RULE AND RUPTURE

STATE FORMATION THROUGH THE PRODUCTION OF PROPERTY AND CITIZENSHIP

Edited by CHRISTIAN LUND *and* MICHAEL EILENBERG

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Rule and Rupture

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Rule and Rupture: State Formation through the Production of Property and Citizenship

Christian Lund

INTRODUCTION

Weak, fragile and failed. Mainstream work on states in post-colonial societies has often used these adjectives to describe dysfunctional public administrations. Kaplan's seminal article, 'The Coming Anarchy', which sketched out imminent lawlessness and state disintegration, was the forerunner of huge scholarly interest in state formation in poor countries (Kaplan, 1994). The first generation of the fragile states literature, with its somewhat skewed focus on how *real* government structures fall short of an *ideal* Weberian index of a rational state was essentialist, ahistorical and teleological. In a recent literature review on failed states, Hoffmann and Kirk (2013) map out how subsequent research has emerged. While this newer body of scholarship is varied, a few features seem generally shared. These include an interest in how public authority actually works, a focus on competition, contestation and conflict as enduring parts of public authority, and, not least, the acknowledgement that public authority is always *in the making*. Some particularly interesting contributions have analysed how a broad range of institutions compete over territorial governance, over different forms of rent from resources, and over the grand narrative of history.[1] These perspectives are shared in this Introductory essay, as well as the special issue which follows. However, the present ambition is to elaborate an approach that does not only take the competing institutions as given entities exercising governance with greater, or lesser, effect, ceremony and gusto: by reorienting the enquiry a little, I want to also capture how governance of vital resources *creates* statehood, or state quality, in these institutions.

In what follows, I therefore present a series of propositions about the interconnectedness of authority and rights. I suggest that property and citizenship, on the one hand, and authority, on the other, are mutually constitutive and represent social contracts of recognition. I then discuss various dynamics of recognition, such as how state quality emerges out of contracts of recognition,

1. For example, Hagmann and Péclard (2010); see also Aspinall and van Klinken (2011); Bierschenk and Olivier de Sardan (2014); Blundo and Le Meur (2009); Das and Poole (2004); Geiger (2008); Grimm et al. (2014); Hansen and Stepputat (2001); Lund (2006a, 2010); Sikor and Lund (2009).

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and how this ought to be the centre of analysis of the formation of political authority. Finally, I provide two concise examples from Ghana and Indonesia.

THE ARGUMENT

Dynamics of State Formation and Institutional Pluralism

Treating the 'state' as a finished product gets in the way of understanding it. The state is always in the making. Political authority is (re-)produced through its successful exercise over an important issue in relation to the social actors concerned.[2] To move beyond the mere incantation of this claim, this Introduction investigates and specifies contracts of recognition as the key dynamic of the constitution of authority, and the chapters which follow describe and demonstrate it.

The argument I pursue is that the ability to entitle and disenfranchise people with regard to property, to establish the conditions under which they hold that property — together with the ability to define who belongs and who does not, and to establish and uphold rank, privilege and social servitude in its many forms — is constitutive of state power. Claims to rights prompt the exercise of authority. Struggles over property and citizenship are therefore as much about the scope and constitution of political authority as they are about access to resources and membership of polities. Hence, investigating the social production of property and citizenship enables concrete understanding of the dynamics of authority or state formation.

Granted, there are many problematics of government (Rose and Miller, 1992), and not all questions of state formation can be reduced to property and citizenship. Government — or authority — forms around the control over central resources, and in some historical periods, and in some places, key resources may be trading points and routes; they may be 'knowledge' or 'security', or even more abstract sources of wealth. It seems prudent to remain open to different kinds of combinations at all times. Yet, property (especially in land) and citizenship *are* increasingly such central resources in most societies, and engaging with these two fundamental and substantive questions in terms of their production allows us to traverse a broad series of dynamic questions of how property and citizenship are made.[3] This takes

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2. I use *public* and *political* authority interchangeably. *Public* points to the 'not private and not secret' aspect of exercised authority. *Political*, on the other hand, points to its contentious element. In most cases, both features apply.
3. I draw on a broad literature on state and political authority, property and citizenship, including: Abrams (1988); Arendt (1948/1979); Asad (2004); Bailey (1968); Baitenman (2005); Barkey (1994); von Benda-Beckmann (1993); Berry (1993, 2002); Boone (2003, 2014); Bourdieu (1994, 2012); Comaroff (2002); Corrigan (1994); Corrigan and Sayer (1985); Das and Poole (2004); Derrida (1986, 2002); Elias (1939/1994); Engeman and Metzer (2004); Foucault (2003); Geschiere (2009); Gramsci (1971); Hansen and Stepputat (2001); Hibou (2004);

us through questions of how notions of ownership are conceptualized, how political identities are constructed, how taxes are recovered, how conflicts are adjudicated, how violence and other sanctions are exercised and legitimated, and so on. There are therefore good reasons to investigate the rights–authority relations from a process perspective.

The mutual constitution of rights and authority takes place in many institutional settings. Thus, no single institution defines and enforces rights and exercises public authority as such. Governance is not reserved for statutory institutions alone. The ability to govern can reside in institutions other than formal government. Statutory institutions (legislative, judiciary and executive) may effectively govern, but it is more appropriate to treat this as an empirical question than a pre-established fact, and more productive to identify the actual authorities in semi-autonomous social fields of property and citizenship (S.F. Moore, 1978). In other words, government institutions are not the only source of state effects. Claims to rights are therefore ways to invoke public authority and governing capacity in different institutions, be they statutory or not. And, conversely, a claim to authority through the categorization of property and citizenship is a way to acquire and exercise state quality. In a nutshell, it is a claim to 'state'.

To grasp the dialectics of rights and authority, we need to dispense with simple assumptions that political authority exists prior to rights of property and citizenship. Rights and political authority are contemporaneous, and the control exercised by institutions over resources and political subjectivities does not *represent* a pre-existing authority. It *produces* authority. Conversely, effective rights do not represent pre-existing natural rights. They are political constructions and achievements. Yet, the idea of the 'state' as something established is very powerful and can easily divert our attention from its constant reproductive and relational character. Hence, if we investigate societies with relative stability, there is a risk that we will see 'rights' (changing and new) as *flowing from* a set of governing institutions. To avoid that, the present collection investigates processes of state formation through the production of property and citizenship from the particular angle of 'rupture'.

Jacob and Le Meur (2010); Jessop (1990); Joseph and Nugent (1994); Krupa and Nugent (2015); Li (2000); Lund (2006a, 2006b, 2008, 2011); Mann (1993); Mbembe (2001); Metzer and Engerman (2004); Migdal (2001); T. Mitchell (1991); B. Moore (1966); S.F. Moore (1978, 1986); North and Thomas (1973); Nugent (2010); Pottage (2004); Roitman (2005); Rose and Miller (1992); Roseberry (1994, 2002); Spencer (2007); Strathern (1999); Tilly (1985, 2005); Weber (1922/1968); Winichakul (1994); Wolf (1999). The ambition of this Introduction and the collection is not to make a comparative analysis between different theoretical approaches, but rather to come up with an analytical approach drawing on others in a productive combination. This is a deliberately broad theoretical sweep for a complex issue: it is materialist (people struggle over real things such as property and wealth); they produce political identity but not in isolation (discourses of who and what people are and what they are entitled to are contentious); this has institutional consequences; and when we look at these consequences in the post-colonial world in particular, institutional and legal pluralism is a predominant phenomenon.

Rupture and the Example of Colonialism

Ruptures are 'open moments' when opportunities and risks multiply, when the scope of outcomes widens, and when new structural scaffolding is erected. These are particularly propitious moments for observing and analysing how authority is as much at stake and as much under construction as the very rights produced through its exercise. This perspective draws inspiration from different quarters. A 'revelatory crisis' as developed by Sahlins (1972) and further elaborated by Solway (1994) makes central contradictions visible. Structures, interests and powers are mobilized and activated for the observer to see. 'Trouble cases', 'situational analyses', or 'diagnostic events' emanating from the Manchester School also take their point of departure in particular events in order to say something more general about structural features in society (Holleman, 1973; Lund, 2014; J.C. Mitchell, 1983; S.F. Moore, 1987; van Velsen, 1967). By looking at ruptures, however, we do more than simply account for the structural *pre*-conditions; we can inspect the very construction of new contracts of recognition. When we focus on moments of rupture in this issue, it is therefore not because they are inherently more important forms of change than any incremental transformations. Both forms of change can give rise to profound reconfigurations of polities, institutions, norms and the prevailing social contract. Above all, the choice of rupture is epistemological.[4]

'Colonization' describes the most dramatic and violent rupture and reordering of property and political subjectivity in human history. Colonial agents — governments and private companies in various combinations — dispossessed colonial subjects and established new property regimes. By the same token, they established new subject categories and various degrees of (dis-)enfranchisement of people in their new dominions. New identities and new categories of property were produced through the colonial administration's everyday power to categorize, regulate and exclude. The capacity to form and reproduce categorical distinctions as principles for recognizing or dismissing claims — for granting or denying rights to property and political participation for entire groups — was key in the colonial enterprise, as it is in state formation more generally.[5] To take an old example, the Norman conquest of England in 1066, and the compilation of the Domesday Book

4. The contributions in this issue focus on ruptures of national scale. In principle, however, ruptures can happen at smaller scales as well. Land grabbing (with all its conceptual warts) often occurs in areas where economic prospects have attracted particular interest, disrupting the ability of specific local authorities to define property rights.
5. The literature in this field abounds. Some of the most striking works include von Benda-Beckmann and von Benda-Beckman (2014); Benton (2002); Breman (1983, 2015); Chanock (1998); Colombijn (2013); Comaroff and Comaroff (2006, 2009); Guha (1997); Holston (2008); James (1963); Mamdani (1996); Mbembe (2001); T. Mitchell (1988); S.F. Moore (1986); Peluso (1992); Said (1978); Stoler (1995); Wolf (1971).

in 1086, was a dramatic rupture and reordering of the state of England. The Book recorded the new situation after the conquest, listing the new propertied classes in England and what they owned (Clanchy, 2013; Corrigan and Sayer, 1985). But recording identity and property did more than that; it also established, with bureaucratic and regal ceremony, that the propertied classes were beholden to the new king, William the Conqueror, for their rights. The Domesday Book established the sovereign as much as it established rights.

Colonial power worked through 'difference' and the reproduction of the 'self' and the 'other' (Mamdani, 2012; T. Mitchell, 1988; Said, 1978). Yet, processes of 'othering' continue to be fundamental to modern society (Chari and Verdery, 2009: 25). The ends of conflicts, of colonialism, of socialism, of liberalism and of authoritarianism have marked ruptures and 'new beginnings' in many places — just as their advents had marked earlier ruptures. Property structures that had been reworked as colonial possessions were challenged, socialized property was undone in different ways, and land concentrations amassed during authoritarian rule were called into question. Likewise, racialized categories of colonial citizenship and different categories of 'patriots' and 'enemies of the state' have been reshuffled in moments of rupture (like the fall of Khmer Rouge in Cambodia, the genocide in Rwanda, the end of authoritarian rule in Indonesia, the war in Afghanistan and so on, as the following chapters demonstrate). However, while property and political subjectivities have been seriously upset, old interests, categorical inequalities, and discourses die hard; and the emerging, recombinant configurations of property and citizenship tell complex stories of how states form through their production. Hence, when we use words like post-colonial, post-liberal, post-socialist, or post-authoritarian, it is to suggest a dramatic break from a previous social organization, without implying that all colonial features have disappeared, all liberal freedoms have been curbed, all socialist property forms are extinct, or all authoritarian edicts have been superseded. Likewise, post-conflict is hardly the definitive end of violence. 'Post' is not necessarily 'past' (Salemink and Rasmussen, 2016). Although such changes are dramatic, most new orders combine with the institutional debris of the past. Thus, while independence — like other ruptures — held promise of fundamental change, the production of categorical distinctions for inclusion and exclusion often continued. Indeed, post-colonial governments have in many instances preserved — sometimes even furthered — colonial patterns of exclusionary property and subject formation.

CONCEPTS: PROPERTY, CITIZENSHIP AND RECOGNITION

Before I develop an analytical approach for engaging social dynamics of the production of authority through property and citizenship, it is necessary to specify more precisely what is meant by these concepts, and by their shared characteristic: recognition.

Property and Citizenship

By property we have to understand more than 'private property'. Property is often — quite perfunctorily — equated with absolute, unfettered ownership. However, the idea of ownership as 'total exclusion of the right of any other individual in the Universe' is indeed an *idea* (Rose, 1998: 601). Ownership is always circumscribed by others' rights, which limit the exercise of an abstract total right to property. I therefore understand property as a legitimized claim to something of value sanctioned by some form of political authority (Godelier, 1986; Le Roy et al., 1996; MacPherson, 1978; Rose, 1994; Sikor and Lund, 2009). Struggles over property — very often in the form of land — can therefore be seen as struggles for the recognition of a wide variety of rights to access resources in various ways. These range from rights to reside and settle, through rights to use and extract, and extend to the right to transact those rights. Land conflicts are sometimes about more than property, however. Conflicts over spatial control have different dimensions that intertwine. What belongs to whom, and who belongs where, connect the legal control over spatial property and the political control over territory. Whether space is seen as property or territory engages a particularly productive tension between spatial control as ownership or rule (Lund, 2013). Territorialization and the spatial ordering of people combine different political and legal techniques of classification, registration and mapping. The processes do not merely structure physical space; they also organize the social and political perception of it (Rasmussen and Lund, forthcoming; Vandergeest and Peluso, 1995). Territorializing strategies allow and disallow certain forms of land use and access; they regulate certain forms of mobility and transactions; and, by differentiating rights to natural resources, territorialization contributes to the structuring of citizenship.

Citizenship can be defined as meaningful membership of an organized political body. Struggles for citizenship are, generally, struggles for the recognition of the very right to have rights in a body politic (Arendt, 1948/1979; Lund, 2011; Somers, 2008). Formal national citizenship is just one of several configurations of socially constructed collective subjectivities. For most people, several political bodies are relevant for different aspects of life (von Benda-Beckmann, 1997). Citizenship is therefore shorthand for people's agency and recognized political subjectivity. It makes up their political 'visibility' and denotes the political institution through which a person derives rights of membership to a community. In many places, land is a resource to which access is ensured not merely through the market or by membership of a national community: local citizenship and status are often just as important.

Projects of rule, taxation, conscription, confiscation, eviction and so on have made people very suspicious of public authority, with good reason (Scott, 2009). However, for many people, the grim reality is — to paraphrase Oscar Wilde — that there is only one thing worse than being seen by political authority, and that is not being seen. To be recognized — and reckoned with — by society and its institutions of authority renders citizenship, at its

most basic, a mechanism for inclusion and exclusion, and signifies the right to have rights (Arendt, 1948/1979: 296; Somers, 2008: 21). Not to be seen as a rights-bearing subject delegitimizes all claims.

Property and citizenship are thus intimately related in their constitution. The core element of both rights is recognition. The processes of recognition of claims to land and other resources as property, and of political identity as citizenship with entitlements, simultaneously invest the institution that provides such recognition with recognition of its authority to do so. That is to say, the act of authorizing recursively authorizes the authorizer.

Recognition

Recognition has been the subject of much sophisticated theorization. A broad Hegelian tradition takes recognition as a fundamental human expression of acknowledgement of the 'other' (Fraser, 2001; Taylor, 1989, 1994). Honneth's work on the grammar of recognition is evocative.[6] For our purposes, so-called 'simple legal recognition' is central (Honneth, 1995: 109). It may be recognition of rights to property, and it may be rights to belonging and political subjectivity. It is important not to employ a legalistic understanding of 'legal' in this connection. Rather, I am looking for an effective recognition of rights by an institution and a reciprocal recognition of its authority by their subjects. By 'effective', I mean sufficient to define and enforce the claims as rights. This connects to the key element in this understanding of recognition, namely that it is reciprocal. The effective recognition of claims as rights produces state quality in recognizing institutions.

The mutual recognition constitutes a contract, one might say (*pace* Rousseau), that links property and citizenship to political authority in society. In exchange for recognized valuable property rights in land and other entitlements, people recognize the political power of the institution by payment of tax in the form of money, tribute, labour, allegiance, or other resources (see Martin et al., 2009). I use the word 'contract' loosely, because such contracts are not exactly voluntary, not always consensual, often contentious, and always under renegotiation.[7] Thus, they do not necessarily imply continuous or stable recognition of the *legitimacy* of the contractual terms. What actors have and who they are is made up, therefore, not of individual features but

6. Honneth operates with three dimensions of intersubjective recognition: recognition of the other as an individual with 'universal rights', an 'intimate other', and a 'legal subject'. Thus, it involves existential, emotive and institutional dimensions (Honneth, 1995: 92–139). Honneth focuses on what he calls 'post-traditional societies'. I find this category somewhat opaque, but see the dimensions as generally useful.
7. Distilling relations of mutual recognition as fundamental does not mean that they are the only ones that matter. Durkheim (1893/2014) argues that rational contracts require a so-called 'non-contractual' element — in other words, a shared understanding of the relationship by the parties involved. This reminder is useful for considering how these social relations (or 'contracts') are embedded and imbricated in other relations, meanings and histories.

of relational — political — attributes. As rights and public authority are co-produced, the erosion of one also means the dissipation of the other. Ruptures may break the contract, and rights held under one regime may evaporate under the next.

Rights entailed through recognition as a political subject may be limited or extensive. In fact, the recognition may entail no rights at all, as the capacity to recognize rights is also the capacity to deny and expunge them.[8] The relative strength between the political institution and the political subjects can vary tremendously between contexts. The relationship can range from the comprehensive subjugation of subjects by despotic institutions that tax heavily, to citizens holding governing bodies accountable (Fox, 1994). Obviously, the relations are always up for negotiation, where people dispute categorical disadvantageous positions, derived from gender, race and caste, as well as class, creed and conviction. But during open moments more radical reconfigurations of the social contract are possible.

DYNAMICS OF RECOGNITION

I have now established that political authority and rights are mutually constitutive. Moreover, I have argued that property and citizenship are recognized claims and that recognition should be the fulcrum of analysis. It is, therefore, time to explore some of the different dynamics of recognition that play out and interlace in contexts of institutional and legal pluralism, post-rupture. In some situations, firm hegemonic constellations emerge, or particular institutions acquire and consolidate a high degree of sovereignty where they are (practically) not beholden to other political authorities. In this issue, the contributions from Collins, Ansoms and Cioffo, Byrne, Korf and Nightingale, and Grajales analyse such moments of sovereignty.[9] However, few property and citizenship issues are unambiguously situated with particular institutions, especially if we look at land struggles and view them over time. Many issues appear in multiple institutional realms at any particular moment in time. Which institution supports what claims as rights, and, especially, *how* — all combine to constitute a significant point of struggle. This becomes complicated when several competing normative and legal orders

8. This may, at first sight, resemble Agamben's description of the state of exception (2005). However, I focus on power exercised through a relationship of mutual recognition rather than power exercised without any dependence on its subjects.
9. Sovereignty is conventionally understood as unlimited and indivisible rule by a state over a territory; governments generally claim legal sovereignty over a territory and a population in the name of the state. This perspective is generally used for addressing international concerns. In contrast, I focus on internal issues of state formation. I focus on *de facto*, effective, or 'positive' sovereignty as the power to determine the issues of property and citizenship, as opposed to a formal 'negative' *de jure* concept of sovereignty reflecting a law-centred ideology (see Hansen and Stepputat, 2006: 296).

legitimize competing claims, and several groups and institutions compete over jurisdiction to settle disputes and set norms by precedent. In many such situations, therefore, public authority is challenged or completely fragmented by uneven interdependence, antagonistic collaboration and fickle alliances between institutions. Such a spectrum of cases is studied here by Lund and Rachman, Eilenberg, Calvo, Hoehne, Baczko, and Hoffmann, Vlassenroot and Marchais. In this Introduction I therefore first discuss the contracts of recognition between claimants of rights and institutions of authority, and then examine dynamics of categorization and competition over jurisdictions.

Contracts of Rights and Authority

Rights originate in claims. Sometimes they are hard-fought and not all claims result in rights. Rights are not simply there, bestowed on people by a benevolent higher body; they are wrested from power. But as the repertoires of claims are wide, there is also a broad array of processes in which people engage in order to pursue their interests, ranging from informal everyday negotiations to full-scale political and legal conflicts. Claims are recognized to a certain degree by significant political institutions; as rights they become more or less solidified and entrenched to the extent that they are successfully vindicated. Sometimes rights and privileges emerge from norms and practices, which are generally accepted as 'good' and 'proper' in society. It may be difficult to identify precise links to institutions in times of tacit consensus or consolidated hegemony. Such rights seem simply to 'exist'. However, sometimes the naturalness of such rights is contested — be it men's rights to control the land of women, nobles' rights to control the labour of slaves, first settlers' rights to control the settlement of latecomers, or governments' rights to evict squatters. In such moments of tension, it becomes more readily visible to whom people are beholden for their rights and, by implication, what institutions validate or ignore the plight of the disadvantaged (women, slaves, latecomers, squatters). Some institutions emerge to reproduce and protect entrenched rights, while other institutions undermine them by being responsive to claims challenging established contracts. Hence, political subjectivity does not only concern relations to formal governments or singular institutions. It concerns relations to any institutional actor that recognizes claims by political subjects as valid, and protects them as rights. This is where the dynamics of property and citizenship intertwine.

An individual is beholden to different institutions for different rights. In turn, different institutions are validated through these relationships. In societies with multiple competing institutions, multiple relationships are therefore established, reproduced and undermined between people and a range of institutions simultaneously, and the authority of one institution may challenge or support that of another. New claims to rights will emerge while others fade, just as institutions' claims to authority evolve. In this process

claimants and authorities look for mutual visibility. There are many examples of how ordinary people attempt to become visible to the relevant authorities to which they would otherwise be invisible. Agrawal's work on community forestry in India (2001, 2005) demonstrates how organization in village committees rendered communities visible to government and 'compatible' with its policies. In the Amazon, Campbell (2015) shows that people act in anticipation of government regulation long before any is adopted. This way, property and its regulation are conjured up by popular state practices in a supposedly ungoverned frontier region. Similarly, Körling (2011), Nielsen (2011) and Winayanti (2010) show how residents of informal urban settlements in Niamey, Maputo and Jakarta have organized their settlements in conformity with the formal technical norms (such as street width or the numbering of houses). By forming 'societies' or 'associations' with *présidents de secteurs*, people may resist and avert eviction and ensure access to public utilities; established presence may enable people to acquire identity cards (or proxies such as voting cards, or membership cards of political or cultural associations); paying for utilities provides customers with receipts documenting and legitimizing residence; and people's possession of land — along with the fact that government institutions ignore or tolerate a land market — allows for the gradual build-up of expectations of recognition. Likewise, by forming health committees, market guilds, or parent–teacher associations *before* there is a clinic, a marketplace or a school, citizens enter the orbit of certain governing institutions and conjure up the exercise of authority and recognition by anticipating the 'contract'. In order to establish a 'contract' of mutual recognition, the inhabitants may be able to act and organize as they anticipate the municipality would expect proper citizens to act. Certain land claimant groups in South Africa, for example, were not yet formally registered as Communal Property Associations (CPAs) — a legal step necessary for land to be transferred to them through the restitution programme. However, they acted as if they *were* registered CPAs, fulfilling the criteria of a certain number of meetings, holding elections and having a constitution, in the hope that the government would be more likely to recognize them as serious and legitimate claimants when it came to the registration and transfer of land.[10]

In her work on public rural water supply in Senegal, Gomez-Temesio (2014) shows how the local population was beholden to the government agencies for the water supply, and the government agents were beholden to local villagers for facilitating their task. The actual face-to-face encounters between them became an exchange in which the agents delivered services, and the population facilitated the development of practical (technically non-legal) norms without which the administration could not function and service

10. Personal communication with Tara Weinberg, Centre for Law and Society, University of Cape Town.

could not be delivered. The work of Bierschenk, De Herdt and Olivier de Sardan is interesting in this respect (see Bierschenk and Olivier de Sardan, 2014; De Herdt and Olivier de Sardan, 2015). They show how official norms, rules and laws exist for bureaucrats and citizens as socio-legal markers. Yet, actual conditions often prohibit the observance of official norms and rules, and new practical norms develop. Thus, parallel, practical contracts of recognition emerge where authority and rights are functional and effective but have only faint connections to official norms and law.[11] People have rights, but they do not have exclusively rightful means of exercising them. This is why they revert to informal arrangements — not to act in illegality, but, on the contrary, to access what they believe is legally theirs. This instrumentalization of practical norms, then, does not undermine the ideas of the state, law and rights. It underpins them.

Consolidating rights is hard work. Strategies of visibility and obscurity depend on the context, on the authorities' ambitions and resources, and on people's available options. While being careful to avoid certain governing agencies, people simultaneously exert great effort, imagination and flexibility in order to be seen by others. Very often, people consolidate their visibility by engaging with several institutions — statutory or not. Rights are then often established by increments of vindicated 'smaller' claims and the gradual recognition by different, often competing, governing bodies such as legal courts, health authorities, land administrations, school administrations, public utility services, tax authorities, *État civil*, NGOs, chiefs, neighbourhood tribunals, militias, 'area boys', and others. Participation in ceremonies (in the widest sense), payment of tribute, and various forms of allegiance — as much as payment of property tax, registration in a census, payment of utilities, organization in neighbourhood committees that can address government institutions for infrastructure, health and school services — all work to undergird the claims people make to property, to residence and to rights of membership. By the same token, people breathe life into the institutions' claims to authority.

However, there are also many instances in which such pursuits can be obstructed, and established rights dismantled. They may easily be eroded if the institution securing them is weakened. If someone holds land thanks to custom, rights may become weaker if a particular customary authority is marginalized. And if a landholder has a plot on the basis of municipal allotments, such rights may be vacuous if there is no enforcement. In Paraguay, Hetherington (2011) explains, *campesinos* held rights to land thanks to 'improvements' backed by the land reform, whereas large-scale soy farmers claimed the same space backed by the Civil Code. Which right actually

11. See also Akinyele (2009); Berry (2009); Das (2011); De Boeck (2011); Hetherington (2011); Jacob and Le Meur (2010); Joiremann (2011); Lentz (2013); Nurman and Lund (2016); Onoma (2010); Roitman (2005); Stacey and Lund (forthcoming, 2016); Ubink (2008); Winayanti and Lang (2004).

prevailed was as much a political as a legal question. The scope for opportunity as well as the risk of marginalization widens with the complex intersectionality of societies characterized by institutional pluralism. This takes us to the question of categorization and the power to categorize.

Dynamics of Categorization and Competition over Jurisdictions

The production, reproduction and erosion of categories are central political processes. Claimants are categorized and institutions' effective jurisdictions are established as rights and authority are claimed in mutually constitutive processes. Let us first focus on how claimants are categorized by themselves and others, and then on how institutions jockey to obtain authority and jurisdiction.

Who can acquire, hold and transact property? This involves questions of identity, since engagement with institutions is very often differentiated along ethnic, gender, occupational and age lines, as well as by class and wealth. Categories such as men/women, old/young, insiders/outsiders, noble/commoner, true believer/infidel, ethnic-this/ethnic-that have proved to be important when people struggle to legitimize land claims. Individuals and groups work to create, maintain, downplay, or unmake their own membership categories — but not under conditions of their own choosing. Often, actors stronger than those whose identities are at stake manipulate the available terms of recognition.

Formal national citizenship with the promise of universal rights is often conjugated with governments' and other authorities' actual practice of objectifying and instrumentalizing identities to differentiate between groups of people and their land rights. Gender, race and caste are sometimes (re-) produced through customary or statutory law. Even when statutory law has formally eliminated such distinctions, they may reproduce through a range of administrative, political and social practices (Sundar, 2011). Sometimes, certain communities are seen, *en bloc*, as belonging to one or another group, and entire communities — often defined in terms of ethnicity — can therefore be seen as either worthy of recognition of rights, or as requiring control and exclusion. The concept of Bantustans in apartheid South Africa is a particularly poignant example. Here, the reproduction of race as a key category consolidated the authority of chiefs by implication (Oomen, 2005). In other circumstances, categories such as landless people, peasants, autochthones, or *comuneros* may be produced by politically effective agents. Rivalry and competition over land easily take a communal form, and violence often follows such a pattern (Jega, 2000; Jensen, 2008; Locatelli and Nugent, 2009; Vlassenroot and Raeymaekers, 2009). Yet communal violence is rarely a simple result of difference in entitlement or political identity; it is stoked and structured by the institutions that feed on categorical inequality.

Collective action often starts from a specific grievance and an issue (access to land, to political participation, to public service, to justice). The Mijikenda in Mombasa, for example, was the creative result of local groups defying colonial categories. On the basis of mutual economic interest they self-identified and assimilated into a single new group with a common culture, language and religion (Willis, 1993). Sometimes, groups are also edited out of history. The Nawuri, for example, aspired to become a recognized ethnic group in colonial Ghana. They failed to become institutionally visible and have disappeared from Ghana's administrative system (Stacey, 2014). Ideologies and legalities structure the categories through which legitimate claims to land and other valuable resources can be put forward. 'Durable inequality among categories arises', Tilly argues, 'because people who control access to value-producing resources solve pressing organizational problems by means of categorical distinctions. Inadvertently, or otherwise, those people set up systems of social closure, exclusion, and control. Multiple parties — not all of them powerful, some of them even victims of exploitation — then acquire stakes in those solutions' (Tilly, 1998: 7–8). Not all distinctions have single or easily identifiable authors (such as government) or formal policies. And distinct authorship may dim over time. Some distinctions will be ephemeral and short-lived, be undermined, and rapidly rendered irrelevant — to be conjured up later, perhaps. Others, however, will reproduce effectively, harden and institutionalize, and be propped up by statutory law, regulation, force and other practices. They may become habitual and sometimes even essential to all involved. Obviously, these categorizations are the result of complex historical processes. Some categorizations (such as seniority, gender, caste and the like) date back to pre-colonial times, and others are more recent. Some were brought about in colonial times when governments established courts with jurisdictions over certain categories of people based on religion or race. Spatial segregation of people along criteria such as race, 'stage of civilization', ethnicity, trade and religion, was a work of Sisyphus for colonial governments (Benton, 2002; Chanock, 1991; Comaroff, 2002; Fourchard, 2009; Guha, 1997; Hoffmann, 2014; Mamdani, 1996, 2012; T. Mitchell, 2002; Sundar, 2009, 2011). Absolute categories are probably impossible in reality, yet categorization can have enduring institutional effects.

Institutions compete to control categorical distinctions. This allows them to become institutional references — the institutions that people address when they have claims to vindicate. The categories they control are used to group people who, in turn, validate the institution. So, just as people render themselves visible in different ways, potential political authorities must also display the capacity to recognize claims. That is, institutions shop for clients, members and followers (K. von Benda-Beckmann, 1981). However, just as institutions compete over jurisdiction, they also, sometimes, depend on each other's recognition and endorsement of their respective authorities.

Not only statutory law, but also political power and practice shape the actual definition and enforcement of claims as rights, and work to define

effective jurisdictions and authority. Institutions — like city councils, mayors, ministries of the interior, neighbourhood associations, chieftaincies — are often organized in formal, functional and structured hierarchies of power, and jurisdictions with accountabilities enshrined in a constitution or other legislation. However, while relations and powers are formally scripted, the actual practice very often abandons the script and establishes the real, effective, relations of collaboration and competition, of coordination and assertion of jurisdictions. Non-statutory institutions also participate in this dynamic. We can think of jurisdictions as overlapping and interfering fields of authority in the making, rather than discrete realms of defined legal scope. They may be thought of in terms of spatial or territorial jurisdiction, in terms of functional jurisdiction, and as jurisdiction over persons, depending on what issue is at stake. Such jurisdictional claims are not mutually exclusive: they can be compounding, as well as bases for competition (Lund and Boone, 2013; S.F. Moore, 1978).

Territorial jurisdictions can vary in terms of how unambiguously they are delimited, how they nest into administrative hierarchies of government, and the extent to which the institutions are recognized by key actors as setting the boundaries of (enclosing) legitimate and rightful territorial domains and social groupings. In his work on the political economy of oil in Nigeria, Watts (2004) identifies different forms of governable spaces, only partially imbricated in one another, in which different cultural, political and legal repertoires are backed by different power resources. By design or default, spatial jurisdictions are sometimes carved out from the national territory. These can range from small-scale segments where certain neighbourhoods are 'black spots' in which local big men or gangs govern over spaces that have been occupied by movements or militias, to *de facto* secession of territory. Sometimes this process is even orchestrated by government itself (Hagmann and Hoehne, 2009; Ng'weno, 2007; Pratten and Sen, 2007; Taussig, 2005; I. Wilson, 2010; L. Wilson, 2011; Wolford, 2010; in this issue, see Lund and Rachman, and Hoffmann, Vlassenroot and Marchais). The same space, thus, can comprise various *functional jurisdictions* exercised by different authorities. These functional divisions can be well specified, or ambiguously delineated and contested. Not infrequently, institutions compete to establish functional jurisdiction over a particular field: what institution allocates land and adjudicates conflicts, for example, or what institution adjudicates in inheritance disputes? Is it statutory institutions, neo-traditional ones, or is it a syncretistic negotiation between government bureaucrats, companies and local leaders? Neighbourhood associations, religious institutions, political parties, local strongmen, vigilantes and militias all compete to be able to define and enforce identity and property claims as rights. The actual relations between institutions are thus 'in the making'.

Finally, within a given territorial jurisdiction, *jurisdiction over persons* can be fractured between and within different authorities. In British India, the East India Company represented the Crown. In civil cases, courts in a given

territorial jurisdiction were to apply Islamic and Hindu laws to Muslims and Hindus, respectively. For criminal cases, jurisdictions configured differently. This 'jumble' animated disputes over jurisdictions (both in terms of legal subjects and subject matter). Competing principles of what was considered British, Muslim and Hindu law were instrumentalized, and forum shopping was widespread (Benton, 2002: 129–40). This does not mean that there is no hierarchy, no delimitation of jurisdiction, or mutual recognition of powers. The world is not flat. It simply means that we should see this as a constant dynamic. Two cases illustrate the issues at stake.

TWO CASES: GHANA AND INDONESIA

Let us first look at the example of chieftaincy in southern Ghana.[12] In Ghana, as in most British colonies, a system of indirect rule developed. The colonial administration would rule through native chiefs. For the colonizer, the system had an appealing simplicity: it built on local customs and institutions, and it was cheap. Yet, what was meant to look like a continuation of chiefly power was, in fact, a rupture. For the chiefs, propped up by colonial power, indirect rule meant a unique opportunity to edit and create customs and justify convenient practice as 'tradition' by the mere status of chieftaincy. Chieftaincies managed to consolidate and reinvent their authority to become rulers of territory, owners of land and resources, and gatekeepers for migrants into society. But statutory government and chieftaincy have competed for authority over land throughout Ghana's modern history (Amanor, 2009; Berry, 2009; Lentz, 2013).

Cocoa production became very important in southern Ghana in the early twentieth century. Migrants from the north headed south to farm cocoa; from the early days, chiefs had the authority to settle migrants and allocate land to them. The colonial government had an interest in cocoa production and consequently in the massive migration of labour, and it had an interest in keeping production costs down. By considering that land belonged to the realm of 'tradition', and that markets were 'non-traditional', land could remain non-commoditized and cheap. Consequently, the government consolidated the chiefs' authority to accept and 'naturalize' strangers, to control land allocation, and to gain land rent as revenue. Aside from this, chiefs' jurisdictions were not subject to interference.

From the late 1940s and in the decades that followed, however, central government tried to recapture some control over land by a series of measures aimed at curbing chiefs' jurisdictions. Government assumed the authority

12. This example draws on Amanor (2009); Berry (2009); Boni (2006, 2008); Lentz (2013); Ubink (2008); Ubink and Amanor (2009).

to expropriate land for major infrastructure projects. In fact, Amanor argues:

> [An] accommodation was reached between the state and customary authorities. The state recognized the rights of the chiefs to control land and revenue, and the chiefs consented to the state gaining a share of these revenues and actively participating in the management of stool revenues. The chiefs also complied with facilitating the expropriation of land for the 'national interest' and for commercial sectors and investors supported by the state. This arrangement has served to undermine the rights in land of farmers and other land users. The most farmers could gain was compensation for the crops they had planted on the land. (Amanor, 2009: 109)

Government did not nationalize the land but took it 'in trust' whenever needed, with the help of the chiefs. While these policies restricted chiefs' land authority, at least on paper, chiefs would continue to control land allocation locally. Furthermore, chiefs regained a formal position through a number of constitutional amendments from 1979 to 1992. At the beginning of the twenty-first century, a Customary Land Secretariat was established which was intended to allow communities to have a say in management of land held under customary tenure. Effectively, however, the Secretariat was placed under the authority of the chiefs, strengthening their authority in the matter. This secured the Chiefs' competencies to allocate land and to define and enforce property.

As land had gradually become scarce in the 1990s, the power of chiefs to accept 'strangers' in local communities had come to be challenged from within. Local youth, worried that what they considered their birth-right was being squandered on strangers, often put pressure on their chiefs to tighten and narrow the access to land, to privilege the autochthonous population, and to weaken the property rights of 'strangers' and their descendants — also retroactively. Charging a higher rent for land held on weaker terms by 'strangers' also worked in the interest of chiefs. This ability to define and enforce local citizenship rights — producing first- and second-class citizens among people who, in principle, all enjoy Ghanaian citizenship — demonstrates the power of chiefly jurisdiction.

This example of the rupture of colonization demonstrates that competition over jurisdiction is not simply a question of crass confrontation but equally one of clever collusion to reduce land users' rights. While statutory institutions could trump an individual chief and acquire a particular piece of land, chiefs would manage most of the land most of the time. Moreover, with the support of statutory institutions, chiefs managed to rework the terms of the social contract of property with the land users to their advantage. Finally, their capacity to define citizenship and its ensuing rights was strengthened as it combined with increasing scarcity of land. This meant that jurisdiction over persons, at least locally, also tipped in favour of the chiefs. As long as the general discourse favoured 'tradition', 'the past', 'history' and 'culture', more egalitarian republican values of civic equality and the