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THE HISTORY OF RESEARCH ON TRADITIONAL LAND TENURE AND TREE OWNERSHIP IN BORNEO*

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Preface

I am going to review the history of land tenure research in Borneo as best I know it. This is part of a monograph I have been working on for a number of years. If I omit any information or data, if I misstate anything, I would take it as a particular favor, if those of you who know would inform me.

Introduction

Research on land tenure in Borneo began with the Dutch in the early decades of this century. In the Netherlands and the Netherlands East Indies there developed a field of inquiry on adat law that included the study of village land rights and individual tenure.

While this field of inquiry arose in response to the needs of the colonial administration, it nevertheless spawned a very active scholarly discipline dealing with adat law worldwide that has made major contributions to our understanding of jurisprudence. But the results of this school were largely unknown to the rest of the academic world until the publication in 1947 of the translation of Ter Haar's summary of the extensive inquiries of many scholars on adat law in Indonesia.

Rungus Land Tenure

I took this summary to the field in 1959 when I began my study of Rungus social structure and economic organization. It gave me a list of possible cultural traits that I might find, and I used it as a basis for questioning headmen on the Rungus adat.

The important aspect of the work of the Dutch adat law scholars is that it clearly outlined the fact that villages in Borneo were jural entities and that their jural personalities varied in interesting ways.

After intensive questioning and study, I found that the Rungus had a system of land tenure previously unreported for Borneo. Each village held rights as a corporate entity, as a jural person, over its territory, as might have been expected from the Dutch work. The Rungus village had clear boundaries and only members of it could cut their swiddens in this territory each year. In these fields were planted maize, rice, vegetables, and manioc or cassava. Once the last of these crops were removed, the field area reverted back to the control of the village and could be used again by anyone in the village.

I eventually termed this system of land tenure "circulating usufruct" (Appell 1983a).

I also discovered that the village was a ritual entity in that it could corporately establish a state of goodwill between it and various gods. And this state of goodwill was backed up by jural sanctions so that violators of it were sued for restitution (Appell 1976).

Another important result of this research was the finding that, as should be expected, the jural personality of the village had developed over time as land had become scarcer (see Appell 1971a). This eventually led to the development of my theoretical position that I have termed "emergent structuralism", which corrects the theoretical errors of the post-structuralists on the origin of social forms (Appell 1974, 1980, 1981, 1984b, 1988).[1] In this I argue that the intersections of behavior in the s
ocial structure, the opportunity structure, and the antistructure lead to the emergence of new forms.

The Village Reserve and the Residual Rights of the Village

The Dutch adat law scholars referred to the village land as the "area of disposal". This suggests that the village has an active hand in the allocation of land for swiddens. In some cases this is more true than in others, but certainly among the Rungus, Iban, and Bidayuh Land Dayak the village is relatively silent on this unless there is a dispute or there are intrusions from nonmembers of the village. Consequently, I suggested that the territory of the village be termed the "village reserve".

There has also been some discussion over the terminology of these village rights (see Ter Haar 1962:81-82; Holleman 1981:XXXIV, 278). Van Vollenhoven refers to the rights over the village reserve as *beschikkingsrecht*, which literally translates as the "right of disposal". Holleman (1981), following recent developments in adat law studies now translates this as "right of avail". In my opinion this leads into the intellectual cul de sac of concepts from western jurisprudence. Consequently, I have preferred to use the term, following Goodenough (1951:34) "residual rights", to refer to these village rights.

The Nature of Jural Entities

The work of the Dutch adat law scholars never fully addressed the problem of the criteria by which jural entities can be distinguished. There has been some discussion over possible terminologies (see Holleman 1981:XLII, 43). However, as a result of trying to understand the nature of tree ownership among the Rungus I was forced to develop what I hope are more precise concepts for delineating the nature of jural entities and their social counterparts, which are critical for understanding the locus of land rights (see Appell 1971a, 1983b, 1984a). In other words it is important to distinguish whether rights lie with a corporation, or with a corporate group, or with individuals, who may in some cases be able to join together to take jural action as a jural collectivity. This is rather complex, and perhaps outside the scope of this paper, so I will not discuss this matter further.

Research on the Land Tenure of the Iban and the Bidayuh Land Dayak

In the late 1960s I began a comparative study of land tenure and tree ownership among Borneo societies. At that time the only available data from in-depth studies of specific groups came from the work of Derek Freeman (1955a; 1970, orig. 1955) in his study of Iban swidden agriculture and Iban social organization and the research of Bill Geddes (1954a, 1954b) on Bidayuh Land Dayak social organization, in which he included important information on land tenure. These systems differed markedly from the Rungus.

This research resulted in a manuscript entitled *Observational Procedures for Land Tenure and Kin Groupings in the Cognatic Societies of Borneo* that I finished in 1971 and then

circulated over the succeeding years to anyone who was planning on doing research in Borneo and who might be interested in this subject.

In this I reanalyzed the very detailed research of Geddes and Freeman and reached some conclusions on the basis of their data that enlarged on their analysis. Consequently, I sent my analysis to them for a critical review. But they did not disagree with my conclusions.

The Iban and Bidayuh Village as Jural Entities

Neither Freeman nor Geddes explicitly dealt with the jural personality of the village. They were also in ignorance of the concept of the village "right of disposal", which had intrigued the Dutch scholars in their study of Indonesian land tenure since the early 1900s. But being extremely thorough field workers, they did provide the data whereby we can look at this aspect of the Iban and the Bidayuh village and reach some useful conclusions on their traditional land tenure systems.

The interesting point, however, is that while both Freeman and Geddes provided empirical data on the function of the village in the property systems of the Iban and Land Dayak, they also at the analytical level seem to have denied the village's place in the property system in unusual terms. Thus, Freeman writes (1970:104, orig. 1955):

> To what extent then is the long-house community as a whole, a corporate group? This is a difficult question to answer in general terms, but it may be observed, from the outset, that the degree of corporateness is low, and that inasmuch as it does exist it stems from ritual concepts, rather than from collective ownership of land or property.

And also (Freeman 1955a:9):

> It is important to realize ... a longhouse community holds virtually no property in communal ownership, nor is there collective ownership of farm land.

Geddes (1954a:59) in a similar vein also wrote with regard to the Land Dayak:

> Although much of the land belonging to Dayak villages in the Sadong has many people sharing in its ownership, the system of land tenure is in no sense a communal one, for each of these persons has his or her particular rights defined in such a way that there should be no conflict with the rights of the others.

A decade later when I began my field work in Sabah I was surprised by the concern expressed by some government officers over the idea of "communalism". Among the British at that time there was a belief that this was pernicious and even might be on the edge of communism. To resolve this apparent anomaly between their data and their conclusions I suggested in the manuscript I circulated to Geddes and Freeman (Appell 1971a) that the stress put on the lack of communally-owned property in both their reports to the Sarawak government was in fact a reaction to concerns prevalent in government circles over the mistaken belief in the "communal" nature of nonliterate societies. For it is entirely clear that the village in both the Iban and the Bidayuh cases did have residual rights over its land, that it could and did control access to its village reserve in various matters.2

Jural Personality of the Village

It is interesting that the jural personality of the Borneo village has been largely overlook by scholars following World War II, with the notable exception of Morris (1976), who had legal training, in his study of Melanau land tenure.[3] Rousseau (1977, 1978, 1987) has also added to our understanding of the jural personality among the Kayan. But Ter Haar's summary of the studies of adat law makes it amply clear that villages do have jural personalities. At a minimum they hold rights over access to their land, access to their forest reserves, and who may or may not become a member of the village. And Ter Haar's work provides a fine detailed *Notes and Queries* for the study of jural entities and their property rights.4

He distinguishes villages whose membership is based on kinship ties from those in which membership is not dependant on establishing a kinship link. The Rungus village is of this latter type. To become accepted into a village all the applicant has to do is get the headman's approval, and this is based largely on past behavior and character. Critical to delineating this jural aspect of the Borneo village is the distinction between de jure and de facto kinship units. For example, in some villages the membership may form an overlapping kin network. But it is not necessary to establish a kinship connection to achieve membership. However, among the Bidayuh Land Dayak, the village is neither de jure nor de facto a kinship unit (see Appell 1971a). The extent to which this holds for other groups in Borneo is not clear.5

Devolvable Usufruct: Partitionable and Devisable

While the village is a jural entity in Rungus, Iban, and Bidayuh society, with somewhat different personalities in each, the traditional system of land tenure within the village is markedly different. The Rungus have circulating usufruct. Both the Iban and the Bidayuh can establish permanent use rights over an areas by cutting primary forest. And these rights are devolvable.[6] That is, they may be passed on to a successor jural entity.

There are two major types of devolvable usufruct. Among the Iban, if a *bilek* family subdivides, there is a partition of property, including land rights. Therefore, I have termed this particular form, "partitionable usufruct". Rights are held by the *bilek* family as a corporate entity.7

However, among the Bidayuh, rights to land are obtained through devisal to all the bilateral descendants from the original cultivator of that forest. Hence, I have termed this "devisable usufruct". Unlike the traditional Iban system where a person marrying out of the *bilek* loses his rights to land, among the Bidayuh all descendants get rights to land wherever they reside. Thus, rights do not appear to be owned corporately by a domestic family.

In systems of devolvable usufruct, the right to use these so-called permanent use rights over a tract of land are contingent on a number of factors, such as residence in the village, least use, etc. And these contingencies vary with the particular society. As these contingencies are complicated and vary widely, I shall not go into them here.

The term "permanent use rights" is hardly satisfactory particularly since Drake has pointed out that among the Mualang Dayak these permanent rights only exist until the land has had four consecutive uses by the holders of these rights. The land then reverts to the village reserve (Drake 1982:101-102). Therefore, it would be more appropriate to refer to these rights that may be created in devolvable systems as "durable use rights". The village as a jural entity thus holds what might be called "reversionary rights".

The Kenyah System

The Kenyah of Sarawak and Kalimantan have an interesting variation of devolvable usufruct, according to Whittier (1973). Traditionally rights over secondary forest were of three types: primary, secondary, and tertiary. Whittier (1973:62) writes:

> The man who first cuts primary jungle gains rights to that parcel of land. Children remaining in the household inherit primary rights

> to the land. Those who move to other households in the village retain secondary rights, i.e., they may use the land if no primary right holder wants it. Children moving to other villages, retain a tertiary right to the land, but with land pressure in the area today, it is unlikely that such rights can be activated.

It would thus appear that the primary rights are partitionable usufruct and the secondary and tertiary rights are devisable.[8] However, these conclusions of Whittier may be revised as the result of the detailed research by Dr. Francis J. Lian into Kenyah land tenure.

The Kayan System

There has been some dispute over the system of Kayan land tenure. Rousseau (1977) claimed that the Kayan had the same type of land tenure system as the Rungus. However, in 1980 when we were traveling in Sarawak and doing research in East Kalimantan, whenever I ran into a Kayan I would enquire about their system of land tenure, and both in Sarawak and in Kalimantan I was told that they did have a system that was essentially devolvable usufruct. Rather than roil the waters, I did not publish on this until I was in Sarawak again in 1986 and learned that a research proposal included the claim that the Kayan had circulating usufruct. I therefore thought it was important to present my evidence (see Appell 1986).

Rousseau (1987) replied to this article. He maintained that in his study of actual usage of land for swiddens in the village of Uma Bawang in the middle Baluy he had found that they indeed had circulating usufruct. But then he went on to say that the situation was different among the Kayan of the Mahakam River in Kalimantan. They did have devolvable usufruct. He added he finds it perfectly reasonable that in the Baram with higher densities of population the Kayan would also have devolvable usufruct, as is also the case in the lower Baluy. But then he states that one of his informants maintained that the clearing of a tract of land produces rights over it in the future.9

But Rousseau is contradictory on this matter within his own writings. While he excoriates me for assuming that the Kayan had a single form of land tenure in 1978 he wrote that "This study is based on fieldwork undertaken in the Baluy area, ... and particularly the village of Uma Bawang... . However, despite regional variations, most of the following description applies to other Kayan groups" (1978:78). He continues, "among the Kayan there is no individual ownership of arable land ... they establish the limits of their own farms without regard to the identity of the previous occupant ..." (1978:83).

Rousseau's conclusions are, furthermore, disputed by Chan (1991), by Mering Ngo (1991), by Antonio Guerreiro (personal communication) and by Makoto Tsugami (personal communication).

But there is some discussion as to whether they have devisable usufruct (Ngo 1991) or devolvable (Chan 1991). It might be that they could have aspects of both systems, as have the Kenyah. Thus, Chan (1991) argues that land rights are forfeited when a individual marries into another household and becomes affiliated with that household. He does not state, however, how this affiliation is decided and then jurally recognized. This is particularly interesting since there is a long period of postnuptial residence of five years in the bride's household. As a household grows from the birth of grandchildren, it may partition. And land rights at that time are divided between the primary household and the partitioning household, with the latter getting less rights to land. At a later date, according to Chan, when the head of the household nears death or dies, land rights are again divided among those who have remained affiliated with the household, with the larger amount going to that child who has cared for the aging parent.

However, if Rousseau is right this variation deserves some form of explanation and raises interesting questions for further research.

Variation in Land Tenure Rules Over Time and Space: Emergent Structuralism and Problems of Intracultural Variation

In (1965, 1971a) I showed how the jural personality of the Rungus village with regard to its rights over land enlarged as a result of growing scarcity. I have attempted to develop a theoretical framework that deals with social processes such as these, which I have called emergent structuralism (Appell 1988). In this, social forms or changes in social forms come into being as a result of intersecting behaviors in three domains: the jural order, or social structure of a society, the opportunity structure, and in the antistructure, the realm of antisocial activity. Dove's (1985) very detailed work on the changes in Kantu' Dayak land tenure provides a nice case of emergent structuralism in which the rules were revised as changes in the opportunity structure occurred as a result of the prohibition of warfare and the increased scarcity of land. The Kantu' land tenure system evolved from (1) circulating usufruct to durable tenure by households, without partition or limitation of time; then (2) to durable tenure mixed with areas reserved for circulating usufruct; and (3) finally to a growing shift to partitionable usufruct.

This evolution of change in land tenure requires a revision of my original classification of types of land tenure found in Borneo. See Table One.

TABLE ONE
TYPES OF LAND TENURE SYSTEMS FOUND IN BORNEO

1.0 Circulating usufruct.
2.0 Devolvable usufruct.
    2.1 Partitionable rights to usufruct.
    2.2 Devisable rights to usufruct.

But to what degree do land tenure rules and property rights vary between sections of an ethnic unit? Rousseau (1987), Cramb (1989), and Jessup (1992) have all raised this issue. This is an interesting point, but certainly an unexceptional one. For we all know cultures vary, and some domains vary more than others. For example, clothing style and hair style is perhaps more variable than others under certain conditions. And it is the job of anthropological inquiry to specify these variations and the conditions that lead to them. Here I think the theoretical framework of emergent structuralism will be of use. Certainly, we would expect land tenure, being more fundamental to the economy of a society, to be less variable, or at least variable within limited parameters. As long as an ethnic group shares the same language, certainly they must share the same terms for and concepts about property. And if not, then that is interesting!

Jessup (1992) argues that an assumption of a uniform land tenure system within one ethnic group living in scattered conditions is dubious. This is of course an empirical issue. The boundaries of cultural contours must always be drawn. To illustrate his point Jessup describes the problem of land tenure briefly in a pioneering Kenyah village in which rights to secondary forest are not recognized because there is an abundance of land. There is nothing exceptional in this since property rights are one indication of scarcity and value. And he raises the interesting question of how does a new community establish rules or make modification to rules under new circumstances. Again this is an empirical question, but we know from anthropological research that tradition has the capacity to reassert itself even after years of abeyance. Would we expect the Kenyah in aging pioneering settlements with growing scarcity to develop a completely new land tenure system of circulating usufruct like the Rungus? Or would they be more likely to revert to what is in their traditional adat, devolvable usufruct? This is again an empirical question, and the processes by which the new structure emerges are of great scientific interest.

The problem with the view of Jessup, Rousseau, and Cramb is that they make the mistake of confusing the system of rules, that is the social structure, with how these are worked out in the opportunity structure. Furthermore, it is one thing to proclaim variability. We should in fact

expect this. But it is another thing to establish this with reliable data supported by numerical evidence and material from case studies. And finally, neither Jessup, Rousseau, nor Cramb situate their study villages along an acculturative time line, in other words, the degree to which social change has taken place and the traditional adat changed.

What Human Ecological Factors Might Have Led to the Development of These Two Systems?

How do we explain the two different systems, circulating and devolvable usufruct? What are the origins of these differences? In Appell (1971b) I put forth the tentative hypothesis that ecological factors might play a part. At that point, all that we knew was devolvable usufruct occurred in areas of high rainfall and circulating usufruct occurred in areas of a major dry season. So I hypothesized that the increased rainfall in Sarawak in conjunction with more productive soils tended to encourage the regeneration of tree species and discourage the growth of weeds in comparison to the Rungus area. Thus, I argued, because of fewer weeds invading the swidden after the first year's harvest, and because young forest has a better chance for a more complete burn in wet areas than in primary forest, there is greater economic value in secondary forest which results in the development of these devolvable use rights.

This led to a series of articles in the *Borneo Research Bulletin*, that argued this back and forth, which have been reviewed skillfully by Henry Chan (1991).[10]

Dove (1985), in the most recent analysis of this hypothesis, concludes on the basis of his analysis of his very detailed data on the Kantu' Dayak that this hypothesis is valid, but that it is also modifiable by historical and socioeconomic factors.

In 1980-81 we worked among the Bulusu' in East Kalimantan (Appell 1985a). The Bulusu' live in one of the highest rainfall areas of Borneo, yet they have a system of land tenure remarkably similar to that of the Rungus. The only difference is that the jural personality of the village is less well developed than that of the Rungus. Thus, contrary to the hypothesis I had advanced (Appell 1971b), the Bulusu' had circulating usufruct.

The Bulusu' have consequently cast into doubt the strength of ecological factors in the development of land tenure systems. It is thus still unclear as to how to explain the origins of these two different land tenure systems. But it would seem to indicate that if there are ecological constraints operating there are also be historical factors and as yet undetermined socioeconomic factors that appear to be more potent. Finally, post-marital residence may be a factor inhibiting the development of durable rights. Among the Rungus residence traditionally was uxorilocal, so that a man if he married into another village would have no rights to land if they had followed the practice of recognizing durable rights. With the development of titles to land under the government system of tenure, residence has changed to virilocal residence.

Research That Needs to Be Done

We have no data on the traditional system of land tenure among wet rice agriculturalists. This is a major lacuna in our knowledge, for in Borneo there are vast areas of wet rice cultivation. This question has been posed about wet rice societies all over the world. But Borneo seems to be among the missing in terms of scholarly inquiry on this subject. However, this is a fascinating subject. Who owns head dams? Who owns rights downstream? How is joint work on the system managed? How are water rights apportioned? How are intervillage disputes over water resolved?

Conclusion: Possible Applicability of This Research

Under situations of social change and the growth of wealth in cities, there is an erosion of the village land base as the cash-rich city dwellers buy land from the cash-poor farmers. This results in the creation of a landless peasantry, and the flood to the cities of those without the

skills, training, or education to move into regular urban employment. And this creates social problems.

Does the traditional system of land tenure in Borneo suggest to planners an approach, a means whereby these social dislocations can be minimized and social stability achieved in the rural areas? Can a system be devised whereby the strengths of a stable rural population can be maintained?

APPENDIX I

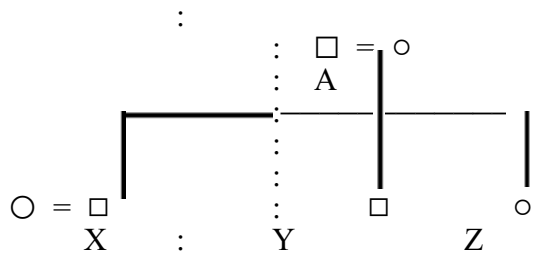
OBSERVATIONAL PROCEDURES FOR DISTINGUISHING PARTITIONABLE USUFRUCT FROM DEVISABLE USUFRUCT**

There are several crucial tests to be applied to distinguish partitionable from devisable usufruct, and corporately held devisable usufruct from individually held devisable usufruct. These tests have to do with the structure of the domestic family at the time of cutting primary forest (see Figure One).

In the case of 1.0, if rights to secondary forest felled by A are devised on his death to the whole set of children, X, Y, and Z, irrespective of the family structure when the rights were created, it is then individually held devisable usufruct. The rights originally created by felling the primary forest were held by A until his death, or until he gave them to his children, and not by the domestic family as a corporate unit.

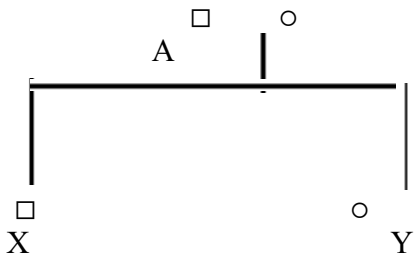
FIGURE ONE: DOMESTIC FAMILY STRUCTURE

1.0

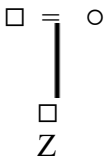


2.0

2.1



2.2



Key: □ - Male ○ - Female - Divorce

In the case of 1.0, if X relinquishes rights to secondary forest of his natal household on marrying out, it can be either a case of partitionable usufruct or corporate devisable usufruct depending both on the jural locus of the rights created and whether or not the domestic family unit is a perpetual corporate unit or only one of limited life.

It is partitionable usufruct, if X has no rights in primary forest cut by A before (or after) X has married out. X on marrying out gets rights from his wife's domestic family. The domestic family units exist in perpetuity with the locus of the rights lying with them as corporate entities. Then, when Y eventually leaves his natal domestic family with his wife and children to establish his own, as part of the partitioning of his natal domestic family, rights to secondary forest created by his natal domestic family are devolved on Y's new household.

Corporate devisable usufruct is found in instances where the domestic family as a jurally corporate entity holds the rights to the secondary forest, but it has limited life. Therefore, its rights have to be devised at some point. In such an instance the feller cuts the forest as a representative of his domestic family. In the situation of domestic family structure illustrated in 1.0, X would receive on the dissolution of the domestic family only those rights created before he married. Rights created after his marriage while Y and Z were still working in the household would be devised only on them with the dissolution of the domestic family.

Another test for this is in the situation of domestic family structure illustrated in 2.0. Rights to secondary forest felled by A before his divorce (2.1) are not devised on Z and rights to forest felled by A in his second marriage (2.2) are not devised on his death to X and Y.

A further test for this can be used when A dies and X and Y, still not married, are maintaining the economy of their natal domestic family. If X cuts primary forest, then marries, do the rights to the secondary forest still remain with the natal domestic family and are not devised to both X and Y until that natal family is dissolved?

A more complex situation of devisable usufruct rights arises when X and Y are considered to have created preferential rights because they helped their father clear the forest. Referring back to 1.0, Y and Z, as opposed to X, may have a preferential claim to the rights on the basis that they were helping their father during the agricultural years that the primary forest was cut. An example of this type of preferential claim occurs among the Rungus with regard to moveable property purchased while a child was actively farming with his parents (see Appell 1974). In this case the domestic family has only limited life as a corporate unit. Rights lie with the domestic family as a corporate entity of limited life, but those who helped create these rights have a preferential right to receive these once the original domestic family dissolves.

NOTES

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** This is a revised version of Appell (1987), eliminating, I hope, some errors of reasoning found in the original.

1 The post-structuralists argue that social forms are generated by the sum total of decisions and transactions. But these do not generate forms in the social structure, that is the jural order. They only generate forms in the opportunity structure. To bring new social forms from the opportunity structure into the realm of the social structure requires a second level order of event, a reflexive event by the members of the society scanning their own opportunity structure and

deciding that social structural change is in order. These new forms are then encoded into the social structure by a legitimizing act or relegated to the antistructure as deviance by a representative body of members.

2 Sather (1980, 1990, personal communication) argues that among the Saribas Iban the longhouse village *aum* ("moot") managed rights over land distribution and disputes and could establish reserves for joint use. He also writes that oral narratives suggest that *aum* initiated by regional leaders could also at times project these rights to a wider intra-river area, particularly in situations of migration and inter-longhouse conflict.

3 Jessup and Peluso (1986:517) are misinformed when they state that Weinstock (1979) found village territoriality to be a common feature of Bornean systems. The scholars of the Dutch *adatrecht* school pointed that out early in the 20th century. I brought this aspect of the jural system of Bornean societies and its entailments for development to the attention of the current generation of scholars in a series of articles based on my own research (see Appell 1971a; 1971b; 1983b; 1986) and in discussion with Weinstock. Unfortunately Weinstock does not quote the source of this information or how he reached this conclusion, although he uses my terminology.

4 Jessup and Peluso's (1986:518) generalization that in Borneo property rights are forfeited by a person who permanently leaves the village needs elaboration as to what is meant by "permanently". The degree to which leaving a village involves loss of rights depends on the ethnic group involved, their jural organization, the type of property, and the type of rights. For example, among the Bulusu' of East Kalimantan and the Rungus of Sabah, Malaysia, rights to enjoy the profits from fruit trees is not forfeited on leaving a village. With regard to rights to cultivate, Whittier writes that among the Kenyah: "Children moving to other villages, retain a tertiary right to the land, but with land pressure in the area today, it is unlikely that such rights can be activated" (1973:62). Among the Bidayuh Land Dayak, rights to cultivate ancestral lands are not forfeited on leaving a village but only the right to activate those rights without permission of the village headman or without returning to the village to reside (see Appell 1971b).

5 Jessup and Peluso (1986:518) in their discussion of Borneo village structure mistakenly claim that the Borneo village is a kinship unit. But they do not distinguish whether it is a de jure kinship unit or only a de facto one. (For a discussion of this issue in another context see Appell 1973.)

6 In Appell (1983a) I referred to land tenure systems with devolvable use rights as "contingent land tenure systems". This proved awkward, which led to the new terminology in Appell (1986).

7 Cramb (1989) reports that in one relatively new village the Iban have chosen to institute a system of land tenure which might be termed limited circulating usufruct. He reports that when the community comes back to the same farming area in a later year each household will farm in roughly the same place as before. In a sample from the Rungus in 1961 only 9% did (Appell 1965). Cramb unfortunately omits a discussion of the sociological organization of this new community. For example, it would be interesting to know if this community had a denser network of kin ties than other Iban communities. It appears that this is a new variation arising

from the impact of social change of the colonial and post-colonial period. It is too bad that he did not recognize I was talking about traditional patterns of land tenure before these societies were closely articulated with the world system.

8 Hudson (1967, 1972) reports a somewhat similar system among the Ma'anyan (see also King 1975).

9 It is interesting that Rousseau (1977) also states that for the village in which he worked, an individual has clear rights to cultivate any first and second year growth of his swidden. Thus, the model of devolvable rights lies there, which may provide one answer to Jessup's (1992) question of on what basis are property rights over forest recreated in a situation there was once low population densities but they are now feeling land pressures. Histories and the logic of thinking
about property have to be investigated to discern the mental models on which new decisions may be based.

10 Cramb (1989) attacks my work. It is amusingly dehumanizing to be treated as a straw man. But more to the point, what has happened to scholarship? Cramb (1989) claims that I was an environmental determinist just because I raised the "tentative hypothesis" (Appell 197b:17) that "the differences in these systems [of land tenure] might be explainable in large part by differences in ecological factors." Cramb ignores my findings from my Bulusu' research referred to above. Cramb in his critique also claims that in later work I moved away from my environmental determinism to an equally unsatisfactory socio-cultural determinism, with land tenure viewed as given for a particular group" (Cramb 1989:fn.2). I was unaware that I thought environments were deterministic rather than constraining; that ethnographic research on a system of land tenure presumed socio-cultural determinism, whatever that means in this context; and that my approach assumed cultural homogeneity. The degree of homogeneity is an empirical question that needs to be addressed in all research. Cramb (1989) claims that there are historical forces, individual choice, etc., that lead to the social construction of a particular system. Cramb ignores the fact that I have argued just that since 1965 (see Appell 1965, 1971a, 1974). In Appell (1985b, 1988) I elaborate on this position and attempted a theoretical model on how to deal with this. Whatever, those who argue for choice seem to forget the sources and constraints of alternative cultural models. Where did those Iban that Cramb studied get the idea for circulating usufruct? How did they implement it? And the opportunity theorists also ignore practical constraints. Why did not those Iban build igloos?

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