
The Relative Resilience of Property: First Possession and Order Without Law in East Timor

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Much of the recent literature on customary property relations in sub-Saharan Africa has highlighted underlying characteristics of negotiability and indeterminacy. Custom is prone to reinvention as resource claimants manipulate customary references across multiple forums for property legitimation and authority. This article focuses on the resilience of customary property relations in East Timor. Based on a study of customary authority in the village of Babulo, we conclude that traditional Timorese narratives of first possession, where land authority is claimed by groups that trace descent to a mythic first settler, have acted as adaptive and resilient focal points for the reproduction of customary property relations in historical circumstances of war, colonization, and occupation. While a finding of customary resilience is not new to post-colonial contexts, the relative novelty of our study lies in its structured explanation for resilience in circumstances of war and displacement, based on the social ordering capacity of first possession principles themselves. This explanation, which derives from focal point theories for cooperative property relations, also takes into account a number of limits on the ordering capacity of first possession principles, which support a conclusion of relative or constrained resilience, particularly in terms of contested interpretations of possessory authority in contemporary East Timor.

From 1974 to 1999, at least 102,800, and as many as 183,000, East Timorese died from conflict-related causes. These deaths represented between 15 and 25 percent of East Timor's then population, a mortality rate equivalent to the killing fields of Cambodia (CAVR 2005:44). Most deaths took place during the period of Indonesian occupation from 1975 to 1999. Many resulted from forced relocations by the Indonesian military, an ill-fated attempt to separate civilians from the armed resistance. Others were due to killings by the Indonesian military and its proxies, pro-Indonesian

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militia groups that after the 1999 vote for independence went on a rampage of house burning and forced population displacement. This displacement in 1999, which affected most of the then population of East Timor, also served to repeat earlier episodes of involuntary population movements, particularly after the 1975 invasion and during the intense phase of military conflict in 1978–1979 (CAVR 2005:76; Fitzpatrick 2002a:5–6, 33–8, 115–19). According to the Truth and Reconciliation Commission established by the new state of East Timor, which is now known as Timor Leste (CAVR 2005:73)¹:

The people of Timor Leste experienced repeated periods of displacement, often in massive numbers, between 1975 and 1999. Most individual East Timorese alive today have experienced at least one period of displacement. Many have experienced several

Since the end of Indonesian occupation in 1999, East Timorese affected by displacement and war have sought to reconstitute and validate their relations with land, either in their places of displacement or through acts of return or relocation. Most have acted in the absence of law, as there is still no effective law to identify private land ownership in East Timor. Many, particularly those in rural areas, have turned to long-standing customary principles to validate their post-occupation relations with land.

This article considers the reconstitution of customary land relations in post-occupation East Timor. Customary systems have been important sources of social ordering in East Timor. Typically they are based on narratives of origin and first possession, where land authority is claimed by lineages that trace descent to a mythic ancestor or first settler. Property relations are constituted around ritualized norms of original authority, with subsequent settlers defining rights and access to land by reference to their relationship with origin groups, particularly as a result of marriage relations between settler households and origin group descendants (Clamagirand 1980; Forman 1980; Fox 1993, 1996; Hicks 1976; Traube 1986). Traditionally the negotiation and assertion of claims to rural land in East Timor have taken place through shared norms and vocabularies of origin and alliance, even in a historical context of law, colonization, and military occupation (McWilliam 2007). In this sense, the customary land systems of East Timor have displayed a substantial degree of resilience and adaptive capacity in the face of historical adversity. Their distinctive cultural character-

¹ *Leste* means *East* in Portuguese. This article uses the expression *East Timor* for consistency of description across the historical periods of Portuguese colonization (Portuguese Timor), Indonesian occupation (East Timor or Timor Timor), and independence (Timor Leste).

istic of incorporating newcomers into origin group hierarchy, through intermarriage and enduring relationships of reciprocity and exchange, has acted as an institutional technique to manage immigration, obtain access to labor, and secure territorial boundaries through defensive alliances against aggressive encroaching groups (Fox 1995).

Our study is the first to focus on the status of customary land relations since the end of Indonesian occupation, and the emergence of the new state of Timor Leste. To what extent have customary norms and systems provided the framework for reconstituted land relations in independent East Timor? On the basis of detailed ethnographic fieldwork in the village of Babulo in Viqueque district, we conclude that customary property arrangements have retained a high degree of resilience notwithstanding the displacement and disruption of Indonesian occupation. Through a description of a ceremony commemorating the reconstruction of sacred houses, we illustrate the way in which ancestral first possession narratives helped the people of Babulo return to their lands and re-establish an orderly system of land relations without engaging in a significant degree of conflict or post-displacement competitive race for rights or authority relating to land. We suggest that ancestral first possession narratives—reproduced through ritual and symbolized by sacred houses—have acted as resilient sources of social ordering because they provide clear and visible signals of relations with land that are interpreted by potential property claimants as focal points that encourage strategies of cooperation rather than conflict (McDowell 2004:77; Sugden 1986:87–97; Zerbe & Anderson 2001:116).

Much of the recent literature on customary property relations in sub-Saharan Africa has highlighted underlying characteristics of negotiability and indeterminacy (e.g., Berry 1993, 1997; Bourdieu 1990; de Sardan 1999; Lund 2002; Moore 1986, 1998). While notions of “custom” remain prominent in postcolonial discourse, custom itself is prone to reinvention and indeterminacy as resource claimants manipulate customary references across multiple forums for property legitimation and authority (Berry 1993:104). Land-related issues of group identity and status can also be relatively porous and subject to opportunistic acts of manipulation and reinterpretation (Juul 2002). In Babulo, by way of contrast, ancestral first possession principles have been relatively resistant to situational processes of reinvention, ambiguity, and contestation, and have continued to provide clear delineations of group identity and status. We suggest that the resilience of custom in Babulo derives from the inherent ordering capacity of first possession principles themselves. In other words, while there are qualities of negotiability and indeterminacy in the pluralist

property arrangements of Babulo, the signaling and focal point functions of first possession principles—symbolized by sacred houses and reproduced through ritual and recursive linguistic techniques—have had a powerful influence on decisions by property claimants to engage in acts of postdisplacement cooperation rather than conflict.

Although traditional narratives of first possession have played a key role in the orderly reconstitution of customary property relations in Babulo, a number of constraints affect the ordering capacity of first possession principles in Babulo and in the coastal lowlands below Babulo. Timorese narratives of origin and first possession are not so much matters of historical fact as social constructions and mythical events in the establishment of cosmological order. They have lost a degree of relevance and ordering capacity in areas where other sources of property legitimacy and authority have intruded, including institutions established under various forms of colonial and neocolonial rule. Currently, for example, there are land tensions in Babulo involving migrants from the neighboring village of Afalocai, who have remained relative outsiders notwithstanding at times lengthy periods of occupation, because village government structures established by the Portuguese have affected traditional mechanisms for incorporating newcomers into customary hierarchy. There are also chronic land conflicts on the coastal plain below Babulo, in areas first cleared and cultivated under Portuguese or Indonesian supervision, where customary authority is relatively weak and state-affiliated village government relatively strong. Hence we conclude that the resilience of customary property arrangements in East Timor is relative and constrained, rather than absolute in nature, as their capacity to maintain social order in a context of relocation and associated land tensions has been limited by the emergence of state-affiliated sources of public authority and the potential for contested interpretations of possessory authority itself.

Background and Overview: The Turbulent History of East Timor

East Timor has a land area of approximately 14,600 km², and a population of more than 1.1 million (Central Intelligence Agency 2010: n.p.). While national income is relatively high due to offshore oil and gas reserves, almost all East Timorese pursue livelihoods outside the oil and gas sector. Around one-third rely exclusively on subsistence agriculture. More than 39 percent live below the poverty line (estimated at less than US\$0.55 a day; International Finance Corporation and World Bank 2007:2, 7). Most agricultural

activity is subsistence farming (corn, rice, root crops, vegetables, and fruit), although there is some cash crop production of coffee, tobacco, cloves, cocoa, vanilla, and areca nuts. The rural population is relatively dispersed. While there is increasing competition for land in urban areas and around rural townships, there is sufficient land for cultivation in most rural districts of East Timor. Generally speaking, current pressures on rural land systems arise more from contested authority over land, particularly as a result of relocations during Indonesian times, than from the availability of land itself.

The first Portuguese governor of East Timor was appointed in 1701. Until the early 1900s, the Portuguese administration was largely engaged in trading activity with East Timor's hinterland. There was a *de facto* system of indirect rule through indigenous authorities in the countryside (Gunn 1999:192). But in the late nineteenth century, as with other colonial systems, there were policy moves toward taxation of colonial subjects and creation of plantations for export purposes. As a result, the Portuguese Parliament passed the colonial land law of 1901, which, in combination with a number of Portuguese decrees specific to East Timor, vested all land not used for permanent residence or cultivation in the Portuguese state (Fitzpatrick 2002a:146–7). The Portuguese administration also renewed military efforts to extend control over rural districts and commenced resettlement programs to facilitate development of lowland agricultural areas. These colonial territorialization efforts came to a halt when Japan invaded and occupied East Timor in 1942. The Japanese occupation was characterized by widespread population displacement and forced resettlements, which created food shortages and a high degree of armed Timorese resistance. It has been estimated that as many as 100,000 East Timorese died between 1942 and 1945, a figure equivalent in proportion to the mortality rates of the Indonesian occupation (Gunn 1999:236).

In 1960, the UN General Assembly included East Timor on its list of non-self-governing territories, which meant it was viewed as a candidate for decolonization and self-determination (United Nations 1960). In 1975, Portugal withdrew from all its colonies without implementing mechanisms for orderly decolonization. On November 28, 1975, a local political party—Fretilin (Frente Revolucionara de Timor Leste)—issued a declaration of independence for East Timor. In response, a rival party—UDT (Uniao Democratica Timorese)—issued a statement on behalf of a group calling itself the “Anti-Communist Movement,” calling for intervention by the Indonesian government and the integration of East Timor into Indonesia (Gusmão 2000:17). On December 7, 1975, Indonesian armed forces invaded East Timor, leading to the displacement of more than 300,000 East Timorese in the months after the

invasion. The Fretilin resistance was well-equipped with weapons left behind by the Portuguese, and by the end of 1976, approximately 80 percent of East Timor remained outside the control of Indonesian forces. In September 1977, the Indonesian military embarked on a new offensive, which included the destruction of food crops and forced resettlement of villagers into “strategic camps.” Official military figures recorded that 372,921 people, as many as one-half of the population, were refugees in these strategic camps by December 1978 (Fitzpatrick 2002a:135). Soon thereafter, forced relocations and strict controls over population movements, including access to agricultural fields, created a severe famine affecting much of East Timor. At least 84,200 are estimated to have died as a result of conflict-related hunger and illness between 1974 and 1999, with most deaths likely to have resulted from the famine in the late 1970s and early 1980s (CAVR 2005:44).

In 1999, the Indonesian government agreed, over the objections of its military, to hold a vote on independence for East Timor. At the time of the UN-organized vote for independence in August 1999, Indonesian statistics estimated the population of East Timor as almost 900,000. As a result of military-backed militia violence that followed the 79 percent majority vote for independence, more than 400,000 people were internally displaced within East Timor itself, and a further 300,000 fled or were forcibly transported across the border to West Timor (Fitzpatrick 2002a,b:5–6). On October 25, 1999, the United Nations Security Council passed Resolution No. 1272, establishing the United Nations Transitional Authority in East Timor (UNTAET). Article 1 vested all legislative and executive authority with respect to East Timor, including the administration of justice, in the hands of UNTAET. UNTAET Regulation No. 1 established a governing law for East Timor that was the law of the previous regime (i.e., Indonesia), as it was applied on October 25, 1999, subject to certain international human rights standards. Technically speaking, the applicable law on land in East Timor therefore remained Indonesia’s Basic Agrarian Law of 1960. But there was no institutional machinery to apply the law, even in those areas where Indonesian land titles had been issued, very little political will to maintain the land law and associated land grabbing of a military occupier, and no certainty as to the way in which international human rights standards would apply to the Basic Agrarian Law. In any event, the land laws of Indonesia have not been applied and all those involved in land policy development, including bona fide Timorese holders of Indonesian land titles, have understood that new laws would be required to regulate and determine land ownership in the new state of Timor Leste.

The independent state of Timor Leste was established on May 20, 2002. Its new Constitution guarantees rights to housing,

private property, and protection against expropriation without due process and compensation (Fitzpatrick 2002b). It also provides for the recognition of “norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law” (Constitution of East Timor 2002). There are now regulations governing the definition and nature of state land, and the grant of leases over state and private land. However, as of December 2009, the key issue of private ownership—who owns what land, where, and under what title—remained yet to be resolved. During its period of control, the UN administration resolved not to establish a land claims commission or otherwise determine the ownership of private land, largely as a result of concerns over its democratic mandate and the potential for new laws to trigger land conflict (Fitzpatrick 2002b). In 2006, the Fretilin government of East Timor also shelved a draft law on private land ownership after political conflict between the President and Prime Minister led to fighting among police and military factions, and a breakdown in social order in the capital city of Dili (Harrington 2007).

In September 2009, the government of East Timor issued a revised draft transitional land law governing first registration and recognition of rights to land in East Timor. The revised draft law provided for ownership rights if a claimant:

- had been in long-term peaceful possession of land since December 31, 1998; or
- was a holder of a statutory ownership title issued under Portuguese (*propriedade perfeita*) or Indonesian rule (*hak milik*) administrations.

The revised draft transitional land law also stated that on community land, as defined, “existing customary rights of land possession and use” were protected, provided that they were not inconsistent with the Constitution and prevailing law (Art. 24(2)). On March 10, 2010, East Timor’s Council of Ministers accepted a further revised draft transitional land law. The further revised draft provides that community property, which is defined as organized in accordance with local practices and customs, shall be inalienable (Art. 25). This latest draft is scheduled for consideration by the Parliament of East Timor in July 2010. At this stage, there has been no attempt to define customary practices relating to community property, or their precise relationship with the proposed legislative recognition of possession-based individual ownership rights. There are ongoing efforts to draft implementing regulations relating to community land. This article provides a detailed case study to assist efforts to

develop effective laws on customary land in the post-conflict circumstances of East Timor.

The Ordering Principle of Origin: Hierarchy and Precedence in Traditional Timorese Societies

There are approximately 26 distinct ethno-linguistic groups in East Timor. Most are classified as Austronesian, a distinct linguistic grouping that encompasses the people of Indonesia, Malaysia, Philippines, and certain islands of the Central and South Pacific. Austronesian groups spread across Southeast Asia and the Pacific over a period of some 3,000 to 4,000 years (Bellwood 1995). Their migratory progress seems to have fueled a distinctly Austronesian cultural focus on notions of origin. Across all the Austronesian groups of East Timor, there are similar principles and vocabularies of origin based on the proximity of lineages or house-based groups to a mythical source of common derivation (Fox 1996:132). Typically, this common derivation involves descent from ancestor-settlers and related affiliation with a sacred origin house (Clamagirand 1980:135; Forman 1980:154; Fox 1993; McWilliam 2005; Traube 1995:46). Proximity to points of common derivation grants social status and determines rights and obligations relating to land. Even non-Austronesian Timorese groups, with extensive histories of cultural association with Austronesian societies, utilize principles of origin and common derivation to structure social hierarchy and relations with land (McWilliam 2007).

Our case study of customary authority in Babulo village in Viqueque district in East Timor provides an illustrative example of origin group structures as they relate to land. The Darlari descent group is acknowledged to have origin group precedence over a number of descent groups and hamlets in the village. The senior lineages (or “source houses”) of the Darlari are the “lord of the land.” The authority of the “lord of the land” is embodied in the Darlari headman and two other senior Darlari members. It derives from their direct descent from ancestor-settlers, mythical founders of an ancient kingdom called Babulu, and is sustained by their knowledge of the founding ancestors, the establishment of sacred houses, and alliances and land allocations involving subsequent settler and neighboring groups. The Darlari elders claim privileged information on the rituals, invocations, and offerings required to mediate access to land and natural resources through relations with the guardian spirits of land and natural resources. Their proximity to the ancestors makes them privileged intermediaries between the “light and open” world of the living and the “dark or hidden” world of the spirits. They have the authority to

pronounce what is sacred or forbidden (*luli*) and what is permitted, particularly but not exclusively in terms of resource use. Many of these sacred prohibitions—known as *tara bandu* in the indigenous Tetum language, which is the lingua franca for much of East Timor—have environmental significance as they concern use of water sources, old-growth forests, and other areas requiring sustainable resource management.

Human settlement on the island of Timor dates back at least as far as 30,000 years ago. Darlari origin group informants refer to a time before their mythical ancestor(s), when “people lived with no rules and regulations” (*Naueti: ki ikuteme, garateme*). Their ancestors were the first to bring social and spiritual order, not necessarily the first to take possession of the land. Although origin group members tend to present narratives of origin as “historical” statements, their underlying notions of time are often fragmented and nonlinear, with at times a degree of incorporation of Christian influences, including references to Noah, and Adam and Eve. References to first possession are widespread among Timorese ethno-linguistic groups as a reference point for calculating hierarchy and common derivation. Yet the concept of first possession itself is socially constructed rather than a matter of objective historical fact. Stories of war and forced migration are common in the oral histories of East Timor, particularly before the pacification programs of the Portuguese. Most contemporary claims to origin group authority are likely to have involved a degree of displacement of earlier groups.² Moreover, some groups do not determine hierarchy and precedence through first possession narratives but through proximity to other points in common derivation, such as membership of a sacred house or possession of sacred objects (Fox 1996:132).

While claims of origin group authority can be constructed and relative in nature, and sometimes delegated or devolved through associated lineages, the overarching social ordering emphasis on origin is embedded in the landscape of East Timor through artefacts and symbolic representations of ancestral connections. All across rural East Timor, there are sacred sites marked by ritual and artefacts where ancestors are known to have “spoken” into the landscape, usually through acts of intermediation with local guardian spirits. These sites include coastal altar posts marking the first landing of ancestor-settlers, prohibited old-growth forests and

² For example, Darlari narratives of settlement include references to a group of people who lived on the land before the arrival of the founder ancestors. Some informants described this group as the “last naked tribe” of the area and believe they eventually died out because they were forced against their custom into wearing clothes.

water sources guarded by local spirits, abandoned hilltop villages that were sites of first settlement, and sacred houses that contain regalia and other symbols of origin group legitimacy. Our Babulo study discusses a renewal of rituals and ceremonies at a reconstructed sacred house that was destroyed during the Indonesian occupation, to invoke relations with the ancestors while reproducing the privileged status and authority of origin group elders, particularly in the face of tensions caused by relocated groups. This example supports our hypothesis that customary principles of land authority, typified by narratives of origin and symbolized by sacred houses, have retained a substantial degree of relevance and resilience notwithstanding the effects of Indonesian occupation. In other words, even though origin stories are constructed narratives and metaphors of legitimacy, they derive a high degree of resilience from their intertwined symbolic, spiritual, and physical manifestations in the landscape of rural East Timor.

The Negotiability of Property and the Reinvention of Custom

Much of the recent literature on customary forms of property in postcolonial contexts, particularly in sub-Saharan Africa, has highlighted characteristics of negotiability and indeterminacy (e.g., Berry 1993, 1997; Bourdieu 1990; de Sardan 1999; Lund 2002; Moore 1986, 1998).³ While there are processes of regularization, which grant a degree of durability and predictability to land relations through established rules and institutions of property, there are also endemic processes of adjustment in which indeterminacy is generated and exploited in order to achieve the situational ends of property claimants (Moore 1978:50; Lund 2002, 2008). These processes of situational adjustment are encouraged or exacerbated in pluralist postcolonial environments as property claimants negotiate across multiple sources of legitimacy and authority, including contested landscapes of custom, group identity, and status (Berry 1997:1228; Fitzpatrick 2006; Lund 2002; Peters 2002:46; Shipton 1994:348). The strategies adopted by property claimants include multiple and at times simultaneous reference to first or actual

³ While the work of Keebet and Franz von Benda Beckmann on Indonesia has also described phenomena of “legal forum shopping” and “shopping forums,” their analysis includes a focus on the structural characteristics of the social fields in which property claimants and adjudicatory institutions negotiate their authority and legitimacy: see, e.g., F. von Benda-Beckmann 1979, 1992; K. von Benda-Beckmann 1984; and Benda-Beckmann and Benda-Beckmann 1994).

possession, input of labor, cash purchase, and lawful title (Shipton 1994:348). This pluralist environment lends itself to legal anthropological analysis that describes processes of strategic choicemaking among distinct but malleable sets of rules and institutions (F. von Benda Beckmann 1992:16).⁴

A useful case study of locals and newcomers in northern Senegal illustrates the negotiable qualities of customary property relations in contemporary sub-Saharan Africa (Juul 2002). As a result of drought in the 1970s and 1980s, a large group of Fulani herders migrated from the Senegal River Valley to southern Ferlo in northern Senegal. The local Fulani population initially allowed the newcomers to access their pastures and water points because of a long-standing customary principle that mandates unhindered movement and access of Fulani herders across the range. However, tension developed as competition for land and water increased, leading local users to seek to redefine Fulani custom by emphasizing their status and rights as firstcomers—even though some had been present in the area for a few years only. The redefinition of custom encompassed exclusionary acts aimed at the newcomers, including the imposition of taxes and fees, attempts to sabotage pumps for the drawing of water, and even forced denial of access to some water sources. In response, the newcomers engaged in a number of strategic actions of their own, including claims to firstcomer or insider status in relation to certain water points where predecessor claims were relatively tenuous. Juul (2002:203) concludes that the case illustrates the “ways in which groups and solidarities tend to emerge or dissolve according to the opportunities available.”

Babulo village in East Timor has a quite different context than southern Ferlo in Senegal, not least because its predominant form of resource use is swidden cultivation rather than transhumant herding. Nevertheless, it is striking that in Babulo ancestral first possession principles have proved relatively resistant to opportunistic processes of reinterpretation or reinvention, and have retained clear distinctions between firstcomer and latecomer lineages, notwithstanding a history of in-migration and an increase in competition for rights and authority relating to land. In the following part, we suggest that the relative resilience of customary arrangements in Babulo is related to the social ordering capacity of first possession narratives themselves.

⁴ Franz von Benda Beckmann (1992:16) has commented that “[d]iscussions of behaviour in situations of legal pluralism have too strongly focused upon choice making between distinct sets of rules and institutions: pluralism has been seen as a set of choice of instrumental action.”

First Possession Principles and Timorese Narratives of Origin

There is a potential analogy between Timorese notions of origin and the legal principle of first possession, which is a mechanism for establishing initial ownership of an unowned thing (Rose 1985). In the common law world, a person who finds an unowned object becomes its owner by automatic implication of law. A hunter who kills a fox, for example, owns the carcass, even in the face of claims by a hunter engaged in hot pursuit.⁵ Until legal prohibitions on whaling were enacted, a whaler who lodged the first harpoon with a connecting line to the boat thereby acquired ownership of certain species of whale (Ellickson 1989). In the Californian gold fields, the first miner to dig a hole was entitled to claim a defined area surrounding that hole (Clay & Wright 2005:157; McDowell 2002:18). Even on the Amazonian frontier, the first settlers to clear and occupy government land could claim ownership titles from the state of Brazil (Alston et al. 1999:35–6). In all these cases, legal rules developed on the basis of pre-existing norms or customs that recognized initial rights of private property from the fact of first possession.

Most property theorists argue that possession is central to property law because it provides a clear and visible signal of relations with an object (Sugden 1986:87–97). It is easily identified and interpreted by other potential claimants, at least those claimants who share similar cultural understandings of possessory signals (Rose 1985:73–88). Unlike its primary alternatives—auctioning rights to the highest bidder or allocating rights according to the greatest need—a norm or rule of first possession is a relatively low-cost exercise for allocating rights to unowned things. It does not require identification of claimants, or the making and evaluation of bids. It seems to satisfy a basic human understanding that first possession is connected to entitlements. Moreover, even in the absence of law, first possession norms may emerge as focal points to facilitate the avoidance of conflict and the development of cooperative forms of resource use. Writing about order without law in the Californian gold fields, Zerbe and Anderson (2001:116) describe focal points in game theoretic terms as:

coordination mechanism that, prior to the play of the game, has particular significance to the players based on their common past experiences. These experiences, socially or culturally derived, help players to “know” what to do, and to be able to predict what other players will do.

⁵ See *Pierson v. Post*, 3 Cai. R. 175 (N.Y. Sup. Ct. 1805).

Because they guide initial patterns of behavior and predictions of behavior, focal points such as a custom or norm of first possession are said to ameliorate the potential for conflict when claims to an unused or unoccupied resource are first made, or are subsequently contested by an influx of other resource users (Sugden 1986:70–1; 1989:88–90). Instead of engaging in competitive racing for rights, or forcibly contesting emplaced rights, resource users may choose on the basis of shared norms or focal points either to engage in coordinated acts of resource allocation, or to forego claims in order to seek other resources for productive endeavor.⁶

In the Californian gold fields, norms of first possession—reportedly derived from American beliefs in reward for labor—were a consistent feature of codes developed by the miners themselves in the period from 1848 to 1849. This period was characterized by “order without law,” as the area had recently been annexed by the United States from Mexico and had no courts, police, or jails (Zerbe & Anderson 2001:114). According to McDowell (2004:77), the rule of first possession—represented by digging a hole and maintained by leaving tools in that hole—was important to constructing a remarkable degree of social order without the involvement of law, at least among American miners. It provided a marker of who would win and who would lose in the event of competition for a claim (Morris 2005:48). Because it signaled prior allocation of rights, the first possession rule reduced the potential for recurring conflict where prospective claimants adopt mutually aggressive strategies in a calculated effort to test the endurance and defensive capacity of the other party. It also generated patterns of compliance and anticipated compliance because of mutually reinforcing expectations of relative success, as first possessors were more likely to defend their claims with confidence and aggression, while other claimants were more likely to forego their own claims in order to search for possessory claims elsewhere.

In East Timor, the traditional cultural focus on origin arguably has acted in a similar way to legal principles of first possession. Local narratives of origin, reproduced through rituals and invocations of ancestral spirits, are well known to all newcomers and neighboring groups. They are often symbolized and represented by sacred houses, which act as clear signals of first possessory claims. They generate patterns of compliance and anticipated compliance because newcomers and neighbors know they can avoid costly forms of conflict and obtain access to land by incorporating themselves into origin group hierarchy through marriage alliances and ritualized relationships of gift exchange and reci-

⁶ This argument applies general game-theoretic theories of focal points and their relationship to cooperative behavior (e.g., McAdams 2000:1654–66).

procuity. As in the Californian gold fields, the concept of origin or first possession has provided an archstone principle around which traditional social order has been constituted in circumstances of population mobility, and a mechanism for avoiding conflict over land by incorporating newcomers and neighbors into a broadly understood hierarchical system for allocating and managing the use of land.

Origin and Authority: Customary Domains in the Village of Babulo

The village (*suku*) of Babulo is located in Uato-lari sub-district, in Viqueque district on the southeastern coast of East Timor. The suku has a total population of 4,136 (Timor Leste Census 2004; see National Statistics Directorate 2006), the majority of whom are of the Nauteti ethno-linguistic group. Most members of the population are subsistence farmers. Agriculture is based mainly on swidden cultivation of maize, cassava, legumes, and root crops. Irrigated rice is cultivated in the lowland areas close to the Bee Bui River, and some dry land (rain-fed) rice is also cultivated in the upland areas. Coconut and candlenut plantations provide many families and individuals with an important cash income. Hunting and fishing are also part of local subsistence strategies. While a limited number of families possess livestock such as water buffalo and cows, many keep pigs, goats, and chickens. Livestock is generally considered to be a valuable household asset and holds an important role in patterns of reciprocal exchange, which are at the heart of rural social relations.

Administratively, Babulo is divided into eight hamlets called *aldeias*: Beli, Darlari, Aha Bu'u, Kotanisi, Roma, Liasidi, Abadere, and Asamuta. All but one of these hamlets was established and named during the Portuguese period, and little was done during the Indonesian occupation or since independence to alter these administrative units other than to change their name from *povação* (Portuguese) to *kampung* (Indonesian) and in the independence period to *aldeia* (Portuguese). In Babulo, each hamlet continues to correspond broadly to a descent group along with their affines and dependents, sharing common ancestors and centered around a common-source *uma luli* (sacred house). Each descent group is subdivided into a number of lineages and sublineages (*uma kain*), each of which has its own "branch" or subsidiary cult-house. Members of each branch of a common descent group are typically classified as *kaka* (older) and *wari* (younger) in relation to one another. The members of "older" houses are considered to be more closely related to the common ancestors of the group and therefore

have authority over “younger” houses. The senior male members of the “eldest” (i.e., source) house of each descent group are often referred to as Na’i (Tetum: master) or Bu Dato (Grandfather Lord), and are considered to be the direct descendants of the group’s ancestors.

Within the traditional community, members recognize the authority of specific “origin groups” over defined territories or domains. Origin group status is a social construction based on interrelated notions of ancestry, attachment to place, histories of migration and settlement, and networks of alliance. In Babulo, one such group is composed of the source houses, or senior lineages, of the hamlets of Beli and Darlari. These groups represent the lineages of two brothers who were the direct descendants of the mythical founders of an ancient kingdom called Bubulu. According to local *tete bo’ona* (in Nauteti: oldest stories or histories), the sibling ancestors of Beli and Darlari lived together near Baha Liurai, the ritual center of their land and burial site of their ancestors. Both were entrusted with the custodianship of their ancestors’ sacred land (*rea luli*) and sacra (*sasan luli*). However, one season, when the time came for the brothers to harvest their rice fields, the elder brother neglected his duties to the ancestors by loudly celebrating, at the burial site of their ancestors, the success of his own harvest instead of waiting silently for the younger brother to collect his produce, thereby causing the younger brother’s harvest to disappear. The brothers fought, and the elder brother was banished from the sacred land of his ancestors. Members of the senior Beli and Darlari houses continue to acknowledge their sibling status through the use of the terms *kaka* and *wari* (elder and younger), while other groups living on their ancestral lands related through marriage or long-term alliance refer to them collectively as Ina Ama Beli Darlari (Mother and Father, Beli Darlari).

The transgression of the elder brother served to justify the reversal of common concepts of authority based on genealogical precedence. As a consequence of the actions of their ancestors, the *source* lineage of the Beli forfeited their right to claim their status as heirs to the domain of their mythic founder-settler ancestors, the Mane Hitu (seven brothers). This privilege was bestowed and retained uniquely by the male-line descendants of the younger (Darlari) brother who remained at the ancestral site of Baha Liurai. In recognition of their status, the senior lineage of Darlari is accorded the title of *rea bu’u* (lord of the land), or in formal ritual speech *rea mumu*, *rea uato* (rod of the land, rock of the land). Today, the authority of the lord of the land is embodied in the headman (Bu Dato) and two other senior Darlari members, one of whom “sits and watches” over the ancestral sacra placed in the main Darlari cult-sacred houses.

As lord of the land, the Darlari elders are the chief stewards of their ancestral lands. Darlari elders claim that the “original” boundaries of their domain extend far beyond current Babulo village boundaries. However, they are reluctant to make these claims public, as they believe this may stir up unnecessary and perhaps even violent conflict with neighboring groups. To legitimize their claims, they refer to ancestral histories and name specific sites where the ancestors are believed to have landed, settled, farmed, fought, and died and were buried. These sites are marked by physical features such as rocks, springs, and specific areas of old-growth forest as well as symbolic structures such as stone altars, ancestral graves, and particular *uma luli* (sacred houses) where ancestral sacra are stored. The memory of these histories and the significance of these sites is preserved through local *tete bo’ona* (histories) and reinforced through specific rituals associated to place. Many of these sites are considered to be *luli* (sacred), and access is restricted or must be mediated through communication with the ancestors and *bu’u* (spirits) that guard them.

Adaptation and Alliance: Managing Migration and Change in the Darlari Domain

Across most customary areas of East Timor, generational growth in group numbers or territory and political changes in house authority have created a substantial degree of transition and specialization in land functions. While Darlari elders claim that in the past their ancestors held both ritual and jural power over the territory and people of their domain, they acknowledge that at some stage in their history their forefathers began to “retreat into darkness,” delegating specific tasks to members of other house-based groups. The elders state that this retreat into darkness was ostensibly a conscious decision in order to keep the secrets of their land from “outsiders,” in particular the colonial authorities (and the Catholic Church). However, they also acknowledge that the delegation of tasks to other groups was also a means of appeasing subsidiary houses and in-migrant groups that represented a potential threat to their authority. Hence, regarding one of the (sub-lineage) branch houses of Darlari called the *uma kabo*, the elders state that their ancestors delegated the task to monitor the use of land and natural resources. Later, according to local histories, the main representative of the *uma kabo*, the Kabo Rai, asked the Darlari Bu Dato to grant his house a token of office so that those under their jurisdiction would have something to “believe in” or “fear.” As a result, the elders state that a Makaer Luli (keeper of the sacra), a ritual specialist, was appointed to assist the Kabo Rai in

this task. The role of the Makaer Luli is spiritual—presiding over collective rituals, acting as an intermediary with the spirit world, and “watching over” the sacra held in the uma luli at the ancestral settlement site of Burlalu. The Kabo Rai’s function is more practical: to monitor land use and access to natural resources, including the application of seasonal prohibitions on the harvesting of various products, collecting tributes for collective ceremonies, and exacting fines for the infringement of prohibitions.

The devolution of land-related authority to constituent or influential lineages indicates the adaptive capacity of origin groups to respond to changed demographic or political circumstances, while also highlighting the increased complexity and contextualization of customary land arrangements as origin principles have moved through space and time. As with other senior origin representatives in East Timor, the Darlari elders are keen to emphasize their overarching status as lord of the land notwithstanding the historical delegation of land authority and ritual functions to subsidiary houses. In fact, in the context of independence, Darlari elders have sought to transform their self-acknowledged retreat into darkness into a source of strength, on the basis that they have successfully resisted outsiders and maintained their identity through all the trials of Portuguese colonization and Indonesian occupation. They have sought to reassert their authority after the departure of the Indonesians, including through the ritual rebuilding of the sacred house at Baha Liurai, which is described in “Reconstituting Original Authority” below. In linguistic terms, the retention of underlying land authority or stewardship by the Darlari elders is also asserted and reproduced through recursive linguistic expressions, common to all Austronesian settings, including repeated hierarchical pairings of “older/younger,” “trunk/tip,” “elder/younger,” “head/tail,” and “before/after” (McWilliam 2002, 2008). These linguistic expressions provide durable reference points for socially constructed notions of origin (McWilliam 2002:20). Their recursive use also militates against ad hoc or situational efforts to reinvent hierarchy and status in a traditional Timorese context.

The adaptive capacity and local contextualization of origin-based arrangements in East Timor extends to the management of in-migration and external group relations. The narratives of East Timor include characteristic references to “stranger kings,” outsiders who are incorporated into the local hierarchy in order to manage relations with the outside world. While status as the lord of the land is retained by origin group lineages, political authority for the purposes of external relations may reside in senior members of an affiliated latecomer house (Fox 1995). For example, in Babulo village, members of the Burmeta descent group are descended from warriors that arrived in the area approximately eight gen-

erations ago. They were offered land by the Darlari origin group because the Burmeta planned to offer vassalage to the kingdom of Luca, which was a rival to the Darlari. In exchange for land, and incorporation into the Darlari social order, the Darlari ancestors gave the Burmeta the title of *ana bo'ona*, *ana tadana* (the eldest and wisest son). The Burmeta were designated the task to guard the people and guard the land (*lai reinu*, *lai rea*). More specifically, this group became known as the gatekeepers (*ita mata*, *kai hene* [door and gate]) between the traditional “inner” community and outsiders, in particular the colonial authorities. Today, members of the Burmeta descent group reside in the hamlets of Aha Bu'u and Kotanisi.

Not all migrants to origin group areas are incorporated as gatekeepers or stranger kings in Timorese customary hierarchy. Many obtain access to land through marriage alliances or ritualized agreements known as *juramento* (oaths), without taking up privileged positions in spiritual or political life. Historically, new arrivals to the Darlari domain have been granted land by means of various traditional contracts, including *juramento* or marriage, aimed at incorporating the in-migrants into local social and political structures.⁷ Typically, origin group lineages provide wives to in-migrants and thereby establish “wife-giver/wife-taker” (*ao-sae/umana*) relations between the respective houses. This process reproduces hierarchical patterns of origin and precedence, with latecomer lineages often referred to either as sisters and children, when their house has long-standing marriage relations, or as friends and acquaintances, when they are more distantly related. Wife-giver/wife-taker relationships provide the basis for enduring patterns of exchange and reciprocity between traditional groups and have been cited as a prime resource of resilience and resistance to the Indonesian occupation (McWilliam 2005).

While no doubt it serves other social functions, including the custom of marrying “out” among exogamous groups, the institutional technique of “bringing the outsider in” through marriage alliances may be viewed as an adaptive mechanism to reduce the costs of reaching land access agreements among different kinship-based groups. In any negotiations over access to land, costly decisions are involved in determining the amount, value, and location of the land to be allocated. There are even costs in the act of decisionmaking itself, with agreement potentially required from all group members or from agents with authority to make decisions on the group's behalf. These costs may be so high as to prevent agreement altogether, in which case conflict over land is a more

⁷ These *juramento* took the form of blood-oaths and are considered to be *luli* (sacred), broken on pain of death or some other form of ancestral retribution.

likely result. Alternatively, intergroup agreement may be reached on basic questions of access, but key issues of heritability and authority are left uncertain or imprecise because prevailing circumstances do not necessarily require crystallized forms of contract. In either case, the value of an established and broadly understood mechanism for reaching agreement is that it provides a cost-reducing template for decisionmaking on central issues that require agreement. The marriage alliance mechanism also provides pathways for repeat multifaceted interactions, through enduring wife-giver/wife-taker relationships of reciprocity and intermarriage, and thereby reinforces conditions favorable to cooperative resource governance activity.

We conclude that two key principles of traditional Timorese societies—the concept of origin and the technique of incorporating in-migrants—have acted as key sources of adaptive capacity and property ordering resilience in historical circumstances of migration, political change, and intergroup welfare. In general terms, where a migratory group approaches land claimed by another group, and that land claim is identifiable by the presence of ancestral artefacts or symbolic structures including sacred houses, there is a greater likelihood of bargaining rather than conflict when there is a priori acceptance of the principle of origin, and greater likelihood of agreement when there is a template for agreement through marriage alliances. While concepts of origin and incorporation have not prevented intergroup welfare, particularly over boundaries to group land, they have acted over a long period of time in East Timor as institutional techniques to promote cooperation and avoidance of conflict among kinship-based groups. It is true that first possession principles are socially constructed and are adaptive in response to in-migration and demographic changes. Nevertheless, they also appear to be resistant to ad hoc or opportunistic acts of reinvention and reinterpretation, involving the situational redefinition of insider and outsider status, because of their key role in ordering social relations in circumstances of population mobility.

Displacement and Disorder: The Effects of Indonesian Occupation

For the elders of the various house-based groups of Babulo, and the Darlari in particular, the Indonesian invasion and occupation represented a period of loss of control over the affairs of their domains. Elders describe the Indonesian invasion and occupation as a period of “disorder,” when “chaos” prevailed, in particular with relation to access and management of land and natural

resources. Indonesian troops are reported to have advanced toward the Uatolari subdistrict, including the village of Babulo, from the port at Beasu in mid- to late 1976. Local informants describe both erratic and systematic patterns of displacement between 1976 and 1979, including mass population flight to Matebian mountain in late 1976. The “surrender” and return of the people of Babulo to areas under the control of the Indonesian military began in late November 1979. As elsewhere in East Timor, the inhabitants of Babulo village were ordered to report to internment and resettlement camps while the troops conducted military mop-up operations in the area. The main internment camp in Uatolari was established at the old Portuguese military post at Uatolari Leten. People from all six villages of Uatolari, as well as the sub-districts of Bagaia and Quelicai, were contained within a restricted area around the military post.

For the first few months after inhabitants’ relocation, the Indonesian military and East Timorese collaborators surrounded the encampment and people were not permitted to leave unless accompanied by an East Timorese or Indonesian guard. Informants describe how during this time people had little or no shelter and they had to sleep, eat, wash, and go to the toilet within the guarded perimeter. Food was scarce, and they had restricted (and sometimes no) access to fields and gardens beyond a specified distance. In the early 1980s, the Indonesian military began “resettling” or “relocating” the civilian population from the internment site at Uatolari Leten. For the people of Babulo a degree of homogeneity was retained as members of the various house-based groups tended to be relocated together, with some even allowed to return to their areas of origin. At the same time, there was considerable relocation of people to the territory of Babulo from the neighboring village of Afalocai, as Afalocai village lands remained sealed off by the Indonesian military until well into the 1990s. Darlari elders claim that under the circumstances there was little they could do to prevent the resulting incursions onto their land, as increased population pressure and limited access to land meant that people went ahead and farmed whatever land available in order to survive, circumventing any traditional principles and processes of land allocation.

Reconstituting Original Authority: Rebuilding the Sacred House at Baha Liurai

Armed conflicts that cause large-scale population displacement can create conditions that favor competitive racing for control of resources (Lewis 2004; Pons-Vignon & Lecomte 2004; Wiley 2002).

Competitive racing includes physical attempts to stake claims to vacant land and political efforts to gain control of land through new and reconstituted institutional arrangements. While much of the literature on competitive racing focuses on the effects of legal rules, including rules of first possession (e.g., Luek 2005), the following description of the ritualized rebuilding of sacred houses in Babulo suggests that long-standing social ordering principles can mitigate the risk of costly racing even in the absence of law and legal order. The fear of disorder will lead people to reassert the familiar, to signal their desire for order by invoking the importance of shared cultural norms and principles.

Since independence, the diverse house-based descent groups of Babulo village have been engaged in a process of returning to their pre-1975 settlements (*baha*) and rebuilding their ancestral sacred houses, which had been destroyed or had fallen into disrepair during the Indonesian occupation. Darlari elders, and members of the Darlari descent group in general, consider the return to their settlement of origin at Baha Liurai mountain an important and necessary step in re-establishing their credentials as lords of the land. The Baha Liurai settlement is the most sacred of all sites in Darlari narratives of origin. It is considered to be the burial place of the *ina ama* (mother and father) of the founder-settlers. Access to the summit of Baha Liurai is absolutely prohibited unless one is accompanied by ritual authorities. Symbolically, the Baha Liurai settlement not only serves to legitimate Darlari precedence in relation to other groups living in the area but also confirms the emplaced nature of their authority. Informants reported that during discussions as to whether or not the settlement should be rebuilt on its original site, closer to the summit of Baha Liurai, or on a more accessible site, the elders agreed that it should be moved closer to the main road (from Uatolari to Quelicai) so that people would be made aware that they were “passing through sacred land.”⁸ This decision highlights the importance of the signaling function performed by sacred houses in East Timor.

As early as August 2000, work began on rebuilding the two main Darlari sacred houses: the *uma buti* and *uma ita*. Following the completion of the *uma buti* and *uma ita*, representatives of all the house-based descent groups living on Darlari lands and neighboring allies were invited to take part in a rare ceremony of ritual sacrifice to the ancestors on the summit of Baha Liurai. The elders explained that the purpose of the ceremony was three-fold: to visit the burial site of the ancestors and communicate within them, to

⁸ Younger members of the family also stated that they felt that the site should be moved closer to the road and to the water source, given the age of those who would be returning to the settlement.

thank the ancestors for watching over the people living on their sacred land, and to ask for their continued protection and generosity. This ceremony last took place immediately prior to the community's displacement to Matebian in late 1976. Prior to 1976, according to the Darlari elders, the ceremony took place every five to 10 years, or "when it was deemed necessary." During the course of the ceremony, key notions of ancestry, attachment to place, histories of migration and settlement, and networks of alliance were all acknowledged within a single visual narrative.⁹ The ceremony at Baha Liurai provided a vivid medium for understanding the role, function, and status of each house-based group and the nature of the relationships that bind house-based groups within a single domain. Critically, the ceremony at Baha Liurai also constituted a renewal or reaffirmation of the bond or the "social contract" that exists between the ancestors and members of the different house-based groups living within the Darlari domain. Darlari elders believe that this ritual [re]connection with the founding ancestors is indispensable for the restoration of the "proper order of things" after 24 years of war, occupation, and displacement.

Constraining the Adaptive Capacity of Custom: Afaloicai In-Migration to Babulo Village

The resilience of ancestral first possession principles in Babulo, as illustrated by the ceremony at Baha Liurai, is not absolute or unconstrained. In many parts of rural East Timor, including Babulo itself, there are indications that traditional mechanisms for incorporating in-migrants have been suppressed or degraded, in parallel with the emergence of state-affiliated village government structures. While in-marrying remains a resilient adaptive technique, with some relocated groups commencing marriage relations with origin groups, there remains a great deal of social tension over the long-term status and rights of relocated groups from both Portuguese and Indonesian times. We illustrate this tension by reference to the movement of people to the Darlari domain from the nearby village of Afaloicai, which is also in the Uatolari sub-district. The Afaloicai example supports our finding of relative or constrained resilience: namely, that the ordering capacity of first possession principles is subject to constraints from the emergence of multiple sources of public authority, and the potential for com-

⁹ During the initial stage of the ceremony there was considerable debate and negotiation regarding various aspects of order and precedence. To a certain extent, the ceremony at Baha Liurai provided a space for a degree of "theatre" where representatives of different groups attempted to redefine their role within the broader group.

peting interpretations of the authority and legitimacy created by possessory principles themselves.

Locally, people broadly distinguish between three movements of people from Afaloicai to Babulo. The first group, mainly from the Afaloicai hamlets of Buibela and Lena, arrived some time in the 1930s in search of land. The second group came during the post-war period, at first seasonally, to work in the rice fields that were being developed on the Uatolari coastal plain, and later settled more permanently in areas that included the current territory of Babulo. The third group were forcibly displaced from their villages of origin as a result of the Indonesian invasion and relocated following the “surrender” of civilians from the resistance stronghold at Matebian mountain in 1979. The way in-migrants from Afaloicai gained access to land on which to farm and settle within the Darlari domain depended on the circumstances of their arrival and the level of engagement with the Darlari origin group, their kin and affines. However, in-migrants from Afaloicai do not appear to have been incorporated into the local social order in the same way as the descendants of the Burmeta or the Roma. They were not “installed on the inside” (Fox 1995) by taking up a specific role or rank within the social hierarchy of the Darlari domain. They have remained organized according to their own house-based descent groups, hierarchically ranked and ordered in accordance with their own histories of origin and precedence. In local government elections, they vote for the village head of Afaloicai and not Babulo. Their presence on Darlari lands is often viewed as temporary, notwithstanding the occupation and use of land by some Afaloicai for more than 60 years, and in the context of communal rituals the people of Afaloicai are often referred to as “the people who use the land for farming and gardening.”

Babulo informants date the beginning of Afaloicai migration to the arrival of a traditional Afaloicai leader known as Gregorio, originally from the hamlet of Lena, some time before the arrival of the Japanese in 1942. The Darlari elders claim that Gregorio and his people arrived with some fanfare—accompanied by drums and whistles—and set up camp on *rea luli* (sacred land) near Baha Liurai. However, it was not long before they started falling ill because they had not respected the prohibitions associated with this land. As a result Gregorio approached the Darlari elders and asked them for some land on which to settle and farm. A traditional juramento (oath) agreement was established between the two groups. Gregorio was “given” a bride from the senior house of Darlari, and through this marriage the group from Afaloicai were offered land on which to farm and settle.¹⁰ However, Darlari elders

¹⁰ Informants from Aha Bu'u claim that Gregorio married into their descent group.

insist that according to the original juramento oath with Gregorio, land was not (and could not) be transferred outright to the Afaloicai. In other words, unlike in-migrants such as the Burmeta, Afaloicai migrants on to Babulo lands have not received land allocations and rights commensurate with integration into the Darlari social order, notwithstanding the establishment of marriage relations, and they retain a status as relative outsiders living away from their own ancestral lands.

After the end of Indonesian occupation, while some Afaloicai returned to their hamlets and villages of origin, many chose to remain in lowland coastal settlements including the territory of Babulo. At present, as a result of large-scale population movement under Indonesian rule, people from Afaloicai account for 49 percent of the total population residing in Babulo village.¹¹ The current head of Darlari hamlet, who is the son of one of the three elders of the Darlari senior lineage, stated that the people of Darlari (and Babulo in general) did not want to incorporate the people from Afaloicai into their administrative hamlets and village. The reason he gave was that the Darlari wanted to maintain control of their territory. He feared that given the growing numbers of people from Afaloicai, if they were incorporated into local hamlet and village structures, the balance of power would be tipped in their favor as they would outnumber the autochthonous populations, including the Darlari, during local elections for hamlet and village heads.

Although Darlari elders acknowledge that their ancestors granted usufruct rights to Afaloicai groups arriving before World War II, they feel that land and natural resources (forest products and fuel in particular) available to their own people are becoming more scarce. Elders also expressed their concern regarding access to land and natural resources by suggesting that some outsiders did not partake in communal thanksgiving rituals and continued to maintain strong links with their ancestral settlements of origin (in the village of Afaloicai). One elder commented that many people from Afaloicai who had been displaced during the Indonesian occupation were now prospering and as a consequence taking over more land. He felt that more and more people from Afaloicai were building houses on Darlari land out of concrete blocks and zinc roofs, which suggested they planned to stay permanently. For their part, informants from Afaloicai claimed that part of the social jealousy between Afaloicai and Babulo in general (not just Darlari) was

¹¹ Population living on Darlari lands: Aha Bu'u 287, Kotanisi 157, Roma 206, Darlari 278, Afaloicai (six hamlets) 2,184 (National Statistics Directorate 2006: n.p.).

based on the fact that the people of Afaloicai worked harder on their land and therefore were able to prosper.

Informants from Afaloicai, including the village head of Afaloicai, stressed that they respected traditional Darlari authority and agreements made with the Darlari lord of the land and claimed that whenever people from Afaloicai sought to expand their land-holdings they always negotiated with local landowners. For example, during the course of fieldwork one of the authors attended a rice harvest ritual at which a settler family from Afaloicai presented a large pig for sacrifice. The pig was a tribute to the ancestors and the Darlari lord of the land to “heal the wound of the earth” and make a customary “payment” for having built a permanent structure on Darlari land. It is believed that when building the foundations of a house the earth is “wounded” (*halo kanek rai*), and the tribute serves to redress the balance. This example supports our conclusion that in general the Afaloicai are not seeking to reinterpret local custom, so as to support property claims based on long-term possession, but have made strategic attempts to nest their claims within the overarching normative framework provided by the emplaced land authority of the Darlari lord of the land.

Although the Afaloicai generally recognize the emplaced land stewardship of the Darlari, at least within the territory of Babulo itself, there is little doubt that most Afaloicai also hope for long-term support from the new land laws of East Timor, through recognition of property claims based on possessory acts of residence and cultivation. Afaloicai recognition of Darlari land authority certainly does not extend to acknowledgment that the Darlari could evict Afaloicai migrants from their land, or prevent them from building “permanent” housing and transferring those houses to their children. While ancestral first possession principles have proved resilient mechanisms for social (re)ordering after the Indonesian occupation, this does not mean that they offer bright-line solutions to all problems of property allocation in Babulo itself. No necessary implication or definition of land authority arises from the nature of first possession principles themselves. The precise nature and status of Afaloicai rights to Darlari land is a question of social construction and power, rather than topics that are inherently or autonomously resolvable by first possession principles (however resilient those principles may be).

Hamlet and Village Heads: The Emergence of Plural Forms of Public Authority

The failure to incorporate the Afaloicai into customary Darlari hierarchy is consistent with the Darlari elders’ description of their

“retreat into darkness,” as hamlet and village heads originally appointed by the Portuguese have undertaken administrative functions in Babulo. Even though hamlet and village heads in rural areas of contemporary East Timor often defer or refer to origin group authority in resolving land issues, the following case study suggests that there is still a high degree of potential for unresolved land tensions consistent with the emergence of pluralist forms of public authority in Babulo. In particular, the extent to which land tensions can be resolved through traditional techniques of juramento agreements or marriage-based alliances has been limited by the potential for competition between the authority of the hamlet or village head, and the Darlari lord of the land.

The offices of hamlet and village heads were established by the Portuguese administration as it sought to extend direct administrative authority to rural districts from the early twentieth century onward. Hamlet and village heads were expected to ensure payment of the head-tax and organize labor for Portuguese agricultural development projects. Through the offices of hamlet and village heads, Portuguese administrative mechanisms began to overlay and at times suppress customary systems of land allocation and authority. Access to land cleared and cultivated under Portuguese programs, in particular, was largely determined by village heads acting under authority from the Portuguese administration. The result was an emerging plurality of authority over land as village heads and other officials favored by the Portuguese administration were not necessarily drawn from senior origin group lineages.

In Babulo in February 2007, an Afaloicai resident approached the head of the Darlari hamlet and complained that some Darlari youths had destroyed a number of his coconut trees. The youths had been building a house for a widow from Darlari but in the process had cut down leaves and fruits from a number of his trees. According to custom, trees and their fruits belong to whoever planted them and, even though this man’s plantation was on Darlari land, he was well within his rights to complain. A community meeting was called. The village heads of Afaloicai and Babulo attended, as did some of the Darlari elders, the local police, and representatives from the subdistrict administration. The outcome of the meeting went far beyond resolving the original dispute between the Afaloicai man and the youth work group and resulted in the purported proclamation of a *tara bandu* between the two communities.¹² The general terms of this agreement as described by

¹² *Tara bandu* is a Tetum expression that literally means “hanging the prohibition.” While the term is often used to describe prohibitions or rules regarding access to land and

the Darlari hamlet head were as follows:

1. Public acknowledgment of the Darlari as *rea bu'u*, or traditional owners of the land and natural resources in the hamlet.
2. Acknowledgment that Darlari had “allowed” people from Afaloicai to farm land to feed themselves.
3. Acknowledgment that any trees or crops planted by people from Afaloicai on Darlari land belong to whoever planted them.
4. Ban on Afaloicai people residing on Darlari land from planting new trees.
5. Ban on taking firewood from the roadside. Afaloicai residents can only use wood from their own trees.
6. Ban on both Darlari and Afaloicai from cutting down any trees in the area, unless with express permission from the hamlet head and village head.
7. A total ban on cutting down old-growth forest.

The stipulation that Afaloicai residents can only use firewood from their own trees substantially limits their access to fuel and has the potential to be a source of future community tension. The last two points of the agreement were considered by the hamlet head to be a reaffirmation of the state ban on logging, which has been in place since 2002. He felt that these measures were necessary to safeguard Darlari land and reduce environmental degradation, and specifically mentioned recent landslides in Naedala, suggesting that these had been caused by overfarming by people from Afaloicai. The hamlet head's actions appear to have been influenced by his participation in training for local government officials on new forestry legislation that included examples of successful community-based natural resource management solutions based on *tara bandu*.

Although a verbal agreement was made between the two communities and the meeting was concluded with the sharing of food, not all residents of Babulo were satisfied with the results. Following the meeting, there was little indication that any of the terms of the agreement were actually being enforced. A number of senior Darlari members refused to attend the meeting. They argued that the original complaint from the Afaloicai man should have been handled differently by the hamlet head. They referred back to the original juramento between the Darlari lord of the land and the people of Afaloicai and suggested that the youths responsible for destroying the trees should have been held accountable for their actions. With regard to the *tara bandu* agreement between the two communities, Darlari elders and senior house members were angry

natural resources, it actually applies to a much broader set of behaviors and practices, including relations among different house-based groups.

with the hamlet head, suggesting that he had undermined the authority of the elders by intervening and bypassing the land authority reconstituted in the course of the communal ritual previously held at Baha Liurai.

It is significant that the coconut trees dispute fell for resolution by the Darlari hamlet head rather than the Darlari elders themselves. The intervention of the hamlet head is consistent with the growth of village government authority on Darlari lands. Yet the hamlet head has been unable to enforce the tara bandu agreement, which suggests that the challenges of Afaloicai displacement cannot easily be resolved by village government actors either, as alternative sources of public authority to customary elders. In other words, the emergence of multiple sources of public authority in Babulo seems to create circumstances that constrain the ability of adjudicative property institutions to manage land tensions involving a large group of in-migrants.

Possession, Property, and Regime Change: Land Disputes on the Uato Lari Coastal Plain

Chronic land disputes on the Uato Lari coastal plain below Babulo support our argument that the presence of multiple sources of public authority and legitimacy creates conditions conducive to chronic land conflict in a context of war and displacement. The Uato Lari coastal land disputes were the subject of well-publicized mediation efforts by UN land administration officials in 2001–2002 (Fitzpatrick 2008). Our fieldwork uncovered more than 15 reported land disputes for the Uato Lari coastal plain in the files of the Viqueque district government's Land and Property Unit, compared to none at all for the territory of Babulo itself.¹³ Many of these disputes have their roots in the way the Portuguese colonial administration originally ordered the clearing and cultivation of rice fields through hamlet and village heads. Local informants claim that certain officials were able to requisition free labor to "open up" large tracts of previously heavily forested or swamp land on the coastal plain. As a result, many individual claims to land on the Uato Lari coastal plain are based not on customary allocation pursuant to ancestral first possession narratives, but on histories of actual possessory acts including clearing and digging irrigation channels, combined with the grant of a hoe by village government officials (Gunter 2007).

While land users on the Uato Lari coastal plain also acknowledge a degree of overarching land stewardship by neighboring

¹³ Copies of these documents are held on file with the authors.

origin groups, they view their specific rights to land as distant and distinct from customary authority and as subject to heritable claims by those who first cleared the land and built surrounding irrigation channels. These types of possessory claims are affiliated with state rather than customary authority, which has made land users vulnerable to forced displacement as a result of rebellion and regime change in the turbulent history of East Timor. For example, the most common cause of chronic land conflict in Uato Lari involves the assertion of claims by groups affiliated with a rebellion against the Portuguese in the 1950s, against pro-Portuguese groups that took possession of their land after the rebellion was defeated (Fitzpatrick 2008). Many of these claims were upheld in Indonesian times, leading to accusations that the successful claimants had collaborated with the Indonesian occupier, thereby denying the rights of descendants of pro-Portuguese groups who have reasserted their own claims in the context of independence for East Timor. In other words, over time the entanglement of possessory claims with multiple state regimes has led to sudden shifts in property rights legitimacy and overlaying narratives of group collaboration and resistance, while also creating cyclical episodes of displacement and return that have contributed to underlying conditions for chronic land conflicts. Hence we suggest that, in contrast to Babulo, the Uato Lari coastal plain has been vulnerable to conflict and disorder because it lacks a clear focal point for cooperative land allocations, based on customary principles of origin, and instead has been characterized by competing possessory claims affiliated with the different political regimes in the history of East Timor. This has meant that the potential for principles of actual possession to act as focal points for social (re)ordering has been greatly undermined by the historical context of displacement and regime change.

Conclusion: Focal Points for Cooperative Land Relations in Postconflict Circumstances

Our study suggests that the effects of war and displacement can not only encourage disorderly competitive racing for rights to land and authority over land, but also expose resilient principles of social organization. In the absence of state-imposed legal order, resource users will look for shared norms or focal points to avoid social disorder and structure cooperative forms of property arrangements.¹⁴ Hence we hypothesize that in postconflict

¹⁴ While Ellickson (1989, 1991) has famously argued that under favorable conditions norms tend to develop to support efficient allocation of resources, his description of a “good neighbor” norm in Shasta County, California, also suggests an underlying relationship between norms and social order (see Ellickson 1991:52–62).

circumstances there is a greater likelihood of social order, and avoidance of competitive racing for rights, where there is a clear signaling norm or focal point that allocates initial rights whilst allowing other users the prospect of obtaining rights to land through cooperative bargaining based on established pathways for agreement. In Babulo, this type of shared norm or focal point is provided by long-standing principles of ancestral first possession.

While first possession principles may lend themselves to social order, as social constructs they are also open to contested interpretations of possessory authority and legitimacy. Focal points such as first possession principles should not be understood in a non-contingent sense, as autonomous precursors to game-theoretic decisionmaking by resource claimants. They are constructed arrangements that are resilient because of their potential to maintain social order and authority in context of heightened fears of social disorder. Yet the ambit of public land authority established by first possession narratives is a matter of social negotiation, in a context of local power relations, rather than a necessary implication from the nature of first possession principles themselves. As constructed arrangements for social ordering, focal points such as first possession are constrained by the presence of multiple institutions of public authority, which can act as alternative sources of legitimacy and enforcement for property claimants. Hence we also hypothesize that in postconflict circumstances there is a greater risk of chronic land conflict, and erosion of conditions for peace-building, where there are multiple sources of public authority and narratives of property legitimacy.

Methodology

Research for this article included extended periods of fieldwork by author Barnes between 2004 and 2008. The fieldwork involved observation of, and participation in, the everyday social and ritual life of Babulo and the hamlet of Darlari in particular. It entailed the documentation and analysis of communal and “house-”specific rituals, oral histories, and life stories. Extended ethnographic interviews were held with customary ritual and political authorities and members of the principal “house”-based groups of Babulo (including key actors based in Dili) as well as with local government authorities from the villages of Babulo and Afaloicai. Data were also collected through numerous interviews and everyday social interactions with members of the community of Babulo. Further interviews were held by both authors from 2004 to 2008 with subdistrict and district-level government authorities and functionaries of the Timor Leste National Directorate for Land and Property.

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