1

Introduction

Any fool can turn the blind eye,
But who knows what the ostrich sees in the sand?
Samuel Beckett, *Murphy*

The Argument

An excerpt from the "Petition for the Payment of Compensation of Farm Lands at Pobaga-Damweo Residential Area,"[1] dating to 28 June 1999, provides a glimpse of some of the land issues people are facing in Bolgatanga and the Upper East Region of Ghana:

It would be recalled that on the 29th May, 1999, the inhabitants [of Damweo, Bolgatanga] entered to cultivate the land claimed by the Police Bureau of National Investigation (BNI) when they were met with threats of shooting them on sight if they were found entering the land. This unfortunate incident was reported to the Bolga Naba who invited both the incoming and outgoing Directors of BNI and the Regional TUC [Trade Union Congress] Chairman for amicable settlement. At the end of this dialogue, it was agreed that we go back and grow low crops such as groundnuts, beans, etc. It was based on this, that we went back to comply with the terms. We were again met with fierce resistance. This new development was again brought to the notice of the Bolga Naba who invited the BNI Director again for further discussion. . . . While dialogue was continuing, service personnel were seen cultivating the land to the provocation of the people, thus heightening tension in the area.

The land on which the police station stands was never legally acquired by the government. Even when land was given back to its original owners after passage of the Constitution of 1979, the police remained on the land and were effectively squatting. No compensation has ever been offered to the local population, so the people have now claimed it back by cultivating

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[1] Material in private possession.

the grounds of the police station. Currently, an effective compromise seems to have been negotiated: on the grounds of the Police Bureau of National Investigation, the local population can grow only low crops, enabling the police to have a clear view from the buildings; on the adjacent, regional police station, the grounds have been divided between the local population and the service personnel, who themselves need to supplement a meager income by cultivating the grounds.

The openness and contingency of land issues in Africa make absolutely central the questions of how and to whose benefit settlements are reached, who has the capacity to endorse or enforce them, and how and by whom they are challenged. At this juncture, local politics and land tenure meet. Land struggles have intensified in the Upper East since 1979 because of rising land values, both in the towns and in parts of the countryside. However, land struggles have also played directly into local political struggles because of the confusion over whose land rights were "restored" by the constitutional changes of 1979. When the 1979 Constitution declared that land held in trust by the government was henceforth to be handed back to its "original owners," earthpriests, families, and individuals saw an opportunity to claim land rights from government and chiefs and to contest a political order that had developed throughout the twentieth century.

The book argues that, in the context of legal and institutional pluralism and the rising competition over land, the constitutional reversal of land tenure that took place in 1979 opened a hornet's nest of potential conflict over land claims *and* over competing claims as to who had the authority to settle those conflicts. Thus, struggles over land fanned the flames of political conflict over customary authority, which has reemerged as a burning issue in contemporary politics. Moreover, exclusivity of land rights is increasing at different levels. Whereas chiefs and earthpriests previously had somewhat overlapping authority over land, competing efforts are now being exerted by both parties to acquire more exclusive control. Chiefs and earthpriests alike have organized to obtain recognition from other institutions to this effect. For "ordinary" people, such organization produces a paradox. The restoration of property held the promise of greater command over the benefits of land for the "original owners." In competition, however, there is no guarantee that land users' claims translate into their own greater command. Their claims may be trumped by claims from customary authorities or from rival land users, leading to their exclusion. In consequence, land users tend either to gain more exclusive rights or to see their rights erode in political processes where skills in political organization of interests are tested.

The book studies what goes on in African politics at the local level when such conflicts occur. It explores how "local" issues do not confine themselves entirely within local arenas and demonstrates this through empirical analysis of the central concepts of property and law. Land, property, and

power obviously cannot be reduced to being only local matters. Broad structural power dynamics are at play, and national and international economies and politics constrict peoples' opportunities and condition the working and significance of local institutions. Nonetheless, a focus on local processes emphasizes that, even in situations of historical and structural inequality, law and property are dynamic fields. Political processes of competition and exclusion are engaged in by people with different degrees of ambition and appetite, of responsibility and resolve.

Property and law may be perceived as fundamental, legitimate fixtures in society. In practice, however, they are quite ambiguous. Moore (1978: 1) reminds us that the "making of rules and social and symbolic order is a human industry matched only by the manipulation, circumvention, re-making, replacing and unmaking of rules and symbols in which people seem almost equally engaged." The political dynamics of property, that is, the processes whereby rights over land and other resources are settled and contested, are fundamental to how public authority is established and challenged. Thus, the study of property dynamics is equally one of state formation. The individual and institutional contestants' pursuit of control over land involves them, willy-nilly, in the competition over public authority – its consolidation, reconfiguration, and erosion. This pursuit is done not necessarily to achieve state formation at the local level but rather to check and overcome competitors and to benefit from the advantages of power. The result is, nonetheless, in part, institutional (Tilly, 1985).

The book is based on research in the Upper East Region in Ghana, and although each corner of the world is the product of specific situations and trajectories, many of the issues considered here are, I would claim, emblematic for much of Africa. However, only by researching the historical configurations of particular situations, their dilemmas, conflicts, and contradictions, are the institutional dynamics of property properly understood. History figures in two forms in this book. On the one hand, it is an analytical category of how historical legacies of colonial rule, power struggles, legislative changes after independence, and the like impinge on local dynamics of property and politics. On the other hand, history as an object of study is a central part of the idioms and logics of local contestation where people conjure up historical interpretations to back certain claims to power and property. Without presuming further parallels, the historical studies of the processes of European state formation by Norbert Elias (1994 [1939]) and of the development of private landed property in England by E. P. Thompson (1975, 1991) demonstrate that large structural transformations are fraught with conflict, ambiguity, and open junctures and are characterized by competing logics in the gradual production of a pattern. There is little to suggest that processes of local politics and the dynamics of property in Africa should exhibit any less ambivalence and contradiction.

Local Politics

A particularly fruitful field for the analysis of local politics is the reception, negotiation, and implementation of national policies, including land tenure reforms, decentralization policies, and public-sector reforms. The conventional view of policy processes as a rational sequence of specific decisions often requires modification when such policy is confronted with concrete "multirational" politics. No government policy is implemented in its entirety unscathed by the contingency of local circumstance and political negotiations. Rather, the reception of policies reflects an uneven playing field where some elements of policy can further existing projects and practice, and where others do not resonate with local political interests and conflicts. This is not to suggest that policies on land and other issues are irrelevant. On the contrary, state and government policies are important not only in their ambition to promote changes in resource allocation and organization but also in a more subtle sense. This tension is reflected in two, partly overlapping, literatures.

National laws and government policies constitute a structure of opportunities for the negotiation of rights and the distribution of resources, and the result is neither coherent policy implementation nor complete disregard of law and policy. While certain elements of the legislation will be absorbed into practices and systems with a much longer history and produce little change, other elements will provide justification for new ways. But instead of "replacing" old policies, new policies will often add a layer of legitimate references. Local actors may thereby use central government policies and directives to shore up their claims or underpin their own authority, and local government institutions often have some considerable margin for improvisation in carrying out the practical operations of policy implementation. As Mosse (2004: 655) suggests, policy may not generate events, but it helps stabilize the local interpretation of them. Policy is thus only a subset of local politics, and the latter can be quite deceptive. Not only are local issues not confined within local arenas, but politics is not the preserve of overtly political institutions. Everyday conflicts over land as well as more spectacular disputes often confront people within the same locality.

Local politics concerning property, therefore, is not a process isolated from wider influences. In fact, as Swartz (1968: 1) reflects, the very hallmark of local politics is that it is "incomplete in the sense that actors and groups outside the range of the local . . . relationships are vitally and directly involved in the political processes." Hence, national legislation and policy, political identification, alliances, and lobbying, as well as ideas about property and law, together constitute a web linking local politics to a broader context. Moreover, success in local politics does not hinge on astute

individual and local management of social resources alone. Conflicts may
be absorbed into broader political competition, where the actions and oper-
ations of the primary actors are couched in the mobilization of power on a
different scale. The original dispute then becomes symbolic of the broader
competition, other actors intervene, and the actions of the primary actors
become far less decisive for the outcome. Furthermore, politics runs along
informal as well as formal lines. While the formal institutional structure,
inclusive of political parties, local and regional assemblies, governments,
and administrations, to some degree meets the requirements of a main-
stream polity in the "age of good governance," political issues are also dealt
with through people's practices outside such institutions. This perspective
on local politics owes a debt to the writings of the so-called Manchester
school and to those who further developed their ideas (Gluckman, 1958,
1961, 1968 [1943], 1973; J. C. Mitchell, 1983, 1987; Moore, 1978, 1986;
Olivier de Sardan, 1999a and b, 2005; Scott, 1985; van Velsen, 1967).

On the more subtle side, the state invades the field of local politics in the
form of an idea (Abrams, 1988). The exercise of power and authority alludes
to the state, and government policies symbolize the state and the idea of law.
Hansen and Stepputat (2001: 8) suggest that states exist only when practical
and symbolic languages of governance combine. The institutionalization
of law and legal discourse and the materialization of the state in a series
of permanent signs and rituals are integral parts of that language. This
Gramscian idea of the state as the "successful effect" of a "will to class power"
points to the active making of the state. When we deal with state formation
in local politics, however, we might have to settle for less than the "successful
effect." Mitigated, erratic, and even futile attempts to rule are also part of
the picture, and while such attempts are "willed" competition over specific
authority, they may not be undertaken with grand state-building ambition.
Nonetheless, the idea of "a state" certainly informs the ways the attempt is
made.

Work by Bierschenk and Olivier de Sardan (1997, 1998, 2003) demon-
strates how the idea of a state – however seemingly distant – informs every-
day politics. Thus, the language of the state is not the preserve of gov-
ernment institutions alone; other institutions strut in borrowed plumes.
What transpires in local-level politics are certain forms of institutionaliza-
tion and formalization of the exercise of authority alluding to state, law,
and the bureaucracy, encoded in official language and often exercised with
the paraphernalia of modern statehood. A variety of institutions may use
the language of the state and its props in terms of contracts, deeds, and
attestations and of stamps, stationary, and declarations. The irony of such
"unstately stateliness" is that, while distinctions get increasingly blurred (in
terms of who is exercising state authority), they become increasingly impor-
tant (in terms of who can produce rights). Reality does not fall into neat

dichotomies, yet people and institutions, at certain times, indeed maneuver as if the world could be divided into such compartments.

This situation produces another paradox. On the one hand, a compelling idea of a powerful state with intention and a higher rationality prevails. Likewise, law and property are referred to as stable, agreed-upon fundamentals of society. On the other hand, however, as public authority is exercised by competing and more or less transient institutions, the ideas of the solidity of the state are contrasted with the actual incoherence and incapacity of the multiple parallel structures and alternative sites of authority (a land commission, the courts, local assemblies, the ministries, chiefs, earthpriests, political factions, hometown associations, neighborhood groups, etc.). This contrast disrupts the notion of unity or rationality in the singular. Such plurality of institutions produces the ambiguous practical meanings of law and property. In a competitive institutional environment, the consequence of insisting on the unity of the state and clarity of property and law is that unity and clarity are undermined. This is a key to understand the dynamic of property and authority, which this book seeks to explain. This perspective on the state owes a debt to more poststructural views on the dynamics of the state, in particular in postcolonial societies (Abrams, 1988; Bourdieu, 1994; Comaroff, 2002; Das and Poole, 2004; Ferguson, 1990, 1999; Hansen and Stepputat, 2001; T. Mitchell, 1991; Steinmetz, 1999).

Although these two groups of authors – the Manchester school and the poststructuralists – differ on several accounts, some central elements are shared among them. First, the combined approach is nonteleological but nonetheless focused on history and the processes of reproduction and change. Second, the approach is nonnormative but is nonetheless concerned with people's norms, ideas, and agendas. Third, the approach does not privilege the state as a site of politics but nonetheless exhibits a keen interest in how the state, both as a set of institutions and as an idea, conditions local politics in a broader field. Finally, the idea of a field generated around a particular issue or concern is important. As a consequence, the analysis is not preordered according to specific theoretical concepts such as class, law, or discourse but rather is open to the dynamic relationships between different processes allowing for the contingency and complexity of the sociopolitical processes.

Moore (1978: 54–81) operates with the concept of a semiautonomous social field as an appropriate area for the study of law and social change. In her work, the semiautonomous social field is not defined by, nor are its boundaries identified with, its organization. Rather, the semiautonomous social field is defined by its capacity to generate rules and establish institutions to induce or coerce compliance with them. Many actors deal and compete with each other, and the field is thus partly constituted by the continuous interpretation – through conflicts and their settlement – of rules and practices.

A semiautonomous social field can be thought of as a broad social space, which is created substantially in relation to a problem, to something at stake – *in casu* land, property and authority. Thus, rather than government being viewed as an organizational structure, a semiautonomous social field denotes a process of governance. The field changes over time; specific actors, institutions, actions, and social relations are not equally important at all times but vary in significance with historical circumstance and opportunity.

In order to engage with local politics, it is useful to sketch out some of the elements of public authority. By authority, I mean an instance of power that seeks at least a minimum of voluntary compliance and thus is sought to be legitimated in some way. The "public" element should direct our attention toward two associated features. On the one hand, public authority connotes impersonal administrative operations in a general sense. On the other hand, it refers to public (as in "not secret") confrontations, discussions, and action in concert. Thus, we are dealing with institutions and groups that in the exercise of power take on the mantle of public authority (legitimated administrative operations) and in which their attempts to govern articulate notions of state. It is a specific form of power exercised publicly and legitimated with reference to the state. The institutions engaged in this enterprise, however, are characterized by movement in and out of a capacity to exercise public authority. They operate between public and private in the twilight between state and society (see Lund, 2006).

In Africa there is no shortage of institutions that attempt to exercise public authority. Not only are multiple layers and branches of government institutions (the judiciary, the administration, the customs service and police, the various extension agencies, etc.) present and active to varying degrees, but customary institutions bolstered by government recognition also vie for public authority. Much of the literature on African politics and its history details how government institutions and chieftaincy institutions, invented or otherwise, negotiate, forge alliances, and compete to constitute public authority and political control (Bayart, 1989; Berry, 1993; Boone, 1998, 2003; Gluckman, 1968 [1943]; Mamdani, 1996; Moore, 1986; Peel, 1983; Rathbone, 2000; van Rouveroy van Nieurwaal, 1999). In addition, associations and organizations that do not appear at first sight as political may also exercise political power and wield public authority. These may be hometown associations, professional guilds, cultural clubs, and the like. Similarly, occasions that would appear to be ostensibly nonpolitical, such as sporting events, inauguration ceremonies, and cultural festivals, may reveal themselves to be active sites of political negotiation and mediation over implementation of public goals or distribution of public authority in which local and regional identities and power relations are reshaped and recast (A. Apter, 1999 [Nigeria]; Bierschenk, Chauveau, and Olivier de Sardan, 2000 [(West Africa]; Cruise O'Brien, 2003 [Senegal]; Gilbert,

1994 [Ghana]; Hecht and Simone, 1994 [Africa]; Pratten and Gore, 2002 [Nigeria]; Worby, 1998 [Zimbabwe]).

In such cases, it is difficult to ascribe exercised authority to the "state" as a coherent institution; rather, public authority becomes the amalgamated result of a variety of local institutions' exercise of power and external institutions' imposition, conjugated with the *idea* of a state. Hence, the practice of governance varies from place to place, and even from field to field, whether it be "security," "citizenship," "property," "development," or some other domain (see Bayart, Geschiere, and Nyamnjoh, 2001; Lemarchand, 1992). Indeed, in some areas authority may be exercised by institutions with near hegemonic competence, while their authority in other domains at the very same time may be ferociously contested. It seems characteristic for much of Africa that enduring concentrated power over many domains within a single set of institutions is rare. Although hegemony always has the character of an unaccomplished project, the diversity of the local political scene in much of Africa often makes it hard to identify any project at all. This observation has given rise to rather frustrated academic and policy literature over the years, often termed "Afro-pessimism." Inspiring and influential examples include Bayart (1989), Chabal and Daloz (1999), Mbembe (2001), and Roe (1999). Although the authors will probably resist such crude classification and the lumping together of different and nuanced arguments, they do seem to measure the state in Africa by its distance from an idea of a "proper" state distinct from society. The acknowledgment of a blurred boundary between state and nonstate, however, makes it a dubious and often unrewarding enterprise to attempt to make an analytical distinction between state and civil society.

This observation is instead a privileged opportunity to explore the general theoretical fragility of clear separation between state and society and to investigate the social processes that simultaneously create and deny the distinction. Whether labeled state or not, it seems that a variety of institutions constitute themselves as de facto public authorities, albeit with greater or lesser success. This is the point. Public authority can wax and wane. Here, although the distinction between state and civil society is analytically unsatisfactory, it is useful when applied to the discursive and political organization of society, on a grand and small scale alike. If public authority – or "stateness" – can wax and wane, it follows that the state institutions are never definitively formed but are in a constant process of formation (Steinmetz, 1999: 9). This implies a certain fluidity in the character of groups defending shared interests. They may form or disintegrate in the course of struggle and can be seen undergoing both constant reproduction and transformation.

Institutions or groups of actors are, thus, simultaneously actors and arenas and manifestations of power relations. All three aspects are important for

an understanding of the political processes involving institutions. First, as
an actor, a politicolegal institution is personified by its governor, for exam-
ple, the mayor, the district chief executive, the district commissioner, the
magistrate, the chief, the party boss, the "strong man," defining and enforc-
ing collectively binding decisions and rules – or, rather, *attempting* to define
and enforce them, because this capacity is rarely fully accomplished and
is often challenged. Consequently, while parties in dispute may go "forum
shopping," taking their claim or dispute to the institution that they deem
to be the most likely to produce a satisfactory outcome, institutions also use
disputes for their own, mainly local, political ends. As Keebet von Benda-
Beckmann (1981: 117) puts it, "besides forum-shopping disputants, there
are also 'shopping forums' engaged in trying to acquire and manipulate
disputes from which they expect to gain political advantage, or to fend off
disputes which they fear will threaten their interests. They shop for disputes
as disputants shop for forums."

Second, as Berry (1997: 1228) argues, social institutions such as house-
hold, family, and community should also be seen as "constellations of social
interaction, in which people move, acquire and exchange ideas and resources,
and negotiate or contest the terms of production, authority and obligation."
An institution, therefore, is also an arena where competing social actors
struggle to influence the way rulings are made.

Third, as arenas, institutions are also manifestations of power relations.
Over time, they may be entrenched and thereby establish a structure of
entitlements and prerogatives, while diluting other rights and rendering
competing claims to authority and resources illegitimate. When an institu-
tion authorizes, sanctions, or validates certain rights, the respect or obser-
vance of these rights by people simultaneously constitutes recognition of
the authority of that particular institution. In order to understand how
political power is exercised, we therefore need to have an eye for the pro-
cessual aspects of the formation of public authority and, in particular, how
it is created through day-to-day social encounters. Yet legitimate authority
is not necessarily legitimate authority indefinitely but must be vindicated
and legitimated through a broad array of political practices. In essence,
such practices constitute the negotiation of public authority in a particular
context.

The Dynamics of Property in Africa

Negotiation in Inequality

Of all issues in African local politics, land remains perhaps the most promi-
nent one. Questions of access to and control over landed property can quickly

mobilize individuals and groups, and "the land question" is consistently an important item on the agenda of most African governments (Bruce and Migot Adholla, 1994; Peters, 2004; Toulmin and Quan, 2000; World Bank, 1996, 2003). There is, of course, no single "land question"; the burning issue varies from country to country and between various groups within different societies, but the mere fact that land questions are so contentious is a clear indication of the political and social transformative dynamics in the negotiation of property. Land tenure has in recent years secured a strong scholarly interest.[2] Increasing scarcity of land due to population growth, environmental degradation, and the slow rates of economic development has led to increased competition for land among rural producers (Berry, 2002b: 639). Urbanization combines these processes. It has meant that land values have gone up and that land has been taken out of agricultural production, resulting in land scarcity. In many growing urban areas, the result has been various forms of urban agriculture (Temple and Moustier, 2003). Land rights obviously vary tremendously throughout Africa, but *claims* to land all seem to be fashioned around social identity. Increasing land scarcity fuels politics of identity and belonging from the household to the societal level, defining boundaries between strangers and locals, insiders and outsiders, and people with entitlements and those without. Consequently, land becomes politically central, as it links important resources to authority in particular ways.

The institutional and normative plurality prevailing in most of Africa means not only that people struggle and compete over access to land but that the legitimate authority to settle conflicts is equally at stake. It is never merely a question of land but a question of property, and of social and political relationships in a very broad sense. Struggles over property are therefore as much about the scope and constitution of authority as about access to resources (Berry, 2002b: 640; Lund, 2002). The essential point is that property is distinguished from mere momentary possession or longer-term access by virtue of being recognized by others, through enforcement by society or the state, and by custom, convention, or law (MacPherson, 1978: 3).

The processes of recognition work in tandem. Recognition of property rights by an institution simultaneously constitutes a process of recognition of the legitimacy of this institution. From this perspective, property and

[2] Central works on land tenure in Africa include Basset and Crummey (1993); Berry (1985, 1993, 2001, 2002a and b); Bohannan (1963); Bruce (1986, 1993); Bruce and Migot-Adholla (1994); Chanock (1991a and b); Comaroff and Roberts (1981); Downs and Reyna (1988); Fitzpatrick (2005, 2006); Juul and Lund (2002); Le Roy, Karsenty, and Bertrand (1995); Moore (1978, 1986); Ostrom (1990); Peters (1994, 2002, 2004); Platteau (1996); Shipton (1989); Shipton and Goheen (1992); and Toulmin and Quan (2000).