Land tenure: the wide view.

When the brothers Geste hold the fort of Zinderneuf in the Sahara desert, the word “hold” tells us something about land tenure and its root in the Latin word “tenere”; to hold, guard, possess, occupy, or defend. People hold land – tenaciously sometimes – against trespass and possible threat, a kind of territoriality that applies even to contemporary suburban homes. Barbara Kingsolver uses the example of repulsing a nocturnal intruder at our child’s bedroom window with a crowbar, and the unorthodox speech therapist, Lionel Logue, says ‘My “castle”, my rules,’ to the future King George VI in the film “The King’s speech”. Mr. Wemmick, in Charles Dickens’ “Great Expectations”, goes the full measure and, in the heart of London, has contrived fortifications, a flag and a drawbridge, and fires a canon at nine o’clock Greenwich time every evening.

Our very survival is bound up with land. Māori call ancestral land turangawaewae, a standing place for the feet, and strong attachments can be forged with place by any nationality. Nor does this only apply to Māori or necessarily take a thousand years, as Pakeha poet Brian Turner asserts. Our legend personifies land, aboriginal folklore weaves it with the Songlines of ancestral beings way back in the Dreamtime, and surveyors wrestle with the challenge of imposing boundaries on a continuum and documenting rights securely and efficiently to the portions created.

An important distinction in land tenure is whether people hold land as individuals and families or whether communally – that is to say as larger groups such as tribes or sub-tribes. The latter – communal tenure – is not merely an historical curiosity; it still accounts for the majority of land rights in the Pacific and for 90 - 98% of African land. Communal tenure is typically short on written law and long on custom, and there is remarkable congruence in tenure custom the world over. Just as Maori moved with their ancestors’ bones in a waka iwi, and sometimes reinterred these in a hahunga ceremony, Joseph’s bones were brought back from Egypt by the Israelites and reinterred at Shechem on purchased land, and a piper plays a pibroch to summon the Scottish soldier’s spirit back from Tyrol to the Highlands. Comparable ceremonies are still alive in African tradition today, where a handful of soil may still be returned to a home area from a grave on foreign soil in order to convince ancestral spirits that a child of the soil – mwana wevhu – has returned home, or soil from one area might be mixed with that of another area prior to moving, and either eaten or held in suspension and the water drunk. Remnants of communal tenure still survive even in unexpected enclaves in Western countries, such as the Swiss and Norwegian saeters.

Cities tend to observe their own tenure rules, which may differ from those prevailing in rural areas. Even thousands of years ago in Jewish tradition, whereas land rights in the countryside and unwalled villages reverted to original holders at the fiftieth, Jubilee year, houses in walled cities belonged permanently to buyers and their descendants. Notwithstanding urban exceptions such as Port Meadow in Oxford, England (which is still held under a form of communal ownership), even in countries where communal tenure predominates it is as though an “urban contract” exists whereby those living in cities tacitly subscribe to individualised, marketable tenure. The African tradition may offer a key to understanding this: in communal areas, while varying levels of access apply to fields and common areas, anyone approaching a homestead needs to shout a verbal “Gogogoil” (knock,
knock!) and be given permission to come in. Cities are in essence just densely grouped homesteads minus the fields and common land, with the same access rules carried over.

But in a more general sense, even urban rights are communal, and always will be. Even if we (or our landlords) hold title deeds, and our land is individually owned, registered and marketable, our lives can never be other than socially based. In John Donne’s words, no man is an island – we are all parts of the continental main. Even if we have managed to distance our neighbours by purchasing a lifestyle block or a high country station, we nonetheless have neighbours on the planet whose future is intertwined with our own. We live together, even where we live alone. Today the closest belonging group wider than our families is usually our nation. However, nations are typically large and impersonal and, like football teams, have increasingly blurred membership rules, causing our awareness of nationhood and our loyalty quotient to fluctuate. National sporting teams can briefly and pleasurably unite citizens, and war or disaster bond us together in dire need, but at other times individuals who would never dream of shirking washing up duties in their family settings, sometimes wriggle shamelessly out of paying their rates let alone their international carbon taxes.

As the world population continues to grow, our co-existence is likely to need higher degrees of cooperation, and perhaps we should not shrug off too quickly the lessons that communal situations could teach us about a mindset whereby belonging to a group is all-encompassing and permeates our relationship with land. That mindset alone provides a motive for looking more closely at what changes occur when communal land tenure is supplanted by private property, for example in places like Vanuatu today. Before communal tenure gives way to private property, land rights are only as secure as the community that gives rise to those rights. There is an embedded survival incentive to cooperate, and to remain part of the community requires an ongoing investment in people. An old Māori saying, “He aha te mea nui?” What is the most important thing? To which the answer is “He tangata. He tangata. He tangata.” It is people. It is people. It is people. However, the cement between people draws its strength from their having a turangawaewae toehold on specific land. It is unclear exactly what occurs when communal rights are privatised but it is perhaps significant that rights tend to be captured in law while responsibilities (or duties) to family, community, posterity and even to the natural world often become voluntary, personal and, because they no longer have a direct link to survival, all too often excluded from our busy schedules. It is as if interwoven strands of land-links and people-links have become separated, thereby allowing people to be indifferent neighbours yet still retain their title deeds. Or allowing children to grow up with stories whose provenance traces back to Warner Brothers and yet being surprised when the young apply a Hollywood test of morality that departs from the more astringent standard we learned on our grandmothers’ laps.

Sometimes it seems that vital principles of our communal tenure could have been jettisoned as we moved to individualised private property, and it seems important to try to pin the core principles of communal tenure and consider carefully whether the Western land tenure model can even now be strengthened in any way. The following may be a starting point:

1. A work principle. Everyone is expected to work, and a clear link exists between work and survival. In communal societies there is a variety of work ranging from the work of food gathering – mahinga kai for Māori – to going into battle. To retire from active physical work is only to commence work in a less active but no less important capacity.
2. Self worth. By contributing, every individual is aware how much they are needed and valued, which leads to opportunities for affirmation and self esteem.

3. Land is not negotiable wealth. Land is a space to earn wealth by food gathering, planting or hunting but is not in itself wealth. Wealth applies to communities not individuals, and as a rule wealth does not in itself earn more wealth. Land is held in trust by the living, on behalf of those who have died, for the yet unborn. This principle is inseparable from an environmental ethic, since land should be passed on in good condition.

4. The principle of individual rights being subordinated to group rights is clearly linked with survival.

5. The principle of specific places existing that are well known and to which individuals can always return and be themselves. Places where returnees will be accepted and can dress in a way and speak a language with which they are comfortable. A place from which individuals can move beyond in the knowledge of a secure place to return to. Bound up with this principle are mechanisms for passing on language and culture, such as songs, poems and stories.

With the exception of number three – land not being marketable – most of these principles have counterparts in Western individualised tenure though often with a different composition and application. To single out just one principle – that of work – in order to make a point, in Western tenure systems we aim for full employment in our societies and congratulate ourselves if we keep unemployment to single figures. However, our measure of “work” is usually confined to waged employment, which skirts around some of the most important tasks of all including mothering our future leaders and sages, singing the songs and telling the stories that pass on the value systems underpinning our collective wisdom to the young, and providing the affirmation that engenders worth and works against self harm and depression and violence. Breaking up a communal mode of existence and replacing it with individualised tenure has been compared with splitting the atom, perhaps releasing pent energies into the pathologies we witness in societies today, some of which could perhaps be traced back to communal tenure modes mutating to individualised forms and might even be reversible as a whole or in part.

As a final facet of communal tenure, let us zoom out to a global focus. Although we may flatter our egos that we “own” land allodially, boat people, land invasions in South America and Zimbabwe, land leases and purchases in Africa, squatters in London, and posturing with nuclear missiles by our continental neighbours, all help remind us that we are only sojourners on this earth for a brief lifetime. Our very survival is inextricably intertwined with others on the planet. If some are grossly rich while others are abjectly poor, an imbalance exists that will cry out for redress as surely as a higher head of water seeks a common level with a lower. Although the idea of one world government raises significant questions, there is probably widespread agreement that we are moving away from absolute ownership towards a conception of rights held from humanity. We are closer to an appreciation that our mutual survival relies on cooperating with others on the planet. In this awareness, our greatest land tenure questions are little different from what they have always been: how can the rich be induced to settle for less wealth out of compassion for those living in poverty? How can we achieve a society where, without coercion, citizens choose fair dealing and responsible, considerate lifestyles from motives of unqualified brotherhood and sisterhood for all humankind? And, if laws cannot effectively be engraved on our hearts, then quis custodiet ipsos custodes? – who should watch the watchers themselves? As we grapple with these questions, we
can be sure that we will be contending with unprecedented population levels on a finite land mass. “Buy land,” Mark Twain famously said, “they’re not making it anymore”, and perhaps they are even taking it away as the sea level continues to rise. Even now a new colonisation is being ushered in, with international sales and leases of land and, along with these, the potential for fresh histories of treachery and broken agreements. Now more than ever we need to work towards a hybrid tenure that captures the best of communal and individualised forms and, once found, to hold onto those principles. Tenaciously.