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## HEGEMONY ON A SHOESTRING: INDIRECT RULE AND ACCESS TO AGRICULTURAL LAND

*Sara Berry*

Struggles over access to and control of land have a long history in sub-Saharan Africa. For a long time, cultivable land was regarded by students of African economic and agrarian history as abundant and therefore immune from both market competition and political conflict. Recent scholarship suggests that this view is oversimplified. Since precolonial times, Africans have attached both material and symbolic significance to land, and rights in land have been exchanged, negotiated and fought over in the course of political and religious as well as demographic and economic change. This article will examine changing patterns of struggle over access to and the meaning of land rights during the early decades of colonial rule, when Africans' relations to land and to each other were being reshaped both by the process of colonial domination and by the accelerating pace of agricultural commercialisation.

Commercialisation, together with colonial regimes' exactions of taxes, labour, and provisions, increased Africans' demand for land and labour, and intensified their efforts to appropriate a share of the increased flow of income from cash crops and wage employment. Competition over land, labour, and income gave rise, in turn, to struggles over the terms on which people gained access to productive resources and/or controlled both income and processes of production and exchange. Patterns of agricultural commercialisation and conditions of access to land were both, in turn, affected by colonial policies aimed directly at regulating rural economic activity, and by colonial regimes' overall strategies of surplus appropriation and social control. Administrators' efforts to collect taxes, keep order, and mediate disputes shaped the legal and institutional conditions under which farmers sought access to land and labour, whether or not they were explicitly designed for that purpose. The effects of land legislation or of agricultural officers' efforts to introduce new methods of cultivation and animal husbandry must be understood in the context of colonial processes of governance in general.

Recent literature on the colonial state in Africa has attempted to move beyond the dominant liberal and Marxist paradigms of the 1960s and '70s. These paradigms, articulated in part as reactions against the laudatory or apologetic historiography of the colonial era, depicted colonial states as external agents, seeking to govern or exploit African societies according to the interests and political philosophies of European powers. The liberal or neoclassical paradigm portrayed the state as an arbiter of conflicting interest groups, existing outside the social and economic system, and capable of impartial intervention to advance the 'public interest', while Marxist writers played a series of variations on the theme of the state as an executive committee of the metropolitan (or local settler) bourgeoisie. (For reviews of some of this literature see Lonsdale, 1981; Kitching, 1985; Jessop, 1977.)

More recently, several authors have tried to unpack these arguments: to look at the state as a complex institution, made up of individuals and interest groups with diverse links to the societies they seek to govern (see, for example, Bates, 1983; Jessop, 1977; Chazan *et al.*, 1988). Lonsdale and Berman (1979) and Berman and Lonsdale (1980) argued, for example, that the colonial state in Kenya was drawn into increasingly coercive patterns of labour control through officials' efforts to cope with the contradictions of capitalist accumulation in a colonial context. Others have suggested that the state plays several roles, serving as an agent of capitalist or other class interests; as an arbiter of social conflict; and as an arena within which social groups struggle to advance their interests through alliances with elements in the state apparatus (Joseph, 1984; Beinart *et al.*, 1986; Chazan *et al.*, 1988).

Scholars' interest in disaggregating the state, conceptually speaking, has intersected with a growing interest, among students of political economy and social history, in the role of culture in shaping social and economic processes. Colonial rule and capitalist accumulation generated conflicts of interest, among Europeans and Africans as well as between them. The outcome of those conflicts was shaped not only by the material and political resources which different groups could marshal in support of their interests, but also by the terms in which people understood their interests and expressed them (Peters, 1988; Carney, 1988; Carney and Watts, n.d.). Historians such as Beinart (1984), Anderson (1984), and Vaughan (1987) have shown how major events, such as famine or soil erosion, become focuses of multiple explanations which, in turn, shape people's responses to the events themselves. Similarly, Peters (1984), Comaroff (1980), and other anthropologists have explored the role of struggles over meaning in shaping governments' policies and interactions between colonised peoples and colonial regimes. In particular, a growing body of literature has shown that 'customary' laws were not static perpetuations of precolonial norms, but new systems of law and adjudication based on colonial administrators' interpretation of African tradition (Colson, 1971; Moore, 1975, 1986; Ranger, 1983; Chanock, 1985; Snyder, 1981).

The present discussion is intended as a contribution to ongoing efforts to draw these strands of argument together. I will look at the early decades of British colonial rule in Africa, when administrators struggled to establish effective control with extremely limited resources. Scarcity of money and manpower not only obliged administrators to practise 'indirect rule' but also limited their ability to direct the course of political and social change. In effect, I will argue, colonial regimes were unable to impose either English laws and institutions or their own version of 'traditional' African ones on to indigenous societies. Colonial 'inventions' of African tradition (Ranger, 1983) served not so much to define the shape of the colonial social order as to provoke a series of debates over the meaning and application of tradition which in turn shaped struggles over authority and access to resources.

The article is organised in four sections. The first presents my general argument about the impact of colonial rule on conditions of access to agricultural resources. The second describes the kinds of debate which

arose under indirect rule over the meaning and uses of 'custom', while the third and fourth illustrate their implications for the organisation of native administration, and for changing conditions of access to land. Examples are drawn from rural areas in four British colonies, selected to reflect different histories of colonial domination and agricultural commercialisation.<sup>1</sup> Because of the time period covered, African countries are referred to by their colonial names.

#### HEGEMONY ON A SHOESTRING: THE ARGUMENT

As they moved to assert military and political control over most of sub-Saharan Africa, colonial administrators faced from the outset a continual struggle to make ends meet. As self-declared rulers of the African continent, Europeans assumed responsibility for governing extensive territories inhabited by scattered and diverse peoples—a vast and potentially expensive project. The British exchequer was, however, reluctant to subsidise either the recurrent costs or the capital costs of colonial administration (Frankel, 1938; Pim, 1940, 1948; Hailey, 1957: 1307 ff.; Hopkins, 1973: 190–1). Partly because of financial stringency, the number of European personnel posted to colonial administrations was limited, and officials were expected to raise enough revenue from their colonies to cover the costs of administering them. However confidently administrators might share Earl Grey's conviction that 'the surest test for the soundness of measures for the improvement of an uncivilized people is that they should be self-sufficient' (quoted in Pim, 1948: 226) the daily struggle to wrest revenue, labour and provisions from reluctant, hostile or scattered subjects was not an easy one (Asiegbu, 1984; Munro, 1975; cf. Weiskel, 1975).

To live within their means, officials worked both to raise revenue and to keep down the costs of maintaining order and running the day-to-day business of administration. One obvious way to cut costs was to use Africans, both as employees and as local agents of colonial rule. African clerks and chiefs were cheaper than European personnel; also, by integrating existing local authorities and social systems into the structure of colonial government, officials hoped to minimise the disruptive effects of colonial rule (Hailey, 1957). In other words, for reasons of financial and administrative expediency, most colonial regimes in Africa practised indirect rule, whether or not they had articulated it as their philosophy of imperial governance.

Although, over time, colonial administrators did evolve an elaborate set of principles and institutions for formalising the conception and practice of indirect rule, in fact they not only failed to preserve (or restore) stable systems of traditional social order, but actually promoted instability in local structures of authority and conditions of access to productive resources. My argument differs from those of authors who have suggested that European 'inventions' of African tradition served to rigidify jural norms and practices, and hence social structures, in Africa (Chanock, 1985; Ranger, 1983; Snyder, 1981; MacGaffey, 1970).<sup>2</sup> Colonial officials certainly tried to govern according to fixed rules and procedures which were based on what they imagined to be the stable political and jural systems of the African

past. But they rarely exercised enough effective control to accomplish exactly what they set out to do.

This was so for several reasons. First, colonial administrators' own economic and political interests often had contradictory implications for their strategies of exploitation and control. Second, contrary to British expectations, African societies were not divided into neatly bounded, mutually exclusive, stable cultural and political systems, but were dynamic, changing communities, whose boundaries were fluid and ambiguous and whose members were often engaged in multiple contests for power and resources. And, finally, officials' efforts to learn about indigenous societies in order to build on them frequently elicited conflicting testimony about the nature of 'native law and custom'. I shall elaborate each of these points in turn.

#### *The contradictions of colonial interests in African agriculture*

The financial viability of a colonial regime was likely to be both threatened and enhanced by successful African participation in cash cropping and wage employment. Whether or not a particular episode of conquest was motivated by the desire to promote European capitalist interests in Africa, once colonial rule was established, officials counted on European enterprise to generate taxable income and wealth. Trading firms, concessionaires, mining companies, and European settlers were all expected to increase the volume of commercial activity and hence the flow of taxable income generated by the colonial economy. European profits depended, in turn, on ready access to cheap African labour—as farm and mine workers, as porters and dock hands, and as producers of commodities for export or for the direct provisioning of Europeans in Africa. Africans were, in turn, more likely to offer their labour cheaply if they were hard pressed to meet their own needs independently of trade with or employment by Europeans. In short, African prosperity threatened the profits of European enterprise on African soil.

However, Africans also paid taxes and bought European goods, and their ability to do so increased with their income. Thus colonial regimes walked a tightrope between encouraging Africans to become involved in labour and commodity markets and attempting to prevent them from becoming economically independent enough to ignore the opportunities afforded by European-controlled markets and jobs. Officials did not want to stifle the flow of African labour, produce, and tax revenue on which the fiscal and economic health of the colony depended, but they were equally anxious to minimise the cost of African labour and produce, and to limit Africans' ability to influence the terms of exchange.

Colonial administrators' ambivalence towards African agricultural growth and commercialisation was expressed differently in different colonies, depending on the particular local configuration of economic activities and interests. In settler economies, such as Kenya, officials faced conflicting pressures to encourage increased African production for sale, in order to generate taxable income, supply the home market, and keep down wage costs, and to suppress it, in order to force out labour and protect European farmers from African competition. Officials advocated the creation of Afri-

can reserves both to limit Africans' access to land and augment the flow of labour to European farms, and to 'protect' Africans from dispossession or excessive exploitation. On the issue of labour recruitment, they shifted their strategy, first using African headmen as recruiters in order to forestall the abuses of commercial recruiters; then shifting to professional recruiters, or even acting as recruiters themselves, as popular discontent threatened to undermine the authority of headmen and, hence, their effectiveness as agents of indirect rule (Lonsdale and Berman, 1979; Heyer *et al.*, 1976; Cowen, 1981).

In Northern Rhodesia large tracts of land were cleared for settlers, but so few ever arrived that their labour needs were insignificant, and colonial authorities never faced the issue of restricting African cultivation in order to generate labour supplies. Instead they wrestled with the issue of settlement patterns. For administrative purposes, it was convenient to have people concentrated in large settlements under the effective control of powerful chiefs. From the earliest years of British South Africa Company rule, officials waged a series of unsuccessful campaigns to prevent the dispersal of Bemba settlements. However, concentrated settlements soon led to deforestation and soil erosion. No sooner had the colonial administration moved people into newly demarcated native reserves, in the 1930s, than the resultant overcrowding led to visible signs of environmental degradation, and villagers had to be resettled within a few years (Allan, 1965: 109 ff.).

In West Africa there were no settlers to speak of, and colonies prospered from the rapid expansion of tree-crop and other agricultural production for export. Even here, however, officials worried that farmers would neglect food crops in their rush to produce for export; that African methods of production resulted in poor-quality produce which brought low prices in Europe; and that European traders' efforts to protect themselves against African competition would provoke disturbances that might threaten the smooth flow of trade (Kay, 1972; Hopkins, 1973). Here, too, official policy towards agriculture and commerce wavered between encouraging export crop production and African commerce and limiting it, as administrators struggled to balance competing interests and manage the contradictions of agricultural development.

#### *The dynamics of African political economies*

For much of the colonial era, many Europeans assumed that African communities consisted of mutually exclusive socio-cultural units—tribes, villages, kin groups—whose customs and structures had not changed very much over time. Officials could see, of course, that there was conflict among Africans at the time of colonial conquest, but they assumed they could restore order by reconstituting what they believed to have been the 'closed, corporate, consensual systems' of the past (Ranger, 1983: 249). Accordingly, colonial administrators set out to discover the boundaries and customs of 'traditional' communities, and the 'original' relations between them, in order to use tradition as the basis of their own administrative structures and practices.

In attempting to construct stable, workable administrative systems in

Africa, officials sometimes sought to preserve traditional structures of authority, sometimes to reorganise or completely recreate them. In northern Nigeria colonial officials found a system of Muslim emirates, complete with written legal codes, courts, and administrative structures, which were almost ideally suited to their purposes. Also, since a majority of the Fulani aristocracy agreed to accept British overrule in exchange for confirmation of their own authority, the process of conquest was brief and relatively smooth. However, few other systems of local government proved as comprehensible or congenial to British notions of administrative efficiency (Perham, 1938; Hailey, 1957; Coleman, 1960). Most African chiefs kept no tax rolls or law books; few made any attempt to separate either the principles or the practice of adjudication from those of politics or diplomacy; and many were vague about the exact boundaries of their domains. In decentralised societies, such as those of central Kenya or south-eastern Nigeria, where colonial administrators were unable to find strong chiefs or hierarchical systems of authority, they created them.

In more centralised polities, chiefs who resisted or challenged colonial domination were deposed and their government sometimes reorganised as well, to prevent renewed dissent. For example, the British deliberately weakened Asante hegemony after 1896 by signing separate treaties with chiefs and communities formerly subordinate to Kumase and disregarding Kumase's claims to 'customary' overlordship. In western Nigeria, where Yoruba states had been engaged in a series of battles and shifting alliances for most of the nineteenth century, British officials insisted on assigning them to positions in a fixed hierarchy under the supreme authority of the Alafin of Oyo, despite the fact that, since the 1850s, Ibadan had been stronger than Oyo, and Ibadan's principal opponent (the Ekitiparapo or Ekiti-Ijesha alliance) was quite independent of Oyo (Johnson, 1921; Atanda, 1973; Akintoye, 1971).

In the early years of colonial conquest and 'pacification' officials dealt with each area *ad hoc*, responding pragmatically, sometimes ruthlessly, to local conditions in their efforts to establish control and mobilise resources. By the end of the First World War, however, official thinking was converging towards a standard 'mental map of an Africa comprised of neatly bounded, homogeneous tribes' (Ambler, 1987: 32) and an increasingly uniform conception of their own imperial mission and how best to realise it. Lugard's *The Dual Mandate in Tropical Africa* (1923) laid out the philosophy of indirect rule and, during the next twenty years, officials laboured to replicate a common system of native administration across the map of colonial Africa. In 1929 the Secretary for Native Affairs in Northern Rhodesia noted with satisfaction that, when the Colonial Office took over administration of the colony in 1924, "the tribes were in a very disorganised state", but since then a tribal organisation had been "created" (Chanock, 1985: 112).

In fact precolonial communities were neither static nor internally cohesive. In central Kenya during the nineteenth century 'men and women throughout the region moved in a complex world of overlapping, layered and shifting associations' (Ambler, 1987: 32) formed through migration, marriage, trade, and blood brotherhood. 'As agricultural settlement steadily

expanded, the patterns of [social] identity were continually recast by the evolving relations among communities' (*ibid.*: 35). Nor were fluid, overlapping or contested social boundaries and lines of authority peculiar to acephalous polities such as those of the Kikuyu, Igbo, or Tiv. Even as British missionaries moved into Northern Rhodesia, followed in 1895 by agents of the British South Africa Company, a major realignment was taking place among Bemba chieftaincies. As Roberts (1973) has shown in detail, the 'strength' of Bemba chiefs and the cohesiveness of the tribe under the central authority of the Chitimukulu, which so impressed early British observers, rested not on any institutionalised system of central authority, but rather on a particular conjuncture of historical circumstances. In the 1860s and '70s shifting alliances and conflicts among neighbouring peoples combined with a realignment of long-distance trade patterns to reward Bemba skills at ivory hunting and slave raiding without bringing dissident groups into their territory (Roberts, 1973: 198–9). This led to a temporary consolidation of Bemba power within the region, but also promoted competition among Bemba chiefs. By the 1880s the power of the Chitimukulu was declining and several smaller chieftaincies were switching their allegiance to the increasingly powerful Mwamba (Roberts, 1973: 211–4; Werbner, 1967). With the establishment of BSAC control in 1895, large fortified Bemba settlements dispersed, leaving much room for subsequent debate over which chiefs had traditional claims to authority over whom.

In Asante, since the eighteenth century, successive Asantehenes had manipulated the allocation of rights over land and people in order to consolidate and extend the power of Kumase (McCaskie, 1980, 1984; Tordoff, 1965; Wilks, 1975). In 1889 Yaa Kyaa secured the throne of Kumase for her son, Agyeman Prempe I, by promising his supporters to restore to them all the land and subjects 'who had been sold, pawned, confiscated or otherwise alienated' from their ancestors by previous Asantehenes. After more than a century of confiscation and redistribution by several Asantehenes, Yaa Kyaa's promises left much room for debate over who was entitled to what (McCaskie, 1984). Similarly, in western Nigeria, much of the nineteenth century was taken up by warfare, migration, and shifting alliances among Yoruba states which generated multiple, conflicting precedents for demarcating 'traditional' social boundaries and chiefly jurisdictions.

In general, colonial regimes imposed themselves on societies already engaged in struggles over power and the terms on which it was exercised. By announcing their intention to uphold 'traditional' norms and structures of authority colonial officials were, in effect, declaring their intention to build colonial rule on a foundation of conflict and change. The result was 'a blizzard of claims and counterclaims' to rights over land and people which served as 'a mechanism for generating factional struggle' rather than eliminating it (Dunn and Robertson, 1973: 73).

#### *The search for tradition*

The debates and tensions provoked by European efforts to construct stable governing structures on top of volatile African social realities were exacer-

bated by colonial administrators' methods of implementing indirect rule. To build colonial administration on a foundation of 'native law and custom', officials needed information about traditional systems of law and authority. But few African societies, apart from those with established traditions of Islamic scholarship, possessed written bodies of legal and historical knowledge from which such information might be drawn. Officials had therefore to rely on travellers' accounts (sketchy and dated, at best) and on oral testimony.

Oral evidence was gathered informally at first; later, more systematically, by official commissions of inquiry and by professional anthropologists hired by colonial regimes for the purpose (Hailey, 1957: 54–6). But the search for oral tradition was fraught with difficulties. Like scholars who collect oral history, colonial administrators who set out to gather information on local laws and customs were told multiple, often conflicting stories. Whichever version of customary rights and practices an official chose to believe, people were sure to challenge it—both because the past was in fact complex and changing, and because Africans took advantage of officials' interest in tradition to offer evidence favourable to their own interests.

When tensions rose over a particular aspect of colonial policy, the Colonial Office convened commissions of inquiry, both to investigate immediate grievances and to amass information about local customs. Though the work of these commissions often contributed to the emergence of an official orthodoxy concerning 'native law and custom', the evidence they collected was often full of varied and conflicting testimony. For example, in southern Nigeria and the Gold Coast, after recurring protests both from influential Britons opposed to commercial concessionaires and from Africans who objected to the proposed enactment of a Crown Lands Ordinance for these territories, the Colonial Office convened the West African Lands Committee in 1912, to consider the 'laws in force' concerning 'the conditions under which rights over land or the produce thereof may be transferred', and whether those laws needed amending (WALC, 1916: correspondence, 2). Perhaps unintentionally, the committee's draft report (which was never published) summed up the colonial administrator's dilemma: 'natives have rights under their own laws and customs', and, for the courts to protect them, 'the appropriate custom or law must be brought to the knowledge of the court'. In practice, however, the testimony offered to the courts 'is often very unsatisfactory and untrustworthy' (*ibid.*).

Partly because the evidence they collected was frequently confusing or contradictory, administrators sought common rules by which to interpret customary practices and apply them to the business of governance. In the 1920s colonial regimes began to employ professional anthropologists to help them discover the rules and practices of traditional African cultures. In keeping with the intellectual currents of the time, anthropologists such as Rattray, Meek and Gluckman assumed that traditional African societies were well ordered, self-reproducing systems, whose natural evolution had been disrupted by the trauma of colonial conquest. Often they saw it as their mission to discover or reconstruct these 'original' systems through fieldwork, and then persuade colonial authorities to restore them, in order

to put African societies back on their normal evolutionary path towards civilisation (Kuklick, 1979: 50).

For Rattray, the 'true Ashanti' was to be found among elderly people in remote forest settlements, isolated from the corrupting influences of commerce and colonial politics, where social interaction was still ordered according to traditional religious precepts (McCaskie, 1983). In Nigeria, Meek concluded from his investigation of the Aba women's war in 1929, colonial rule had weakened the religious basis of traditional law and order, undermining 'what was before a well-ordered community', and threatening to replace it with 'a disorganized rabble of self-seeking individualists' (quoted in Chanock, 1985: 26). And Gluckman's writings (1941, 1965) present a picture of the Lozi kingdom as a cohesive system, in which economic, political, social and religious practices complemented and reinforced one another in harmonious and well-ordered fashion.

By the 1920s the study and interpretation of African custom were becoming institutionalised as part of the routine activity of colonial administration. Beginning in 1922, District Officers in the Gold Coast were 'obliged to take examinations in native custom, although apparently they were not required to pass them' (Kuklick, 1979: 51). In general, anthropological research served to reinforce the official view of African societies as clearly bounded and coherently organised (Crook, 1986: 89-90; Kimble, 1963: 486). To be sure, some administrators were well aware that tradition could be invented as well as recalled. 'After a review of fifty years' disputes' in the coastal Ghanaian stool of Ada, one official commented sarcastically that the Adas' 'knowledge of ancient traditions is, in fact, small, but the manufacture of new ones has been raised by them to the status of a rural industry' (quoted in Sutton, 1984: 42-3). Indeed, some saw distinct advantages in the confusion: in Ahafo, one official pointed out in 1930, 'as a result of the system of indirect rule in vogue it is extremely unlikely that any riot or disturbance should be directed against Government authorities. What disturbances occur are invariably in the nature of "faction fights"' (quoted in Dunn and Robertson, 1973: 87).

However, multiple and conflicting testimonies were more likely to be dismissed as evidence of Africans' venality or obtuseness than to be examined for the possibility that the homogeneous systems of primordial law and culture which officials had painstakingly pieced together to serve as the basis of the colonial order might never have existed in the first place. In Brong Ahafo 'it was the conventional wisdom of the administration, apt to be produced without noticeable irony after the recital of the most baroque confusions, that in unravelling disputes about traditional issues, one must "always be governed by well established Akan custom"' (Dunn and Robertson, 1973: 169).

In summary, colonial rule affected conditions of access to land and labour through the interplay of administrators' ambivalence towards African farmers' prosperity, their efforts to govern through indigenous rules and authorities, and on-going debates over the meaning of 'native law and custom'. As agricultural commercialisation and labour migration gave rise to disputes over the means of production officials insisted on resolving them in terms of 'native law and custom'. Their insistence served, in turn, to

reinforce existing linkages between farmers' access to resources, their position in local structures of power, and their ability to win arguments over customary rules and practices. Ongoing struggles over power and the interpretation of tradition were incorporated into the rules and procedures through which officials sought to 'cope with the contradictions' and 'crises of accumulation' which accompanied colonial rule (Lonsdale and Berman, 1979; Berman and Lonsdale, 1980). Struggles over the meaning of traditional rules and structures of authority shaped struggles over resources, and vice versa (Peters, 1984).

In general, the effect of indirect rule was neither to freeze African societies into precolonial moulds, nor to restructure them in accordance with British inventions of African tradition, but to generate unresolved debates over the interpretation of tradition and its meaning for colonial governance and economic activity. In seeking to maintain social and administrative stability by building on tradition, officials wove instability—in the form of changing relations of authority and conflicting interpretations of rules—into the fabric of colonial administration.

#### THE INTERPRETATION OF CUSTOM: RULES AND SOCIAL IDENTITIES

In their respective attempts to enhance the power and exploit the resources of colonial regimes, Europeans and Africans debated both the nature of customary rules and the demarcation of social groups to which they should apply. For European officials, the second question arose because they assumed that Africans belonged to distinct, mutually exclusive groups, each with its own set of rules and institutions for enforcing them. Whether or how a particular rule should apply to a given individual depended on what group s/he belonged to. For example, the right to cultivate land or the obligation to pay tribute for doing so was held to depend on the social origin of the person in question. The rights and obligations of 'strangers' were commonly held to be different from those of indigenes, and much effort was accordingly devoted to determining who was a stranger by classifying people according to descent group, or 'tribal' affiliation. How 'the law' was applied then followed from the decision as to who a person was.

In the Gold Coast, for example, by endorsing the view that a chief's right to collect cocoa rents depended on the social origin of the farmer the colonial authorities helped to intensify disputes over boundaries between stools, and the designation of 'paramount' and subordinate chiefs (Hill, 1963; Austin, 1987). In Kenya and Northern Rhodesia, where African reserves were demarcated on tribal lines, land rights were similarly linked to social identity. Needless to say, this created many anomalies, since existing settlement patterns were often multi-ethnic (Sorrenson, 1967: 37–8).

For Africans, the interpretation of rules also depended on who was involved, but for different reasons. In most precolonial African societies, status and wealth depended on accumulating dependants or followers. 'Strangers' were welcomed—as wives, clients, 'blood brothers', settlers or disciples—because they enhanced the prestige and often the labour force of the head of a household, kin group or community. Access to land and

labour thus followed from negotiations over a person's relationship with other individuals or groups. Negotiations could take a long time. Payment of bridewealth, for example, sometimes took years: an adult son might still be paying part of his mother's bridewealth after his own sons were eligible for marriage and/or his mother had died (Comaroff, 1980). In the event of divorce or separation the disposition of a couple's children and property depended not on whether or not the couple were married but on how married they were at the time of separation—which depended in turn on the interpretation of transactions and other events in the history of their relationship (see also Comaroff, 1980).

As commercialisation led to new demands for land and labour, Africans increased their efforts to negotiate new relationships in order to gain access to additional productive resources. In Akan, Yoruba, and Kikuyu societies, marriage gave men various claims on the labour of their wives, while women (and, in matrilineal Akan communities, men) gained the right to cultivate land belonging to the husband's lineage. In central Kenya in the nineteenth century, people participated in rituals of 'blood brotherhood' in order to augment the portfolio of kin-like relationships through which they could organise trade or seek refuge in other communities in times of famine or disease (Ambler, 1987).

As cocoa farming spread in southern Ghana and Nigeria during and after the 1890s, would-be farmers sought access to suitable uncultivated forest land by negotiating with heads of local families or chieftaincies. Often they acquired rights to plant tree crops or even to the land itself in exchange for money, labour services, and/or annual 'gifts' of produce or cash which served to acknowledge the continued authority of local leaders. Similar processes occurred in Kenya, where migrants (*ahoi*) 'begged' permission to settle and farm in a new area. *Ahoi* might work for local elders or marry into their families in order to get established. As they accumulated herds and formed their own domestic establishments they advanced to full membership of the *mbari* or settlement of their hosts (Kanogo, 1987: 26). Also, in Northern Rhodesia, access to land or labour followed from a decision to marry or join a new community (Richards, 1939; Pottier, 1985; Watson, 1958).

In general, then, people tended to negotiate access to land and labour in the process of joining a new household or community. Negotiations often included transfers of goods or money in exchange for rights of access or control, but the meanings of such transfers were not fixed—as colonial officials assumed them to be. For example, the sale of land or other assets did not necessarily extinguish the rights of the seller: in central Kenya, land sold in exchange for cash might be reclaimed by the seller or his kin on the grounds that custom dictated that land belonged to the 'family' or that sales were redeemable (Sorrenson, 1967; Fisher, 1954). Similarly, in both Ghana and Nigeria, purchasers of cocoa farms might be held responsible for paying tribute (or rent) to the landholders who had given the original farm owner permission to plant permanent crops in the first place (Berry, 1975; Hill, 1963). In both cases, terms of access were negotiable, and the outcome in any particular transaction depended on the history of relations between the persons involved, and the way they were interpreted at the time of the

land acquisition. As Chief Kinyanjui told the Kenya Land Commission, when questioned about his role in a past land dispute, 'I do not remember what I said before the District Commissioner eight years ago. Tell me who summoned me to give evidence. What I said depends on whose witness I was' (Kenya Land Commission, 1934: 282).

In short, administrators sought information on traditional social structures and identities in order to know how to apply customary rules in governing colonial peoples, while African colonial subjects renegotiated rules and social identities in order to cope with or take advantage of colonial rule and commercialisation. Together they debated the nature of linkages between customary law and social identity. But the debates remained unresolved, partly because European officials were struggling with conflicting evidence about social processes which they misunderstood, and partly because Africans' efforts to take advantage of the colonial economic and political order led them to keep redefining the rules and institutions on which colonial officials predicted their strategies of governance. Whatever conclusions officials reached about the content of customary laws or the boundaries of traditional societies were either challenged by Africans offering a different version of tradition, or outpaced by changing social and economic practices. Both processes tended to keep the debates going, rather than give rise to a new set of fixed rules or social relations. In the following section I will illustrate the process of debate with two examples: the periodic reorganisation of chiefly jurisdictions and native administrations under colonial rule, and debates over customary land tenure.

#### THE 'ORGANISATION AND RE-ORGANISATION' OF NATIVE ADMINISTRATION

After World War I colonial regimes across Africa moved to codify customary law and formalise the structures of indirect rule, in keeping with the general trend towards rationalisation and professionalisation of the colonial service (Young, 1988: 45 ff.). Chieftaincies—often recognised in accordance with British ideas of administrative efficiency—were legally constituted as 'Native Authorities'. Chiefs were empowered (and required) to raise revenue, spend money on public facilities such as roads, latrines, and clinics, and adjudicate cases according to customary law—all under the supervision of British officials, who also had the power to appoint and depose chiefs themselves. In principle, British officials sought to create permanent structures for the consistent and disinterested enforcement of fixed rules. In practice, both the structures and the boundaries of native administrations were periodically readjusted—in some cases practically up to the eve of independence.

For example, in the Gold Coast, native authorities were not even fully established until 1944, less than a decade before they were abolished altogether. From the nineteenth century, British officials had found it expedient to negotiate with Akan stools as semi-autonomous states, rather than subsume them under the formal apparatus of indirect rule. This did not stop the British from working actively to undermine the power of Asante, first by military attack and, in 1896, by negotiating a series of

treates with neighbouring states which placed them on an equal footing with Kumase in the eyes of the colonial regime.

During the early decades of colonial rule, as the spread of cocoa raised the value of land and the volume of litigation over access to it, chiefs manœuvred to maximise their revenues from cocoa 'rents' and judicial fees and fines—by asserting claim to land and subjects which the British had allocated to other jurisdictions, and by reinterpreting customary rules concerning their prerogatives. Citizens and aspiring candidates to chiefly office responded with a flood of protests and destoolment proceedings which kept administrators busy and led to periodic adjustments of stool boundaries and hierarchies. One of the most dramatic cases was the decision, in 1935, to restore Kumase hegemony over a number of neighbouring stools, in response to prolonged agitation by Kumase chiefs and their supporters. 'With the restoration of the Ashanti Confederacy in 1935 reasonably clear . . . titles to land in return for regular payments gave way to a massive Kumasi *Reconquista*', in which Kumase chiefs tried to reassert their 'customary' right to collect tribute on land which, since the British occupation, had been extensively planted in cocoa and had accordingly increased in value many times over (Dunn and Robertson, 1973: 53).

In western Nigeria, early treaties between colonial agents and Yoruba chiefs were supplanted, after 1916, by the designation of Yoruba obas as native authorities. The colonial regime also attempted to establish hierarchies of superior and subordinate chiefs, both within pre-existing Yoruba states and between them. Since Yoruba states had been engaged for much of the nineteenth century in a series of struggles over hegemony, 'tradition' offered a poor guide in demarcating these hierarchies. As in the Gold Coast, Yoruba communities regularly questioned their assigned status *vis-à-vis* their neighbours, and administrators were confronted with countless petitions from communities seeking autonomy from a neighbouring chief, or groups of people within a town or state seeking to depose a chief, in the hope of enthroning a successor who would be more favourable to their interests. During the 1930s District Officers prepared a series of 'Organisation and Re-organisation Reports' in which fresh batches of local testimony were presented in defence of preserving or redrawing boundaries and relations between communities (Nigerian National Archives, 1934–50; see also Hailey, 1957: 462).

In the settler colonies, the former demarcation of social boundaries was guided by issues of land appropriation as well as local administration. In Kenya, where administrators had to contend with the absence of 'any Chief who could command the respect accorded to the Kabaka of Uganda' or any 'ready-made organisation which could be converted into an administrative machine',<sup>3</sup> British officials appointed headmen, often on the basis of their willingness to collaborate with the colonial authorities rather than any traditional claims to power.<sup>4</sup> Local native councils were created in 1925, modelled on Kikuyu *kiama* (councils of elders), but drawn from administrative districts designated by the colonial administration and comprised of individuals selected or approved by District Officers. In practice, spheres of authority were not clearly defined, and the councils and the native tribunals (customary courts) functioned more as arenas of struggle over

control of land, revenue, jobs and influence than as guardians of Kikuyu custom (Kitching, 1980: 198; Glazier, 1985: 82 ff.).

Native reserves were not formally demarcated until 1926, largely because settlers objected to being cut off from potential access to land within them (Sorrenson, 1967: 19). Once established, however, the reserves were organised on tribal lines, thus linking land rights firmly with social identity, and provoking prolonged debate over the relative weight of 'tribal', 'family', and individual rights (Sorrenson, 1967; Sillitoe, 1962; Kenya Land Commission, 1934). Within the reserves, migration and changing economic opportunities led to new demand for access to land, which intensified debate over which communities had the right to allocate use rights to individuals.

In Northern Rhodesia, British officials waged a series of unsuccessful campaigns to control settlement patterns and shape Bemba chieftaincies to the needs of orderly administration. When agents of the British South Africa Company first moved into the new protectorate, in the late 1890s, they were favourably impressed with the apparent power of Bemba chiefs, who presided over large fortified settlements, and even worried that they might have a tendency to abuse their power. *Pax Britannica* obviated the need for such encampments, however, and people lost no time in dispersing themselves over the countryside, in order to practise their extensive system of *citemene* agriculture. Company officials were afraid the dispersal of the population would erode the authority of Bemba chiefs, making them useless as agents of Company rule. In 1907 the company banned the practice of *citemene* and forcibly rounded people up into villages, 'but the famine which followed led to a change of mind' (Hellen, 1968: 203; see also Kay, 1964). Colonial officials who succeeded the company pursued similar ends with less draconian means, but their efforts to establish a minimum size for Bemba villages were no more successful. When admonished that their authority would dwindle if they permitted their 'subjects' to scatter, Bemba chiefs blandly countered that 'the greater the number of villages, the greater the prestige of the chief' (Ranger, 1971: 27).

When indirect rule was formally established, in 1929, four out of thirty-odd Bemba chiefs were designated native authorities; the rest were relegated to subordinate status. Elsewhere in the colony, chieftaincies were created outright. In both cases, colonial restructuring provoked numerous disputes over chiefly ranking, prerogatives, jurisdictions and succession (Meebelo, 1971: 195–219). As in other colonies, efforts by the Colonial Office to implement 'national self-determination on a tribal level' resulted in African complaints about the rankings of native authorities, and British complaints about Africans' 'failure' to follow custom (Gann, 1963: 230). Native administrations were reorganised periodically, up to the eve of independence.

In short, British efforts to build stable systems of native administration on customary foundations had the effect of maintaining fluid, flexible social boundaries and structures of authority. In practice, British officials' efforts to impose fixed rules in the name of tradition (Chanock, 1985; Glazier, 1985; Ranger, 1983) served to 'institutionalise' struggle and debate over the meaning of customary rules and structures of authority—an outcome which

is reflected in their own continual readjustment of the formal institutions of native administration.

#### INDIRECT RULE AND ACCESS TO LAND: THE LIMITS OF COLONIAL CONTROL

Debate over customary land rights and the meaning of ownership was joined in the Gold Coast over a series of Land and Forestry Bills proposed by the colonial government between 1894 and 1911 (Kimble, 1963: chapter 9; Crook, 1986: 88). To create a legal basis for future government control over the allocation of land for public or private use, the Governor proposed in 1984 that all 'vacant' land be declared the property of the colonial state. A public outcry followed, in which the central argument advanced by African chiefs, merchants, lawyers and clergymen was that there was no vacant land in the colony—'all land is owned' (Kimble, 1963: 336; Crook, 1986: 88). To avoid unrest, the government dropped the Bill but, in 1897, put forward a new version, under which the state would act as 'trustee' for the African population. The Bill stipulated, further, that any farmer who developed 'vacant' stool land could, on application to the Governor, be given 'settlers' rights' of individual ownership (Kimble, 1963: 340; Asante, 1975: 33).

The 1897 Bill provoked a storm of opposition. J. Mensah Sarbah and other African lawyers and clergymen organised the Aborigines' Rights Protection Society to lobby against any measure which even appeared to threaten Africans' land rights. Though not always sympathetic to 'traditional rulers', in this case the ARPS was supported by a number of chiefs eager to appropriate a share of rising cocoa incomes in the name of customary chiefly prerogative. Led by spokesmen for the ARPS, opponents of the Bill reiterated the argument that 'all land is owned' and hence exempt from appropriation by the colonial state. When officials and judges asked, 'Owned by whom?' they received a variety of answers, but the one which proved mutually acceptable was 'by the community' (Sarbah, 1897; Hayford, 1969; Crook, 1986: 89).

The Lands Bill of 1897 was shelved indefinitely, but the debate continued. In 1910 rumours that colonial authorities planned to enact Crown Land Ordinances for the Gold Coast and southern Nigeria reawakened African suspicions that this was simply a manoeuvre to alienate their land. Public meetings were held in both colonies at which people denounced the proposed legislation (Kimble, 1963; Hayford, 1969; Berry, 1975: 120). Asked by the Governor to prepare a report on Yoruba customs, a committee of Lagosians headed by Henry Carr affirmed that 'every piece of land, cultivated or uncultivated, including forests, has an owner' (Hopkins, 1969: 85). Fearing unrest, officials in Nigeria demurred at requests for concessions. When Lever Bros. applied for a large palm oil concession in southern Nigeria in 1908 the government agreed, on condition that the company negotiated separate agreements with every community or descent group which claimed jurisdiction over any part of the land in question. Lever Bros. decided it would be too much trouble and moved their operations to the more hospitable terrain of the Congo Free State (Great Britain, 1914).

In 1912 the West African Lands Committee was convened to collect evidence on customary land tenure in West Africa, and to make recommendations for codifying and enforcing it. The committee sat for three years, collecting oral and written testimony from hundreds of witnesses. The committee's report was never published, but its findings were well known among colonial officials. Although the evidence and correspondence included statements that land sales had occurred in the Gold Coast since the 1870s, that Yoruba chiefs had no claims to land other than that belonging to their own families, etc., the committee's work appears to have strengthened the growing consensus that land was communally owned in Africa. The draft report endorsed the Yoruba chief who declared, 'I conceive that land belongs to a vast family, of which many are dead, few are living, and countless numbers are yet unborn', adding that land was 'God-given' in Africa and 'cannot be alienated' (WALC, 1916: 31-2). Quoting the testimony of E. D. Morel, R. E. Dennett and the Commissioner of Lands in Southern Nigeria, C. W. Alexander, the committee stressed the political importance of upholding 'pure native tenure'. Land tenure, they asserted, was the foundation of native rule: 'together they stand or fall' (*ibid.*: 3).

As indirect rule evolved from a successful compromise in northern Nigeria to a blanket prescription for colonial rule in all contexts, officials articulated an increasingly confident and uniform understanding of 'pure native tenure'. Chief Justice Maxwell's ruling on a Kenyan land case, in 1919, was typical: he avowed with 'absolute certainty' that 'the theory of individual ownership of land is absolutely foreign to the mind of any African until he has begun to absorb the ideas of an alien civilization' (Kenya Land Commission, 1934: 32). Occasionally official documents sounded a note of realism: a 1947 report on land tenure in Adansi (Gold Coast) concluded that, because native court judgements 'turned on questions of historical fact . . . rather than Court decisions on legal principles . . . it has not proved possible to abstract . . . any general principles of Akan land tenure' from court records (Matson, 1947, quoted in Kyerematen, 1971: 36). Such cautionary tales did not, however, stem the tide of codification of 'native law and custom'.<sup>5</sup>

By linking land 'ownership' to community membership, administrators opened a Pandora's box which ultimately undermined their own efforts at codification. As Crook (1986: 89) has pointed out, 'the irresoluble ambiguity in th[e] doctrine [of community ownership] was—which community?' and the answer depended on 'vexed questions of historical precedent and jurisdictional claims'. As we have seen, debates over chiefly jurisdiction were difficult if not impossible to resolve from oral testimony. Similarly, chieftaincy disputes and periodic reorganisation of native administrations occurred with undiminished frequency throughout the colonial period. The 'doctrine' of community ownership of land meant, in effect, that such reorganisations affected not only the conduct of government business but also the definition of property rights—as in the case of the Kumase reconquest of Ahafo lands which followed the restoration of the Asante Confederacy in 1935.

The linking through 'customary law' of land access to community mem-

bership also meant that individual farmers' efforts to negotiate access to land for purposes of cash cropping could influence issues of social identity and administrative structure. In 1913, for example, the chief of Akwapim claimed authority over parts of Akyem Abuakwa, on the grounds that farmers from Akwapim, who had migrated to Akyem Abuakwa to plant cocoa, were still his 'subjects'. The ensuing dispute was still not resolved in 1926 (Hill, 1963: 154–7). In addition, official recognition of chiefs' traditional right to allocate land to 'strangers' and collect tribute from anyone who derived anything valuable from the land opened a window of opportunity for Akan chiefs to profit from the growth of cocoa production. Disputes arose over who should be considered a 'stranger' and therefore liable to pay tribute on his or her cocoa farms; whether chiefs' traditional claim to one-third of any game, gold, or forest products derived from their territory entitled them to one-third of the proceeds from strangers' cocoa farms; and whether cocoa tribute, or 'rent' as it came to be called, should be treated as the personal income of the chief or the public revenue of the stool (Hill, 1963: 147; Austin, 1987: 262). In general, struggles over access to land provoked reinterpretations of jurisdictional boundaries and vice versa, leading in some cases to disputes which dragged on for fifty years or more (Sutton, 1984: 42; Dunn and Robertson, 1973: 225).

In western Nigeria land rights were vested in families (*idile*, lit. houses) rather than chieftaincies, but this did not isolate them from local politics or render them any less subject to debate. As in the Gold Coast, 'strangers' were expected to make annual payments (*isakole*) in exchange for the right to use land. On any given family's land, a 'stranger' could be a person from another house within the same town (Berry, 1975: 91; Lloyd, 1962: 64–5). In Ibadan some enterprising hunters familiar with the uninhabited forests surrounding the town 'showed' fellow townsmen where to plant cocoa, then claimed jurisdiction over the land and the right to collect *isakole* from the farmers to whom they had served as guides. Some accumulated hundreds of 'tenants' in this way, advancing their status within their own lineages and their claims to political prominence in the town (Jenkins, 1965; Berry, 1975: 94, 117–21).

Another example was a case in Ife in the late 1940s when an Ife family sued several tenants for back payments of *isakole*.<sup>6</sup> The tenants belonged to a group of Ife residents known as Modakekes, whose ancestors had fled to Ife from Oyo during the nineteenth-century wars, and the suit stirred old tensions between the Modakekes and the indigenes. As tension mounted, Ife chiefs and families began to insist that all Modakekes farming in Ife were 'strangers', liable to pay *isakole* to an Ife family, whether or not they had ever done so in the past. The native court, controlled by the Oni, upheld the Ifes' claim, ordering the Modakekes to pay or lose their farms (Berry, 1975: 114–15; Oyediran, 1974). As in Ahafo in 1935, social identities—based on traditions of origin or nineteenth-century political allegiances—were invoked to redefine land rights in an area where cash cropping had spread extensively.<sup>7</sup>

In Kenya debates over customary land tenure were, of course, shaped from the start by the administration's decision to bring in European settlers and provide them with land and cheap labour. A Crown Lands Ordinance

was enacted in 1902, without reference to African opinion, in order to facilitate land allocation to settlers. The earliest settlers staked claims in what is now Kiambu District, receiving English-style leasehold titles which could be bought and sold. The law stated that land appropriations were to be made 'with due regard to African interests', but in practice little effort was made to ascertain the nature of Africans' claims to land before it was alienated to settlers, or to ensure that Africans displaced by settlers received compensation (Sorrenson, 1967: 18). By 1907 a thriving market had emerged in land titles, and prices rose four- or five-fold in the next few years (Lonsdale and Berman, 1979; Kenya Land Commission, 1934: 323).

Kikuyus' resentment at being denied access to land they had used in the past for cultivation, grazing, water, etc., was intensified by the knowledge that Europeans were reaping large profits from speculative land sales, and they pressured local administrators for redress. District Officers, responsible for maintaining order in their districts at minimal cost, were anxious to mitigate African discontent. The first serious attempt to collect information on traditional Kikuyu land tenure was made by a District Officer named Beech in 1911. He amassed testimony from several hundred Kikuyu *mbari* who asserted that land appropriated by settlers had formerly belonged to them and that, in agreeing to let Europeans settle there, they had had no intention of forfeiting all future rights to the land. Their claims to compensation were largely ignored until the late 1920s, when growing demand for land in the Kikuyu reserves led both to frequent litigation in local courts and to renewed pressure on administrators to address Kikuyu grievances.

Within a few years of the beginning of European settlement in Kenya, settlers were beginning to move beyond Kiambu to the Rift Valley, where they found vast tracts of land inhabited mostly by nomadic pastoral groups such as the Maasai, who did not interfere with Europeans' appropriations of land but did not provide a usable source of labour either. Beginning in 1909, however, Kikuyu who had been displaced by European settlers, or simply wanted more land, also began to migrate into the Rift Valley. They also came as settlers—expecting to 'beg' for land in the traditional manner (*ahoi*), performing services and professing subordination to their hosts until they had established homesteads and herds of their own, then graduating to full membership of the host community (Kanogo, 1987: 26; Wambaa and King, 1975). At first, European settlers welcomed the extra labourers and gave Kikuyu migrants liberal access to land in exchange for minimal amounts of work. However, they considered the Kikuyu to be squatters or tenants, with no permanent rights to land which the settlers had acquired from the government or purchased from other Europeans.

Many Kikuyu squatters prospered during their early years in the Rift Valley; some accumulated substantial herds and established large communities of kin and followers, in a manner reminiscent of migrant cocoa farmers in West Africa (Kanogo, 1987: 17–27; Wambaa and King, 1975). Just before and after World War I, and again in the late 1920s, however, when European settlers' profits were being squeezed by rising land values, fluctuating market conditions and competition from successful squatters, settlers put pressure on the colonial administration to tighten restrictions

on squatters' assets and conditions of service. In 1929 the government carried out a 'sweep' (*kifagio*) of squatters' livestock, slaughtering thousands of animals and offering little or no compensation to their owners.<sup>8</sup> In 1937 the government enacted a new Resident Native Labourers Ordinance which empowered settlers to eliminate squatters' herds and demand up to 270 days' labour annually from Africans resident on their land.

Beginning in 1929, some squatters left the 'White Highlands', hoping to escape further official and settler inroads into their assets and incomes. Some returned to the Kikuyu reserves; others sought access to land in reserves earmarked for other 'tribes'. Both forms of migration led to increased population density, tension over land access, and debate over the interpretation of customary land rights within the reserves. Colonial officials acknowledged that land within the Kikuyu reserve was controlled by individual *mbari*, and even recognised that some returned squatters were unable to get land from their *mbari*. Nonetheless, the government accepted the recommendation of the Kenya Land Commission that 'legitimate' Kikuyu claims for compensation could be satisfied by adding blocks of land to the 'tribal' reserve rather than to dispossessed individuals or *mbari*. In short, government policies towards Kikuyu land claims incorporated multiple interpretations of 'customary' land tenure, and served to exacerbate tension and litigation rather than resolve Kikuyu grievances.

In Sorrenson's trenchant phrasing, 'the "final solution" of the Kikuyu-European land conflict was seen in tribal terms' (1967: 24). Administrators did indeed cling to their belief in the primacy of tribes and tribal tenure, but the 'solution' turned out to be anything but final. Within a few years the colonial government decided to open up additional blocks of land to displaced squatters, but to exercise close control over the way they used the land, in order to forestall problems of overgrazing and soil erosion, which were already serious in some of the African reserves. The controls greatly angered Kikuyu settlers (some of them displaced for the third or fourth time), as did the government's refusal to grant them full *githaka* rights to land allocated them in the settlements. The resulting tensions contributed directly to the Mau Mau uprising of the early 1950s (Throup, 1988; Kanogo, 1987; Sorrenson, 1967; Ochieng and Janmohamed, 1977).

#### CONCLUSION

Colonial efforts to exercise hegemony on a shoestring did not block the commercialisation of agricultural production and resource mobilisation in Africa but did shape the way in which rights of access to land and labour were defined and transacted, and the way people used resources to establish and defend rights of access. Under indirect rule, colonial regimes incorporated on-going struggles over power and social identity into the structure of colonial administration, and elicited conflicting testimonies from their African subjects concerning the meaning of 'native law and custom'. As a result, property rights and labour relations were neither transformed according to the English model nor frozen in anachronistic 'communal' forms, but instead became subjects of perpetual contest. Under indirect rule, British officials sought to make rights of access contingent on people's

social identity. At the same time, Africans sought to negotiate new social identities in order to take advantage of commercial or political opportunities. The combined result was an on-going debate about how rules of access were linked to social identity, and vice versa.

My conclusions differ from those of scholars who have argued that, by codifying customary law and using fixed rules to adjudicate disputes, colonial governments incorporated custom, transforming it from a flexible idiom of dispute to an instrument of authoritarian rule. According to this view, power was transferred from traditional communities to appointed chiefs and their literate clerks, and fixed rules, based on British inventions of African tradition, replaced the flexible, negotiable arrangements of the past. In turn 'legalization led to a freezing of rural status and stratification, henceforth defined and not negotiated' (Chanock, 1985: 47; MacGaffey, 1970; Snyder, 1981).<sup>9</sup>

The literature on customary law and dispute settlement does not entirely support this interpretation. Writing of Zambia, Chanock himself points out that the effects of commercialisation on social relations were contradictory. People ignored traditional obligations to kin in order to save money for other uses, and at the same time intensified the exploitation of family labour in order to expand production for the market. '[C]onflicts about what was and what was not customary were intense' (Chanock, 1985: 236). Such conflict underlay many of the cases heard in customary courts, where they were argued from multiple perspectives. In the courts of Bemba chiefs, Richards observed in the mid-1930s, 'the composition of the court varied according to the issue discussed' (Richards, 1971: 111). Infractions of regulations imposed by the colonial regime (such as sanitation laws or tax liabilities) were frequently heard only by the chief and court clerk, but disputes over land, marriage, chiefly succession or protocol attracted large, varying groups of participants, who debated each case at length (*ibid.*: 112–3, 116–20; see also Perham, 1936: 21–4).

Forty years later, Canter (1978) studied disputing processes in a Lenje chieftaincy near Lusaka. He found that, while local court proceedings were brief, formal, and authoritarian, enforcement of court rulings was left to informal negotiations between the parties involved. Moreover, a large number of disputes were heard in family or village moots, where attendance was open and there were no limits to the number of issues which might be raised, the number of people who might speak, or the length of time they might discuss a case. From observations in a rural district near Chipata, Van Donge (1985: 69) concluded that 'life in Mwase Lundazi was not so much shaped by "development policies" and their intended and unintended consequences as by arbitration sessions, which were chaired by the chief, in which land and headmanships were discussed and by local court sittings which mostly dealt with disputes between co-wives' (see also Bond, 1987).

In her study of customary law in Ada, Sutton (1984: 47 ff.) argues that, throughout the colonial period, there was also confusion over which laws applied in what contexts. 'It was not a question merely of "two systems of jurisprudence . . ."—African and English—but of English law and many African systems' (*Ibid.*: 47). It was unclear, for example, whether a case on appeal from a native to a superior court was to be heard according to

English or customary law and, if the latter, whether English judges were qualified to hear it. There were also endless possibilities for reopening cases on the grounds that previous rulings had misinterpreted customary law, or for moving cases back and forth between courts and informal moots for the same reason (see also Dunn and Robertson, 1973).

The continual renegotiation of rights of access and control which occurred under indirect rule affected both the significance of market transactions and farmers' strategies of investment. Much of the literature on the nature of African property rights and their implications for economic development postulates a universal dichotomy between individual and communal rights: then deduces behaviour from the supposed logic of whichever system appears, from available evidence, to have gained the upper hand in a particular colonial context (Feder and Noronha, 1987; cf. Collier, 1983). In fact, individual and community rights frequently coexisted, and more than one community might claim rights to a particular resource. Structures of access to productive resources involved 'bundles of rights' (Gluckman, 1965) and bundles of right-holders. The way in which a particular resource was managed depended on relations among right-holders as well as on the jural content of the rights they held.

Under indirect rule, membership of a community came to be considered the primary basis for claiming rights to productive resources. Hence the delineation and exercise of property rights became enmeshed in conflicting testimony over community boundaries and structures. Indirect rule affected the management of resources not by preserving communal property rights, with their attendant problem of 'free riders' (people who misuse resources because they cannot be held accountable for conserving them), but by assigning property rights to social groups whose structures were subject to perennial contest.

The fact that land rights were subject to an on-going debate over the interpretation and application of 'custom' helps to explain why agricultural surplus was often channelled into ceremonies or redistributed among farmers' kin, clients and/or patrons.<sup>10</sup> As we have seen, farmers' ability to gain or retain access to land for purposes of cultivation depended as much on their relationships with other people as on the specific terms under which they claimed land rights. Consequently, farmers often found it advisable to invest part of any available surplus in the means of contesting access to resources, leaving less for investment in directly productive capital. Such investments included not only the actual costs of litigation but also marriage payments, funeral ceremonies, loans and various forms of patronage. These kinds of outlay served to reinforce or advance people's standing in social networks, or helped to promote interpretations of custom which might strengthen their claims to productive resources. People invested in the means of access to productive resources—including social identities or forms of status through which they could claim rights to productive resources—as well as in the means of production *per se*.

#### NOTES

<sup>1</sup> This article is part of a larger study of changing conditions of access to productive resources and their implications for patterns of resource use in African agriculture. The study

is built on a comparison of agrarian change in one rural area in each of four anglophone countries, from the late nineteenth century to the present. The case study areas were selected to represent a range of variations in both agro-ecological conditions and political-economic history. Among other things, the cases represent the major variant patterns of European and African interest in land during the colonial period. They include two agricultural economies on the 'traders' frontier' in West Africa—namely, the cocoa-growing areas of central Ghana and south-western Nigeria—and two in settler colonies—the predominantly Kikuyu areas of Kenya's Central Province, and the ecologically and commercially marginal agrarian systems of north-eastern Zambia. In the Kikuyu reserve in Kenya, African farmers expanded agricultural production for the market throughout the colonial period, despite losing substantial amounts of land to European settlers. In north-eastern Zambia, by contrast, there were only a handful of European settlers and almost no agricultural commercialisation occurred until after independence.

<sup>2</sup> Ranger (1983) points out that some groups of people who were oppressed or subordinated as a result of the invention of tradition resisted, but implies that the outcome usually favoured those groups (such as chiefs, elders, men) who claimed superiority under the rubric of tradition—rather than remaining fluid or indeterminate.

<sup>3</sup> Hailey (1957: 446) gives the source of this statement as the *Report of the Commission appointed to look into the Financial and Economic Position . . .* (Nairobi, 1948).

<sup>4</sup> Tignor (1976), Kenya Land Commission (1934).

<sup>5</sup> For examples of efforts to codify customary law in western Nigeria see Ward Price (1939), Elias (1951), Rowling (1952, 1956), Lloyd (1962). For the Gold Coast, Asante (1975), Kyerematen (1971).

<sup>6</sup> Before the spread of cocoa cultivation *isakole* was a gift of produce given by a 'stranger' to the owners of the land he farmed on. As cocoa raised cash returns to farming, 'tenant' farmers were expected to pay a certain amount of cocoa, or its equivalent in cash, each year. The amounts were not insignificant—1 cwt per annum was common—but neither were they exorbitant. Moreover, a land-holding family usually collected the same amount from each tenant regardless of the size of his farm. In this respect *isakole* was closer to a form of tribute than a pure economic rent (Berry, 1975: 104–11).

<sup>7</sup> In both Ghana and Nigeria cocoa farms were brought and sold and, in Ghana, farmers also purchased land, often well in advance of their ability to bring it under cultivation (Hill, 1963; Berry, 1975, 100–4; Galletti *et al.*, 1956, 138 ff.; Lloyd, 1962, 128–9). Yet the meaning of land and farm sales was open to debate. In the Gold Coast the High Court ruled, in 1907, that a farm pledged as security for a loan could be attached and sold if the borrower defaulted (Asante, 1975: 41–2). A decade later, however, the West Africa Lands Committee criticised this ruling as contrary to 'pure native tenure'. By the 1920s the courts were insisting that customary tenure precluded individual ownership (Asante, 1975: 45 ff.). In Nigeria sales of cocoa farms did not affect landholders' continuing right to the land on which they stood. Farm buyers still owed *isakole* to the owners of the land and, in areas such as Ibadan, where owners and tenants came from the same town, sales of trees were not recognised in the customary courts for fear they would undermine the landholder's claim (Berry, 1975: 112–13). In both Ghana and Nigeria all cocoa farms, including purchased ones, tended to become family property in time (Lloyd, 1962: 295–6, 305–7; Hill, 1963: 127; Berry, 1975: 102; Okali, 1983: 115 ff.).

<sup>8</sup> Colonial officials rationalised the slaughter of squatters' stock as necessary to prevent overgrazing and deterioration of pasture land. The rise of conservationist thinking among colonial officials in the 1930s will be discussed in a forthcoming paper.

<sup>9</sup> Kitching (1980) points out the irrelevance of European concepts of ownership for understanding precolonial Kikuyu practice, but argues that 'settler colonialism' effected a transition 'from simultaneous to exclusive land use' (p. 286). I am arguing that simultaneous and overlapping claims on land and labour persisted under colonial rule, and that the nature of property rights was not transformed but left unresolved.

<sup>10</sup> It is beyond the scope of this article to describe in detail the effects of contested rights in land on patterns of land use and agricultural investment. I have discussed social investments out of agricultural surplus elsewhere (Berry, 1985, 1989) and will also treat them in more detail in a forthcoming study.

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### *Abstract*

In their efforts to govern African colonies through traditional rulers and customary law, British officials founded colonial administration on contested terrain. By committing themselves to uphold 'native law and custom' colonial officials linked the definition of Africans' legal rights with their social identities, which were, in turn, subject to conflicting interpretations. As agricultural growth and commercialisation intensified demand for land, competition for access to land and control over agricultural income gave rise to disputes over customary jurisdictions and structures of authority. Using evidence from colonial Nigeria, the Gold Coast, Kenya and Northern Rhodesia, this article argues that, under indirect rule, the commercialisation of transactions in rights to rural land was accompanied by, and served to promote, unresolved debate over their meaning.

### *Résumé*

En s'efforçant de gouverner les colonies africaines à travers les dirigeants traditionnels et le droit en usage, les représentants officiels britanniques ont fondé l'administration coloniale sur un terrain contentieux. En choisissant de maintenir 'le droit et la coutume indigènes', les représentants coloniaux ont lié la définition des droits légaux des africains à leurs identités sociales, qui à leur tour, étaient sujettes à des interprétations contradictoires. Comme le développement de l'agriculture et de la commercialisation ont intensifié la demande d'acquisition de terres, la concurrence pour accéder à la propriété et contrôler le revenu agricole ont engendré des controverses sur les juridictions usuelles et les structures de l'autorité. En prenant les exemples des colonies du Nigéria, de la Côte-d'Or, du Kenya et de la Rhodésie du Nord, cet article soutient que sous une représentation indirecte, la commercialisation des opérations dans les droits fonciers ruraux a contribué à engendrer un débat non résolu sur leur sens.