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Land and Property Institutions: Endogenous Origins and Equilibrium Effects

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> The African situation ... is a complex one [when it comes to property, ownership, and land]. We [must] concentrate on three sets of relationships: between the producer and the land, the producer and the market, and the producer and the State. [T]here can be little doubt that the subject of land tenure and usufruct is one of the most difficult with which the student of Africa must grapple" (Post, 1972: 227).

The idea of the state in Africa as institutionless underlies much contemporary theorizing about African politics. The term "neopatrimonialism" -- widely employed in the comparative politics literature to describe African political systems -- implies lack of institutionalization, centralization of power in the hands of a supreme ruler, and government through personalized, shifting networks. The counterpart of this idea is institution-less conceptualization of society, and most importantly perhaps, of *rural society,* which accounts for 50-90% of the total population of almost all African states.[1] Once "institutionless Africa" is accepted as descriptive of both state and society, both state and social *structure* fall out of the explanatory equation. Almost by definition, politics revolves around networks, identities, informalism, and trust and distrust.

This chapter reverses this image of structure-less states and societies. It focuses on rural land tenure institutions and argues that they are the product of institution-building strategies of Africa's modern rulers, both colonial and postcolonial. Africa's rulers are seen here as strategic actors who have sought to impose political order in the countryside in order to govern, and to remain in power. As strategic actors, they have been subject to the disciplines of rule and revenue, power and resistance, and cost and benefit, both political and economic.[2] Like all rulers, rulers in Africa have been constrained and incentivized to seek compliance from subjects and citizens, to build institutions to lower the costs of securing acquiescence, and

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[1] It extends the arguments laid out in Boone, *Property and Political Order in Africa* (CUP 2014). I thank Cambridge University Press for permission to reuse Figure 2 (2014:   ) and some sentences and lines of argument borrowed from Ch. 2, pp. xx-xx, of this text.

[2] I therefore reject the image of rulers as driven only by power games among an elite and short-term self-interest; as confined to capital cities where they lack the will, means, and institutions to govern countryside; or conversely, as able to unilaterally impose their will on passive, inert rural societies.

to enhance the predictability of rule.[3] They have pursued institution-building and state-building strategies that are shaped by the societies they seek to govern.

The analysis of land institutions builds on strands of NIE that have been influential in comparative politics since the 1990s.[4] Part I defines land tenure institutions as property institutions, arguing that they can be viewed in the abstract as outcomes of strategic interaction (asymmetrical bargaining) between rulers and rural societies. Part II uses this model to theorize about institutional origins, variations, and change in land tenure institutions in SSA. The line of argument is is consistent with revisionist colonial and postcolonial historiographies that see law and institutions as the products of conflict, negotiation, and contract between central rulers, local elites and leaders, and ordinary people.[5] Part III turns to the question of institutional effects.[6] It argues that land institutions shape state structure and processess, patterns of political group formation and mobilization, and land conflict in ways that bear directly on central concerns of political science.

I. Institutions, Land Institutions, and Political Endogeneity

Institutions (or simply rules), can be understood as humanly-designed constraints that shape interaction and behavior (North 1990: 3), and thus as *endogenous* to politics -- that is, they are products of social choice and competition. Because institutions structure repeated action among actors engaged in competitive and complementary interdependencies (ie., social interaction), they can be modeled as strategic equilibria. They are stabilized not necessarily by the "collective benefits" they produce, but rather by the balance of power among contending parties that seek to constrain the actions of others, and to seek

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[3] Moore, Jr. 1966, North 1981, Levi 1989, Nye 1997.

[4] Following Ostrom 1990 and Knight 1992, for example, this tradition reject some of the early axioms of NIE (optimality, reductionism). Knight focuses squarely on power asymmetries, social conflict, and distributional effects (sub-[Pareto] optimality). These social conflict approaches are situated within macro-structural contexts, in contrast to earlier, more economistic, rational choice work, that assumed the absence thereof. As Ostrom argues, the framework does not yield precise predictions but can be used to generate hypotheses and organize further research.

[5] See for example the pioneering "invention of tradition" work on indirect rule (Ranger, Hobsbawn) and vast literature in African legal and social history that it has brought forth and inspired. A major upshot is that "the customary" is neither "precolonial" nor created of whole cloth by the colonizer. It emerged from negotiation, standoff, or compromise, deal or contract, and has never been stable or unchanging.

[6] NIE proposes both exogenous or endogenous approaches to the study of institutions and recognizes the analytic problems inherent in this bifurcated formulation. This is only partially satisfactory as a general rule. One problem is that in studying institutional effects, it will be hard to separate the effects of the institution itself from the indirect effects of the forces that contribute to its persistence. This is a problem that scholars seek to handle through research design.

advantage. Even in situations of great power asymmetry, weaker parties have some bargaining leverage: they can inflict costs on more powerful social actors by withholding acquiescence to a given norm or rule. By this definition, institutions persist in equilibrium -- ie., as long as social actors judge that abiding by the prevailing rule is their best choice (for now), given the information they have an the circumstances in which they find themselves. Questions of institutional origins, persistence, and evolution (development) can all be treated as variants of the same analytic problem: Why and when do certain institutions emerge (or not), persist, evolve, and/or decay?

This chapter leverages this definition of institutions to analyze *land tenure* institutions in Africa. Land tenure institutions are property institutions that define the manner and terms under which rights in land are granted, held, enforced, contested, and transferred. A land tenure *regime* is a system of intertwined institutions about the classes of individuals or groups who have access to land rights; who can assign, transfer, enforce, or adjudicate land rights; and the substance of the rights themselves.[7] Land tenure institutions go far in defining both the evolution and character of states and societies, not only in Africa but everywhere, because of the nature of property itself.

Property as a concept and a political phenomenon lies at the confluence of political-legal order and economic order.[8] It is first and foremost a *political* relation: unlike possession *per se*, it cannot exist in a state of nature. Property is a recognized claim or entitlement that establishes a political relationship between the claimers of a property right, a third-party enforcer of that right, and other members of an organized society who are (potential) users or claimants. It is also an *economic* institution. It is the cornerstone of relations of production: property rules govern access to and use of productive assets, and the distribution of the wealth so generated. This means that property is also a *social* relation: property structures relations among persons and groups concerning the access and use of things, the organization of work and use of labor, and the appropriation of the fruits of human labor.

In African societies past and present, land tenure institutions are integrally linked to both state and social structure. They are endogenous not only to the extent of state capacity (high/low), but also to the

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[7] See also Hall and Soskice (2001: 46) on "regimes" as interlocking systems of complementary institutions—social, economic, political—that can structure interactions at macro, regional, and perhaps sectoral levels (or domains). Use of the term "regime" is consistent with the notion of institutional order proposed by Ostrom (1990, 50-51).
[8] As Perry Anderson pointed out (1974: 404-5, cited by Hann 1998, 46-47).

character of stateness in a given setting (bureaucratic, theocratic, monarchical, patrimonial...). Intrinsic to land institutions are mechanisms of taxation, dispute adjudication, regulation of holdings and transactions, recognition of users and user groups. In an organized state, these are necessarily embedded in larger legal, citizenship, regulatory regimes, and in larger structures of territorial administration, modes of labor mobilization, and surplus extraction. At the same time, land and other property institutions obviously shape the distribution of power and resources in society, and thus both the forms of competition and its outcomes.

Property rights in land may be held under institution of *private property in land* (or, a private property land tenure regime, or system of "freehold"), wherein rights are private, individual, and freely transactable on legal and state-regulated markets. In most of the world and most of Africa, however, these institutions do not govern property rights in land. In 2014, USAID claimed that 70% of the land in developing countries is unregistered -- this means that it is not titled or taxed directly.[9] The figure for farmland and pasture land in sub-Saharan Africa is about 80-90%. Absence of freehold does not imply the non-existence of state-recognized rights to occupy and use land, or the absence of structured relations around surplus production and appropriation, however. Property rights in land can come from a political grant or state-enforced entitlement that is not exclusive to an individual, and not legally transactable on the open market (as in Indian reservations in the US and Canada). Government can grant and enforce collective rights/entitlements to land, give certain classes of users conditional rights to government land, or recognize users' rights to permanently live upon and use land held under state trusteeship.

North, Levi, Brenner, Ostrom, and others have asked how land and property institutions emerge, evolve, vary, and decay in different geographical-historical contexts, and this is our concern here. An endogenous theory of property institutions proposes that a ruler with the coercive power to claim sovereignty over territory may have good reason to concede, grant, or offer property rights in land to subjects (or acknowledge and continue to enforce prior rights) if this will generate some benefit for rulers. Such a "concession" or deal could reduce the costs, economic and political, of holding the land or territory directly, or of excluding others from it. North and Levi conceptualized "benefits to rulers" in the form of taxes that could be drawn from profits generated through productive land use (such as farming). Anderson

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[9] USAID Land Tenure and Property Rights Portal, "Mobile Solutions Matter for Landowners," accessed 3 July 2014. at http://usaidlandtenure.net.

linked the granting of feudal property rights to European monarchs' interest in securing the acquiesce of powerful rural warlords, the rural nobility's agreement to govern the peasantry, and their agreement to help raise armies at the best of the central rulers. The work of these scholars suggests that if institutions are political or "bargained" outcomes in an abstract sense, then the content of these bargains or "contacts" -- including the specific character of land tenure and land institutions -- would (a.) reflect the relative bargaining power of the parties, and (b.) be sensitive to change over time in bargaining power, interests, or payoffs of the contracting parties. This logic offers an intuitive and a powerful heuristic for generating hypotheses about origins, stability, variation and change in land institutions in Africa.

Connections between property in land, state structure, and social structure are the hinge-point of the macrosociological work of Barrington Moore (1966), Perry Anderson (1974), North (1980, 1991), Hechter and Brustein (1980), Brenner (1982), Boix (2003), Engerman and Sokoloff (2003), and Acemoglu and Robinson (2006). Many in the NIE tradition have placed land institutions at the center of work on the politics of economic change, and the economics of political change. Within African studies, these lines of analysis are extended and deepened in the work of many scholars who have modeled state institutions in rural Africa, including land institutions, as cause and consequence of competition (or entente) between rulers and subjects who had or have capacity to constrain rulers' options. An "entente" -- that is, an equilibrium that emerges when parties realize that given the prevailing distribution of forces and interests -- is modeled in the NIE literature as a contract, and this notion can be expanded to "social contract" when we are talking about basic rules that structure relations between rulers and ruled in ways that help produce political order.

A partial list of work on African land tenure institutions that employs such reasoning, coming from both NIE or macrosociological traditions, would include Hart (1982), Bates (1983), Berman (1984), Phillips (1989), Berman and Lonsdale (1992), Ensminger (1992), Austin (2005), Munro (1998), Firmin Sellers (1996), Gibson (1999), Onoma (2010), Chauveau (2000), Dozon (2008), Platteau (2009), Colin (2007, *forthcoming*), Poteete (2009), Nugent (2010), Joireman (2000, 2011), and Boone (2014).

II. Contemporary land institutions in Africa: Origins, variations, and origins of variations

In the early 2000s, 60-70 percent of sub-Saharan Africa's total population lived and worked in the rural areas, mostly as farmers, pastoralists, and agro-pastoralists. Yet only 2-10 percent of all land Africa was surveyed, registered, and held under private title.[10] If so much of the land is not held as private property, then how is access and use regulated and organized? What governs the organization of work, the division of the social surplus, and use of coercion in these relationships?

Absence of familiar property institutions in rural Africa does not mean absence of institutions. By constitutional authority, states themselves are sovereign controllers of 90-98% of the land in sub-Saharan Africa, and most constitutions also give governments direct powers to allocate and reallocate land to users. The lands worked by most African farmers (and pastoralists) are parts of "national domains" that are legally controlled by political authorities who act in the name of the state. Coercive and legal power to give and take state land lies in the hands of African governments. Constitutions of several African countries literally vest the power to allocate land in the president. Land rights lawyers Liz Alden Wily and Patrick McAuslan wrote that from a legal standpoint, most peasant farmers are "tenants at will" of the state. The state itself is their landlord, or more precisely, their overlord, in the sense that most smallholder farmers and pastoralists hold permissive occupancy rights granted by the state. These are generically referred to in the literature as "customary rights," but as we shall see, this term can be misleading in several ways. The origins of these rights, their terms, how they vary, institutional apparatuses by and through which they are enforced and maintained are the subjects of this section.

An endogenous theory of the origins of contemporary land tenure institutions in Africa can start with modern state formation, since property and the state are mutually constitutive.

With colonial conquest (incomplete in many parts of sub-Saharan Africa until the 1920s), colonial rulers in Africa confronted the challenge of creating governed space and eliciting compliance to foreign domination and exploitation. They had to demobilize and subordinate African populations, impose legibility on colonial subjects, and find ways to draw resources and wealth out of colonies in ways that would not provoke insurrection, uprisings, anti-colonial mobilization, or far-reaching passive resistance. They were aware African populations' capacity to raise the costs of governing above the colonizers'

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[10] In two of every three sub-Saharan African countries, over 60 percent of the total population lives and works in the countryside (WDR 2008). Writing for the World Bank, Deininger estimated this (Chimhowu and Woodhouse 2006, 346, citing Deininger 2003.

capacity to mobilize resources for repression.[11] Rulers worried about tax revolts, tax boycotts, crop burnings, and the destruction of transport infrastructure; the assassinations of chiefs, European colonial officials, and policemen; and rural exodus and flight across borders to neighboring colonies or to the cities. Cities presented a new set of challenges; they were (and have remained) even harder and costlier to govern. Colonial rulers were very strongly motivated to keep the vast majority of their African subjects not only "in the countryside" but also fixed within legible territorial jurisdictions and under the authority of more-or-less reliable African agents of the colonial state.

A historical sensibility even vaguely attuned to the dynamics of conquest, resistance, and the insecurities of rule sees that once colonial conquest was achieved, pure coercion and extreme predation would have been too costly for European rulers to impose over most of the population most of the time. A NIE perspective suggests that the institution-building under colonial rule can be modeled as a kind of contracting in the shadow of violence between rulers and ruled, with both sides capable of inflicting costs upon (and making concessions to) the other. Obviously there was heterogeneity of interests and capability, and cooperation and competition, on both sides. There were costly break-downs into pure predation, open resistance, extensive violence, and disorder. There would be no theoretical justification for supposing that colonial institutions, including land institutions, were ever uncontested or stable in any absolute sense.

The historical record supports such an interpretation, and makes it possible to trace institution-building (and state-building writ large) across the 20th century and into the 21st. Colonial rule in most of sub-Saharan Africa seemed to stabilize around institutionalized state apparatuses the 1920s and 1930s. African societies' productive capacity, combined with their capacity to disrupt colonial administration and inflict heavy costs on rulers, gave colonial subjects their leverage or "bargaining power" in strategic

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[11] Obviously rural populations have not always succeeded in resisting dispossession. On rural protest, see Ken Post, 1971: 272-80. He inventories six forms, which we can elaborate somewhat to include (1) resistance to the initial colonial conquest, (2) local riots and revolts against taxation and forced cash crop cultivation ("endemic in West Africa"), (3) revolts against monocropping, terracing, sanitary measures such as cutting down cocoa trees affected by swollen shoot disease; destruction of crops, roads, bridges, stores; marketing boycotts and hold-ups; (4) armed struggles to expel white settlers from the land (eg. Mau Mau) and the (5) protest, demonstrations, and other mobilization in the context of the national liberation struggles, including the armed national liberation struggles in Guinée Bissau, Mozambique, and Angola, and Rhodesia, now Zimbabwe, (6) and revolts against the new ruling classes after independence. Colonial history is also full of other sorts of rural resistance -- from flight of populations, to murders of chiefs or colonial officials, to millenarian movements and the subversive activities of secret societies, etc. Herbert Weiss (1967) believed that rural radicalism and political mobilization was a much larger part of the independence struggles than most scholars believed, focused as they were on urbanization and urban-based movements.

interaction with colonizers. In most parts of most colonies, rulers elicited African subjects' cooperation and acquiescence to colonial administration and taxation "in exchange" for the Europeans' own commitment to restrain their demands and extractions. Colonizers delegated prerogative and privileges to local African intermediaries and agents, as is well known from histories of indirect rule. They undertook to provide some palpable goods and services.[12] *Ententes* that stabilized around rules and procedures can be modeled as contacts, social contracts, or institutions binding rulers and ruled.[13] Colonial subjects' acquiescence was tentatively exchanged for colonizers' commitment to act with some predictability and some restraint. Institutions that emerged from this contracting were intentionally designed by European colonizers to impede African subjects' capacity for collective action (through disarmament, Indirect Rule, divide and rule, and mobility restrictions, *inter alia*) and to blunt the rise of anti-colonial consciousness (through ideologies of "the customary" or "moral uplift," for example). They also allowed Europeans to extract labor, agricultural commodities, and forest products out of the African countryside.

The land tenure institutions that are the subject of this chapter are one of the important (decisive) outcomes of this process. Land institutions took one of two basic (generic) forms, varying by district or region within each African colony. [14] First is the the neocustomary land tenure institutions, which were less costly to impose and enforce, but gave rulers less control over land use and are beset by principle-agent problems (and give African subjects relatively more autonomy). Second was the statist land institutions, which can be very costly to impose and enforce but give central rulers more control (direct control) over land allocation and use. Under statist land institutions, land users are subject to the unmediated surveillance and repressive powers of the state. Postcolonial African governments largely maintained and reproduced land institutions inherited from the colonial states, actively modifying, elaborating, extending, and reproducing them in new ways.

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[12] This intuition or theory of institution-building underlies revisionist colonial historiographies (Chanock, Veil, Ranger), choice-theoretic models of African states and social contracts (Boone 2013, Nugent NLR, Azam 2001), whether they emerge from the sociological tradition or the economistic tradition of theorizing about the state and state formation (Nye 1997).

[13] See also Engerman and Metzer (2004).

[14] In practice, categories can be blurred.

<u>The Neocustomary Land Institutions</u>[15]

Across most of sub-Saharan Africa, colonial rulers confirmed the ancestral or prior occupancy rights OR conceded new permissive occupancy and use rights to African subjects <u>if and when</u> they belonged to state-recognized rural collectivities (officially recognized "tribes"), <u>if and when</u> they accepted to live under the authority of state-recognized local authorities within state-designated boundaries in territories designated as "tribal homelands." The land rights so granted or recognized were rights to occupy and use land, to pass it on to heirs, to <u>not be</u> subject to land tax, and to be able to claim compensation [in kind] for land expropriated by the state. These were the defining institutions of colonial indirect rule. From the colonizers' perspective, these arrangements rested on a complex of rules, political relationships, and policies aimed at fixing rural populations on the land, organizing them into governable collectivities within administrative-cum-political hierarchies that were linked to the central state, fostering divide-and-rule politics that impeded social mobilization and containerized it, and promoting peasantization and the cultivation of food crops and taxable crops. From the perspective of ordinary colonial subjects in the countryside, these arrangements granted access to land and produced a kind of local political order that induced most people to acquiesce to colonial rule most of the time.

Neocustomary tenure often bears very tenuous connections to precolonial (eg. pre-1885) customs, institutions, and practices. Sara Berry's hedged statement on the matter provides a good way to think about precolonial legacies: "Some of the organizing concepts of precolonial land tenure systems continued to influence evolving patterns of land control" (1988:58). The extent of continuity needs to be taken as a variable, both across space (including subnationally) and time. Sometimes continuity is hard to find: Michael Watts (1983: 75) wrote that the British "literally invented communal land tenure" in Northern Nigeria.

The ideological underpinning of neocustomary land institutions is the idea that "each tribe" manages "its land" (within its "homeland") through its "own rules" and under its "own traditional authorities."   These arrangements consist of an interlocking set of four types of rules: rules defining territorial jurisdictions, authority structures, rules governing group membership and rights, and property

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[15] The "neo" in the term neocustomary is intended to underscore the extent to which contemporary land institutions have been created, formalized, and codified by twentieth and twentieth-first century governments.

rules. Contemporary African states have incorporated the four defining elements of the neocustomary land institutions into the formal legal-administrative structures and practices.[16]   Although the term Indirect Rule is not used in postcolonial Africa, the colonial terms homeland, chief, tribe, and customary are used.   The isomorphism of neocustomary institutions across extremely heterogeneous socio-political, demographic, ecological, and economic contexts is itself a telltale sign of the colonial template, and of their intrinsically modern, state-crafted character.

Territorial jurisdiction rules. Indirect rule transformed the vast, and politically fluid or potentially-oppositional spaces of conquered Africa into the governed spaces of colonial Africa (Watts 2004). Working from treaties, routes followed by colonial military columns, maps distinguishing pacified areas from hostile territory, and new agreements with local African authorities, colonial authorities worked in the 1900s through the 1930s to zone each colony into ethnic homelands and state-controlled forests, reserves, municipal circumscriptions, and territories assigned to European settlers and investors. Territorial jurisdictions under neocustomary authority were conceived as the ancestral homelands of the "tribes" the rulers (re)configured and and formalized as state-recognized collectivities.

Bargaining in the shadow of violence, colonial rulers delimited jurisdictions that confirmed or expanded the geographic sphere of influence of some (trusted) customary authorities and reduced or eliminated the domains of distrusted local leaders or groups.[17]

These tribal homelands were the territorial containers for building neocustomary land institutions and colonial citizenship regimes.[18] (Figure 1.) Their boundaries mapped onto sub-district and district (or circumscription or cercle) divisions in colonial administrative grids. Colonial territorial administration of district officers, commandants de circle, their lieutenants, and chiefs was constituted and functioned within

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[16] See Boone and Nyeme, CP, forthcoming 2015 for the Tanzania exception.

[17] The size and shape of jurisdictions was tailored in pursuit of political and bureaucratic expediency. The Gogo of Tanganyika, for example, were amalgamated into a new, hierarchically ordered chiefdom in the 1920s because British administrators deemed their existing political collectivities to be too small and too decentralized (Rigby 1977, 84).

[18] See Young 1994: 232-3. Those not certified as official ethnic groups or tribes thus did not get their own homeland, and thus, no neocustomary land entitlement. They were pressured to "join recognized tribes." Recognition of a homeland can thus be seen as something valuable that some communities or people wrested from the colonial state, operating they were from a position of great disadvantage. In zones vulnerable to land expropriation by whites such as northern Tanzania, state recognition of a homeland was a major political asset when it came to resisting (further) expropriation. See, for example, Spear 1997 on the 1951 Meru Land case.

this template. Postcolonial states absorbed these administrative grids and the ethnic homelands and land rights they institutionalized. Indeed, postcolonial governments have reproduced and elaborated the logic of segmenting territory (land) among different state-recognized ethnic groups. It is a dynamic propelled forward by the actions of both rulers and ruled: units are subdivided as the administrative grid tightens; "forgotten minorities" press rulers and their political patrons in the state for their own jurisdictions and land entitlements.

Figure 1: Gorowa Native Authority, "Tribal and Ethnographic Map," *Atlas of Tanganika*, 1956

There is nothing informal about the institutions that carve national space into political and administrative sub-divisions in African countries. They are as formal as the *départements* of France, or state borders in the United States. These jurisdictions are not exactly the same as their counterparts in the countries just mentioned, however. The rules define and divide the political collectivities that rulers are willing to recognize, impose indigene-stranger hierarchy within them, as well as hierarchies among them (ranking agricultural ethnic groups above pastoralists, for example). (See Mamdani, *Define and Rule*). These same rules restrain labor and class mobility in agrarian society, the functioning of markets, and national integration.

Citizenship rules.   If ethnic jurisdictions were territorial templates for indirect rule and neocustomary land institutions, then "tribes" were the social groups that fit within these containers. Through aggregations

or division of existing social and political groupings, colonial administrators endeavored to forge the supposedly natural tribal communities that were ideologically framed as the authentic African social form. Chanock (1998) uses the term "new tribes" to distinguish these groupings from territorial, social, and political collectivities that existed in precolonial times.

By definition, neocustomary law varied across the ethnic groups within one colony. It governed land and civil affairs, and some criminal law. As a matter of routine government and administration, therefore, it was necessary to assign a state-recognized tribal identity to each person in order to know *which* customary court and which customary law would apply in the case of a land dispute or claim, inheritance matter, civil infraction, or ordinary crime. Mobility restrictions -- a fundamental monitoring and control technology of the colonial state -- also required that individuals be assigned an ethnicity and a homeland.[19] Judicial systems, territorial administration, and property regimes literally could not function unless individuals were assigned a state-recognized ethnic status.[20]

For colonial and postcolonial subjects, using a state-recognized ethnic status has conferred a right of residency in a homeland, a right to claim a neocustomary land entitlement, and diminution of the risk of land dispossession or displacement by ethnic outsiders (incl. Europeans). This means that many colonial subjects had good reason to accept such legal identities. Strategic interactions between state and subjects shaped the incorporation of subject populations into a new political order (Chauveau et Dozon 1987, Dozon 2008). Murdock's (1959, 1967) "ethnic mappings," used to construct the ethno-linguistic fractionalization indices that are popular among today's social scientists, are actually products of the modern state-making process, rather than exogenous to politics and the modern state.

Such rules institutionalized the political status of "internal foreigner" -- a subject of the colony (or now, citizen of a country) living outside her or his ethnic homeland. In Kenya, this would be a Kikuyu working in Kisii, or in Nigeria, a Yoruba living in the North. The salience of this distinction is high in

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[19] These were relaxed after WWII.

[20] The urgency of these assignments for state-building is evident in the example of the Maasai in then-Tanganika. The British in Tanganyika created a "Masailand," and in 1925 commanded that "all Masai are to be moved into the Masai Reserve." Those who refused to move into the reserve were to "give up their claims to be Masai." Conversely, non-Masai finding themselves in the reserve were commanded either to become Maasai or to move out: All communities were to "accept the citizenship of the tribes they were living among." The Senior Commissioner for Arusha District, Mr. Browne quoted the late Governor Sir H. A. Byatt: "'They must definitively be Masai or not Masai.'" Tanzania National Archives (TNA), Mr. Browne, Sr. Commissioner Arusha District, Annual Report 1925, 18 January 1926, p. 11 (TNA, AB.31 (1925). File n. 1733/1/36).

agrarian settings, where the internal foreigner (a.k.a. stranger, guest, acceptee, or "in-migrant") would be excluded from claiming a land entitlement, land ownership, and from having full "political voice" in the local community.

These institutions are unfamiliar in Western countries where most national governments do not differentiate between different classes of citizens based on (non)membership in subnational political communities. Indeed, the existence of such distinctions conflicts with the idea of the unitary state and unified citizenship regime.

State-recognized ethnic status is not an informal institution (although other kinds of social and kinship-based communities may well be considered as such). Under colonialism it was officialized in census categories, ID cards, entitlements to claim land in ethnic homelands, and differentiated civil codes and courts. In much of contemporary Africa, the distinctions remain integral to the functioning of land institutions and in rules of access to the political arena at the local level. In Soubré in western Côte d'Ivoire in 2006, the national government carefully registered each farmer as either an "autochthonous owner" of land or as an ethnic stranger who, by writ of the state, could only enjoy permissive occupancy rights at the pleasure of an autochthonous host. In Vavoua in the same region, ethnic strangers (*allogênes* and *allochtones*, or foreigners and "internal foreigners") were warned in August 2014 that choosing the sous-prefet's local *interlocateur* and the local land-rights adjudicator, the *chef de village*, was the privilege of the heads of indigenous lineages. Ethnic outsiders should stay out of it.[21]

Many political scientists have studied ethnic identity in Africa as an individual cognitive attribute or preference (or behavior). They might reject the argument that ethnicity is a legal status, or official institution. To sort out this debate, it is important to underscore that we are talking about two, conceptually distinct phenomena. Those pinned with a yellow star in Nazi Germany (a state-imposed legal status) may or may not have self-identified as Jews, or seen themselves as members of "the same community." This does not change the reality of the state's action or intention, and surely leaves open the possibility that state policy have have a direct impact on individual identity, cognition, group-ness, and collective action. As this example suggests, the two kinds of ethnic identity may coincide, overlap, be nested, evolve together (or

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[21] Région Haut Sassandra, prefecture de Vavoua, sp de Séitifla, village de Ancien Prozi. "Côte d'Ivoire - A Vavoua allogènes et allochtones exhortés à ne plus se mêler des choix des chefs de village," *La Rédaction*, 20 août 2014, posted by AIP, accessed 20 July 2015 (http://www.connectionivoirienne.net/102345/cote-divoire-vavoua-allogenes-allochtones-exhortes-se-meler-choix-chefs-village).

apart), and do in dynamic interaction over time. State-created and -imposed ethnic designations have far more of a foundation and on-going impact on ethnic identities in Africa than most political science acknowledges, or than models that take ethnicity as an "independent variable" in political explanation can accommodate.

Authority rules. The imperial powers did not have the means or the motive to govern colonial Africa directly, by obliterating local authority and social structures and building bureaucratic-authoritarian institutions from scratch. *Indirect* rule was the cost-effective solution. It institutionalized a colonial form of power in the hands of chiefs who were appointed or confirmed in power by the European rulers. The ideological and indeed, the practical, justification for this was the colonizers' interest in taking advantage of and accentuating mechanisms of social cohesion and control that they either observed or imagined to be inherent in "tribal society." They hoped to harness the authority and legitimacy of Africans who already possessed these assets in the eyes of subject populations. The inherent fallacy and contradiction was, of course, that (1) such authority did not exist everywhere, and (2) collaboration with disruptive, sometimes violent and predatory colonial overlords diminished legitimacy (or prevented it from developing). This is the root of the fundamental agency problems built-into indirect rule: the more faithful and reliable the chief as an agent of his European overrulers, the less authority he would have in the eyes of subjects, and the more he would have to rely on coercion (more costly and often counterproductive for the colonial state) to execute directives from above (Hechter 2008). Colonial rulers, recognizing this and seeking to economize on monitoring, created wide gap between principal and agent in land affairs, local civil matters, and in allocating the local tax burden.

It is an error to define chieftaincy as an informal institution. Official chiefly hierarchies were an explicit part of colonial administrative hierarchies, with chiefs appointed by ranked classes (chief class A, B, C) and placed on the government payroll. In Côte d'Ivoire in the 1930s and 1940s, the colonial administration kept a portfolio on each appointment chief that was much like a personnel file in the HR department of a business or university. These documents were routinely updated and consulted when promotions, demotions, replacements, and pay-raises were under consideration. Appointment and removal procedures were regulated by administrative decree. With the end of colonial rule, African leaders revised

these systems but did not eliminate them. Paramount chieftaincy (regional-level) was done away with almost everywhere, as was the power of chiefs to requisition the labor of their subjects for agricultural work. Yet chieftaincy is built-into the territorial administration and land administration institutions in most African countries. Where chiefs are on the government payroll, this is unambiguous. In Côte d'Ivoire, for example, *sous-préfets* select village chiefs (based partly on assessments about who will be effective), and each appointment is officialized by decree of the Minister of the Interior.

Much of the power chiefs wielded over subjects on a day-to-day basis was derived from their land powers. Colonial indirect rule give chiefs control over the allocation of unused land and the power to adjudicate land disputes within their jurisdictions – these were their primary instruments for gathering power and exercising social control. Chiefs also judged and ruled on civil matters (marriage, divorce, inheritance, all closely related to land matters) and distributed the burden of taxation (including forced labor) among villages and households in their jurisdictions.

Mamdani (1996) stressed the paradox of chieftaincy under indirect rule: it *institutionalized* a form of authority over local subjects that was, in essence, *arbitrary*. If we regard colonial rulers as strategic institution builders, we can say that they did so for four reasons: so that the legitimacy of their local agents could subsidize the costs of colonial rule; to grant discretion to their agents, to "customize" local authority to fit local situations, and to build-in flexibility (for change over time).[22] Personal rule largely unrestrained by written code or law was thus an intentional feature of institutional design. Postcolonial rules have transferred some of the the powers and prerogatives of the colonial chiefs to state agents and secular politicians. However the grounding of chiefly power in land tenure institutions, and the much of inherently arbitrary character of local governance, have been actively reproduced across much of postcolonial Africa. As a result, authority relations rooted in neocustomary land institutions are highly salient in shaping local political economies. As Clark Gibson (1999:127) wrote in a study of wildlife policy in Kenya, Zimbabwe, and Zambia in the 1990s, "Chiefs still possess considerable influence over social and economic institutions

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[22] Colonial administrative theory held that the neocustomary as their crafted it was authentically African, unique to each "tribe," and that it was flexible and evolving over time. Neocustomary authorities were therefore given wide prerogative in defining the rules of neocustomary. Administrative regulations often required that they do so in consultation with "elders," institutionalizing a patriarchal and gerontocratic form of local government and administration. Chanock explains that until late in the colonial period, the European authorities resisted formal codifications of customary law (as implemented in customary courts) for fear that this would freeze its "natural development" (Chanock 1998).

in the rural areas... Most of this authority results from the chiefs' control over access to land.... Chiefs retain the right to allocate land... This prerogative is decisive... Control over access to land also allows chiefs to regulate access to employment opportunities.. [and] to secure positions for themselves and their family, friends, and supporters."

Property Rules and Relations. Neocustomary land tenure institutionalized subjects' rights to untaxed, unregistered land in their "ethnic homelands" via the authority of chiefs.

These property rules, enforced by postcolonial states, have barred legal transfer of land rights to women and non-members of the state-recognized community of land holders (ie, the ethnic community). Colonial and postcolonial rulers capitalized on this as a mechanism for reproducing the cohesion of state recognized ethnic communities. Neocustomary authorities have had incentives to implement and enforce these rules because they sustain chiefly land powers and their own local authority (Ribot 1999, 2003). Those who benefit from these rules (are also strongly incentivized to uphold them.

Under neocustomary property rules, the status of internal foreigner or "ethnic stranger" is highly salient. Ethnic outsiders or strangers are unable to access land directly (through purchase or otherwise) in their jurisdictions of residence; they do so as the guests or tenants of ethnic-insider hosts. As Stephano Boni (2005:82) explained in an analysis neocustomary land tenure institutions in Western Ghana in the early 2000s, classifying each farmers' ethnic membership is necessary for the implementation of the tenurial and taxation regime. Neocustomary property rules thus define socio-economic hierarchy and social cleavage in many, probably most, farming regions.

These territories, subject populations, and chiefly hierarchies constituted the basic political-administrative units of the colonial states in Africa. Mamdani and Lentz call them the "local states" or "native states" of colonial Africa (Mamdani 1996: 20-21, Lentz). Neocustomary land tenure regimes institutionalize the feature of these "local states" that are most salient in defining the structure and workings of contemporary African states.

Neocustomary land tenure exists in a wide variety of forms as a "chosen institution" of postcolonial rulers. The fact that land institutions continue to evolve through the strategic interaction

between governments and different (sometimes competing) classes of users drives home this point.

Decapitation of many chieftaincy hierarchies (eg. paramount chieftaincies) and the state-imposed reining-in

of the arbitrary powers of chiefs in much of Africa in the 1950-1970 years (especially chiefs' ability to

requisition labor to work their own fields) reflected rulers' response to grassroots resistance to

neocustomary authority in its most predatory and opportunistic forms. Whether by constitutions, law,

executive decree, administrative order, or practice, most governments have confirmed the role of chiefs or

other *autorités traditionneles* in allocating access to farmland and pasture and adjudicating land-related

disputes arising over land boundaries, inheritance, and transactions (even if other chiefly prerogatives have

been reduced). Postcolonial governments have not only reproduced old ethnicity-based land entitlements in

ethnic homelands, they have often created new ones: new homelands give new entitlements to newly-

recognized ethnic groups.[23] Herbst (2000) and others are thus incorrect to see neocustomary land regimes

as informal, archaic, or anti-state.[24] They are not vestiges of precolonial Africa that subvert attempts by

modern leaders to rule the countryside. The opposite is closer to the truth.

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[23] Ghana's 1992 constitution makes chiefs owners and managers of stool and skin lands, which are lands attached to the chieftaincy as an institution and supposed to held in trust for the members of the collectivity. Article 36(8) of the 1992 Constitution states: "The state shall recognize that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana and of the stool, skin or family concerned, and are accountable as fiduciaries in this regard." Kassanga and Kotey (IIED, 2001, 1). In Benin, "customary laws were codified (accurately or not) in Le Coutumier du Dahomey of 1931... which was still used in the courts until 1996... Land cases and inheritances cases [were heard in] "la chambre traditionnele des biens." Wing 2012. Postcolonial Kenya endorsed a more secular and bureaucratized version of customary land tenure in the former ethnic homelands, or what the colonial administration called "native land units": "Native Lands Trust Boards [were] established by the Native Lands Trust Ordinance of 1938. At independence [in 1963], these native lands became trust lands, and were vested in county councils to hold them in trust for the benefit of all persons residing thereon" (Migai Akech 2006). In Sudan in 1994, the government reinstated "a system of local administration that relied on customary authorities, the old model inherited from British colonial rule... Once installed in office, state-recognized chiefs could use their power... to allocate land [and] organize local militia (Reno 2010b, 329). Forrest (2003, 213) writes of the "reestablishment of Mandjack kingships" in Guinée-Bissau after 1987.

[24] My argument is that neocustomary land tenure institutions operate WITHIN the formal regulatory structures of the state – that is, formal institutions define the place and space for the neocustomary. My argument conforms with Mamdani's (1996, 2012): the colonial and postcolonial states define the space for, and recognize the exercise of, the "arbitrary." An analogy could be parents' authority over their children. A parent's actions in disciplining a child are not part of the "informal sector." Rather, the parent's right to do so is a legally-recognized space of individual, discretionary (arbitrary) autonomy. This discretion is exercised within limits, such as the legal prohibition against physical child abuse. Analogously, neocustomary land tenure regimes operate in spaces, through prerogatives, and within limits that are defined and recognized by states. To apply this abstract and general definition (conceptualization) to any particular, actually-existing practice of neocustomary land tenure, of course we would find fuzziness and variation around these principles. See Boone 2014 for example.

Most African governments have sought to tap into the political potential inherent in neocustomary land tenure. They have relied on chiefs as vote brokers and reminded rural communities that central authorities are the ultimate arbiters and guarantors of neocustomary land entitlements. At the same time, members of state-recognized ethnic groups have maintained powerful stakes in neocustomary land tenure. We saw this in Kenya, for example, in the midst of raging debate over elite land grabbling in 2005. The populist Kenya Land Alliance declared that "the Kenyan customary concept of ownership of land still prevails." Since customarily no individual in a community owns land, land is owned by all collectively for the benefit of each and every member of the community. . . [C]ustomary lands are managed and controlled by the County Councils, which hold them in trust for communities (KLA 2005)."[25]

As this example suggests, institutions that entitle community members to claim access to unsurveyed and untaxed rural land can also serve to restrain the state, land-hungry elites, and the market. The fact that these constraints are not absolute and that their bindingness changes over time does not invalidate this point. Rights in the old democracies can also be trampled upon or eroded, but we do not consider them to be non-existent or politically irrelevant. In the Kenyan example, the existence of such a social contract around land is what ensures that the KLA claims are viewed as legitimate and potent in the Kenyan political arena.

B. The Statist Land Institutions

Colonial administrators' dominant strategy was the pursuit of rural governability, but in the context of the larger imperial projects, this goal was alloyed with others. They risked the wrath and backlash of subject populations by asserting direct control over land and land-based resources to generate revenue, to settle new populations on the land, or to create cities, mines, dams, industrial zones, etc. Postcolonial rulers have be motivated by the same types of goals: to make land grants to the postcolonial elites (as in the case of Kenya's Rift Valley), to promote agribusiness in attempts to bolster agricultural production and productivity, to exploit mineral and forest resources, to create national parks, game

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[25] Kenya Land Alliance (KLA), Issues paper n. 4, 2005.

preserves, gazetted forests, military camps and training zones, and demonstration farms that would be off limits to smallholders and pastoralists, and to construct cities, dams, and reservoirs.

We can model this calculus by saying that rulers asserted direct control over land when the expected costs (in economic and political terms) have been outweighed by the expected payoffs.[26] The idea of strategic interaction between rulers and ruled remains valid. In many colonies and postcolonial settings (Côte d'Ivoire in the 1940s and 1950s, Tanganika in the 1940s and 1950s, Kenya in the 1930s-1960s, Senegal in the 1990s, Tanzania in the 2000s), ambitious colonial or postcolonial plans for land expropriation from rural smallholders have been shelved or scaled-back by the specter of rural political mobilization against the state.

Such constraints help to explain why rulers have asserted direct control over land allocation on a limited scale within carefully demarcated territorial jurisdictions. In these zones, rulers have expropriated established occupants and rights-holders, pushed them aside or expelled them, and proceeded to allocate land access directly, either arbitrarily or under statute. This is the process of institutionalizing the statist land regimes. It has generally required the on-going application of considerable state violence and repression.

Every student of African history knows that in Kenya, Zimbabwe, South Africa, Namibia, and Mozambique, colonial states alienated vast domains from African land users and allocated these lands to white settlers. Less recognized is the fact that many colonial and postcolonial governments created schemes for Africans to encourage migration and settle new peasantries on lands outside their ethnic homelands.[27] Some of the best-known examples of postcolonial settlement schemes are found in Kenya, where the government resettled over 500,000 Kenyan families on Rift Valley farmland in the 1960s and 1970s. In Côte d'Ivoire, 75,000 Baoulé displaced by construction of the Kossou Dam in 1970 were resettled by the government in the western forest zone of the country. In postcolonial Rwanda, settlement schemes placed tens of thousands of families on reclaimed marshlands, or pasturelands expropriated from Tutsi in the Hutu Revolution. In Tanzania in the 1950s and 1960s, governments organized the settlement of

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[26] The calculus often involves bargains or deals with displaced populations (i.e., the promise that displacees would be allocated "new land" somewhere else). Imposition of statist land regimes is more likely where the aggrieved rural populations are politically weak (e.g. pastoralists).

[27] Amselle (1976, 24) refers to these as movements of rural African populations that were directed, oriented, or planned by the state. See Silberfein 1988, 51; Adepoju 1982.

migrants on "new lands" opened up to smallholder farming tsetse eradication. In Senegal, governments created "new lands" for in-migrant farmers by expelling pastoralists from the Ferlo and drilling boreholes. Claire Médard (2009, 342) uses the term "state controlled agrarian frontier" to describe the state-led clearing and settlement of the Chebyuk area on the southern slopes of Kenya's Mt. Elgon starting in the 1970s, 1980s and 1990s, where "land allocations and access to forest resources are managed in neopatrimonial style." Cases in point can be found in colonial and postcolonial South Africa, Rhodesia, Namibia, Kenya, Rwanda, Uganda, Tanzania, Nigeria, Ghana, Mali, Sudan, Ethiopia, Senegal, Belgian Congo/Zaire/DRC, and others.

In such areas, land authority is not devolved to state-recognized customary authorities. The central state itself is a direct allocator and manager of land access and use. We refer to this type of land control regime as "statist" to underscore the directness of the state's role in allocating land and, thus, to distinguish this mode of land governance from the indirect rule arrangements that define the so-called customary land tenure regimes in Africa.[28]

Authority Rules.   Statist land institutions create authority structures that differ greatly from those prevailing under the neocustomary land tenure regimes. The in-migrants are beholden to the central state for land access. They do not seek or obtain land access from a neocustomary chief, local landlord, or other indigenous host. Writing of settlers on Mali's Office du Niger irrigation scheme, for example, Robert Pringle (2006, 49) describes the position of the settlers vis-à-vis the state: "Because the colons [peasant settlers] from what is now Burkina Faso had no traditional rights to the authority's [i.e., Office's] previously vacant lands, they—and their dependents—remained uniquely vulnerable to central control." This dependency finds legal expression in the fact that farmers on peasant settlement schemes have rarely received private title to their land. Kenya's Rift Valley Settlement Schemes were a (temporary) exception

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[28] The analytic distinction between customary and statist land regimes can blur as, for example, when governments appoint new chiefs to rule over populations in government-created settlement schemes, or when state-recognized customary authorities are pressured by government to settle strangers on customary land. Joireman (2011) notes that in the urban slums of Nairobi (on state land), the government appoints chiefs as local political authorities.

that proved this rule. Titles assigned in the mid-1960s were not kept up-to-date and proved generally

unusable for transactions (sales and mortagaging) in short order. [29]

Territorial Jurisdiction. If a boundary is an institution, then a state-imposed and -enforced territorial

boundary that is the dividing-line between two different legal regimes is a formal institution par excellence.

The municipal boundaries, forest reserves, game parks, and settlement schemes are the delimited

jurisdictions in which statist rules of land-allocation and administration apply. Within their boundaries,

ancestral and neocustomary rights are extinguished (or perhaps downgraded to residual status).[30] In forests

and reserves, such boundaries are often emphatically enforced through the action of armed officers, police,

guards, wardens, scouts and patrols.

The political bite of these rules is evident in contemporary Africa's chronic struggles over the legal

boundaries of game parks, gazetted forests, state-owned farms, foreign-leased planations, and cities. Over

the last 100 years, rules delimiting zones of purely statist land tenure have provided legal and political

justification for dispossession, explusions, and displacements.[31] They have turned farmers and pastoralists

claiming ancestral or neocustomary rights into squatters, trespassers, poachers, and common criminals in

lands they have used for decades or more. (Squatters and trespassers are exhorted by the state to "return to

homelands" in which the displaced may have never resided.) Reciprocally, in places like much of southern

Côte d'Ivoire, national rulers' ability to "release" state forest land to loggers and, in their wake, small-scale

farmers, has been a prime mechanism of both wealth acculumation (for the state, foreign interests, and

national elites) and political regulation of rural populations (by opening up new lands for settlement) since

the 1960s.

Legal, political, economic, and guerrilla struggles between state and citizens over drawing

boundaries, modifying them, enforcing them, and the legitimacy of state allocations within the borders of

territorial jurisdictions under statist land institutions have often taken center stage in postcolonial African

politics. The release of the Ndungu Commision Report in Kenya in December 2004, for example,

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[29] See below on Moi-era handling of defaults.

[30] As in cases in which an expropriation might be recognized and compensated by a land concession elsewhere, or by some other political concession such as right to gather downed wood in some parts of a government forest).

[31] See for example Lane 1996, Hodgson 2011, Odgaard 2005.

documenting pervasive corruption in the allocation of state lands to high-ranking members of the Kenya elite, contributed mightily to the momentum for a new national constitution (including new national land policy) 2010.

Citizenship. Under statist land institutions, neither neocustomary nor ancestral rights are recognized by the state. This is clear in the major urban areas. Cities like Nairobi, Abidjan, and Dakar are "cosmopolitan zones" not only because of their large non-African or international populations, but also because national citizens of different ethnicities rub shoulders in a "national" space that is not recognized as a homeland to any one particular group. (Groups claiming indigeneity to these jurisdictions – e.g. Lebou in Dakar, Ga in Accra, Lagunaires in Abidjan -- contest this, and use their loss to extract concessions from rulers.) It is also true in rural zones under statist land institutions. Settlement schemes are home to African settlers who have no ancestral or neocustomary rights to the land they occupy; they are ethnic strangers, often receiving land allocations in ethnically-mixed communities without regard to homeland of origin. Those claiming to be autochtonous to the area may well feel that they have been pushed aside or invaded -- like "involuntary hosts of uninvited guests." [32] Autochthones may believe that they have been expropriated outright by the state and the rulers' clients (the settlers).

Property. The distinctive feature of statist property rules is that land is allocated directly by the state and its direct agents (such as uniformed sous-prefets or settlement scheme agents). Ancestral and ethnicity-based entitlements are not recognized. Figure 2 captures the bureaucratic rationality and high modernism of official settlement schemes in Rwanda in the 1970s and 1980s. Ancestral and neocustomary rights are not recognized. Private property (registered and titled freehold) is *one kind of* statist land tenure, since the state is the direct regulator, adjudicator, and enforcer of private property, even if the transactions are negotiated on the market. However, in most territorial jurisdictions under statist land institutions in Africa South of the Sahara, users enjoy rights of permissive occupancy, rather than freehold, and governments have not promoted land markets. Titling and market-based property transactions entail high costs to government, both in terms of the costs of bureaucratization and in terms of loss of political leverage over

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[32] Shack and Skinner 1978, 5.

settlement schemes and settlers. Rulers have also been sensitive to the risks of accelerating rural class formation and the the rise of landlessness. In Kenya in the 1980s, Moi pulled land mortgage bankruptcy cases out of the courts and empowered the provincial administration to handle over this politically-charged problem, thus holding-back the development of land markets. This can be described as a kind of equilibrium-induced outcome in the sense that it was almost certainly supported by most of those who were in default. As history tells us, the rise of private property may be resisted by those trying to preserve their existing land rights.

Figure 2: Paysannat de Muhero, Rwanda, 1970s.
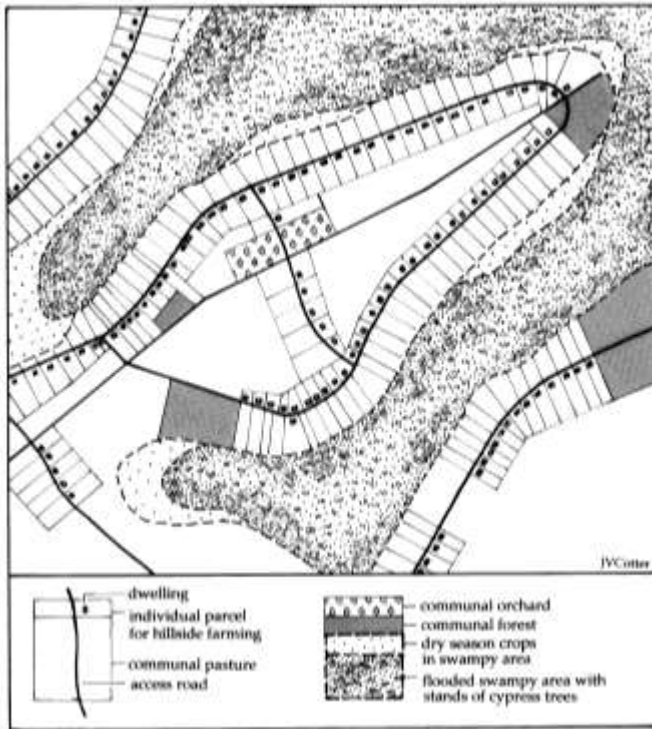
Source: Drawn by John V. Cotter from Prioul and Sirvin, 1981.

Just as the customary land regimes are partly self-enforcing, so too are the statist land regimes. Rulers have sunk costs and a vested stake in the projects they have authored and the clients (settlers) that they are defending. Migrant farmers (settlers) whose land rights have been granted directly by state authorities have not only a vested stake in the statist land institutions that govern the land that they occupy and use, but also a stake in the longevity of the rulers who guarantee and enforce their land rights. Preferences around national integration issues are also shaped by statist land institutions. Migrant farmers (settlers) occupy and use land *outside* their ethnic homeland, they have a vested stake in the national principle that "citizens have a right to live and hold land anywhere." This represents a frontal challenge to neocustomary land tenure.

In general, the statist tenure regimes have been much more deeply contested, and thus more politically and economically costly for rulers to create and enforce over time, than the neocustomary property institutions. If the statist land institutions are modeled as equilibria, then these equilibria are highly vulnerable to upset. The political bond that holds together the parties to this "social contract" may not

outlive an incumbent ruler, especially (1) if is it is contested openly by a rival constituency claiming prior claims to the land and (2) much of the rest of the national population is vested in, and wants to reaffirm, the validity of neocustomary land tenure.

III. Institutional Effects (Equilibrium Effects)

These are institutional frameworks within which colonial and postcolonial governments have promoted peasantization of farmers, sedentarization, and incorporation of rural populations into the administrative-economic structures of the 20th century state. They have secured the acquiescence of agrarian societies in Africa in most places for most of the last 50 or 60 years. Where government has accommodated rural interests, rulers' legitimacy and electoral strength has derived largely from political bases in agrarian society, and from governing networks that run through neocustomary elites and local level state agents (such as sous-prefets in zones of statist land institutions) whose power is rooted in part in authority over land.[33]

The prevailing land institutions have been a check on more rapid and wholesale commodification of land rights and rural labor, enclosure, and large-scale expropriation. They have constrained and slowed the rise of landlessless and full commodification of agricultural output. These effects have been fundamental in defining the character of rural societies, African agriculture, national class structure, and national economies. Land tenure regimes of both neocustomary and statist character have also structured African states, societies, and forms of political competition and conflict.

State-building. Land institutions tie rural populations to national governments, and into national political economies. Rulers have had an interest in sustaining the authority-based controls over land because these help them stay in power: the prevailing property regimes in land reduce the political autonomy of land users and rural communities, give rulers leverage over resources that can be used as patronage, and

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[33] Africa's newest country, South Sudan, provides fresh support for this claim: the new SPLM government, in the wake of its victory, sought the allegiance of local communities by promising formal state-recognition (institutionalization) of their territory and land rights. Badiey (2013) explains that the previous Government of Sudan often dispossessed these groups, creating grievances that helped to fuel demands for southern autonomy. In the new South Sudan, diasporic groups want *national* citizenship rights, whereas many local communities are demanding *ethnic* rights. This mirrors a programmatic and ideological tension evident in many of the land cases examined in this study.

underpin bargains with local strongmen who are tied to national rulers. Across much of the national territory of most countries, "the rural masses" are tied to micro-territories, land entitlements, and to varying extents, neocustomary authorities as well.

Nested within larger ethnic territories or "homelands," ethno-regional groupings bargain and compete for benefits that national rulers may provide. In jurisdictions under statist land tenure regimes, land users are tied to the state agents who grant them access to land controlled directly by the state (in settlement schemes or in (de)gazetted forests, parks, etc.).

The politics of "subnational unit creation" is driven mightily, on both the supply and demand side, by the drive to grant new land entitlements. There are highly charged redistributive implications both within the new units and across new and old units.

Defining political identities and collectivities. Neocustomary land tenure institutions impose and reproduce state-recognized ethnic identities and reproduce them through the workings of land relationships.[34] They also incentivize individuals and families to claim and maintain ethnic identities that confer land rights in state-recognized homelands. By the same token, exit from these ethnic identities is costly if it involves forfeiture of the right to claim land.

These same institutions also create incentives and political opportunity structures (ideologies, leadership, political channels for being heard by rulers, and legitimate claims on the state) for groups to act collectively (ie., *as ethnic collectivities*) to defend collective land entitlements, and to assert claims to other benefits and dispensations that state recognition entails. These effects are heightened where other forms of collective action and mobilization are ignored or repressed. Those who access land via *statist* land institutions, by contrast, are incentivized to embrace national rather than ethnic identities (Boone and Nyeme 2015). The presence of this tension highlights the possibility that what Political Science codes as

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[34] "... American racial identities have not been something that emerged rather organically from social experiences or ideology traditions...[Rather], to a considerable degree, American racial identities have been created relatively autonomous governmental institutions that labeled some a "white," some as "black," some as different races. Those institutional arrangements [include] antebellum state civil and criminal laws, late-nineteenth- and early-twentieth-century state Jim Crow laws, federal census rules, immigration and naturalization statues, judicial rulings on all of the above, police enforcement of all of the above, political parties structured to express and preserve all of the above, and more... These institutional arrangements can [may] plausibly seen as more central to the construction of racial identities in America than any particular ideological tradition (Smith, 2006: 93-94).

"ethnic politics" in many African countries may in fact conceal an underlying tension between preferences for ethnic vs. non-ethnic (or national integration) politics, and that these preferences many be unevenly distributed across ethnic groups. These tensions appear more or less clearly in politics around land in Kenya, Côte d'Ivoire, Rwanda, and South Africa, for example.

Hechter (2004) argued that under indirect rule, many critical political issues are embedded in highly localized social relations and forms of power. The adjudication fora and venues are capped at the local level, and the responsible authorities are local. Indirect rule thus shapes political process – in terms of political scale, substantive content of issues, processural rules – and forms of collective action. Direct rule produces different outcomes, according to Hechter – it changes the scale of politics, and forms of collective action. It promotes the growth of trans-local social movements and forms of political mobilization. Hechter's general arguments are directly applicable to substantive issues analyzed here.

 Shaping forms of land-related conflict. Land institutions shape politics, producing effects that vary across space in predictable ways. Both neocustomary and statist land tenure institutions play a strong role in defining lines of sociopolitical cleavage (and alliance) in rural society, creating economic and political hierarchy, and distributing rights in the local political area. Tensions fueled by rising competition for land are refracted through the different land regimes (Boone 2014). Under neocustomary land institutions, ethnic insiders almost always have a clear the upper-hand, backed by national governments which "choose" neocustomary institutions, have a stake in them, and enforce them. Ethnic strangers are highly likely to be disadvantaged and discriminated against. The tables are turned under statist land tenure regimes when national rulers have vested interests in defending the migrants that they have encouraged to settle in zones outside of their ethnic homelands. As suggested above, these arrangements are easily destablized by regime change or change in the ruling coaltion (Boone 2014).

Conclusion

A main goal of this chapter has been to depict structure and variation in these institutional configurations in rural Africa. This has made it possible to connect the study of land institutions to broader,

more institutionalist, understandings of regime type and political order, and also expose political dynamics in Africa that have so far escaped comparative and scaled-up analysis.

Making visible this part of the architecture underlying state-society relations in these mostly agrarian societies undercuts the following stereotypes or assumptions, all prevalent in the political science literature on Africa: (1) the notion that modern African states are disconnected from their rural hinterlands (Hyden's image of the state as "suspended in mid-air'); (2) the idea that the countryside and rural societies are both institutitionless and beyond the "reach of the state" (ie., composed of face-to-face, self-governing, natural communities of kith and kin who are highly resistant to state encroachment) (Herbst, 2000), (3) the belief that rural property institutions are absent, constituted by pre-colonial African customs and norms, uniform continent-wide, or unique in each locality or varying randomly, as connoted in the common practice of casual use of "customary" or "traditional" to describe to land tenure arrangements in all of rural Africa, and (4) the latent idea, often present but patently unexamined, that impersonal markets govern access to rural farmland and pasture, as is the case in, say, in the United States.

National political order anchored in the social contract we have described – whereby acquiescence is exchanged for the right to claim land in one's homeland – maybe be self-limiting, however, where populations grow, land is finite, agricultural technology is very slow-changing, and off-farm livelihoods are hard to come by. In much of SSA, land frontiers have closed or are closing. Pressure on the land widens cleavages in society that run along the lines of power relations, economic inequalities, ethnicity, generation, and gender. Neoliberalism and fiscal austerity have done away with many of the old ways of targeting government spending on rural localities. At the same time, economic liberalization also quickens markets and the incentives that motivate rulers to sell or lease land to investors.

From this perspective, some of the larger political stakes and strains of rural property rights transformation in Africa come into focus. For governments, the stakes in agrarian transformation are double-edged. Governments are ambivalent or hesitant in the face of pressures to enforce and accelerate the full commodification of land. The prevailing land regimes anchor their power in the rural areas, structure rural constituencies and state control over them, and give rulers expansive powers over land management and land allocation. For farmers and populations in the rural areas, growing exclusivity and transactability of land rights is also double-edged. Full commodification of land erodes the communal solidarities, and

exposes individuals and collectivities even more fully to the compulsions and risks of the market. Because of the redistributive implications of these changes, they divide communities and families.

High visibility political debates over land institutions are now unfolding in many African countries, pitting defenders of neocustomary entitlements against those pushing for alternatives. There is a struggle over land institutions in Kenya in which defenders of customary land entitlements (such as the KLA, mentioned above) are pitted against those who want to reinforce the state's direct powers to land without reference to neocustomary or ancestral entitlements, to allocate it to new users or to expand the scope of the market. Similarly, Côte d'Ivoire has been torn by a decade of civil conflict between one social coalition defending autochthonous land rights and neocustomary entitlements, and another bent on reinforcing state powers to allocate land regardless of ethnic citizenship, and/or to regulate and enforce impersonal land markets. In other places, politics revolves around the restitution or reallocation of lands under statist land tenure regimes (Zimbabwe, Rwanda), or around the hardening of neocustomary entitlements (Nigeria), or the hiving off of new "ethnic homelands" to appease new demands (Uganda). In these countries as in many other African contexts, political struggle around land institutions frames stark questions about the terms of social contract – past, present, and future – between African governments and rural populations.

Reference list

Acemoglu, Daron and James A. Robinson. 2006. *Economic Origins of Dictatorship and Democracy* (Cambridge and New York: Cambridge University Press).

Adepoju, Aderanti. 1982. "Population Redistribution: A Review of Governmental Policies," in *Redistribution of Population in Africa.* John I. Clark and Leszek A Kosinski, eds. London and Exeter, NH: Heineman Educational: 58-84.

Amselle, Jean-Loup, ed. 1976. *Les Migrations Africaines*. Paris: Maspero.

Anderson, Perry. 1974. Lineages of the Absolutist State. London: New Left Books

Austin, Gareth. 2005. *Labour, Land, and Capital in Ghana: From Slavery to Free Labour in Asante, 1807-1956.* Rochester, NY: University of Rochester Press.

Azam, Jean-Paul. 2001. "The Redistributive State and Conflict in Africa," *J. of Peace Research* 38/4 (2001): 429-444.

Badiey, Naseem. 2013. "The Strategic Instrumentalization of Land Tenure in 'State-Building': The case of Juba, South Sudan." *Africa: Journal of the International African Institute* 83 (1): 78-99

Bates, Robert. 1983. *Essays on the Political Economy of Rural Africa.* Berkeley and Los Angeles: University of California Press.

Berman, Bruce. 1984. "Structure and Process in the Bureaucratic States of Colonial Africa," Development and Change 15: 161-202.

Berman, Bruce and John Lonsdale. 1992a. *Unhappy Valley: Conflict in Kenya and Africa. Book One: State and Class*. Athens: Ohio University Press.

Berry, Sara. 1988. "Concentration without Privatization? Some consequences of changing patterns of rural land control in Africa," in *Land and Society in Contemporary Africa.* R.E. Downs and S.P. Reyna, eds. Hanover and London: University of New Hampshire and University Press of New England, pp. 53-75.

Boix, Carles. 2003. Democracy and Redistribution (Cambridge and New York: Cambridge University Press).

Boni, Stefano. 2005. *Clearing the Ghanaian Forest: Theories and Practices of Acquisition, Transfer, and Utilisation of Farming Titles in the Sefwi-Akan Area*. Legon, Ghana: University of Ghana Institute of African Studies.

Boone, Catherine. 2007a. "Property and Constitutional Order: Land Tenure Reform and the Future of the African State." *African Affairs* 106 (October): 557-86.

Boone, Catherine. 2014. *Property and Political Order in Africa* (New York: Cambridge University Press).

Boone and Nyeme. 2015. *Comparative Politics*, forthcoming October.

Brenner, Robert. 1982. "The Agrarian Roots of European Capitalism." *Past and Present* 97 (November):16-113.

Chanock, Martin. 1998. *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia*. Portsmouth, NH: Heinemann. First published in 1985 by Cambridge University Press.

Chauveau, Jean-Pierre. 2000. "Question foncière et construction nationale en Côte d'Ivoire." *Politique Africaine* 78: 94-125.

Chauveau, J-P and J-P. Dozon. 1987. "Au coeur des éthnies ivoiriennes... L'état," in *L'Etat Contemporain en Afrique*. Emmanuel Terray, ed. Paris: L'Harmattan: 221-296.

Chimhowu, A. and P. Woodhouse, 2006. "Vernacular Land Markets in Sub-Saharan Africa." *Journal of Agrarian Change* 6 (3): 346-371.

Colin, J-P, Kouamé, G. and Soro, D. 2007. "Outside the autochthon-migrant configuration: access to land, land conflicts and inter-ethnic relationships in a former pioneer area of lower Côte d'Ivoire." *The Journal of Modern African Studies* 45: 33-59.

Deininger, Klaus. 2003. "Causes and Consequences of Civil Strife: Micro-level evidence from Uganda." *Oxford Economic Papers* 55: 579-606.

Dozon, J.P. 2008. *L'Afrique à Dieu et à Diable: Etats, Ethnies, et Religion*. Paris: Ellipses.

Engerman, Stanley and Kenneth L Sokoloff . 2003. Institutional and Non-Institutional Explanations of Economic Differences," NBER Working Paper 9989. Cambridge, MA: National Bureau of Economic Research.

Engerman, Stanley L. and Jacob Metzer, eds, *Land Rights, Ethno-Nationality and Sovereignty in History* (London: Routledge, 2004).

Ensminger, Jean. 1992. *Making a Market: The Institutional Transformation of an African Society.* New York and Cambridge: Cambridge University Press.

Firmin-Sellers, Kathryn. 1996. *The Transformation of Property Rights in the Gold Coast: An empirical analysis applying rational choice theory.* Cambridge and New York: Cambridge University Press.

Forrest, Joshua. 2003. *Lineages of State Fragility: Rural Civil Society in Guinea-Bissau*. Oxford and Athens, OH: James Currey Ltd. and Ohio University Press.

Gibson, Clark. 1999. *Politicians and Poachers: The Political Economy of Wildlife Policy in Africa* (CUP).

Hall, Peter A. and David Soskice. 2001. *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. Oxford: Oxford University Press.

Hann, C. M. 1998. "Introduction: The Embeddedness of Property," in *Property Relations: Renewing the Anthropological Tradition.* C.M. Hann, ed. Cambridge: Cambridge University Press: 1-47.

Hart, Keith. 1982. *The Political Economy of West African Agriculture* (Cambridge University Press).

Hechter, Michael. 2008. *Containing Natinoalism*. Oxford: Oxford University Press.

Hechter, Michael. 2004. "From Class to Culture," *American Journal of Sociology*, 110/2 (September): 400-45.

Hechter, Michael and William Brustein. 1980. Regional Modes of Production and Patterns of State Formation in Western Europe. *American Journal of Sociology*, 85/5 (March): 1061-1094.

Herbst, Jeffrey. 2000. *States and Power in Africa: Comparative Lessons in Authority and Control.* Princeton: Princeton University Press.

Hobsbawm, Eric and Terence Ranger, eds. 2012. *The Invention of Tradition*. Cambridge University Press.

Hodgson, Dorothy. 2011. *Being Maasai, Becoming Indigenous: Postcolonial Politics in a Neoliberal World* (Bloomington, Indiana University Press).

Hyden, Goran. 1980. *Beyond Ujamaa in Tanzania*. Los Angeles and Berkeley: University of California Press.

Issacman, Allen. "Peasants and Rural Social Profest in Africa," *African Studies Review*, 33, 2 (1990): 1-120.

Joireman, Sandra. 2000. *Property Rights and Political Development in Ethiopia and Eritrea: The State and Land, 1941-1974* (Athens: Ohio University Press).

Joireman, Sandra. 2011. *Where There Is No Government: Enforcing Property Rights in Common Law Africa*. Oxford: Oxford University Press.

Kassanga, Kassim and Nii Ashie Kotey, 2001. "Land Management in Ghana: Building on Traditional Authority." International Institute for Environment and Development (IIED), Land Tenure and Resource Access Series. London: IIED.

Kenya Land Alliance (KLA). 2005a. "The National Land Policy in Kenya: Addressing Customary/Communal Land Issues." KLA Issues Paper no. 4/2005, Nakuru: KLA.

Knight, Jack. 1992. *Institutions and Social Conflict.* Cambridge University Press.

Lane, Charles. *Pastures Lost: Barabaig Economy, Resource Tenure, and Alienation of their Land in Tanzania* (Nairobi: Initiatives Publishers, 1996).

Levi, Margaret. 1988. *Of Rule and Revenue*. Berkeley and Los Angeles: University of California Press.

Mamdani, Mahmood. 1996a. *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism.* Princeton, NJ: Princeton University Press.

Mamdani, Mahmood. 2012. *Define and Rule: Native as Political Identity.* Cambridge, MA: Harvard University Press.

Michaelopoulos, Stelios and Elias Papaioannou. 2013. Precolonial Ethnic Institutions and Contemporary African Development. Econometrica 81/1: 113-52.

Migai-Akech, J. M. 2006. "Land, the Environment and the Courts in Kenya: Background Paper for the Environment and Land Law Reports, a DFID/KLR Partnership," Nairobi: UK Department for International Development (DFID) and Kenya Law Reports (KLR), February.

Moore, Jr., Barrington. 1966. *Social Origins of Dictatorship and Democracy*. Boston: Beacon Press.

Murdock, G.P. 1959. Africa: Its Peoples and their cultural history. New York, McGraw Hill.
Murdock, G.P. 1967. Ethnographic Atlas. Pittsuburgh, PA: University of Pittsburgh Press.
Mueller, Susanne. 2011. "Dying to win: elections, political violence, and institutional decay in Kenya." *Journal of Contemporary African Studies* 29 (1) January: 83-100.

Munro, William A. 1998. *The Moral Economy of the State: Conservation, Community Development, and State Making in Zimbabwe*. Athens: Ohio University Press.

Mwangi, Esther. *Socioeconomic Change and Land Use in Africa: The Transformation of Property Rights in Maasailand* (Palgrave Macmillian, 2007).

North, Douglass. 1981. *Structure and Change in Economic History.* New York: W.W. Norton.

North, Douglass. 1990. *Institutions, Institutional Change and Economic Performance*. Cambridge and New York: Cambridge University Press.

Nugent, Paul. 2010. "States and Social Contracts in Africa," *New Left Review* 63, May-June: 35-63.

Nunn, Nathan. 2009. "Importance of History for Economic Development," *Annual Review of Economics*, vol. 1, pp. 65-92.

Nunn, Nathan. 2007. "Historical Legacies: A Model Linking Africa's Past to Its Current Underdevelopment." *Journal of Development Economics* 83: 157–175.
Nye, John V. C. 1997. "Thinking about the State: Property Rights, Trade, and Changing Contractural Arrangements in a World with Coercion." *Frontiers of the New Institutional Economics*, J.N. Dbovnik and J.V.C. Nye, eds., (San Diego: Academic Press): 121-144.

Odgaard, Rie. 2005. "The Struggle for Land Rights in the Context of Multiple Normative Orders in Tanzania," in Sandra Evers, Marja Spierenburg, and Harry Wels, eds., *Competing Jurisdictions: Settling Land Claims in Africa* (Lieden and London: Brill), 243-64.

Onoma, Ato Kwamena. 2010. *The Politics of Property Rights Institutions in Africa*. New York and Cambridge: Cambridge University Press.

Ostrom, Elinor. 2005. *Understanding Institutional Diversity.* Princeton, NJ: Princeton University Press.

Phillips, Anne. 1989. *The Enigma of Colonialism: British Policy in West Africa*. London: James Currey.

Platteau, J.-P. (2009). "Institutional obstacles to African economic development: State, ethnicity, and custom." *Journal of Economic Behavior & Organization* 71(3): 669-689.

Post, Ken, 1972. "'Peasantizatoin' and Rural Political Movements in Western Africa," European J. of Sociology, 13/2 (November): 222-254.

Poteete, Amy. 2009. "Defining Political Community and Rights to Natural Resources in Botswana," *Development and Change*, 40/2: 281-305.

Prioul, Christian et Pierre Sirven. 1981. *Atlas du Rwanda*. Kigali: Imprimérie Moderne Nantasie Coueron.

Ranger, T. 2004. "Nationalist Historiography, Patriotic History and the History of the Nation: the Struggle over the Past in Zimbabwe." *Journal of Southern African Studies* 30 (2): 215-234.

Ranger, Terence. 2012. "The Invention of Tradition in Colonial Africa," in E. Hobsbawm and T. Ranger, eds.*The Invention of Tradition* (Cambridge: Cambridge University Press): 211-262.

Reno, Wm. 2010. "Violent Non-State Actors in Sudan," in *Violent Non-State Actors in World Politics.* Klejda Mjlaj, ed. London: Hurst and Co.: 319-341.

Ribot, Jesse and Nancy Peluso. 2003. "A Theory of Access." *Rural Sociology* 68 (2): 153-81.

Ribot, Jesse C. 1999. "Decentralization, Participation, and Accountability in Sahelian Forestry: Legal Instruments of Political-Administrative Control." *Africa*, 69 (1): 23-43.

Rigby, Peter. 1977. "Local Participation in National Politics, Ugogo, Tanzania." in *Government and Rural Development in East Africa: Essays on Political Penetration*. L. Cliffe, J. S. Coleman, and M. R. Doornbos, eds. The Hague: Nijhoff: 81-98.

Shack, Wm. A. and Elliott P. Skinner. 1979. *Strangers in African Societie*s. Berkeley: University of California Press.

Silberfein, Marilyn, ed. 1988b. *Rural Settlement Structure and Africa Development.* Boulder, CO: Westview Press.

Smith, Rogers M., Which comes first, the Ideas or the Institutions," in Ian Shapiro, Stephen Skowronek, and Daniel Galvin, eds., Rethinking Political Instituitons: The Art of the State (New York: NYU Press, 2006, pp. 91-113.

Southall, Roger. 2005. "The Ndungu Report: Land and Graft in Kenya," *Review of African Political Economy*, 32/103: 142-150.

Spear, Thomas. 1997. *Mountain Farmers: Moral Economies of Land and Agricultural Development in Arusha and Meru.* Berkeley and Los Angeles: University of California Press.

Vail, Leroy, ed. *The Creation of Tribalism in Southern Africa* (Berkeley and Los Angeles: University of California Press, 1989).

Watts, M. 1983. "Good Try, Mr. Paul: Populism and the Politics of African Land Use." *African Studies Review* 26 (2) (June): 73-83.

Watts, Michael. 2004. "Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria," *Geopolitics* 9/1: 50-80.

Weiss, Herbert F. 1967. *Political Protest in the Congo: The Parti Solidaire Africain During the Independence Struggle*. Princeton: Princeton University Press.

Wing, Susanna. 2012. "Women's Rights and Family Law Reform in Francophone Africa," in *Governing Africa's Changing Societies: Dynamics of Reform. **Error! Not a valid link.**Boulder, CO: Lynne Rienner Publishers: 145–176.