoral redemption provisions of article 1841 of the Civil Code to offer metropolitan French new possibilities of controlling land transfers to their advantage. While this procedure could be exercised in France only for all the rights of succession of the heir, the procedure could be used in overseas French settlements in accordance with article 7 of the Decree of 1934 even if the transfer concerned only "one or several successions of real estate or of joint ownership but not the whole". In practice, this text did not achieve the desired results either. On the other hand it had the disadvantage of taking away all the security of the acquisition of jointly owned property, because of the possibility of the existence of joint heirs, unknown at the time of these acquisitions, who became known afterwards.

Another essential aim recognised by the decrees of the 4 July 1932,[61] of 25 June 1934, and of 13 October 1945, was to protect native property and establish the principle of freedom of transaction introduced by the Tahitian Code of 1848.[62] In reality, the Administration did not exercise the discretionary power, conferred upon it by this text, as might have been envisaged. However thanks to this text the Administration exercised an extremely strict control over all transactions even where no natives were involved. This somewhat excessive policy was justified by the French administrators by reference to the large number of Chinese who very quickly held a large portion of the local investment in land (both in monetary and

58 BO 1892, No 128. It was analysed as the first breaking of promises by France with respect to the maintenance of local native jurisdictions. An agreement made on 29 December 1887 anticipated that these jurisdictions would disappear at such time as the boundaries of all lands had been fixed and all disputes had been resolved. This agreement was approved by Law on 10 March 1891. See Sage, op cit p 383.

59 It is in that year that the sittings of that court and the publicising of ownership declarations came to an end. See Sage, op cit p 388

60 Official Bulletin, 1934, p 324.

61 Nullifying the decree of 26 January 1844.

62 Calinaud, L'Autorisation de transfert immobilier, Revue Juridique Polynésienne, vol 1, no 1, June 1994 p 25.

commercial terms). Further some of the Chinese had obtained French naturalisation without dropping their habits and customs or their firm intention and desire to live within a Chinese community which quickly became a state within a state in the Territory.[63]

(b) Leeward Islands and Dependencies (Raiatea, Bora Bora, Huahine)

The legal provisions analysed so far did not apply to the Leeward Islands.[64] France took possession of those islands on 16, 17, 18 and 20 March 1888 and they were declared a French Colony by the law of 19 March 1898. The decree of 17 September 1897[65] which brought a system of justice to the Leeward Islands preserved the native laws of this archipelago. Article 12 stated: "The native laws recognised by the government, the text for which is registered with the Administrator, may not undergo any modification without the consent of the Governor who reserves the right by decree to make them more in keeping with French legislation, without however undermining the rights reserved by article 12". This provision compelled the Governor to enact the decree of 22 December 1897.[66]

This decree was like the decree of 24 August 1887 which applied to Tahiti. It required that property owners should claim their real estate within a period of one year, starting from the day of the decree's publication, before a commission appointed to this effect by the Governor of each district.[67] The noteworthy innovation here was the lesson that was drawn from the experiment in Tahiti. It was decided that all land claims in the Leeward Islands, whether they were contested or not, would be scrutinised by the commission, and it would be the commission's decision that established the title. The claims would then be notified publicly and published in the Official Journal for a period of 6 months during which time objections would be received by the commission. Once this period had expired, the commission was to meet and examine the declarations and any objections. The commission would then announce the allocation of property either to the claimant or to the objector or to the domain when the rights of both parties had not been sufficiently established. All properties, including those belonging to the domain, would thus become the object of a decision by the commission.

The decree of 1898 was different in this respect from the decree of 24 August 1887 which was in full force due to the relevant expiry dates.[68] An interesting feature of the decree was that it allowed, mainly for practical reasons, oral proof of the right of ownership. It made provision for appeals against a decision by the commission to be made within a period of three months. Upon the expiry of this period of appeal, or from the time when the second stage of jurisdiction had been ruled on, the final title of ownership was pronounced by the Administrator who kept an account of it in a register. Detailed changes were made to the decree of 22 December 1898 by the

63 On this racist and discriminatory conception, see Coppenrath *Les Chinois de Tahiti* La Société d'études Océaniennes 1967, Musée de l'Homme, Paris.

64 France received the request for the protectorate of the Leeward Islands in April 1885 only after the annexation of this archipelago: the legal and statutory provisions inspired by the French codes in force in Tahiti were not applied: the rebellions and the impression that Raiatea was the centre of religious beliefs and political attacks had been responsible for a certain amount of caution exercised with respect to the inhabitants of the Leeward Islands. Brochet, op cit p 91: After the inhabitants' rebellion. Cochin, op cit p 77. Toullelan, op cit pp 71-81.

65 BO 1897 pp 332-334, amended by decree of 22 December 1897, BO 1897 p 387.

66 See above 65.

67 Roucaute op cit p 13.

68 Roucaute op cit ibid.

decree of 10 September 1901 (on the question of the length of appeal against the committee's decision), by the decrees of 10 October 1904 and 12 April (with respect to the cost of the issue of titles of ownership), and by the decrees of 20 October and 20 December 1911 (relating to the nature of appeal committee).

Even where customary laws were firmly established and the principle of the codification of native laws was accepted, provision was nevertheless made for administrative intervention in respect of all the legal measures taken.[69]

(c) The Marquisas and Gambier Islands

The decree of 24 August 1887, declared applicable to the Marquisas Islands at the same time as the Gambier Islands by the decree of 27 October 1897, was not applied due to the special administrative organisation of this archipelago and for political reasons.[70]

A special title was developed which became the decree of 31 May 1902 organising property and land in the Marquisas Islands. The 1902 decree appears as a clean sweep of the past, attesting to the will of the French to establish an original land system.

All certificates issued by native committees followed declarations concerning property made before them.[71]

The decree of 31 May 1902 (like the decree of 24 August of 1887 applicable to Tahiti and the decree of 22 December 1898 applicable to the Leeward Islands), ordered that applicants declare their possessions within a period of one year valid from the day of its promulgation (Article 6). All possessions were forfeited to the state in the event of a demand not being made with this period. As in the Leeward Islands, a committee would meet upon the expiry of the year in order to assess the rights of claimants and of the opposing parties if there were any. If these rights were not recognised the land was allocated to the domain. Oral proof was implicitly admitted since the committee could base its decision upon real and sustained occupation. This amounted to the recognition of the validity of the use of acquisitive prescription as it is provided for in the Civil Code.

Decisions became subject to appeal within six months before the superior tribunal of Papeete. When the committee decisions became final the Administration would then draw up titles of ownership or a draft register. A copy would be given to the owner. This title of ownership formed under article 15 was the sole reference point for all titles to real estate which (according to article 17) would thenceforth be governed by French law regardless of who the owner was.

Among the clauses of the decree of 31 May 1902 two clauses warrant note:

- article 5: the seashore up to the high tide mark, a zone fifty metres wide beyond this limit, streams, rivers and waterways, public squares and paths and in general all property declared non-private by the Civil Code[72] could not be subject to private appropriation;
- article 16: prohibited natives from disposing of their real estate regardless of the nature of the title, without the authorisation of the Administration (which reserved pre-emptive rights).

69 Brochet, op cit p 92.
70 BO 1887 p 310. Note by Monsieur le Gouverneur Gallet, 1912, JO 1902, Papeete.
71 Roucaute, op cit p 14.
72 It is interesting to compare this clause with the decisions made by Tahitian courts. Decree No 25 on 5 May 1866. The decree of 31 May 1902 established the principle of ownership based upon claims.

Once the principle of giving ownership titles on the basis of claims was admitted, the application of the rules of the Civil Code followed as a material consequence.

(d) The Austral Islands

A long time after the annexation of French Polynesia, the Australs (and Rurutu-Rimatara in particular) were totally relinquished.[73] This archipelago was governed by a series of native rules which were in force before the arrival of any Europeans. Placed under the French Protectorate in March 1889, the first collection of legal texts were the "codified laws" of Rimatara and Rurutu; they were promulgated by the decree of 26 September 1900 which approved the codification of the native laws of Rurutu.[74] On the whole, it contained the local native laws which were brought together into a single text and published both in Tahitian and in French. Provision was made for the land system by Law XXXVII on land proceedings. In the absence of a friendly agreement concerning property matters, the parties were to address themselves to the judges who would hear the witnesses together with the state servants.

In the absence of witnesses, the judges would peremptorily determine the property boundaries. The same law made provision for questions of rights to land. The judges and the state servants had to seek the advice of the elders of the islands who were familiar with the land in question and who would stand as witnesses. It was the role of the elders to say who was the rightful owner of land, which remained undivided. The Elders also decided which members of the family were able to enjoy it, under the authority of the head of the family.[75]

The succession system was not controlled by any legislative stipulation. In fact the system of complete family ownership exempted the legislator from making provision for the order of heirs or the extent of their entitlement to land.

II. Adapted Solutions Proposed by the French Administration

Polynesians were and are still deeply attached to their land, and have always considered that questions of land should be resolved by native courts. While a native court was recognised in principle, its prerogatives were gradually reduced to an institution without real power. Moreover, the constant tendency towards the individualisation of land ownership sought by the French Administration conflicted with the reluctance of the Tahitian population to comply with procedures which did not fit in with their customary way of living.

1. The diminished role and the disappearance of the native courts[76]

The French authorities had respected the native court systems of the time of the Protectorate, and the native systems dealt principally with questions of land. The Polynesian attachment to ancestral land signified that land tenure as understood by Westerners meant little. Since there was recognition of native land, land disputes could be resolved by Polynesian courts.

73 P Vérin, "Les Etats de Rurutu et de Rimatara, étranges petites Protectorats océaniens de droit interne"; Revue Française d'Histoire d'Outre-Mer, t.L I I, no 186, 1965, pp 225-231.

74 Official Bulletin 1900 p 258, completed by decree of 12 April 1905 (Official Journal 1905-112), and Decree 19 May 1905, Official Journal 1905 p 149, Decree 25 August 1917, Official Journal 1917 p 359.

75 As a matter of principle, a newly declared chief was the eldest son of the previous chief.

76 For more detailed commentaries, see Sage, op cit p 367.

Having imposed the system of subdivision of ancestral land upon the indigenous population, it became important for the French colonisers to diminish the prerogative of native courts which could act as a check upon the system of individual ownership which had been set up. The power and survival of native courts varied from one archipelago to another. Furthermore, it seems that the very distance of certain islands from Tahiti meant many of them were able to preserve their native laws.

The Society Islands and dependencies witnessed the rapid diminution of prerogatives left in the hands of the native judges. The case was different for the Leeward Islands because, while they were not far from Tahiti, they knew how to oppose the abolition of native courts and those courts prevailed there until 1935. The Marquisas, the Australs and the Gambiers, enjoyed a semblance of autonomy for their native courts, due to their geographical distance. Nevertheless the loss of the prerogatives given to native judges was common to all the island groups. Sooner or later the native laws disappeared and were replaced by laws from metropolitan France. The disappearance of native laws completed a new stage in the colonisation process.

(i) Society Islands and its Dependencies

The French authorities had respected the native court system from the formation of the protectorate. But a decree by Queen Pomare on 14 December 1865 granted competence to the French tribunals both in civil matters and in representative matters. The fundamental decree of 18 August 1868[77] laid down the organisation of justice in the French Polynesian settlements and subjected all inhabitants regardless of origin or nationality to the jurisdiction of the French tribunals.

Under the terms of article 3, the law in force was French law.[78] Article 5 was applicable where a native was involved as a plaintiff or the defendant. The judges then had to appoint a Tahitian assessor. The assessor had an advisory role and his opinion had to be mentioned in the wording of the judgment *"le tout à peine de nullité"* - otherwise the decision was null and void.[79]

Article 7 of the decree of 14 November 1992 repealed article 5 of the decree of 1868, and therefore the presence of an assessor was no longer obligatory.

One exception to the general jurisdiction of the French tribunals even in native matters was made by paragraph 2 of Article 4 of the decree of 18 August 1868.[80] It dealt with disputes between Tahitians concerning the ownership of land. These disputes had to come before a special native court system which had, incidentally, been reorganised by the Tahitian Laws of 28 March and 7 April 1866. The courts were: members of the District Council, a High Court of five *"Toohitu"*, and a Tahitian Court of Cassation.[81]

This exception continued even after Tahiti's annexation as a result of the law of 30 December 1880. But after an agreement made between King Pomare V and the French Government on 29 December 1887, and ratified by the law of 10 March 1891, both parties "decided on the abolition of special

77 Promulgated by the decree of 16 March 1869. Official Bulletin of the Colony year 1869 p 42.
78 For the application of this law - see High Tribunal of Papeete 17 September 1910-1911, Collection, 3, 81.
79 For its application - Cass Civil (reject); 9 December 1884.
80 Dareste, Treaty of Colonial Law, vol II p 473, Paris, 1931.
81 Official Bulletin of the Colony, year 1886, p 40.

native laws the day the processes relating to the demarcation of property were completed and the disputes to which they gave rise were settled".

The Tahitian Court of Cassation was abolished by the application of the agreement upon the death of King Pomare V. A decree of 27 February 1892 transferred the prerogatives to the Superior Tribunal in Papeete. It is significant that the desire to increase the guarantee of equal and impartial justice for those on trial called for the disappearance of customary tribunals.[82]

The Tahitian High Court was completely changed by the decree of 26 September 1900 and it became an ordinary law court with verdicts issued by European judges.[83]

(ii) Leeward Islands

As well as preserving native laws, the colonial legislators closely scrutinised them and subordinated the execution of judgments to the opinion of the French authorities. After stating in article 3 that all matters between "natives" and Europeans or "assimilated people"[84] would be judged by a Justice of the Peace assisted by a native assessor, the decree of 17 September 1897[85] laid down (in article 11) that any objections of a civil or commercial nature would be judged by native judges in accordance with native law. But paragraph 2 of the same article added that prior to execution, a final judgment under native law required the "visa" of the Administrator and if he refused, the Governor of the Colony would give a ruling. Article 12 added that all native laws acknowledged by the Government, and whose texts were kept with the Administrator, could not undergo any modification without the Governor's permission. The Governor had therefore to endeavour to act in such a way that the changes envisaged by the native laws were in keeping with French legislation without undermining the rights laid down in the preceding articles.

A decree on 18 April 1918[86] set up an appeal against final judgments for the people of the Leeward Islands.[87]

As a result of the decree of 14 December 1929, the decisions of the native courts of the Leeward Islands were brought before a tribunal located at Uturoa,[88] which comprised a Justice of the Peace with a wide knowledge of the Leeward Islands and two native assessors.

Everything to do with the applicable law, the rules of procedure concerning judgments, appeals and the execution of judgments, was in articles 96 to 138 of the native laws, which were codified by the decree of 4 July 1917.[89]

This judicial system prevailed in the Leeward Islands until 1945.[90] The codified laws appeared as a transition between the native laws and the law of metropolitan France which came into full force in 1945.

82 Cf annex for the report for the President of the Republic, preceding the decree of 27 February 1892.
83 BO 1900, p 256.
84 That is to say, all non-indigenous people.
85 Dareste op cit p 472, decree published BO 1919-1-705, BO 1897 pp 332-334 completed by decree of 22 December 1897 BO 1897, p 387.
86 BO, 1918, 1, 492.
87 Decree modified on 28 April, 1924.
88 Town of Raiatea Island.
89 Which repealed a previous decree of 27 October 1898. The Official Bulletin, 1898, p 241.
90 For the development after 1934, see Brochet, op cit pp 80 onwards.

(iii) The Marquisas and the Gambier Islands

The Marquisas and the Gambier Islands underwent an evolution similar to that of Tahiti and the Leeward Islands.

(iv) The Austral Islands

This archipelago, the furthest away from Tahiti, also experienced the same process of the disappearance of its native laws.

Where customary laws were firmly established, though the principle of the codification of native laws was accepted, provision was made for administrative intervention in all the legal measures taken.[91]

From the 7 March 1917, a government decision[92] appointed a committee of 6 members whose duty was to initiate a new codification and on 29 September 1938[93] the native tribunals saw their influence diminished, three native judges being dismissed.[94]

There was no text which made possible the identification and individualisation of property ownership. Doubtless this oversight may be explained by the geographical distance of the Australs and by the little interest attracted by this group of islands.[95] It was not until 1946 (the date of the application of French legislation) that the codified laws of Rimatara and Rurutu were applied throughout the group.[96]

Moreover it would appear that decisions under these laws went ahead without appeal. The law specified that "whosoever raised new difficulties concerning a decision, would be fined five piastres".

The decree of 5 May 1916 which modified the legislation of the Rurutu and Rimatara islands introduced a choice for those who were to be tried. They could either be judged under their native laws or under French Law. By opting for French law, appeals in civil matters were made possible, thus avoiding being bound by a decision granted according to native rules.[97]

2. Inadequate administrative structures used by the French administration

In principle, each and every plot of land was to be identified and attributed a title.[98] Starting from there, the line of transmission, whether it be hereditary or by *inter vivos* transfer, was to be connected to the original title. On this basis, the line of transmission would become flawless and the title beyond contest.

The reality was different. The implementation of the principle met with two sorts of difficulties. The first related to the tools used by the French Administration to ascertain each land's owner and the second related to ancestral usages followed by the Polynesian population. These two difficulties make it virtually impossible to identify the original owner of land and accordingly to tell who the legitimate successors are.[99] In this situation, which is fairly typical, the original land title does exist, but is not of any use.

91 Brochet, op cit p 92.
92 JO, 1917, p 204.
93 JO, 1938, p 622.
94 JO 15 October 1938, p 650.
95 Roucaute, op cit p 15.
96 Roucaute, op cit, p 6.
97 One can therefore conclude that all the means of evidence admitted by the civil code would be used by the person on trial and that in particular one could take advantage of titles established by the French Administration.
98 Cochin, op cit p 75.
99 Cochin, op cit pp 110-112; Roucaute, op cit p 28; Panoff, op cit p 47.

(i) The land survey policy

The establishing of titles ought to have been supplemented by mechanisms that would have simplified it.

The registry system had been brought to the Kingdom of Tahiti by the statute of 11 March 1852, but the way the registry offices operated was far from satisfactory.[100]

The system of recording of deeds was initiated by the decision of 28 November 1867 that created a Land Registry Office and by the enactment in 1874 of the French statute dealing with mortgages.[101] The problem was that the publicity that was the standard practice in France was made on a *personal* basis. This did not fit in with the title system that was being set up in Polynesia, which logically required publicity on a *land* basis.[102] Moreover, the land registrar was powerless to check the accuracy and consistency of the deeds that were submitted to him. What happened was that the titles of the 1852-86 period were not recorded, and the titles established after 1887 and the decisions of the Tahitian High Court were recorded fitfully and sometimes long after the event.

The office in charge of the cadastral survey was created by an Ordinance of 1862 and reorganised several times.[103] The land statute of 1852 provided that each owner should declare the boundaries and the area of the property, but the facts and figures were not verified. The information at the time was generally inaccurate and inconsistent. The Ordinance of 1868 and the Decree of 1887 prescribed a physical marking of the land boundaries by the district council. When the marking did take place, measurements were taken by walking or at the throw of a stone.

The survey operations conducted at the close of the 19th century were not extensive, and the results were all lost in a hurricane in 1906. They were resumed in 1927, but at such a slow pace that 40 years on less than half of the lands had been surveyed. Moreover, there was no consistency between the titles, the registration, and the cadastral data.

(ii) The consequences of the traditional practices

The second difficulty has something to do with the way the population used the establishment of individual land rights. This procedure was likely to be recognised, given the ideology of the Tahitian ruling class and the deficiency of the vital statistics. Yet, the Tahitian population, who were at first reluctant to declare ownership and remained so until the Decree of 1887, did not proceed as expected by the administration.[104]

As was hoped for by the administration, they seized the opportunity to redistribute their rights, but apart from a handful of persons who tried to divert the operation to their own personal interests and speculate, they generally did not break away from the traditional conception of family ownership. Thus, under the guise of individual declarations, land would be declared under the name of a childless old man whose estate would go to all his nephews and nieces, or under the name of an ancestor who lived one or two centuries ago, or jointly under the name of one person plus his or her

100 Roucaute, op cit p 29.
101 Roucaute, op cit ibid.
102 Roucaute, op cit ibid.
103 Roucaute, op cit ibid.
104 Roucaute, op cit.

"*fetii*".[105] Undivided possession was thus further entrenched and became almost perpetual.

As far as registration was concerned, the requirements set by the 1887 decree were not successfully fulfilled.[106] The origin, the age, and even the sex of the person who registered were not mentioned anywhere. The Registry Office was established by a statute of 11 March 1852. A temporary Ordinance was enacted on 17 January 1866 to remedy all gaps and irregularities which occurred since 1852. A vast census was organised: all birth, marriage and death certificates prior to 1852 were filed by dates and districts, and recorded in two copies (one for the registry office of the district concerned and the other copy to be kept by the office of the clerk of the court). The authenticity of such documents was established by the signature of the President of the District Council or his deputy. Unfortunately in 1877, registry offices were almost non-existent and, as a remedy, a specific law was enacted on 15 November of the same year to organise such offices.

To further reduce the credibility of the registration, the custom of changing names[107] added to the uncertainty of the owners. Following a logic of his own, an owner could register under an identity relevant to the particular case that was not the same as that mentioned in the registry office nor as that used in a different place for different land. The difficulties are easily foreseen in the following example:[108]

Father
Teata a Tetuarui

Mother
Mahinetua a Tamata

Son (at his birth)
Indifferently: Taro a Teata
Taro a Tetuarui
Taro a Vahinetua
Taro a Tamata

Changing of the son's name at adulthood or due to a specific event
for example: Raetio

Grandson (at his birth)
Tomanu a Taro
Tomanu a Teata
Tomanu a Tetuanui
Tomanu a Vahinetua
Tomanu a Tamata

III. CONCLUSION

Determining land and property issues with precision presented a number of difficulties which remain unresolved today.

The enactment of property laws which corresponded to the European approach, and the framing and then the disappearance of native laws, all

105 That is, all of his relatives. Calinaud, Note sur l'indivision foncière, op cit p 8. See above note 16.

106 Roucaute, op cit p 65.

107 This is an old and well establised pattern; one of the oldest recorded changing of name took place in 1788 when Otou changed his name to Pomare.

108 From Roucaute, op cit p 28. Cochin, op cit pp 110-112. Panoff, op cit p 47.

should have worked towards successfully establishing a metropolitan land system. It was a bitter failure for the French administrators who superimposed text upon text thus complicating the land system they wished to simplify.

It might be thought that the difficulty in making the French metropolitan law system effective in French Polynesia resulted from the fact that it was added to the already existing system of customary laws. However, the French Middle Ages provide numerous examples of the coexistence of laws.[109] In reality, the French coloniser moved forward by trial and error and laws often contradicted one another.[110]

Just like the land system of the old French regime, the Polynesian right of customary ownership, was considered a relative right. Effectively the family group, represented by a chief, who appeared as the sole person entitled to own land, was the real owner. Within the social structures of Polynesia, it was normal for several people to share the rights of ownership.[111] The concentration of the right of ownership within the hands of a single person was the exception.

The system envisaged by the French colonisers and inspired by the Civil Code, was that ownership be concentrated in the hands of a single person, and the dividing up of land could from then on only be a temporary thing or for the duration of a person's life. The first task the French had was to identify who the holder of the right of property ownership was, disregarding the customary methods of occupation of ancestral land. The failure of the French legislators very clearly apparent from the way in which the Polynesians integrated procedures such as division of land and the mortgage system into their own social environment. "The difficulties of the resultant regime were afterwards compounded by the breakdown of family ownership and new demographic pressures. Hence the clashes that we are witnessing at the end of the 20th century".[112]

109 A Gouron "The combination of written Law and Statute Law and the French Medieval Experience", African Annals 1962-1 pp 197-205. *Colonisation et Législation Coloniale*, Librairie Du Receuil Sirey, Paris.

110 Panoff, op cit pp 115-128.

111 Panoff, *La Terre et l'organisation sociale en Polynesie*, Payot, Paris pp 45-48.

112 Calinaud, op cit.