

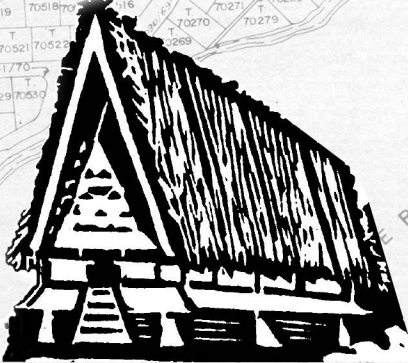


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Issue 27

LAND:

Public Use and Regulation



Francis X. Hezel, S.J.



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Landowners vs Government?

We were driving back from a party late one night when we found the road near our destination closed. Logs and branches had been piled high in the middle of the road to block all traffic. The family that owned the land at this intersection demanded a larger right-of-way payment from the government to reimburse them for their land. They had received an easement fee from the government years ago, but they were demanding more in keeping with the appreciation of the value of the land. Meanwhile, we and all others who usually drove the road had to take a long detour around this piece of road that added another twenty minutes to their travel time.



Years ago a family leased a small piece of land to the state government so that a village school could be built on it. Not long after the construction of the school was completed, the family went back to the government to demand a higher lease price. When the government replied that it was not able to meet the family's lease demands, the family locked the doors of the school, reclaimed their land and served notice that they were taking over the school building. Since then they have used the building as a family residence.



The dispensary that once served the health needs of the small outer island community is no longer in use. The family that owned the land on which the dispensary sits once loaned this land to the government free of charge. After a few years, however, the family had a change of heart when they saw how much rental money another family was getting for their school land and began charging the government lease fees for the dispensary land. Without money to pay the new lease requirement, the government was forced to return the land to the family, so the people of that island had no functioning dispensary at all.





good as well. There are times when the good of the community must supersede the desires of individuals, as we have seen. This principle has always been acknowledged, at least implicitly, in island life and it remains as essential today as ever.

If the good of the community is to be genuinely served, some regulation of land use will be required. Some disinterested party speaking on behalf of the whole community must negotiate and arbitrate when this is called for. The party that does this in most societies, and will undoubtedly have to do this in Micronesia, is the government. This means that the people of the nation must place sufficient confidence in its government to entrust it with the powers that governments ordinarily exercise—among them eminent domain and power to restrict the use of private land—in order to fulfill this responsibility.

F. X. Hezel, SJ



All three of these incidents actually happened, and situations like these have probably occurred many times over in different parts of Micronesia. Something resembling this is very likely occurring even today. This is no surprise, because there is nothing more sensitive in small island societies than land. Even in today's modern Micronesia land rights are a critical issue, something that can ignite a quarrel faster than anything else. Despite the growth of the cash economy over the years, land remains an explosive issue in our day.

In all three of these real-life conflicts landowners were pitted against the government in seeking what they regarded as a proper return for land of theirs that the government had been using for public purposes. In any showdown between a private landowner and the government, is there ever any question whose side the common folks take? We all know that the cheers are for the landowner. Let him have what he is asking for his land and perhaps more, people think. After all, the government has taken for its own use what rightfully belongs to the landowner. Let the government pay for the land, and pay well. In the popular mind, the government is the Goliath to the landowner's David.

...Or Landowners vs. the Community?

If we look at these situations more closely, we see that the clash is not simply between an individual and the government. It is really between the landowner and the people who would have profited from this land if it were used for the purpose for which the government attempted to lease it. In the first illustration, the family blockading the road were denying the entire community access to that road. In the belief that their land was worth much more than what they were receiving for it, they were appealing to the government to reimburse them fairly for what it was taking. Yet, it was their own community that stood to gain from an open road, just as it was the same community that was inconvenienced when the road was shut down.



The same is true of the other two examples. When the family in the next story reneges on its arrangement with the government and asks for its land back, the children are denied an elementary school in their own village. It is they who will have to walk to the next village if they want to attend school, and it is their families who will have to suffer the consequences upon those children who decide they won't bother going to school if it means a longer walk. Likewise, the withdrawal of land for a dispensary means that the island community is in real danger of not receiving the health care that it needs.

Who suffers if the landowner does not accept the government's terms? Not the government, which will get along nicely with or without the land lease, but the community. The community is forced to do without a school, a dispensary or a road. The same is true in conflicts that arise over easements that a landowner once signed giving permission to let power, water or sewage lines run through his land. When the landowner has a change of heart, whatever the reason, it is the local people who are deprived of the public services that the government is attempting to offer them. Whenever controversy develops over land used for airports, docks and hospitals, the public suffers.

Things aren't always what they first appear to be. Conflicts over leased land may appear to be between the landowner and the government, but at bottom they really aren't. All have to do with the public services that are offered the community. The role of the government is in reality an intermediary one, with the government merely acting as the representative of the community to provide the general public with what they need for a higher standard of living. Appearances to the contrary, the issue here is between the individual landowner and the community that is served by the land he controls.



for land leases for these schools and dispensaries in the future. Any financial burden should be borne by the municipality. The issue here is not only land availability, but the sense of ownership on the part of the local community that is vital to the success of the project in question.

1. Payment for easements for use of land for public projects—roads, phone lines, cables, sewers, for instance—should be minimal if any. Individuals must begin to see that the public good must at times override private considerations. In cases where compensation is warranted, the amount paid should be determined by an impartial assessment of the value of the land. This is particularly important in those areas of Micronesia where there is no longstanding tradition of public land use.
1. Eminent domain may need to be invoked by the governments to meet their legitimate land needs in the future, especially in connection with public projects such as the airport or dock facilities. Although governments may possess such power on paper, they have been unwilling to use it for fear of paying the inevitable political price.
1. Zoning measures—that is, determining which areas of an island may be used for what purposes—may soon have to be implemented to guard against private land owners' indiscriminate use of their land for opening rock crushers, car repair facilities, junkyards, and so forth, near sites that have a potential value for tourist development.

Conclusion

Land is and always has been the most cherished possession that an island family can have. It has multiple uses and should continue to be utilized as a private resource in the future. Yet, land is also a jointly shared resource and must serve the common



expensive to do so. How do we ensure that the public keeps the facility it needs without requiring the government to pay exorbitant rent for the airport?

Then there is the problem that arises when activities performed on private land are harmful to the public or incongruous with other activities in that area. Suppose a landowner wants to set up a rock crusher, at which dynamiting will take place, next to an elementary school. If the blasting is judged to be dangerous for the school children and the noise an obstruction to learning, who will step in to forbid the landowner to make this use of his own private land? How will the community prevent irresponsible siting of businesses: a fish processing plant next to a tourist resort, for instance, or a car repair shop next to the state capital building?

Government Intervention in Private Land Use

Some regulation of land use is called for. Traditional leaders may have assumed this responsibility in the past, but on most islands they are no longer in a position to do so. In a modern society some authority has to step in and regulate what can be done where—something that is known as *zoning*. In addition, some way has to be found to provide for the needs of the community while offering fair recompense to persons for the land they are providing for the public. In rare cases, the government may have no choice other than to take land to provide for these needs, on condition that a fair exchange is made. This is known as the power of *eminent domain*.

Government intervention in land matters in most modern societies takes the following forms, which almost certainly will be needed in Micronesia as well.

1. Secure land must be provided for schools and dispensaries in all municipalities in which they exist or are to be built. The state governments should be freed of the burden of paying



The Alienation of the Village School

The fate of the village school furnishes a good illustration of the popular change of thinking on public services. In Palau after the Second World War, the people in the villages worked to fix up their schools as soon as they could. Only after the village elementary school was open did they begin to rebuild their own homes. This speaks volumes about the value that Palauans placed on education then and now. Where did the land for the village elementary schools come from? In some cases the village chief may have provided the land. In others he might have prevailed on people who had suitable land to donate it for the benefit of the village. Whatever the case might have been, you can be sure that the land came from the villagers themselves, the very people who postponed the repair of their own homes until after the completion of their school.

Although Palauans showed exceptional dedication to education, they were not the only ones who provided land for their own schools. From one end of Micronesia to the other, the local elementary school, like the dispensary, was built by the hands of villagers, often from local wood with a thatched roof or from scrap tin and salvaged lumber. It stood on land that was contributed by the community it served. It might not have been much to look at, but it belonged to the community in a way that later concrete block schools never did. School lockouts would have been unthinkable in those days when there was no big money at stake and the community had to look out for its own needs.

All that changed in the early 1960s when the Trust Territory administration, impatient with the slow

Whenever controversy develops over land used for airports, docks and hospitals, the public suffers.



progress in schools and dispensaries, centralized education and health services. The rickety old village schools were torn down, and in their place contractors built modern cement classroom buildings. Saipan paid for everything—the construction costs, any land leases that had to be arranged, even the salaries of the teachers. Henceforth, education and health services were to be the job of the Trust Territory government. Communities, which had once built their own schools and paid for their own teachers, were absolved of all responsibility for providing these services in the future. From that time on, schools and dispensaries would belong to the government, and local people would look to the government to provide for their education and health forevermore.

Today, twenty years after the termination of the trusteeship, the government still bears this responsibility, even though its resources are dwindling. People in the village still turn to the government, as they learned to do in the 1960s, to build and maintain their schools and dispensaries, to recruit and pay for their teachers and health aides, and to pick up all other costs associated with government services. In an earlier day, villagers might have allowed their land to be used for a school or dispensary that would benefit the community. But today people have learned to look to Saipan—or Palikir—to do it. After all, everyone knows that the government has plenty of money. Communities, which once accepted responsibility for their own services, have for years now turned to the government, which is expected to dig into its own deep pockets to provide what we once provided for ourselves. The product might seem more attractive, but in some important ways we've all been hurt by this change. People are always enfeebled rather than empowered whenever they get used to saying: "Let someone else do it."

Land for Other Public Services

The change in attitude toward village schools and dispensaries is echoed in the way people think about other



another parcel or for the modest payment that the nation can afford in these days of dwindling budgets.

Conflicts over Public Needs

Land use needs for public purposes can raise bitter conflicts, as we have all witnessed. Whose responsibility is it to provide the land for a local school or dispensary? Should the community itself provide for this, as they once did, or does the state government have the obligation to pay for the land lease?

At times conflicts arise over the value of a piece of land that owners are selling or leasing to the government for some public project. When landowners claim more for their land than the government is prepared to pay, who will assess the fair value of the property? What happens if the landowners refuse to settle at a reasonable price with the government for some project that the community badly needs?

Sometimes a landowner has made a prior agreement with the government to allow power, water or sewage lines to run through his land, only to change his mind years after the project is completed. Often this happens because the landowner feels that he is being denied benefits that are rightfully his. Sometimes he feels that the easement arrangement he has signed provides far less benefit to him than one signed by someone else. At other times he can be angry at the high rates he is being charged by the public utilities company after he is letting them use his land. Who will arbitrate in such disputes? What if the landowner resists a settlement?

What happens when the government has erected a large facility—an airport, for instance—on land leased by private landowners and the lease is up for renegotiation? The landowner might hold out for a huge increase in lease rental, knowing that the government does not have the option of moving the facility since it would be prohibitively



Today the government is Micronesian, run by local islanders and serving the people of these islands. Yet, in some respects it still seems that it is not their own. The political system itself is foreign-made and perhaps not very well understood by people. Moreover, it is not paid for by the people it serves. Although the people of Micronesia support it through the taxes they pay and other sources of revenues, they do not bear the burden of the whole cost of the government. Taxes are only a minor source of revenue compared to the US subsidies that provide most of the income. That may be changing, however, for subsidies from the US are expected to decrease in the years ahead. In any case, the government may still be perceived as rich, but it will not be able to afford what it has in the past.

An even more serious problem is that many people just don't seem to trust their government. If someone were approached by the government to surrender a piece of land that the government needed for a project, the individual might wonder whether there was a scheme afoot that was going to profit government officials. Rightly or wrongly, many people believe that the officials, who are highly paid in the first place, are the ones to profit from whatever the government does. High government officials have been accused of involvement in money-making schemes, sometimes using inside information on government plans to engage in land speculation.

The suspicion is that government officials take good care of themselves first. Legislators who raise their own salaries and expense funds before all else give credibility to charges like these. So do officials who, with an uncanny knowledge of where the government will invest next, buy up land to sell to the government at higher than usual prices.

As long as these suspicions continue, people will have a difficult time regarding the government as a disinterested party, one that they would trust to mediate their clashes over land. In addition, they will continue to be uneasy in exchanging their own land for



services as well. The government's job today is not only to provide education and health services for the community, but it has the responsibility of providing power and water and waste disposal and cable television, not to mention roads and docks and airfields. There is also the need for administrative buildings, warehouses, hospitals and some housing. Many of the new public projects were unanticipated in earlier days. Who would have thought forty years ago that we would need television cables strung from village to village? But the demands for services grow over time, and so does the need for land to satisfy these demands.

If the government does not own this land outright, it is obliged to lease from private individuals or families to provide these services for the public. In some cases, the land used many years ago for airports or other projects was borrowed from individuals for public needs. This land continues to be needed for this purpose. The government can't simply leave the airport to the original owners and look for a new location to build, since the cost would be prohibitive. In the latter case, the government must have some way of negotiating with individuals to secure the land needed for public services.

As with the schools and dispensaries, people look to the government to reimburse them for the land they give up to aid in the completion of these projects. If a water pipe cuts across someone's property, he expects to be compensated handsomely for the fragment of land that is used. Landowners must be compensated for trees that are cut down as a road is put through an island. The fish traps that lie offshore bring a monetary payment from the government if the land nearby is needed as an airport. The general attitude is that if the government wants the use of my land, they should be prepared to pay, and pay well.



One Solution: Public Land

This was not always the way it was done. In an earlier era, the traditional chiefs might have taken the responsibility for providing the land for such projects. Somehow Yapese villages were always able to get land for the clubhouse, the meeting house and the menstrual house without leasing it. Kosrae and Chuuk managed to find land for churches easily enough, it seems. On Pohnpei traditional chiefs were probably instrumental in providing land for any needs that might have arisen. If they could not make an outright grant of the land, they would have at least negotiated use rights from someone who could.

On some islands chiefs held the rights to excess land which could be used to meet just such community needs. Such land was held “in trust” for their communities—as we would express it in present day terms—to provide for public purposes and other contingencies. The “edges of the chiefdoms,” the interior lands that were largely unsettled, could be used at the discretion of the paramount chief on Pohnpei. The land over which chiefs held such rights was eventually appropriated by the colonial government during German and Japanese times. The rationale for this in the minds of the colonial authorities is that this land, which was not being used by individuals and lay under the control of chiefs, was land that was intended for the public good anyway. Since the colonial government was charged with providing for the public good, it should have the authority to administer these lands.

When the trusteeship began after the war, this land came under the control of the US authorities to be administered as “public land.” At one time almost two-thirds of the total land in Pohnpei and nearly as much in Kosrae was public land. With holdings like these, the Trust Territory government, like the Japanese colonial government before the war, was land-rich. Even if the government didn’t have a suitable plot of land for a particular purpose, they had the money to buy what they needed from a



private landowner. No wonder people could simply turn to the government and expect them to find sufficient land for whatever project they were sponsoring at the time!

What has happened to this public land? Since 1975 it’s been returned to the local governments, who have in turn given it back to the people from whom it was taken. If the original owners could not be found, the land was homesteaded or otherwise made available for settlement. The governments retained only as much as they thought they might need for public purposes. Today the government in FSM owns about 28 percent of the total land, still a seemingly generous amount but far less than it once controlled. The government, once land-rich, has now become dependent on private land for use in public services.

The Case Against the Government

Although the government is supposed to provide the public services needed by all, looking always to the common good, it is suspect in the eyes of many Micronesians today. First, the government is regarded as alien. This attitude partly stems from the long history of colonial rule when the government was run by outsiders for their own purposes. Local people had no input into these purposes and they did not always endorse them. Even today the workings of government are not well understood by people, who still often feel that they have little control over their modern government. They can vote their leaders into office, but what these leaders do once elected is not always as responsive to the input of local people as chiefs would have been in days past.

Since Trust Territory days the government has come to be regarded as inexhaustibly rich. It has always seemed to have had plenty of money to institute programs, to fund mammoth construction costs, and to pay the salaries of the thousands of employees on its payroll. In the eyes of the public, there seems to be nothing that the government is unable to do.