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## **Is land more than the sum of its parts?**

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While science is providing answers to pressing questions of the capacity of our land to produce food, the way in which land is used is constrained also by the law. Regulatory responses to land use can occur on a number of levels but most of these assume a free market in land as a composite of separate resources to be exploited - minerals, energy stores and water are themselves becoming the subject of discrete property rights generating conflicts between interest holders. Perhaps the way we regulate land needs to take a broader view of its capacity to serve human needs; a view that appreciates it is more than the sum of its parts.

A lot of what you might hear at this symposium focuses on the science of food production: where we can grow food and how much food can be grown. Perhaps also you've heard about community based projects focused on producing and consuming food within a local context or even about the related issue of food sovereignty: on a local or global scale.

All of these issues perhaps rest upon an assumption that we have access to the land necessary for food production. Indeed that we are looking at food sustainability in the tropics presupposes a particular location – or land mass – at which these issues arise.

As a property lawyer, I'm interested in the way in which the law conceives of the land and how it regulates the use of land. This is important because it is ultimately the law that will facilitate or inhibit access to the resources we need to grow food – in the tropics or indeed anywhere.

The first thing to note is that the law of property works together with the capitalist and individualist construction of our economy. Property generally, but property in land in particular, is both a legal and an economic concept. It is law that grants rights over land and economically speaking, these rights have a monetary value. Monetary value exists as capital – in the land itself as an asset – and also in the potential of the land to yield an income. This includes income from food production. On this property model of land, land is a resource to be exploited.

We'll return to the notion of property in land in a minute.

Secondly however, is that environmental law regulates the use of land in a way that privileges the ecological value of that land. This applies over what used to be called the 'waste lands of the colony' – land that is not owned privately such as national parks – but also environmental law affects the way that *private* land is used. This law, in the public interest, may affect the way in which land as a resource can be exploited.

In the context of sustainable food production, let's look at the idea of land as a resource. Food production occurs primarily on private land. This is land over which a

private person or corporation has sole control – or ownership. There is an argument that private property is important to support sustainable exploitation of land. First, because if you are investing in food production you must have security of interest to ensure your return, and secondly because it is also a capital resource, you need to preserve its capacity to endure into the future.

In other words, economic self-interest will (theoretically) protect the land into the future.

There are of course well-documented issues with land use that illustrate how agriculture has destroyed land's inherent value as a resource but as a general proposition, it is still rational to want to sustain the land's viability into the future – to fix up these kinds of problems.

What is a different problem is the way in which we have taken this idea of land as a resource and out of this have carved a number of quite different property rights out of the same area of land. And it is these competing property rights that are now, in my view, as big a threat to sustainability of land and therefore food production, as poor agricultural practice.

Once, private ownership of land used to extend to the whole of a defined parcel. It included airspace, minerals, water, vegetation and wildlife. Now however a landowner does not own minerals, water or wildlife and is constrained in use of vegetation. These constraints have ecological benefits – vegetation management for example has sought to halt the impact of land clearing on the water table and soil viability.

However those parts of land – and the ecosystem embodied in the land itself – that have been excised from private interests (minerals and water) have themselves become independent property interests of sorts. These interests, available for acquisition in market-like conditions, can vest in other individuals (or corporations).

Thus, a farmer (or other food producer) may well own their 'land' but at the same time a miner may own rights to mine the very same area. That farmer may also have their access to water curtailed because of private water rights vesting in upstream landowners.

In other words, there is a competition between property rights over the one area of land.

We see the conflict in the CSG standoffs in central Queensland and in NSW. In looking at food production in the tropics, we need to understand the variety of resources embodied in the ecosystem in the north. Mining for example is an important part of the economy – local, state and national. And land title up here outside the cities and towns is not developed to the extent even of freehold. This would give farmers a tenuous set of rights over the land, subject to other directly competing sets of rights to exploit resources.

The way in which some rights over land use are privileged over others was illustrated in a Queensland court decision last year. In *Xstrata*, a group of farmers objected to a

coalmine going ahead adjacent to and on their farmland. The court found that the Mineral Resources Act was clear in its purpose. The court was obliged to give greater weight to the economic benefits of the proposed mine than to the farmers' concerns about noise, dust, vibration and water quality. Their observations as to the impact of mining on the health of their cattle were not supported by scientific evidence and so held no weight.

In conclusion, the science behind our ecosystems in the tropics and the capacity of our land here for sustainable food production is imperative. However the regulatory environment in which food production takes place must support these endeavours. Legislation governing our relationship with the land needs to reflect the imperative of sustainable food production.

Our land, and its capacity to produce our food, is more than a bundle of resources for exploitation – it is indeed more than the sum of its parts. So long as the law views land as a bundle of market-based resources for exploitation to economic ends, there is little room for the holistic – indeed the ecological – thinking we need to sustain our land in the context of societies in the north. And this includes our food production.