

### 3 Property and Land Institutions Origins, Variations and Political Effects

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The idea of the state in sub-Saharan Africa as ‘institutionless’ underlies much contemporary theorising about African politics (Chapter 1, this volume). The term ‘neo-patrimonialism’ – widely employed in the comparative politics literature to describe African political systems – implies a lack of institutionalisation, and the centralisation of power in the hands of a supreme ruler and government through personalised, shifting networks. The counterpart of this idea is an ‘institutionless’ conceptualisation of society, and most importantly perhaps, of *rural society*, which accounts for 50–90 per cent of the total population of almost all African states. 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 revolve around networks, identities, informality, and trust and distrust.

This chapter reverses this image of structureless 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, extending the argument laid out in Boone (2014). 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. Like all rulers, rulers in Africa have been constrained and incentivised to seek compliance from subjects and citizens, to build institutions to lower the costs of securing acquiescence, and to enhance the predictability of rule. They have pursued institution-building and state-building strategies that are shaped by the societies they seek to govern. Contemporary land tenure institutions are one outcome of this process.

The analysis of land institutions builds on strands of the New Institutional Economics (NIE) that have been influential in comparative

politics since the 1990s.<sup>1</sup> The first part of the chapter 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. The second part uses this model to theorise about institutional origins, variations, and change in land tenure institutions in sub-Saharan Africa. The line of argument 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.<sup>2</sup> The final part of the chapter turns to the question of institutional effects. It argues that land institutions shape state structure and process, patterns of political group formation and mobilisation, and land conflict in ways that bear directly on central concerns of political science.

### **Institutions, Land Institutions and Political Endogeneity**

Institutions (or simply rules) can be understood as humanly designed constraints that shape interaction and behaviour (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 (i.e. social interaction), they can be modelled as strategic equilibria. They are stabilised 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 gain 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 – i.e. so long as social actors judge that abiding by the prevailing rule is their best choice, given prevailing power relations, resources and options. 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?

<sup>1</sup> Following Ostrom 1990, for example, this tradition focuses squarely on power asymmetries, social conflict, and distributional effects. Its social conflict approach is situated within macro-structural contexts, in contrast to earlier, more economic, rational choice work that assumed the absence of structured contexts. As Ostrom argues, the framework does not yield precise predictions but can be used to generate hypotheses and organise further research.

<sup>2</sup> See, for example, the ‘invention of tradition’ work on indirect rule (Ranger 2012) and the vast literature in African legal and social history that it inspired.

This chapter leverages this conceptualisation of institutions to analyse land tenure institutions in Africa. Land tenure institutions are property institutions that define the manner and terms by which rights in land are granted, held, enforced, contested and transferred. A land tenure regime is a system of intertwined institutions surrounding 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.<sup>3</sup> 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 and economic order. It is first and foremost a *political* relation: unlike possession *per se*, it cannot exist in a state of nature. Property is a recognised 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 organised society who are (potential) users or claimants. It is also an *economic* institution and 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 organisation of work and use of labour, and the appropriation of the fruits of human labour.

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 character of ‘stateness’ in a given setting (bureaucratic, theocratic, monarchical, patrimonial or other). Intrinsic to land institutions are mechanisms of taxation, dispute adjudication, regulation of holdings and transactions, and recognition of users and user groups. In an organised state, these are necessarily embedded in larger legal, citizenship, regulatory regimes, and in larger structures of territorial administration, modes of labour mobilisation and surplus extraction (Boone 2007). At the same time, land and other property institutions obviously shape the distribution of power and resources in society, and thus affect both the forms of competition and their 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’),

<sup>3</sup> 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. This use of the term ‘regime’ is consistent with Ostrom’s (1990: 50–51) notion of institutional order.

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 per cent of the land in developing countries is unregistered – this means that it is neither titled nor taxed directly (USAID 2014). The figure for farmland and pastureland in sub-Saharan Africa is about 80–90 per cent. Absence of freehold does not imply the non-existence of state-recognised 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 United States and Canada). Government can grant and enforce collective rights/entitlements to land, give certain classes of users conditional rights to government land or recognise users' rights to permanently live upon and use land held under state trusteeship.

Many scholars (Moore Jr. 1966; Anderson 1974; North 1981; Levi 1988; Ostrom 1990) 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 exclude others from it. North (1981) and Levi (1988) conceptualised 'benefits to rulers' in the form of taxes that could be drawn from profits generated through productive land use (such as farming). Anderson linked the granting of feudal property rights to European monarchs' interest in securing the acquiescence of powerful rural warlords, the rural nobility's agreement to govern the peasantry, and their help in raising armies at the behest 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 'contracts' – including the specific character of land tenure and land institutions – would (1) reflect the relative bargaining power of the parties, and (2) be sensitive to change over time in bargaining power, interests or payoffs of the contracting parties. This logic offers an intuitive and 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-points of the macrosociological work of Moore (1966),

North (1981, 1990), Engerman and Sokoloff (2003), and Acemoglu and Robinson (2006). Many in the NIE tradition have placed land institutions at the centre 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 modelled state institutions in rural Africa, including land institutions, as cause and consequence of competition (or entente) between rulers and subjects with the capacity to constrain rulers' options. An 'entente' – that is, an equilibrium that emerges when parties realise the prevailing distribution of forces and interests – is modelled 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 and macrosociological traditions embracing complementary logics, would include Bates (1983), Berman and Lonsdale (1992), Ensminger (1992), Munro (1998), Colin et al. (2007), Poteete (2009), Onoma (2010), Joireman (2000, 2011) and Boone (2014).

### **Contemporary Land Institutions: Origins and Variations**

In the early 2000s, 60–70 per cent 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 per cent of all land in Africa was surveyed, registered and held under private title.<sup>4</sup> If so much of the land is not held as private property, then how is access and use regulated and organised? What governs the organisation of work, the division of the social surplus and the 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 per cent 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

<sup>4</sup> In two of every three sub-Saharan African countries, over 60 per cent of the total population lives and works in the countryside (World Bank 2008). On land under private title, see Chimhowu and Woodhouse (2006: 346, citing Deininger 2003) and Boone (2014: 23).

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.<sup>5</sup> The state itself is their landlord, or more precisely, their overlord, in the sense that most small-holder farmers and pastoralists hold permissive occupancy rights granted by the state. These are generically referred to in the literature as ‘customary rights,’ but as the present analysis shows, the term ‘customary’ can be misleading. I propose instead a conceptualisation that draws a distinction between neo-customary and statist land tenure institutions, or land tenure regimes. Their origins, how they vary and the 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 is one that seeks to examine the political, economic and social forces that structure the emergence and evolution of the institutions themselves. It 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 demobilise 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 mobilisation or far-reaching passive resistance. They were aware of African populations’ capacity to raise the costs of governing above the colonisers’ capacity to mobilise resources for repression.<sup>6</sup> 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 neighbouring 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.

<sup>5</sup> See Alden Wily 2001; McAuslan 2013.

<sup>6</sup> Obviously rural populations have not always succeeded in resisting dispossession. On rural protest, see Ken Post (1972: 272–280) who inventories six forms. Herbert Weiss (1967) argues that rural radicalism and political mobilisation was a much larger part of the independence struggles than most scholars believe, focused as they have been on urbanisation and urban-based movements.

With a historical sensibility that is even vaguely attuned to the dynamics of conquest, resistance and the insecurities of rule, one can see 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 modelled 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.

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 interaction with colonisers. 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. Colonisers delegated prerogative and privileges to local African intermediaries and agents, and recognised some land rights for most colonial subjects. These were the pillars of colonial indirect rule. Colonisers also organised the provision of some palpable goods and services, such as protection from armed raiding, roads and some Western education.

Ententes that stabilised around rules and procedures can be modelled as 'social contracts'.<sup>7</sup> Colonial subjects' acquiescence was tentatively exchanged in return for the colonisers' commitment to act with some predictability and some restraint. Institutions that emerged from this contracting were intentionally designed by European colonisers to impede African subjects' capacity for collective action and to blunt the rise of anti-colonial consciousness, and were only partially successful in these regards, even in rural areas. They also allowed Europeans to extract labour, agricultural commodities and forest products from the countryside, although success here was also limited.<sup>8</sup>

Land tenure institutions – the subject of this chapter – are one of the important and decisive outcomes of this process. Across most of sub-Saharan Africa, the land institutions that govern most ordinary farmers' access to land take one of two generic forms, varying by district or region

<sup>7</sup> See Nugent 2010. <sup>8</sup> See Issacman and Roberts (1995), for example.

within each African colony or country. First are the neo-customary<sup>9</sup> land tenure institutions, created under colonial indirect rule. They are less costly to impose and enforce, but give rulers less control over land use and are beset by principle-agent problems (giving African subjects relatively more autonomy). Second are the statist land institutions, which can be very costly to impose and enforce but give central rulers more (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 the types of land institutions they inherited from the colonial states, modifying, extending and reproducing them in new ways.

### **Neo-customary Land Institutions**

Across most of sub-Saharan Africa, European rulers recognised some of the ancestral or prior occupancy rights of their colonial subjects, and conceded new permissive occupancy and use rights to some. Colonial rulers recognised these as *neo-customary* land rights *if and when* their African subjects belonged to state-recognised rural collectivities (officially recognised ‘tribes’), and agreed to live under the authority of state-recognised local authorities (‘chiefs’) within territories designated by the state as ‘tribal homelands’. The land rights so granted or recognised were rights to occupy and use land, to pass it on to heirs, to *not be* subject to land tax and to claim some compensation (usually in kind) for land within the homelands that was expropriated by the state. They worked to fix rural populations on the land, and to organise them into governable collectivities within administrative-cum-territorial units. They also promoted peasantisation and the cultivation of food crops and taxable crops within the framework of colonial economies. For ordinary colonial subjects in the countryside, these arrangements produced a form of local political and economic order that induced most people to acquiesce to the status quo most of the time.

Neo-customary tenure in colonial and postcolonial Africa often bears very tenuous connections to precolonial (e.g. 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

<sup>9</sup> The ‘neo’ in the term neo-customary underscores the extent to which contemporary land institutions have been shaped, formalised and codified by twentieth and twenty-first century governments.

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 neo-customary 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 four interlocking sets of rules defining group membership, territorial jurisdiction, property and authority relations. Each is discussed in a separate sub-section below. In varying degrees and ways, contemporary African states have incorporated the four defining elements of neo-customary land tenure into their legal-administrative structures and practices.<sup>10</sup> Although the term ‘indirect rule’ is not used in Africa today, the colonial terms ‘homeland’, ‘chief’, ‘tribe’ and ‘customary’ are. The isomorphism of neo-customary institutions across extremely heterogeneous socio-political, demographic, ecological and economic contexts is itself a tell-tale sign of the colonial template and its intrinsically modern, state-crafted character.

#### *Neo-customary Territorial Jurisdictions*

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 neo-customary authority were conceived of as ancestral homelands of the ‘tribes’ that colonial officials had reconfigured and formalised as state-recognised 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.<sup>11</sup> These tribal

<sup>10</sup> See Boone and Nyeme (2015) for the Tanzania exception.

<sup>11</sup> Jurisdiction size and shape were tailored in pursuit of political and bureaucratic expediency. The Gogo of Tanganyika, for example, were amalgamated into a new, hierarchical chiefdom in the 1920s because the British deemed existing political collectivities to be too small and too decentralised (Rigby 1977: 84).

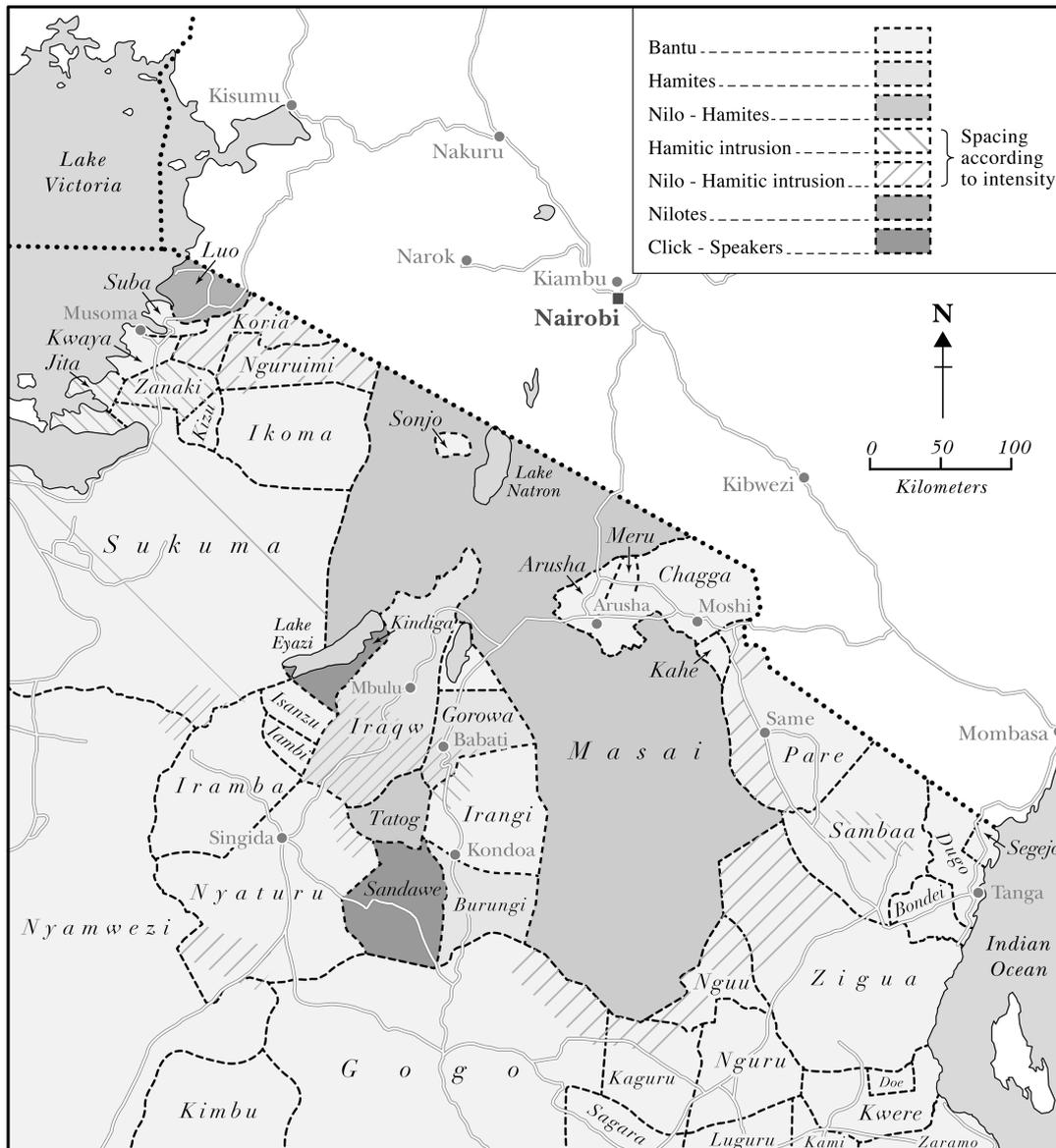


Figure 3.1 Gorowa Native Authority, 'Tribal and Ethnographic Map', from *Atlas of Tanganyika*, 1956

homelands were the territorial containers for building neo-customary land institutions and colonial citizenship regimes.<sup>12</sup> Their boundaries mapped onto sub-district and district (or circumscription or *cercle*) divisions in colonial administrative grids. Figure 3.1 offers a redrawn version of a 1956 map of tribal jurisdictions in northern Tanganyika as an example. Colonial territorial administration – constituted of

<sup>12</sup> Those not certified as official ethnic groups or tribes thus did not get their own homeland, and thus, no neo-customary land entitlement, and were pressured to 'join recognized tribes'.

a hierarchy of district officers, *commandants de cercle*, their lieutenants and chiefs – was organised within this template. Postcolonial states absorbed these administrative grids, as well as the ethnic homelands and land rights they institutionalised. Indeed, postcolonial governments have reproduced and elaborated the logic of segmenting territory (land) among different state-recognised ethnic groups. It is a dynamic propelled forward by the actions of both rulers and ruled, with units subdivided as the administrative grid tightens – ‘forgotten minorities’, press rulers and their political patrons in the state for their own jurisdictions and land entitlements.

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. Subnational boundaries in African countries are often not exactly the same as their counterparts in the countries just mentioned, however. They often define and divide the political collectivities that rulers are willing to recognise, impose indigene–stranger hierarchies within ethnic territories and create hierarchy among groups (privileging settled agriculturalists over pastoralists, for example). These same rules restrain labour and class mobility, the functioning of markets, and national integration.

#### *Neo-customary citizenship rules*

If ethnic jurisdictions were territorial templates for indirect rule and neo-customary 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 endeavoured to forge the supposedly natural tribal communities that were ideologically framed as the authentic African social form. Chanock (1998:238) uses the term ‘new tribes’ to distinguish these groupings from territorial, social and political collectivities that existed in pre-colonial times.

By definition, neo-customary 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-recognised 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.<sup>13</sup> Judicial systems, territorial administration and property regimes literally could not function unless individuals were assigned a state-recognised ethnic status (TNA 1925:1).<sup>14</sup>

For colonial and postcolonial subjects, using a state-recognised ethnic status has conferred a right of residency in a homeland, a right to claim a neo-customary land entitlement, and diminution of the risk of land dispossession or displacement by ethnic outsiders (including 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 and Dozon 1987). Murdock's 'ethnic mappings' (1959, 1967) – used to construct the ethno-linguistic fractionalisation 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 institutionalised 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 agrarian settings, where the internal foreigner (or stranger, guest or 'in-migrant') would be excluded from claiming a land entitlement, land ownership and 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. Significantly, state-recognised ethnic status is not an informal institution (although other kinds of social and kinship-based communities may well be considered as institutions). Under colonialism it was officialised in census categories, ID cards, entitlements to claim land in ethnic homelands, and differentiated civil codes and courts. In much of contemporary Africa, these distinctions remain integral to the functioning of land institutions, and in structuring 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

<sup>13</sup> These were relaxed after the Second World War.

<sup>14</sup> The urgency of these assignments for state-building is evident in the example of the Masai in Tanganyika. The British in Tanganyika created a 'Masailand', and in 1925 commanded, 'all Masai are to be moved into the Masai Reserve'. Those who refused to move were to 'give up their claims to be Masai'.

the same region, ethnic strangers (*allogènes* and *allochtones*, or foreigners and ‘internal foreigners’) were warned in August 2014 that choosing the *sous-préfet*’s local *interlocuteur* 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’.<sup>15</sup>

Many political scientists have studied ethnic identity in Africa as an individual cognitive attribute or preference (or behaviour). 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 all 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 has a direct impact on individual identity, cognition, groupness and collective action. As this example suggests, these two kinds of ethnic identity may coincide, overlap, be nested or evolve together (or apart), and may do so in dynamic interaction over time. My key point is that state-created and state-imposed ethnic designations have a far greater impact on ethnic identities in Africa than most political science acknowledges, and a far more direct and on-going impact than models that take ethnicity as an ‘independent variable’ in political explanation can accommodate.

#### *Neo-customary 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 in most places: it institutionalised 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 colonisers’ 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 not only did such authority exist everywhere, but also such collaboration – with

<sup>15</sup> *La Rédaction*. 20 August 2014. ‘Côte d’Ivoire – A Vavoua allogènes et allochtones exhortés à ne plus se mêler des choix des chefs de village’. Posted by AIP, [www.connectionivoirienne.net/102345/cotedivoire-vavoua-allogenes-allochtones-exhortes-se-meler-choix-chefs-village](http://www.connectionivoirienne.net/102345/cotedivoire-vavoua-allogenes-allochtones-exhortes-se-meler-choix-chefs-village).

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 over-rulers, 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, recognising this and seeking to economise on monitoring, created wide gaps between principal and agent in land affairs, local civil matters and in allocating the local tax burden.

It is, therefore, 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 Human Resource department of a business or university. These documents were routinely updated and consulted when promotions, demotions, replacements and pay-rises 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 labour of their subjects for agricultural work. Yet chieftaincy is built into the territorial administration and land administration institutions in most African countries today. 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). Each appointment is officialised by decree of the Minister of the Interior.

Much of the power chiefs wielded over subjects on a day-to-day basis was and is derived from their land-related powers. Colonial indirect rule gave 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 labour) among villages and households in their jurisdictions.

Among others, Mamdani (1996) has stressed the paradox of chieftaincy under indirect rule: it institutionalised 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:

to subsidise the costs of colonial rule through the legitimacy of their local agents; to grant discretion to their agents; to customise local authority to fit local situations; and to build in flexibility (for change over time).<sup>16</sup> Personal rule, largely unrestrained by written code or law, was thus an intentional feature of institutional design. Postcolonial rules transferred some of 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 much of the inherently arbitrary character of local governance, has been actively reproduced across much of postcolonial Africa. As a result, authority relations rooted in neo-customary 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 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'.

#### *Neo-customary Property Rules*

Neo-customary land tenure institutionalised subjects' rights to untaxed, unregistered land in their 'ethnic homelands' via the authority of chiefs. These property rules, enforced by postcolonial states, have worked to bar legal transfer of land rights to women and non-members of the state-recognised community of land holders (i.e. the ethnic community). Colonial and postcolonial rulers capitalised on this as a mechanism for reproducing the cohesion of state-recognised ethnic communities. Neo-customary authorities 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 incentivised to uphold them.

Under neo-customary 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.

<sup>16</sup> Colonial administrative theory held that the neo-customary as they crafted it was authentically African, unique to each 'tribe', and that it was flexible and evolving over time. Chanock explains that until late in the colonial period, the European authorities resisted formal codifications of customary law for fear that this would freeze its 'natural development' (Chanock 1998).

As Stephano Boni (2005: 82) explained in an analysis of neo-customary land tenure institutions in western Ghana in the early 2000s, classifying each farmer's ethnic membership is necessary for the implementation of the tenurial and taxation regime. Neo-customary 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 2005).

Neo-customary 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 (e.g. paramount chieftaincies) and the reining-in of the arbitrary powers of chiefs by a number of African states in the 1950s and 1970s (especially chiefs' ability to requisition labour to work their own fields) reflected governments' responses to grassroots resistance to neo-customary 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 traditionnelles* in allocating access to farmland and pasture and in 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 also created new ones: new homelands give new entitlements to newly recognised ethnic groups.<sup>17</sup> Herbst (2000) and others are thus incorrect in seeing neo-customary land regimes as informal, archaic or anti-state. They are not vestiges of precolonial Africa that subvert attempts by modern leaders to rule the countryside. The opposite is closer to the truth.

Most African governments have sought to tap into the political potential inherent in neo-customary land tenure. They have relied on chiefs as vote brokers and reminded rural communities that central authorities are the ultimate arbiters and guarantors of neo-customary land entitlements. At the same time, members of state-recognised ethnic groups have

<sup>17</sup> Ghana's 1992 constitution makes chiefs owners and managers of stool and skin lands, which are supposed to be held in trust for the members of the collectivity (Kassanga and Kotey 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' (Wing 2012). Forrest (2003: 213) writes of the 'reestablishment of Mandjack kingships' in Guinée-Bissau after 1987.

maintained powerful stakes in neo-customary land tenure. We saw this in Kenya, for example, in the midst of raging debate over elite land grabbing in 2005. The populist Kenya Land Alliance (KLA) 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 [are supposed to] hold them in trust for communities' (KLA 2005: 4).

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 within the Kenyan political arena.

### **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. Colonisers risked the wrath and backlash of subject populations when they asserted direct control over land and land-based resources to generate revenue, settle new populations on the land or create cities, mines, dams and industrial zones. Postcolonial rulers have been 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 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) were outweighed by the expected payoffs.<sup>18</sup> The argument that this calculus reflects strategic interaction between rulers and ruled remains valid in

<sup>18</sup> The calculus often involves bargains or deals with displaced populations (i.e. the promise that displaced 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).

these contexts. In many colonies and postcolonial settings (Côte d'Ivoire in the 1940s and 1950s, Tanganyika in the 1940s and 1950s, Kenya in the 1930s to 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 spectre of rural political mobilisation 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 institutionalising 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 recognised 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.<sup>19</sup> 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 the Tutsi in the Hutu Revolution. In Tanzania in the 1950s and 1960s, governments organised the settlement of migrants on 'new lands' opened up to smallholder farming tsetse eradication. 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 (Boone 2014).

In such areas, land authority is not devolved to state-recognised 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

<sup>19</sup> 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).

rule arrangements that define the so-called customary land tenure regimes in Africa.<sup>20</sup>

### *Statist Authority Rules*

Statist land institutions create authority structures that differ greatly from those prevailing under the neo-customary 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 neo-customary 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 in the 1960s represent a (temporary) exception that proved this rule. Titles assigned in the mid-1960s were often not kept up to date as land passed from one generation to the next. Often, titles remained in the hands of the state agencies that partially financed the original land allotments. Rates of titling are very low on Rift Valley settlement schemes created in the 1980s and 1990s.

### *Statist Territorial Jurisdictions*

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 neo-customary rights are extinguished (or perhaps downgraded to residual status). In forests and reserves, such boundaries are often emphatically enforced through the action of armed officers, police, guards, wardens, scouts and patrols.

<sup>20</sup> 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-recognised 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.

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 plantations and cities. Over the last 100 years, rules delimiting zones of purely statist land tenure have provided legal and political justification for dispossession, expulsions and displacements (see Odgaard 2005; Hodgson 2011). They have turned farmers and pastoralists (claiming ancestral or neo-customary rights) into squatters, trespassers, poachers and common criminals in lands they have used for decades or more. 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 accumulation (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 legitimising state allocations within the borders of territorial jurisdictions under statist land institutions have often taken centre stage in postcolonial African politics. The release of the Ndungu Commission Report in Kenya in December 2004, for example, which documented pervasive corruption in the allocation of state lands to high-ranking members of the Kenya elite, contributed to the momentum for a new national constitution (including new national land policy), which was finally introduced in 2010.

### *Statist Citizenship Rules*

Under statist land institutions, neither neo-customary nor ancestral rights are recognised 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 recognised as a homeland to any one particular group.<sup>21</sup> It is also true in rural zones under statist land institutions. Settlement schemes are home to African settlers who have no ancestral or neo-customary 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 autochthonous to the

<sup>21</sup> Groups claiming indigeneity to these jurisdictions – for example, Lebou in Dakar, Ga in Accra, Lagunaires in Abidjan – contest this and use their loss to extract concessions from rulers.

area may well feel that they have been pushed aside or invaded – like ‘involuntary hosts of uninvited guests’.<sup>22</sup> Autochthons may believe that they have been expropriated outright by the state and the rulers’ clients (i.e. settlers).

### *Statist Property Rules*

The distinctive feature of statist property rules is that land is allocated directly by the state and its direct agents (such as uniformed *sous-préfets* or settlement scheme agents). Ancestral and ethnicity-based entitlements are not recognised. Figure 3.2 captures the bureaucratic rationality and high modernism of official settlement schemes in Rwanda in the 1970s and 1980s. Ancestral and neo-customary rights are not recognised. 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 sub-Saharan Africa, 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 bureaucratisation and in terms of loss of political leverage over settlement schemes and settlers. Rulers have also been sensitive to the risks of accelerating rural class formation and 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 manage 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.

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 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 occupy and use land *outside* their ethnic

<sup>22</sup> Shack and Skinner (1979: 5).

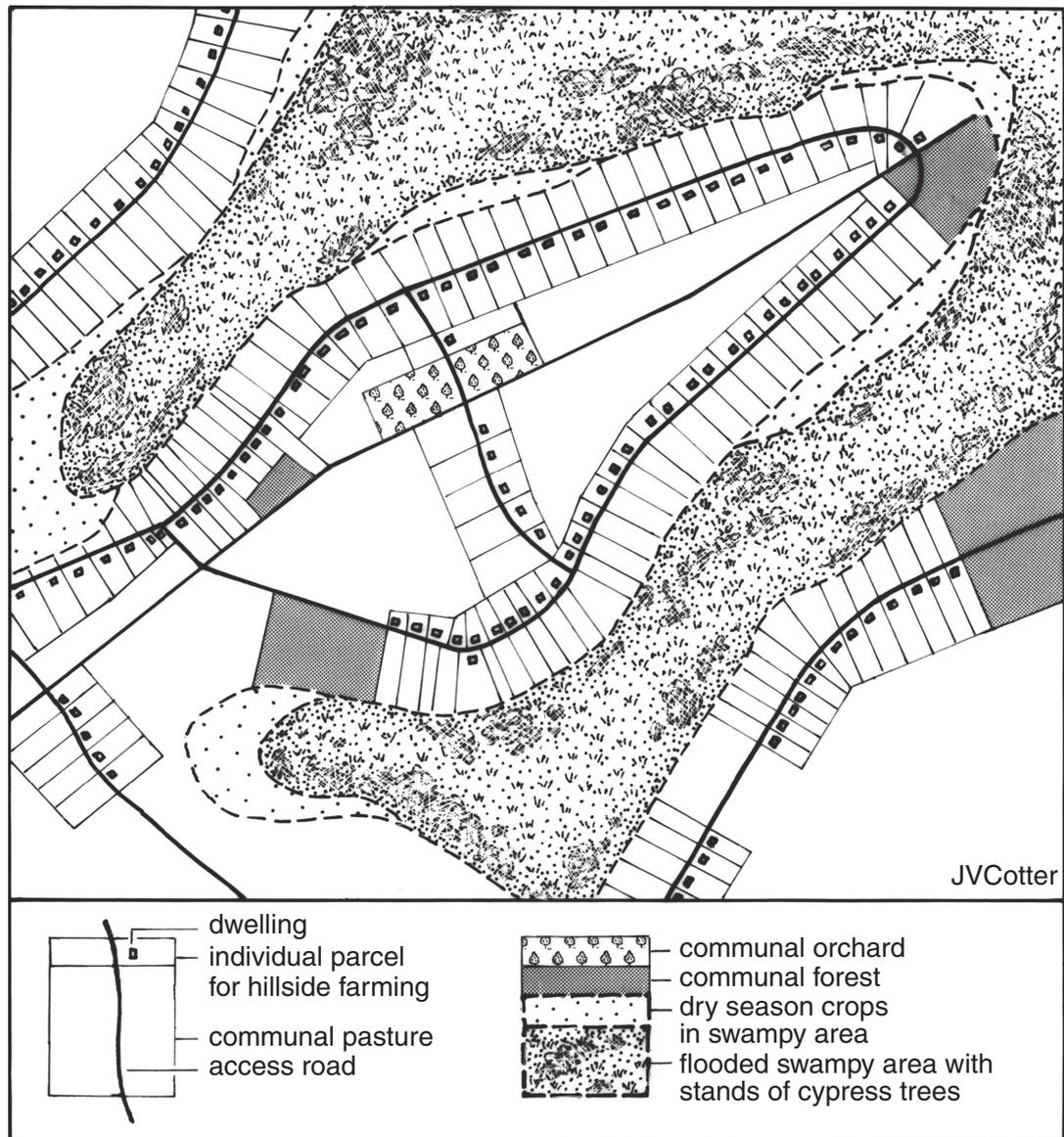


Figure 3.2 Paysannat de Muhero, Rwanda, 1970s

Source: Drawn by John V. Cotter from Prioul and Sirvin, 1981.

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 neo-customary 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 neo-customary property institutions. If the statist land institutions are modelled 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 it is contested openly by a rival constituency claiming prior claims to the land; and (2) if much of the rest of the national population is vested in, and wants to reaffirm, the validity of neo-customary land tenure.

### **Institutional Effects**

These land tenure regimes represent the institutional frameworks within which colonial and postcolonial governments have promoted peasantisation of farmers, sedentarisation and incorporation of rural populations into the administrative-economic structures of the twentieth-century state. They have secured the acquiescence of agrarian societies in Africa in most places for most of the last fifty or sixty 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 neo-customary elites and local-level state agents whose power is rooted in part in authority over land.<sup>23</sup>

The prevailing land institutions have served as a check to more rapid and wholesale commodification of land rights and rural labour, enclosure and large-scale expropriation. They have constrained and slowed the rise of landlessness 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 neo-customary and statist character have also structured African states, societies and forms of political competition and conflict. The following discussion identifies what NIE theories could model as 'equilibrium effects' of the rural land tenure institutions that have prevailed throughout most of rural sub-Saharan Africa since political independence. Yet, NIE proposes that as political equilibria, institutions are only as stable as the underlying power balances, resource constraints and interests that gave rise to them in the first place. The chapter's conclusion shifts attention to forces of disequilibrium and change.

### *State-Building*

Land institutions tie rural populations to national governments, and into national political economies. Rulers have had an interest in sustaining the

<sup>23</sup> See Badiéy (2013). 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 (institutionalisation) of their territory and land rights. This argument is developed in Boone (2014).

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 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, neo-customary 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 degazetted forests, parks and so on).

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*

Neo-customary land tenure institutions impose and reproduce state-recognised ethnic identities and reproduce them through the workings of land relationships.<sup>24</sup> They also incentivise individuals and families to claim and maintain ethnic identities that confer land rights in state-recognised 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 (i.e. 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 mobilisation are ignored or repressed.

Those who access land via statist land institutions, by contrast, are incentivised 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 'ethnic politics' in many African countries may in fact conceal an underlying tension between preferences for ethnic versus non-ethnic (or national integration) politics, and that these preferences may be unevenly distributed across ethnic groups. These

<sup>24</sup> Rogers Smith (2006: 93–94) makes a similar argument about US racial identities.

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 localised 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, procedural rules and forms of collective action. Direct rule produces different outcomes, according to Hechter. It changes the scale of politics, the target of political claims and grievances, and forms of collective action. It promotes the growth of translocal social movements and forms of political mobilisation. Hechter's general arguments are directly applicable to the substantive issues analysed here.

### *Shaping Forms of Land-Related Conflict*

Land institutions shape politics, producing effects that vary across space in predictable ways. Both neo-customary and statist land tenure institutions play a strong role in defining lines of socio-political cleavage (and alliance) in rural society, creating economic and political hierarchy, and distributing rights in the local political area. Tensions fuelled by rising competition for land are refracted through the different land regimes (Boone 2014, 2017). Under neo-customary land institutions, ethnic insiders almost always have a clear upper-hand, backed by national governments which 'choose' neo-customary 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 can be destabilised by regime change or a shift in the ruling coalition.

### **Conclusion**

One of the main goals 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 – such as Hyden’s image of the state as ‘suspended in mid-air’ (1980); (2) the idea that the countryside and rural societies are both institutionless and beyond the ‘reach of the state’, composed of face-to-face self-governing communities (Herbst 2000); (3) the belief that rural property institutions are absent, constituted by pre-colonial African customs, uniform continent-wide (or always unique or varying randomly) or ‘informal’ as connoted by the common use of ‘customary’ or ‘traditional’ to describe land tenure arrangements in all of rural Africa; and (4) the latent idea, often present but unexamined, that impersonal markets govern access to rural farmland and pasture.

National political order anchored in the social contracts described above – wherein acquiescence is exchanged for the right to claim land in one’s homeland – may be self-limiting, especially where populations grow, land is finite, agricultural technology is very slow-changing and off-farm livelihoods are hard to come by. In much of sub-Saharan Africa, 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 liberalisation also quickens markets and the incentives that motivate rulers to sell or lease land to investors. The return to multiparty elections has heightened competition over rural votes and thus increased some rural voters’ bargaining power, but this comes at a time when many small-scale farmers are poorer and more economically insecure than they were a few decades ago, and when rulers may be devaluing smallholders’ contribution, as food and export-crop producers, to the national economy.

This analysis brings some of the larger political stakes and strains of the transformation of rural property rights in Africa 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 neo-customary entitlements against those pushing for alternatives. In Kenya, there is a struggle over land institutions. Defenders of neo-customary land entitlements (such as the Kenya Land Alliance in 2005, mentioned in this chapter) are pitted against those who want to reinforce the state's direct powers over land without reference to neo-customary or ancestral entitlements (to allocate it to new users or to expand the scope of the market). Similarly, Côte d'Ivoire was torn by a decade of civil conflict. One social coalition defended autochthonous land rights and neo-customary entitlements; the other wanted government to back the rise of land markets that operate without regard to ethnic citizenship. In other countries, politics revolves around the restitution or reallocation of lands under statist land tenure regimes (Zimbabwe and Rwanda), the hardening of neo-customary entitlements (Nigeria) or creation of new 'ethnic homelands' to appease new demands (Uganda). In these countries as in many others in Africa, political struggle around land institutions frames stark questions about the terms of social contract – past, present and future – between African governments and rural populations.

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