

LAND, STATE-BUILDING, AND  
POLITICAL AUTHORITY IN AFRICA

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# LAND, STATE-BUILDING, AND POLITICAL AUTHORITY IN AFRICA

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This dissertation examines the effect of customary institutions on the state's control over property rights, in an era of booming demand for African agricultural land. Through the cases of Zambia and Senegal, the dissertation argues that this modern state-building process is constrained and facilitated differently according to variation in pre-colonial organization. Two key processes for building the state's authority over land are examined. First, I demonstrate that historically hierarchical customary authorities are more likely to resist large-scale land acquisitions by the state and multinational corporations. Second, I show that small-scale farmers strategically title their land in response to their status within the customary regime. Analysis of original geo-coded survey data, case studies, archival research, and a database of land titles compiled over 18 months of fieldwork demonstrate how the organization of customary institutions determines the development of state property rights.

## BIOGRAPHICAL SKETCH

Lauren Honig received her bachelor's degree in Political Science and International Studies from Northwestern University in 2007. She was a Peace Corps Volunteer in Burkina Faso from 2007-2009. In 2010, she began her graduate education in the Department of Government at Cornell. She will be a postdoctoral research fellow at the Kellogg Institute for International Studies at the University of Notre Dame during the academic year 2016-2017. Starting in the fall of 2017, she will be Assistant Professor of Political Science at Boston College.

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# CHAPTER 1

## Land, State-Building, and Political Authority

### 1.1 Introduction

Control over territory and the enforcement of property rights are central to our definitions of the state. However, across Sub-Saharan Africa (henceforth “Africa”) and in much of the post-colonial world, state property rights mix, conflict, and overlap with customary property rights institutions. With less than 10% of land in Africa registered by the state (Alden Wily 2011, 15), chiefs, marabouts, kings, and other customary authorities (CAs) maintain a great deal of power over the provision of property rights. In such circumstances it is not the state, but a customary authority that grants individuals access to land. Within any given country, some citizens appeal to the state and others to non-state authorities for access to their land, depending on where they live. For example, in Burkina Faso, citizens in the far West are more likely to access land through a customary authority than those in the East (Afrobarometer 2008). In some villages in Mozambique, customary “régulos” allocate land, in others, this is the role of the party secretary (Pitcher 2002; Sousa Santos 2006). Neighbors in Central Uganda can derive their land rights through customary authorities, landlords, or state land titles (Place and Otsuka 2002). The phenomenon of citizens of the same country relying on different authorities for the allocation and protection of property rights is widespread across Africa. This project explores why subnational variation in the state’s control over land continues and how historical customary institutions can have long-term impacts on where land titles develop.

This partial state control over property rights is a challenge for states struggling to exert

authority within boundaries inherited from colonization. While African governments have nearly universally asserted that the state “owns,” “manages,” “guards,” or “administers” all of the land in the country,<sup>1</sup> customary control of land remains in practice. This presents a challenge to the state’s ability to translate state preferences into actions (Geddes 1994), its monopoly on political authority within its territorial boundaries (Weber 1918; Tilly 1992), and its ability to tax land. The state extends its authority over land by converting land from customary control to state property rights, such as title or leasehold (Sikor and Lund 2009). This is a modern state-building process that resolves a state’s struggles to penetrate the rural periphery and to neutralize competing non-state authorities.

Within African countries, *de facto* authority over property rights varies sub-nationally and remains unsettled.<sup>2</sup> While scholars have recognized this pattern of partial and mixed state control of land (Hydén 1980; Herbst 2000; Boone 2003; Baldwin 2014), they have not addressed how the independent agency of customary authority impacts the state’s control over property rights. The dominant explanations for how state land titles develop focus on induced innovations in property rights that result from increases in population density and land values (Boserup 1965; North and Thomas 1973; Ensminger 1997). Within Africa, land titling is believed to be the result of an evolutionary process in which land titles slowly replace customary property rights that have outgrown their function (Platteau 2000b). However, land is a political resource and customary institutions vary in their ability to mobilize to maintain control of it.

This dissertation shows that the development of state land titles cannot be understood

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<sup>1</sup> For example, the state is “manager,” “guardian,” or “administrator” of all land in Cote d’Ivoire, Senegal, Mali, Burkina Faso, Madagascar, Cameroon, Ghana. It is the “owner” in Sudan, Gabon, Guinea, Mauritania, and Democratic Republic of Congo. In Nigeria and South Africa (outside of KwaZulu Natal) land is “vested” in the state. In Malawi, Zambia and Namibia, it is “vested” in the president or government. (Diaw 2005); Alden Wily. 2015. “Estimating National Percentages of Indigenous and Community Lands.” LandMark: The Global Platform of Indigenous and Community Lands. Available at: [www.landmarkmap.org](http://www.landmarkmap.org).

<sup>2</sup> None of the 18 Afrobarometer countries have 75% or above agreement on who is responsible for administering land (Afrobarometer 2008).

without considering the influence of different types of customary authority. Through the cases of Zambia and Senegal, I demonstrate that CAs vary systematically in how they respond to land titling. While demand for land titles may be high, customary institutions affect the supply of state property rights by making it easier or harder to access land in their domains. Through resistance to the conversion of land from customary to state property rights, CAs can shape where state property rights institutions develop. The relative differences in the ability of customary authorities to mobilize against land conversions are rooted in the historical organization of the customary institution—whether it was a pre-colonial state or not. Examining historical institutional endowments identifies how variation between customary institutions that is independent of the state can contribute to where land titles develop today. This provides evidence of the continuing effect of historical political institutions on the extension of state authority over land and the persistence of customary authority in shaping the relationship between citizen and state.

### **1.1.1 The Salience of Land Politics**

The stakes of who controls land and why this changes are particularly high in the African context, where 65% of the population is engaged in agriculture.<sup>3</sup> There, access to land is critical to both the state's economy and the daily lives of African citizens. Further, the number of people dependent on access to this limited resource will continue to grow in the foreseeable future. The rural populations who subsist off of land and family labor have the highest birth rates, yet there is limited evidence of increasing population densities provoking increases in sustainable

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<sup>3</sup> 65% of the labor force in Sub-Saharan Africa is engaged in agriculture. World Bank. 2014. "Human capital for agriculture in Africa." *Science, Technology, and Skills for Africa's Development*. Washington, DC: World Bank Group. In Zambia and Senegal, 63% of the population and 50% of all households rely on agriculture, respectively. Central Statistics Office. 2012. "2010 Census of Population and Housing: National Analytical Report." Lusaka, Zambia: Government of the Republic of Zambia; Agence Nationale de la Statistique et de la Démographie (ANSD). 2014. "Rapport Definitif-RGPHAE 2013." Dakar, Sénégal: Gouvernement du Sénégal, 151.

agricultural technologies in Africa (Headey and Jayne 2014). With Africa's population expected to double within 35 years,<sup>4</sup> and rural population growth fast outpacing urbanization and the growth of non-agricultural employment, competition for land will continue to intensify.

Land has long been a central political issue in Africa. Control of land plays a role in most conflicts in the region. In recent years land was a major grievance in Côte d'Ivoire's civil war (Chauveau 2000; Marshall-Fratani 2006) and Kenya's 2008 electoral violence (Klaus and Mitchell 2015). Disputes between militias over land have contributed to the protracted conflict in the Democratic Republic of Congo (Autesserre 2010). The 1994 genocide in Rwanda was exacerbated by extreme land scarcity and its perpetrators were promised their victims' land (Prunier 1995; André and Platteau 1998; Bigagaza, Abong, and Mukarubuga 2002). Small-scale conflicts over land are pervasive across the continent, including migrant-native disputes and battles between farmers and pastoralists. The types of property rights in practice can shape whether land conflicts erupt (Deininger and Castagnini 2006; Bates 2008) and what form the violence takes (Boone 2014). The high saliency of land in conflicts is due, in part, to its spiritual and cultural value, in addition to its importance as a material asset (see, e.g., Shipton 2009). Debates over who has the right to use and control land are amplified as land becomes a more scarce and valuable economic resource.

Local pressure on agricultural land in Africa is magnified by recent trends in global and national land markets. States have new incentives to consolidate their control over property rights in the current era of booming global investments in African land. Historically, the high costs of surveying land relative to potential revenue slowed this process. However, concerns about national food security, volatile food prices, and interest in new arenas for investment have provoked a global surge in demand for land. In 2009 alone, there were an estimated 39.7 million

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<sup>4</sup> UNICEF. 2014. "Generation 2030/AFRICA." UNICEF, August.

hectares (ha) of investment deals in African land; this contrasts with an average of 1.8 million ha per year from 1961-2007 (Deininger and Byerlee 2011, 9).

This increase in large land deals has been characterized as a new “global land grab,” prompting important debates within the policy and academic communities (Borras Jr et al. 2011; Cotula 2013; Boone 2015). Cases of states negotiating massive land developments have gained international attention. This includes the failed 1.3 million ha lease of primarily customary land in Madagascar in 2009 that contributed to the fall of the regime. In Sudan, Gulf Arab states have been major investors in recent hydro-agricultural that involved the forced displacement of tens of thousands of citizens (Verhoeven 2013). In Liberia, the Nobel Peace Prize winning President Ellen Johnson Sirleaf was denounced in the press for having allocated a third of the country’s land to international investors between 2006 and 2011, much of it for biofuel production.<sup>5</sup> Such investments in land are promoted by, channeled through, and defended by the state as a means of diversifying the national economy and attracting foreign direct investment. While large commercial land deals and state farms are not new (Alden Wily 2013), they have increased rapidly across the continent and the developing world. The current land rush ushers a fundamental transition in the value of African land, as land becomes scarce and potential investors abundant (Collier and Venables 2012, 3). This serves to both accelerate the establishment of state control over land and make the process more contentious.

The spiking global and domestic demand for African land has reinvigorated debates on land titling and decentralized natural resource control. In a widely cited argument, De Soto (2000) proposes that the absence of land titling is the source of under-development in the global south. The World Bank, Millennium Challenge Corporation, and international development

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<sup>5</sup> Siakor, Silas Kpanan’ayoung and Rachel S. Knight. 2012. “A Nobel Laureate’s Problem at Home.” *New York Times*, Jan 20.

organizations implement land titling campaigns in hopes that land titles will prompt investment by increasing tenure security (Deininger and Chamorro 2004; Feder and Noronha 1987), open credit markets (De Soto 2000), make land access less discriminatory, and generate a tax base for weak states (Hanstad 1998). However, the empirical support for the developmental benefits of land titling has so far been limited (Migot-Adholla et al. 1991; Firmin-Sellers and Sellers 1999; Jacoby and Minten 2007).

Many scholars and practitioners have identified decentralized and community control over natural resources as an alternative to land titling (Runge 1986; Wade 1987; Bruce and Knox 2009). This approach often relies on extensions of the scholarship on Common Pool Resources (Ostrom 1990). The argument for decentralization is that it promotes local accountability and adaptable resource use (Meinzen-Dick, Di Gregorio, and Dohrn 2008). However, this trend of “celebrating the local” rests on the assumption that local natural resource management is inherently more efficient and equitable than state control (Herring 1998; 2002). In practice, it is the structure of local institutions that determines whether the social benefits of decentralized natural resource management are realized (Ribot 1999; F. Nelson and Agrawal 2008; Mohan and Stokke 2000).

The transfer of political authority is at the heart of these struggles over land. This dissertation contributes to the existing debates on land grabbing, resource conflicts, land titling, and decentralization by studying the effect of customary political institutions on how local property rights develop. While similar questions related to natural resource control resonate across the developing world, this project examines these issues through the cases of Zambia and Senegal. The next section introduces the concepts of customary land and customary authority. This is followed by the theoretical foundation of this dissertation. I first establish the framework

of land titling as a state-building project. This is followed by a brief discussion of existing scholarly approaches to land titling. I then present the novel theoretical approach for this dissertation by proposing two ways that customary institutions can overcome individual incentives for land titling to constrain the development of state property rights. Section 1.4 explains my approach to data collection and analysis. The chapter concludes with a summary of the dissertation.

### **1.1.2 Defining Customary Land**

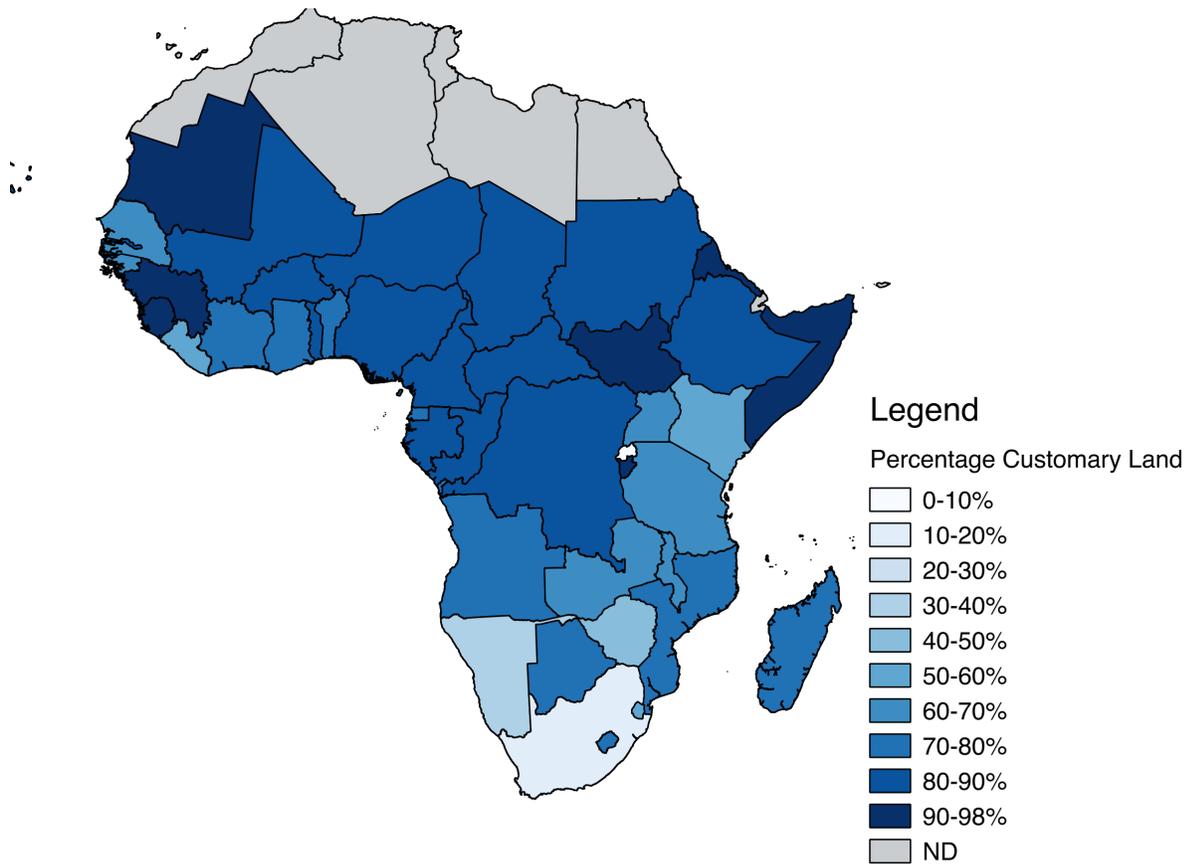
Customary land is land that is controlled by communities. There, land ownership derives from a diverse range of local, non-state institutions. The defining feature of customary land is that it is outside of direct state control. State controlled land includes areas registered to the state such as national parks, and land under state property rights, including titles, leases, and permits of occupation. Customary land, by contrast, features property rights that are allocated and protected by non-state authorities according to customary norms. These authorities can include community councils, village-level chiefs, and traditional authorities responsible for entire ethnic groups.

As I do here, state constitutions and scholars alike often define customary land as areas that lack statutory property rights or other forms of direct state control (Colin and Woodhouse 2010, 3). However, while customary land tenure systems are complex and often defy codification, they share a procedural logic that favors negotiability and social networks (Chauveau 1998). Land on which rights to access are allocated according to local norms, is a feature of *every* country in Africa. This type of land is called “Tribal Land” in Botswana, “Communal Land” in South Africa, “Terroirs” in Burkina Faso, “Community Land” in Benin, and “National Domain” or unregistered land (*non-immatriculée*) in Mali and Senegal. In countries such as Zambia and Ghana, “Customary Land” is the legal designation of such land.

Across the range of categories and local institutions that comprise customary land is the common thread that customary norms and not statutory titles allocate access to land. As this dissertation shows, the amount of customary land is not fixed, and decreases with each new land title. However, customary land remains the dominant system of land access in Africa today.

Figure 1 provides the most recent data on the percentage of customary land per country.

**Figure 1: Percentage Customary Land Per Country in 2015<sup>6</sup>**



The result of dual, mixed, and unsettled rules for accessing land is a property rights regime characterized by institutional pluralism.<sup>7</sup> Within each of the countries on the map, some citizens apply to the state’s property rights institutions while others apply to those of a customary

<sup>6</sup> Wily. “Estimating National Percentages of Indigenous and Community Lands.”  
<sup>7</sup> See, e.g., O. R. Young (2002); C. Toulmin et al. (2000, 2); Meinzen-Dick and Pradhan (2002).

authority. This same dynamic occurs within villages; individuals with titles and those with lineage-based rights may be neighbors. In this project, “institutional pluralism” refers to situations in which citizens may access land through multiple, non-hierarchical forms of property rights institutions; under institutional pluralism the authority to allocate property rights is not settled. This creates opportunities for forum shopping (von Benda-Beckmann 1981), allowing citizens to enter or exit state institutions to obtain access to property rights. While institutional pluralism may benefit rural populations who can invest in multiple systems to protect their property rights (Berry 1993), it undermines the state’s monopoly on authority over property rights.

### **1.1.3 Defining Customary Authority**

Customary authorities are local elites who derive their authority from tradition, culture, spirituality, or shared myths of origin (Logan 2009, 104). These are the “traditional authorities” of Weber’s classic formulation, in contrast to rational-legal authorities (Weber [1922] 1958). Many modern customary authorities have roots in pre-colonial political organizations, including pre-colonial kingdoms and clans. Spirituality and ritual are often tightly linked with political power; the marabouts of Senegal are notable in their use of Islam, while the religious elements of other customary authorities are more often categorized as animism. Another commonality across many types of customary authority is their hereditary claim to power (Logan 2009).

Customary authorities hold a wide range of roles; their relationships with the African state vary across time and place. In different contexts, they have been characterized as clientalistic patrons (Baldwin 2010; Von Trotha 1996), agents of the state (van Rouveroy van Nieuwaal 1999; Ribot 1999; Lund 2006), civil society actors (Englebert 2002, 15), and popular representatives of rural populations (Bratton, Mattes, and Gyimah-Boadi 2005; Fanthorpe 2006;

Logan 2013). They navigate between collaborating with the state and challenging its consolidation by maintaining autonomous power. At independence, in a wave of socialist and nationalist reforms, many African states passed laws to abolish customary authority. More recently, African governments have embraced and provided greater formal rights to customary authorities (Englebert 2002; Ubink 2008). Today, some CAs are recognized by the state, such as Zambia's chiefs, while others retain only de facto authority. Despite the state's attempts to coopt and undermine customary authority, they continue to be an important part of the daily lives of African citizens. Citizens value customary authorities as guardians of collective identity and traditions. The majority of African citizens surveyed within 19 Afrobarometer countries trust their customary authorities and would like to see their influence *increase* (Logan 2013).

The two major functions of customary authority in Africa are conflict resolution and land management. The rules and norms that customary authorities rely upon are dynamic and regularly reinterpreted within their context. Customary law should be understood not as a static set of rules but as decisions made with reference to shared social values for the group or "customary principles" (Lavigne Delville 2000, 99). For example, while the protection of lineage-based rights to a plot of land has largely been consistent over time and across many customary institutions, customary norms for practices such as land fallowing have changed with increased population densities. Elsewhere, customary norms are changing in favor of increased tenure rights for women (Kevane and Gray 1999). The resilience of customary land institutions is in part due to their ability to adapt when faced with changing market conditions and state laws (Chauveau 1998, 71).

## **1.2 Theoretical Context**

### **1.2.1 Land Titling as State-Building**

Converting land from customary to state property rights is an act of modern state-building. By registering or titling land, the state extends its authority over land and populations previously subject to non-state authorities. Establishing a monopoly on authority (Weber 1918) and replacing traditional authority with national political authority (Huntington 1968, 34) are understood to be fundamental to modern statehood. While European states established territorial boundaries and a monopoly of authority through a long process of war and extraction (Tilly 1992), states across Africa and much of the developing world have inherited boundaries. For these states, the extension of its authority within boundaries determined under colonial rule has been particularly challenging. Scholars attribute this to the international community's automatic recognition of juridical statehood, which slowed the development of state institutions (Englebert 2009, Jackson and Rosberg 1982). Furthermore, in Africa, the process of extending the state from core to periphery has historically been constrained by difficult geography, low population densities, and limited state capacity (Herbst 2000). As a result, there is a yet "unresolved political struggle" of state elites to extend state authority over their populations (Bratton 1994, 231).

Land titling resolves two fundamental challenges to developing states—extending state authority to peripheral areas and replacing alternatives to the rule of state law. The spatial disjunctures in the state's authority within Africa are well established. Scholars argue that the authority of the state in the everyday life of citizens varies between center and periphery (Herbst 2000) and urban and rural (Bierschenk and Olivier de Sardan 1997; Bates 1981; Hydén 1980; Mamdani 1996). The rule of state law is also uneven in African states. It can be undermined by corruption (Olivier de Sardan 1999) and powerful criminal networks (Reno 1999) or challenged by moral authorities, such as the debates over family codes (Bleck and Van de Walle 2011; Villalón 2010). As Joireman masterfully demonstrates, the pervasiveness of plural systems for

the enforcement of property rights in modern African states is indicative of the weakness of the rule of state law. She finds that the state's "monopoly on property rights enforcement" does not extend from core to periphery, but instead reflects local institutions (Joireman 2011, 14). These seminal works have established the persistence of the uneven reach of the state.

The literature on modern state-building provides two independent solutions to the challenges of extending authority from core to periphery and establishing the rule of state law: infrastructure and security. Developing infrastructure, such as schools and roads, increases the visibility of the state in the citizens' lives. Such state-building through the expansion of infrastructure or "infrastructural power" strengthens the exchange between state and citizen (Mann 1984, see also: Soifer 2008). This approach to extending the territorial reach of the state through infrastructure has informed a literature that relies on roads and railways as a measure of state-presence (Centeno 2002; Herbst 2000). In contrast to the extension of state presence within peripheral or marginalized geographic zones, the growth of military power builds the state by enforcing the rule of state law. This is the "building armies mechanism" of state-building (Taylor and Botea 2008). Expanding the state's coercive abilities neutralizes alternative authorities and increases the political authority of the state by sheer force. While infrastructure increases the state's presence in peripheral rural areas and security neutralizes challenges to the rule of state law, only land titling addresses both tasks of contemporary state-building.

Extending state property rights creates a monopoly on authority over land allocation and establishes direct links with citizens who had previously relied on customary authority for property rights protections. This builds the state's rule of law and integrates the rural periphery into state institutions. In doing so, land titling increases state presence in the every day life of citizens (Sikor and Lund 2009). Registering customary land in the state's land titling system

makes populations and their most important factor of production “legible” to the state (Scott 1998). It converts a regime of institutional pluralism in property rights to a unified state system, conforming the *de facto* property rights institutions to the *de jure* laws of the state. Further, extending the state’s system of property rights builds state revenue by making land taxable, facilitating domestic and foreign agricultural investment, and making land easily accessible for the state’s own development projects. While most literature on land titling focuses on its economic impacts, replacing customary with state property rights has long-term effects on the authority of the state. For developing states, it is a critical means of state-building, or the “attempt to enhance the capacity to rule” (Spruyt 2002, 133).

In contrast to literature that suggests an oppositional relationship between markets and states, whereby growing markets infringe upon or replace the state’s authority, here the state-building project is *through* the extension of land markets. Titling is a response to demand for land, which facilitates land markets and the state’s authority. As the land titling process replaces customary property rights and commoditizes the land, community resistance to this can be understood as a contemporary example of Polanyi’s “double movement” (1944).

There are two main processes for replacing customary property rights with state land titles. First is through large-scale land deals. The creation of these large new land titles, often for commercial investments or state projects, transfers major portions of land into the state domain. The second key process is the mass titling of smallholder farms. While these titles are far smaller than commercial agricultural investments, their sheer quantity makes them an important driver of the development of state control of land. This dissertation examines both the elite and smallholder processes of state-building through land titling.

The arguments and data presented thus far indicate that customary control of land and

spatial variation in the state's authority are persistent across Africa. Existing scholarship supports the contention that land titling is a process that builds the state's authority. However, this literature cannot explain why land titling proceeds at different rates within the country. Why do commercial agricultural investments cluster in some regions and not others? How does the local political context affect which smallholders title their land? To answer these questions, I turn to the literature on the development of land titles.

### **1.2.2 Induced Institutional Change and Evolutionary Theories of Land Titling**

The dominant explanations for the shift from customary to state property rights focus on the value of and demand for land. Rising land values increase competition, provoking individuals to seek statutory property rights. At higher land values, there are greater incentives to shift to property rights institutions that protect individual ownership of the resource. This explanation for why land titles develop in some areas and not others is based on the insight from economic institutionalism that changes in the value of factors of production "induce institutional change" (Ahmad 1966; North and Thomas 1973; Grabowski 1988). This approach to land titling highlights the spontaneous, "incremental," and evolutionary nature of institutional change propelled by individual choice (North 1990). Boserup's (1965) work on population growth is the foundation for most modern studies of land titling. She argues that increasing population densities in agricultural communities prompt technological innovations, including the shift towards private property rights derived from state authority. Other formulations of the induced institutional innovation approach highlight a larger set of factors that can increase the value of land, such as the commercialization of crops and transportation networks (Deininger and Feder 2001). While the causes of increased land values may vary, the logic of this approach is that individualized state property rights develop first in areas with the highest demand for land.

Platteau's (1996, 2000b) Evolutionary Theory of Land Rights (ETLR) is an influential version of the induced institutional change approach that is often applied to African cases. His analysis focuses on the transaction costs of obtaining titles for populations living on customary land. When land is abundant and conflicts between neighbors are infrequent, the costs of titling are high relative to any benefit. However, this calculation shifts as population density and the commercialization of agriculture increases. Then, farmers should turn to the state for protection of individual property rights, in the form of land titles. Customary property rights institutions should outgrow their function as land values increase, provoking demand for state property rights. Taken to its full extension, land rights are slowly evolving towards complete coverage by state institutions. Titles should develop first on the highest value land and last in areas where there is the least demand for the land.

### **1.2.3 Customary Authority and the Modern Manifestations of Pre-Colonial Hierarchy**

However, as Boone (2003) demonstrates in her seminal work on African state-building, these property relations must be understood within local political contexts. Sub-national variation in the state's authority, including control over natural resources, is not the result of an evolutionary response to relative price changes, but instead is produced by a strategic political interaction between state and customary authorities. She argues that states choose to devolve power to local elites and to "deconcentrate" the government apparatus. The state allows some customary institutions to remain and replaces others based on the customary institution's social hierarchy and its economic autonomy from the central state. Baldwin (2014) updates this argument about the state's strategic devolution of power to take into account electoral motivations. She argues that states cede authority to CAs as a means of electoral coalition-building when the CAs do not share ethnic ties with the ruling politicians.

Herbst's influential work challenges these state-centric approaches (2000). He argues that it is not the state selecting where to replace customary authority, but structural factors that hinder it. The partial authority of the state within its territorial boundaries is the result of its limited capacity. Low population densities and difficult geographies constrain the state from extending its influence from core to periphery. The importance of structural factors in conditioning the state's performance is also underscored in scholarship on the effects of inherited borders, ethnic heterogeneity, population density, and natural resource endowments (see, e.g., Easterly and Levine 1997; Sachs and Warner 1995).

However, the growing literature on pre-colonial institutions suggests that historical institutions impact outcomes independent of the state's intentions. This literature identifies long-term outcomes of pre-colonial institutions on public goods provision, economic development, and governance (Englebert 2000; Gennaioli and Rainer 2007; Michalopoulos and Papaioannou 2013; Osafo-Kwaako and Robinson 2013; Wilfahrt 2015; Hariri 2012). These works frequently focus on variation in centralization or hierarchy in the pre-colonial institution; such classifications of African political systems were initially exploited by colonial-era anthropologists including Fortes and Evans-Pritchard (1947). Pre-colonial political institutions have been hypothesized to exert influence by affecting the legitimacy of the post-independence state (Englebert 2000), the bargaining power of local authorities (Boone 2003), and the ability of states to restrain and control chiefs (Gennaioli and Rainer 2007). This literature provides evidence that pre-colonial institutions have persistent impacts and contribute to path-dependency in modern outcomes.

### **1.3 Theory**

The argument in this dissertation builds upon these literatures to demonstrate how customary

authorities condition the modern state-building process by blocking the evolutionary development of state property rights. While the demand for state land titles may exist, customary authorities can mobilize to interfere with their supply, making it harder to title land in some areas and easier in others. As a result, in the long term, different constellations of customary authority shape where state property rights develop.

This approach is consistent with literature that highlights how local context can influence property rights institutions. Firmin-Sellers (2000) and Greif (1994) argue that culture shapes how institutions function and change. For Firmin-Sellers (2000), culture shapes the actors' choice set for the individualization of land tenure by dictating what the community accepts as fair. Greif (1994) argues that the effect of culture results from its capacity to coordinate the group's expectations of each others' behaviors. The proponents of the induced institutional change approach themselves have also proposed a variety of factors that can slow or increase the speed of evolutionary change. This includes ideology and vested interest groups (Ruttan and Hayami 1984). Baland and Platteau (1999) contribute a body of work on the impact of group economic heterogeneity on property rights institutions. In the language of economic institutionalism, differences between customary institutions can change transaction costs. This dissertation will argue that customary institutions slow institutional change by organizing resistance to the loss of customary land through coordination or coercion mechanisms.

### **1.3.1 The Stakes of Land Titling**

Conventional wisdom on how titling develops overlooks the importance of the negotiations between political actors over the control of a finite and increasingly valuable natural resource. Both controlling and relinquishing control of land create opportunities for political and financial gains. This section establishes the stakes of land titling for the state, investors, customary

authorities, and customary community members. Here, I focus specifically on large land titles that include the land of multiple households. Individual smallholder land titling is discussed in the following section.

### **The State and Investors**

As established earlier in the chapter, the state benefits from land titling; titling builds its authority and its income base. Accessing land to be permanently incorporated into the state's land systems is necessary for state development projects and for supporting commercial investments within the country. State politicians facilitate large land deals and smallholder land titling because they are a source of immediate and ideally, long-term, revenue for the state. Further, politicians can gain personal benefits from large land deals, as brokers between investors and the community. On an individual level, successfully facilitating new land titles allows state politicians to demonstrate their own political authority and gain financially, in the name of the state's development agenda.

While the creation of a new title is almost always in the state's interest, in the context of low-density agricultural land in Africa, state politicians have minimal incentives to expropriate land from resistant customary authorities. The state's security apparatus and legal power of eminent domain could be used to access land for state titling. Yet, the political costs of forcing a community to cede land are high. Customary authorities have close ties to citizens and are an important presence in their everyday lives. They can be efficient vote brokers (Koter 2013); an angry customary authority can cost political parties an election. As a result of the political importance of gaining or maintaining the support of CAs, politicians are often uninhibited in their efforts to curry their electoral influence. For example, in the lead-up to the contentious 2012 elections, Senegal's incumbent President Abdoulaye Wade provided lavish per diems to village

chief for attending a conference and promised them salaries for the first time since independence.<sup>8</sup> In Zambia, the ruling party gave cars to nearly half of the country's chiefs 6 months before the 2008 elections (Baldwin 2010; 2015). In addition to electoral influence, customary authorities can hold spiritual or cultural influence over state politicians (Beck 2001; Schatzberg 2001). For states with limited capacity and resources, preventing protests and maintaining social peace factor significantly into politicians' decisions. Keeping the customary authorities happy is an important means of promoting stability in rural areas. Consequently, it is less costly for the state to look for land to title elsewhere than to force a land deal on a resistant population.

Large-scale land investors have a relatively simple stake in this process. They need a title to gain financing from banks for commercial projects, and, particularly when the investor is from outside of the community, for security of tenure. They are expected to want the best land at the least costs of money and effort.

### **Customary Authorities and Their Communities**

#### *Costs*

Each title permanently reduces the amount of land that the individual CA oversees. This has consequences for the CA's influence within the community and within the state. Locally, CAs' power and revenue depend on land. They can extract land rents, labor, and gifts as tribute for their role in allocating land and adjudicating land conflicts. Decreases in the amount of land and the number of individuals dependent on customary property rights reduces the CA's power in the community. Further, when land is titled, the CA loses control over an increasingly valuable resource that is desired by the state and the private sector. As with state politicians, controlling more land increases the CA's opportunity to use it for political influence and financial gain.

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<sup>8</sup> 2011. "Le Président Wade annonce un statut pour le chef de village." *Agence de Presse Sénégalaise*, 19 July.

Land conversions are also costly for the entire customary group. They reduce the size of the customary institution's most important sphere of influence, weaken the authority of customary property rights, and decrease the amount of land under shared community land usage norms. For those that identify as members of the customary institution—often through an affiliated ethnic group—the reduced amount of land under customary control is a loss of group power. Further, the introduction of statutory property rights in the community challenges the authority of the customary system (Quan 2000, 37). As a result, preserving the customary institution as the dominant system for accessing land makes all members' customary property rights more secure.

In addition to the long-term political and social benefits to members of the customary institution of maintaining customary control of land, land titling for large land deals also has immediate costs. This can include the displacement of households, losses of land under fallow, relocation to lower quality land, and losses of investments or crops. Even when households are not actively farming on the land in question, land deals can lead to a loss of access to areas with group rights such as spiritual sites, pathways for herding animals or accessing water, grazing land for animals, and open-access areas for collecting wood, wild plants, insects, and animals. For members of the customary institution, maintaining customary control of land allows for more land for future generations of group members and more flexible usage or leasing arrangements.

However, customary institutions can be exclusionary and inequalitarian (Peters 2004). Thus, although there are collective benefits to protecting customary control of land, they are not distributed equally within the community. Some individuals have more to gain from the continuing power of the institution and, consequently, have more to lose from land titling. In general, customary land in Africa features areas with group rights but it is not collectively

owned. Instead, lineages own the land, either as families who trace their ancestry back to an early settler in the village or in the form of inherited customary authority. Customary institutions conserve these lineage-based rights. As a result, the stakes of land titling are higher for elites who gain status from recognition within the institution, such as a large customary landowner or member of an elite class. These group members have the most to lose from the weakening of the customary system.

### *Individual Benefits*

Despite the costs to the customary institution and its members, land titling offers compelling individual benefits. The primary holders of customary land rights are either customary authorities or families with lineage-base rights, preserved by the testimony of customary authorities. These are Ensminger's (1997, 169) categories of "lineage controlled" and "chief-controlled" land tenure.<sup>9</sup> When an investor or the state seek a large tract of land, CAs and customary landowners face the decision to accept or refuse to cede the land, and if so, under what conditions.

For large-scale land deals on the land of multiple landowners, the landowners gain immediate individual material benefits for their consent to cede customary land. State agencies, private individuals, and companies offer money and in-kind gifts as compensation. Further, in some cases, agreeing to a land deal may have the added political benefit of helping the CA establish a personal rapport with state politicians. While it is standard for investors to pledge community benefits such as creating jobs and building infrastructure, communities do not perceived these as credible because the realization of such promises has been uncommon. As such, the group benefits for ceding land out of customary control are limited. Instead, with rare

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<sup>9</sup> In a review of land tenure in 22 West African countries, Bruce (1998) also identifies these two categories of customary land ownership, naming them "lineage based" or "monarchical" (8-9).

exceptions, the benefits of land conversions are concentrated, privately captured by customary authorities and individuals with lineage rights. For rural elites who control the vital factor of production, these individual benefits are persuasive reasons to agree to convert their land.

In order to protect their control over land and long-term power for the institution, the challenge for customary institutions is to overcome the individual incentives to cede land. By enforcing the accountability of landowners and CAs to the institution's goal of keeping land in the customary domain, CAs can slow the state's extension of control over land. CAs have two main channels for creating these ties of accountability to the group goal: coordination or coercion. These two different ways of mobilizing are determined by the national institutional context. In the cases examined here, these frameworks were established during colonialism.

### **1.3.2 Two Solutions for Customary Authorities**

How customary institutions influence the state's land titling project differs depending on whether the CAs have state recognition or not. The colonial authorities in Africa laid the legal foundations for the contemporary relationship between customary authority and the state. As is presented in greater detail in Chapter 2, the French had a suspicious but tolerant policy towards customary authority, which evolved into the modern system of de facto CAs in Senegal today. By contrast, the British bolstered and created customary authority through a policy of indirect rule that is largely unchanged in contemporary Zambia. These policy approaches established different channels for CAs to shape land titling in each context. For Senegal's unrecognized customary authorities, the institution must rely on coordination to prevent the loss of customary land. In Zambia, the state's recognition of CAs concentrates power in individual chiefs and undermines ties of accountability to the local population. As a result, the customary institution needs to have strong internal hierarchy to coerce chiefs to conform to the institution's goals.

While the channels differ depending on national institutions, across these contexts it is the strongest customary institutions—those with historical hierarchies—that can coordinate or coerce to maintain customary control of land.

### **Coordination**

Customary authorities that have no formal role in land allocation rely on the coordination of collective action to enforce accountability to the group goal of continued customary control of land. Without state recognition of individual CAs, a larger set land users, owners, and elites are implicated in the land titling decision. Customary institutions can resolve the problem of individual incentives to cede land out of the customary domain by coordinating across this group of decision-makers. When faced with an investor or the state seeking a large area of land, institutions with strong, organized networks make it more difficult for elites to defect from the group goal. They create a stronger attachment for elites to the customary institution, and, in doing so, facilitate coordination.

The strength of the customary institution derives from a variety of characteristics that contribute to its organizational capacity. Customary institutions with stronger organizations have thicker ties across individual villages and a stronger sense of group membership. This makes it easier to identify institutional goals and to censure members for deviating from them.

Organizational capacity allows for communication across communities within the institution, which facilitates both group solidarity and monitoring. In this way, customary institutions can create ties of horizontal accountability in which members of the institution enforce group solidarity and accountability to the institutional goal of controlling land over individual benefits. We can expect the customary elites who risk losing power and status to be particularly invested in enforcing horizontal accountability among members, including other influential elites, to the

institution's goals.

Elites within the institution drive this coordination mechanism. Elites in a stronger customary institution are committed to maintaining the institution's power because they gain from it and can expect continuing benefits in the future; for elites in a weak and decentralized institution, the challenges of organizing and the lack of strong sense of group membership make the expectation of future benefits more tenuous, relative to a stronger customary institution. This is a self-reinforcing dynamic—elites in stronger institutions are more motivated to protect the institution's domain because it is stronger, but this relative strength of the customary institution results from members having a greater commitment to its continuation. This commitment to the institution is why, given the thick ties of communication and ability to coordinate, the elites do not, instead, collude to sell the land and take the individual benefits. Elites in stronger institutions have both the ability and will to coordinate to maintain their control over land.

As a result of the thicker ties of group membership, communication, and commitment to the group goal, customary institutions can create horizontal accountability to the group goal. These organizational characteristics make it more difficult for a member to select individual benefits without being socially sanctioned by the group. By creating horizontal accountability across members, the customary institution can shift the outcomes of attempts to convert land from customary to state property rights. Due to this coordination mechanism, it should be more difficult to title customary land in zones where customary institutions have greater organizational capacity.

### **Coercion**

In contrast to the large group of decision makers in a system without state-recognized CAs, the state's recognition empowers individual CAs with nearly complete authority in the decision to

cede land out of the customary domain. In this context, individual chiefs become the central actors in the negotiations over land titles. Where land is “chief controlled” the challenge for the customary institution is enforcing the individual CA’s accountability to the group goal over very concentrated individual incentives to cede land. However, by providing legal status and legitimacy to the chief, state recognition makes it more difficult for members of the institution to constrain the CA. Both horizontal accountability to other elites in the institution and downward accountability to the subject population are undermined by the state’s protection of the chief. This concentration of power in an individual chief undermines collective coordination.

As a result, in order for the customary institution to hold such a chief accountable, the individual chief must be subject to hierarchical customary authority. Overall, state recognition makes it difficult for the customary institution to remove the leader. However, the customary institutions that have established internal processes for dethroning their chiefs can overcome the individual incentives for chiefs to cede land. An established coercion mechanism within the customary institution can counter the effect of the state’s support and influence the chief’s decision-making.

Hierarchical authority within the customary institution facilitates ties of vertical accountability. When higher-level chiefs can hold lower-level chiefs accountable, with means such as punishment, rewards, and removal, the chiefs within the institution will be more likely to comply with the group goal. In this context of CAs bolstered by the state, a clear hierarchy of customary authority is necessary for the institution to compel CAs to keep land in the customary domain. Without such monitoring and coercion from within the customary institution, individual CAs are free to comply with their individual incentives.

## **Resistance**

When approached to cede land from the customary domain, landowners and customary authorities respond with different levels of resistance. As the previous two sections have argued, the organization of their customary institutions can shape resistance to land deals by facilitating cooperation or coercion. Resistance includes refusals, delaying negotiations, demanding high payments, and imposing other substantial conditions. As a result, within a given state's territory, investors and the state will face more or less resistance to their project in certain zones *relative to other zones*. Customary institutions can make it harder for the state and state-supported investors to access land in their area, leading investors to seek land elsewhere. All things being equal, the state will be more likely to convert land where it faces less resistance. This has implications for the spatial distribution of land conversions; on the aggregate, this creates a geographic pattern in the development of state property rights. Where customary authorities can enforce conformity to the goal of continued control of land, via coordination or coercion, customary property rights are less likely to be replaced by state land titles.

The argument advanced throughout this dissertation is that customary institutions structure the resistance of individual CAs and communities to land deals. The increased likelihood of resistance by CAs in historically hierarchical customary institutions is not a reflection of greater ties of downward accountability towards citizens or concern for their welfare. Instead, their higher levels of resistance result from the constraints of the institution on the individual CA's ability to release land from the customary domain. The land conversion outcome is the result of variation in the capacity to maintain control over a valuable resource. In sum, to understand how property rights develop or change, it is critical to consider the stakes for CAs seeking to maintain power and states struggling to extend their authority.

### **1.3.3 Smallholder Land Titling**

The stakes of individual smallholder<sup>10</sup> titling differ slightly from those of large land deals. In this process of replacing customary with state property rights, farmers seek titles for land that they already own in the customary system. Although this does not involve displacement as a large land deal would, smallholder titling also has implications for the customary group. Smallholder titling reduces the size of the land under the control of the customary institution, calls into question the strength of other customary property rights in the area, and can contribute to the loss of secondary group rights to the land.

If customary authority does shape where state property rights develop by forcing conformity to the group's interest in maintaining control over land, we should also see this reflected in smallholder titling. For the individual smallholder, a title provides legal land ownership documents that have greater weight in state courts and the banks that provide credit. Titling allows the smallholder to assert individual ownership, preventing any encroachments or shared access to the land. However, for the individual, smallholder titling costs time and money. For the customary group, smallholder titling is a decision to exit the customary system of property rights. Each title contributes to the slow dissolution of customary control over land. Given these stakes, it is individuals with the least to gain from the continuation of customary authority over land who should be most likely to title. Those with lower privilege in the institution will exit it more easily, given the opportunity. By contrast the smallholders who have greater privilege in the customary institution are more invested in its continued control of land. These individuals should be more likely to resist land titling.

#### **1.4 Testing the Theories**

The theoretical framework proposed here argues that customary institutions vary in their ability

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<sup>10</sup> Here, smallholders represent households that are primarily reliant on family labor with land holdings under 20 ha.

to mobilize to resist the conversion of land to state property rights. Strong, organized customary institutions can hold members accountable to the collective goal of maintaining control of land. Where CAs lack such organization, customary property rights institutions are more quickly replaced by the state. However, there are several challenges to examining the impact of customary institutions on the development of state property rights in Africa. First is identifying why some customary institutions have greater levels of organization relative to others. Second, is balancing the generalizability and external validity of theoretical claims with the great complexity of different systems of customary land tenure. The follow section presents my strategy for addressing these challenges through my research design and data collection.

#### **1.4.1 Pre-Colonial Statehood**

An extensive body of scholarship on customary authority in Africa has examined the collaboration between chiefs and the state (Bayart 1989; Williams 2010; Logan 2009) and the ways in which the state has molded customary authority (Colson 1949; Moore 1986; Chanock 1998). As this research highlights, an important challenge in studying the effect of CAs on the state is whether the organizational capacity of the customary institution is dependent on its relationship with the state. That is, whether customary institutions are strong because the state made them strong or whether customary institutions are strong independently of the state.

To identify whether customary institutions can constrain the state's extension of control over property rights, I use their organizational capacity prior to the arrival of the colonial state as a starting point. Relying on pre-colonial organization—whether the institution was state-like or decentralized in the 19<sup>th</sup> century—allows us to identify any impact of customary authority that is independent of the state's policies. Although these customary institutions have changed since their pre-colonial origins, my claim is that their modern organizational capacity is a reflection of

this initial institutional endowment. Where there were strong pre-colonial states, highly organized customary institutions are more likely to exist today. Likewise, zones without political structure above the village level have limited organizational capacity today. I use the term “decentralized”<sup>11</sup> to describe this type of pre-colonial political system. As Chapter 4 demonstrates, even when the colonial authorities tried to create hierarchical customary organizations where none existed, they failed at building meaningful institutions. The institutions that developed over years of pre-colonial war, taxation, and state-building are remarkably resilient. Where no such historical institutions existed, they could not and did not develop the same organizational capacity in the post-colonial era.

#### **1.4.2 Generalization Versus Specificity**

The shift in control over land is occurring across a variety of types of customary authorities and states in Africa. To identify how different national institutions shape the state-building process, and when the effects of customary institutions maintain across most-different cases, this dissertation studies two distinct state contexts. The European colonial powers were particularly important in determining how state property rights develop, as they laid the groundwork for modern state-CA relations and legal systems in Africa (Chapter 2). Zambia and Senegal are ideal cases for this study because they feature a critical and representative variation in customary institution types: whether they are recognized by the state or not (Burr and Kyed 2007). A legacy of colonial rule, this represents broader trends in state-customary relations in former British and French colonies, respectively.

Zambia and Senegal are most different cases within a set of basic scope conditions. The countries feature very different customary institutions, colonial histories, agricultural systems,

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<sup>11</sup> My use of this term is consistent with Firmin-Sellers (2000). Such societies lacking pre-colonial hierarchy are also known as “segmentary,” (Geschiere 1993), “acephalous” or “stateless” (Fortes and Evans-Pritchard 1947).

and geographies. Yet they fit within the same scope of continental (non-island) African states without protracted civil wars or major white settlement. While the theoretical argument is not a priori limited to such cases, setting these scope conditions allows for a clearer comparison of the relevant factors at work. Within these two selected country-cases, I leverage both sub-national and cross national-comparisons to demonstrate why and how customary institutions shape the development of state property rights.

This dissertation has been deeply influenced by the existing scholarship on property rights, which often takes the form of rich, in-depth local case studies or sophisticated quantitative analyses with proxies that suggest the impact of different forms of property rights.<sup>12</sup> Scholars of land tenure in Africa have documented the varied and dynamic systems of customary land management, establishing that the rules for accessing customary land can differ not only sub-nationally but within ethnic groups and over time.<sup>13</sup> However, I take a different approach than these important studies. I abstract from the nuance of the wide variety of customary forms of property rights to focus closely on the determinants of customary control of land. At the same time, by examining how and why the state's control of land differs across space *within* its boundaries, I add complexity to the country-level studies of the effects of different property rights regimes.

The best measure of the state's control of land is its own record of land titles. The conclusions in this dissertation are based on original datasets of titled land in every district in Zambia and Senegal, including a set of all large-scale land deals completed between 2007-2013.

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<sup>12</sup> Examples of influential case studies include Peters (1994); Berry (2001); Chauveau (2005). The Common Pool Resource literature provides rich examples of the effects of distinct local institutional configurations on resource control (Ostrom 1990). Acemoglu, Johnson, and Robinson (2001) is a prominent example of cross-national analyses that rely on proxies and instrumental variables to measure property rights institutions. See also, Pande and Udry (2006) for a discussion of "coarse" measures of property rights institutions.

<sup>13</sup> A very large literature addresses the internal dynamics of different customary land tenure systems. On Zambia, examples are: Kajoba (2002); Gordon (2001); Palmer (2000); Colson (1986). On Senegal, examples are: Dahou and Ndiaye (2008); Galvan (2004); Billaud (2009); Blundo (1996); Hesselings and Eichelsheim (2009).

This allows me to construct measures of the proportion of land under customary control by district. I then identify the effect of customary authority on land titling outcomes using measures of customary institution types derived from historical maps of pre-colonial organizations and a variety of indicators of land value and infrastructure access. To my knowledge, no existing scholarship has drawn conclusions on the development of state property rights in Africa with such comprehensive national datasets of land titles.

For each country, the quantitative analysis of the effect of historical customary institutions on modern land titling is combined with comparative case studies that establish *how* customary institutions affect property rights outcomes. The case studies and qualitative narratives in this dissertation are based on a wealth of interview data. This includes 81 interviews with customary authorities in Zambia and Senegal, 15 focus groups with smallholder farmers in Zambia, open-ended survey questions from an original survey of 1001 smallholder farmers in Senegal, and 98 interviews with local council members, bureaucrats, and agricultural investors. These case studies and datasets were collected over 18 months of fieldwork in Zambia and Senegal.

For the second major form of land titling—mass smallholder titling—my research strategy relies on complementary surveys of smallholder farmers in Zambia and Senegal. Here, the combined analysis of a nationally-representative survey in Zambia and a spatially-concentrated survey in Senegal allow me to identify patterns that are consistent across many different types of customary institutions as well as intra-institution relationships. The Zambia and Senegal surveys share the same core set of questions. To examine how customary institutions structure the smallholder's decision to title, I rely on measures of individual status within the customary institution. The key outcomes of interest are whether the household has a

land title and whether they believe that it is possible to obtain a land title. The Zambia survey is an excellent agricultural census collected by the Indaba Agricultural Policy Research Initiative (IAPRI) in Lusaka. Its geocoding at the household level allows me to assign additional attributes to the households, including the type of customary authority and distance to infrastructure. In Senegal, I developed a survey based on the Zambia survey instrument, with additional questions related to land tenure security. The Senegal survey sample includes a high number of households per customary institution, in only two regions. This allows me to examine variation among individuals within the same type of customary institutions. The combination of the surveys with the same questions and divergent sampling strategies in two different national institutional contexts helps me identify the generalizable effect of status within the customary institution on the smallholder's decision to title. The focus group interviews with smallholders in Zambia and open-ended survey questions in Senegal establish the internal validity of these findings and provide a rich account of how rural citizens secure access to land in these two countries.

## **1.5 Outline of the Dissertation**

The chapters of the dissertation are organized as follows. Chapter 2 examines the colonial origins of contemporary property rights regimes and state-customary relations in Zambia and Senegal. This chapter unpacks the accepted wisdom that the European colonizers chose the “best” land, to make two key claims. First, the British and French established distinct land policies to reinforce their approaches to customary authority. The British relied on customary authorities to justify their rule and created a dual land tenure system to build the authority of chiefs. By contrast, the French encouraged land titling throughout the entire territory. After failing to replace customary authority with the state's, they reluctantly accepted the continuation of de facto customary authority over land. Second, this chapter argues that despite its use as agricultural land, the

development of state property rights in the colonial era was not based on agricultural productivity or potential. Instead, strategic geo-political and commercial considerations determined the colonizers' selection of agricultural land to title. The chapter concludes with discussion of how the British and French policies in Zambia and Senegal related to governance in their other colonies.

Chapters 3 and 4 examine how customary institutions constrain the state's authority over land in the current era, with a focus on the major conversions of property rights that result from large land deals. Chapter 3 illuminates this modern state-building process in the context of unrecognized customary authority over land in Senegal. This chapter argues that customary authorities embedded in pre-colonial states have a greater capacity to coordinate to resist land titling. As a result, land titles cluster in areas with historically decentralized customary institutions. These findings are based on a paired comparison of one multinational land deal attempted in two customary institutional zones and the analysis of a national dataset of all new land titles between 2007-2013.

Chapter 4 examines the effect of customary authorities on the extension of state property rights in Zambia, where, consistent with many former British colonies, chiefs are recognized by the state as custodians of land. There, the decision to convert land is concentrated in individual chiefs. As a result of state recognition, many chiefs are unfettered in their decisions and accept the compelling individual incentives to cede customary land. However, chiefs who are embedded in historically hierarchical institutions are constrained by ties of vertical accountability. Through the threat of punishment, superior chiefs can coerce inferior chiefs to resist land conversions. Analysis of a database of all land titles in Zambia demonstrates that, all things being equal, state property rights are more likely to develop in zones with decentralized customary institutions than

zones controlled by historical hierarchies. A comparison of two customary institutions that share a language and region, but different pre-colonial organizations, illustrates how vertical accountability among Zambia's chiefs shapes property rights outcomes.

Chapter 5 shifts focus from large land deals to the mass titling of small plots. This chapter examines how customary institutions structure smallholder titling decisions. Across diverse types of customary institutions in Zambia and Senegal, the individuals who are most likely to title are those with the lowest privilege in the customary institution. Farmers who have close ties to the CA, measured as kinship, are systematically more likely to opt to remain in the customary system of property rights. This is evidence that customary institutions shape land titling outcomes by structuring privilege within the community. In doing so, they shape citizens' engagement with the state's institutions. Data collected from focus groups and geocoded small-scale farmer surveys in Zambia and Senegal identify how CAs influence land titling outcomes for smallholder farmers.

Chapter 6 concludes with the broader implications of this study for state-building and political authority in the post-colonial world. This dissertation demonstrates that the partial state control of land is not determined by the state's limited capacity to title or the low value of the land, but by an active process of resistance by customary authorities. Customary institutions formed before the existence of the state are able to constrain it and dictate where its authority grows. As a result of the agency of CAs, we can expect that the system of dual or mixed property rights will remain the dominant property rights regime. Yet, as global land markets grow, customary institutions will continue to shape which land remains under community control. The chapter concludes with a discussion of why customary control of land creates a paradox for rural citizens.

## CHAPTER 2

# The British and the French Colonial Occupation and Division of Land

### 2.1 Introduction

The European colonial powers established the foundation for property rights institutions in African countries today. In the 19<sup>th</sup> century, as the colonizers divided the continent and defined territorial boundaries, they faced the challenge of how to organize the new areas of land under their control. In Zambia and Senegal, the colonial authorities' decisions on how to exploit and govern the territories created two distinct property rights regimes. By examining how the British and French authorities divided the land in the colonies between customary and state land<sup>14</sup> and how they designated who had which rights over land, this chapter identifies the origins of the contemporary national institutional contexts in Senegal and Zambia.

At independence, 95% of the land in Senegal<sup>15</sup> and 94% in Zambia were customary land;<sup>16</sup> the remaining land was under direct state control in the form of state titles and reserved state land. While both colonies were designated as agricultural colonies, their division of land was not based on fertility, soil type, or agricultural suitability. Instead the first land in each

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<sup>14</sup> A note on terms used in this chapter: I use Customary Land in reference to the land the colonial authorities in Zambia called "Native," "African," or "Tribal" Land. In Senegal this land was described by the French as "*indigène*," or "*Africain*" land or with "*la tenure coutumière*." I use State Land in reference to the land categorized as "Crown Land" in Zambia and "*terrains domaniaux*" or "*terrains immatriculée*" in Senegal. Both the British and French used the words "chief" and "chiefdom" (or "*chef*" and "*chefferie*") to describe political authorities that predated their arrival. The French also used the term "*souverains*" and both used the terms "kings" and "kingdoms." I use Customary Authority and chief interchangeably to represent this concept in this chapter. However, for the French in Senegal, "*Chef*" also represented an administrative head; such posts are distinct from "Customary Authorities" as used here.

<sup>15</sup> This is divided between 3% of reserved state domain areas (sea front, rivers and lakes) and 2% in private land titles (Hesseling 2009, 249).

<sup>16</sup> Northern Rhodesia, Ministry of Lands and Natural Resources, "Annual Report of the Department of Lands for the Year 1960" 1960, Box 93A/Shelf 16, Northern Rhodesia Lands Annual Reports, Government Series, The Zambia National Archives, Lusaka.

colony to come under state control was selected based on strategic political considerations, which informed the earliest zones of European agricultural settlement. Soon after, the colonial states constructed railways, with routes designed to connect ports (in Senegal) and mines (in Zambia). In both colonies, state property rights developed fastest near the railways. These areas became the agricultural heartlands of both Zambia and Senegal. While land under direct state control was used for agriculture production, its location was determined by geopolitical and commercial interests.

The European powers established their colonial land policies in coordination with their approach to customary authority, which made both more effective and resilient over the long-term. The French tolerated customary authorities and promoted universal land titling. Both indigenous and European residents were encouraged to register their land in the state's system of property rights. While the earliest French authorities identified chiefs as feudal lords to be quashed by the eminent domain of the state, for the British, the *dissolution* of customary authority was the evil to be avoided. The British relied on customary authority to facilitate and justify their governance of colonial Zambia. To this end, they implemented active land planning policies that created zones where chiefs had recognized authority over smallholder property rights.

The symbiotic relationship between their land policies and systems of customary authority was also compatible with their colonial economies. Both countries tried and failed as settler agricultural colonies. In the early and middle colonial periods, when their land policies

were being established, the maximum European population in Zambia was 12,000<sup>17</sup> and 5,700 in Senegal.<sup>18</sup> Early in their rule, the French switched their focus in Senegal to the export of groundnuts grown by smallholder farmers; this required none of the active land use planning or displacements of indigenous populations that accompany plantation agriculture. In Zambia, the colonial economy was based on mineral exports,<sup>19</sup> but the British continued to try to profit from settler agriculture throughout their rule. Their top-down land planning helped facilitate settler access to land. The coordination of their land and customary authority policies made them a lasting foundation for the national institutions in modern Senegal and Zambia.

The current systems of unrecognized customary authority (in Senegal) and state-recognized authority (in Zambia) were established under French and British colonialism. These different systems shape how the state extends control over the land within its boundaries and which channels are available to customary authorities to influence the development of new land titles. To explain the current divisions of land in the two colonies, the first section of this chapter identifies the root causes of first agricultural settlements in Zambia and Senegal. The second section examines the distinct strategies used by the British and French to justify their control of land, in relation to customary authorities. How this approach to customary authority was reinforced by the colonizers' divergent land policies is established in the third section. The fourth section shows how the combination of first agricultural settlements, limited colonial science, and the development of railways shaped to the extension of state control of land in the colonial

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<sup>17</sup> Government of Northern Rhodesia, "Report of the Commission Appointed to Enquire into the Financial and Economic Position of Northern Rhodesia [Pim Report]" 29 January 1938, University of Zambia (UNZA) Special Collections; After WWII and rises in nationalist movements in other southern African colonies, there was a wave of white settlement to Zambia. Bruce and Dorner count 1185 European farms in 1961 (1982). Zambia had a peak white population of 70,000 in 1964, at independence. This compares to European population in Senegal in 1971 of 40,000 (Nelson 1974, 65).

<sup>18</sup> Rousseau, R. 1937. "La population du Sénégal d'après le recensement de 1936." *L'information géographique*, 2 (1).

<sup>19</sup> By 1936, 95% of value of exports was minerals; 84.3% of that is from copper. Government of Northern Rhodesia, "Pim Report," 46.

period. Finally, the chapter concludes with a discussion of the relationship between these early policies and modern state-building in Zambia and Senegal, with reference to how these property rights institutions compare to other British and French colonies.

## **2.2 Initial Exploration and Settlement**

The paths the Europeans followed to penetrate the territories that would become Zambia and Senegal shaped where and how they established authority over land. In the places where the first colonizers settled, they created the earliest zones of state controlled land and systems of land titling. Subsequent infrastructure development and land titling were in relation to these first settlements. As a result, it is important to consider how these first enclaves of colonial state authority over land were established. As this section argues, the locations of the earliest state property rights in Zambia and Senegal were selected for their commercial and strategic geopolitical positions.

The French entered Senegal by water. Their political presence in Senegal began in 1658 with the station of Saint-Louis, at the point where the Atlantic Ocean meets the Senegal River. This fort along the Senegal River provided the French access to transportation that crosses the width of modern Senegal into Mali, with tributary links to Mauritania and Guinea. Soon after, the French gained control of a major Atlantic Ocean commercial port to the South of Saint-Louis, previously occupied by the Portuguese and the Dutch. This small strategic island port, Gorée Island, is proximate to and protected by the Cap-Vert peninsula, where the city of Dakar would later be established. The next French stations were established deep into the Senegal territory, along the Senegal, Casamance, and Saloum Rivers. The French government reported that, by 1855, it had “effectively occupied” much of the territory surrounding these rivers, including the areas of Dagana, Podor, Bakel, and Senoudebou on the Senegal River and the

Casamance Delta and Sedhiou on the Casamance River.<sup>20</sup> By building stations along these two independent waterways, the French gained access to the far North, far South, and far East of Senegal.

Over 200 years after the French lay claim to Saint-Louis in Senegal, the British established its first fort in Zambia. While Senegal was the jewel of the French West African (AOF)<sup>21</sup> colonial possessions, the land-locked and sparsely populated Zambia was a secondary interest to the British. Instead of directly administering the colony as the French did, the British government granted the charter for the development of Zambia to the British South Africa Company (BSAC), from 1889 to 1924. Founded by Cecil Rhodes, the BSAC had the right to exercise political and military functions on behalf of the Crown.

The British established their presence in Zambia by land, from neighboring British colonial outposts in the East and the South. The territory of Zambia was initially administered as two separate entities: North Eastern Rhodesia and North Western Rhodesia. The earliest British posts in North Eastern Rhodesia were extensions from the British colony of Nyasaland (Malawi). The British created their first fort in Zambia on a major trade route. In 1889, Fort Abercorn was established on the Stevenson Road that linked Lake Nyasa in Nyasaland to Lake Tanganyika, along the contemporary border between Zambia and Tanzania. This was selected as a strategic location for trade and for establishing a Trans-African Telegraph from Lake Nyasa to Lake Tanganyika.<sup>22</sup> Their second station, Fort Jameson, also extended from and was administered by the British outpost in the town of Blantyre, Nyasaland. Its location reflected the additional political need to infiltrate the powerful and resistant Ngoni pre-colonial state. Fort Jameson was

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<sup>20</sup> Sabatié, Alexandre Camille. 1925. *Le Senegal: Sa Conquete et Son Organisation (1364-1925)*. Saint-Louis, Senegal: Government Printer, 286.

<sup>21</sup> The French West African federation or Afrique Occidentale Française (AOF) includes present-day Senegal, Guinea, Cote d'Ivoire, Burkina Faso, Benin, Niger, Mali, and Mauritania.

<sup>22</sup> Bradford, JES. 1936. "A Three-Million-Acre Title Survey." *Empire Survey Review* 3 (22): 469–76.

built near the village of the superior Ngoni authority, Mpezeni.<sup>23</sup> In 1899 the BSAC began administering all of North Eastern Rhodesia from Fort Jameson. As a result of political and commercial interests, Fort Abercorn on the Northern border with Tanzania and Fort Jameson on the Eastern border with Malawi are the initial points of entry for the British into Zambia. These are the first locations where the British sought major land interests to accommodate colonial administrators, traders, missionaries and a few settler farmers. In 1901 this amounted to 188 Europeans in North Eastern Rhodesia.<sup>24</sup>

As the British were entering North Eastern Rhodesia from their established position in Nyasaland, they progressed into the west of the territory by way of their stations in Southern Rhodesia (Zimbabwe) and Bechuanaland (Botswana). The first British stations in North Western Rhodesia were determined by water networks and negotiations with a powerful pre-colonial head of state. In 1889, following the Belgian military campaigns against neighboring chiefs to the North, the leader of the ethnic Lozi “Barotseland” state applied for protection treaty with the British. The Lozi leader, known as the Lewanika, relied on a missionary who lived in the Barotseland capital to broker the initial negotiations with the British administrators who were based in Salisbury (Harare, Zimbabwe). In their 1890 treaty, the Lewanika stipulated where the British zone of influence would be, and what areas of the vast territory of North Western Rhodesia were off limits to the British. Prior to this treaty, the British had no forts in the territory. Due, in part to his timing, the Lewanika was able to influence where these first British outposts were established. Abiding by the terms of the treaty, the British set up their first administrative base on the Kalomo River far from the area prohibited by the Lewanika. This base, named Kalomo, was centrally located within the territory allocated to the British in the

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<sup>23</sup> Cardew, CA. 1948. “Nyasaland in 1894-5.” *The Nyasaland Journal* 1 (1): 51–55.

<sup>24</sup> Great Britain, Census Office. 1906. *Census of the British Empire 1901*. London: Darling & Son, 178.

Lewanika treaty. It allowed for communication with the rest of the British Empire through Southern Rhodesia by way of Victoria Falls. Kalomo would remain the British capital of North Western Rhodesia until 1907.

These first colonial posts are the starting point for how the British and French later extended their authority over land. In both countries, their locations reflect strategic interest in controlling important transportation networks and the limitations of European movement outside of waterways. In Senegal, these posts included ports actively used by European traders. In Zambia, customary authorities influenced their locations. While they would determine how the colonies' agricultural economies and land institutions developed, none of the initial settlements were selected for their agricultural potential.

### **2.3 Treaties and Justification for Land Control**

From these early zones of influence, the British and French sought to make their new colonial possessions profitable. Both European powers identified agriculture as the principal means of exploiting the colonies. As a result, they focused on justifying their authority over property rights and gaining direct control of land for farming early in their occupation. In their initial assessments of their new colonial possessions, they noted sparse population densities with complex and varied systems of customary authority. Both the French and British were fixated on studying and documenting the land tenure systems of different ethnic groups.<sup>25</sup> The colonial authorities relied on these early anthropological reports on customary organizations to identify who had authority over land and how it could be ceded to the state. While both of the colonial

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<sup>25</sup> For Senegal, see reports on individual ethnic groups in the colonial *Bulletin du Comité d'Etudes de l'A.O.F.* and the *Journal Officiel de l'A.O.F.*; Geismar, L. (Administrateur en chef des Colonies), 1933, *Recueil des coutumes civiles des races du Senegal*. Saint-Louis, Senegal: Government Printer; For Zambia, see, e.g., Government of Northern Rhodesia, "Native Land Tenure" 1938, 2/324, Secretariat Series, The Zambia National Archives, Lusaka and BSAC, District Notebooks (1890-1924), The Zambia National Archives, Lusaka.

powers relied on a combination of coercion and diplomacy to establish their control over the territory, their justifications for their authority over land rights diverged. The British insisted that their rights derived from treaties with customary authorities while the French relied on the rights of the victor. This was the start of the two different approaches to customary-state relations that determined how CAs influence the state today.

### **2.3.1 Senegal**

Although the initial French approach was to amass treaties with existing authorities within Senegal, this justification was soon replaced by a nearly exclusive focus on the eminent rights of the victor. Before 1890, the French registered hundreds of treaties with leaders, groups, and individual villages for protection from pillage, freedom of movement for French traders, and small areas of land for official French posts. In return, the French offered tribute, promises to respect the leaders' authority, and recognition of specific lineages' authority. In the decentralized Casamance region of Senegal alone, the French signed 40 different treaties between 1828 and 1894. Similarly, in the large the Fouta pre-colonial state they collected 41 treaties between 1785 and 1885.<sup>26</sup> These treaties included limited cessions of land from chiefs to the colonial state. The Cayor, Saloum, and Joal customary authorities ceded small areas of trading post land in 1765, 1784, and 1785, respectively. The French reported treaties with the Waalo for land for agricultural experiments in 1819 and with the Cayor for the area where the railway line would be built. However, by the end of the 19<sup>th</sup> century such negotiations for the cessions of land from customary authorities were replaced by pacification campaigns and expropriation defended as the rights of the victor.

The ordeal of acquiring railway land from the Cayor pre-colonial state marked the end of the French attempts to justify their use of land through treaties and provides an important

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<sup>26</sup> Sabatié, *Le Senegal*, 232-234.

example of how trivial these initial contracts were. In 1879 the French signed a treaty with the Cayor head of state or “Damel” for the land necessary to create a railroad. The treaty promised the sitting Damel, named Lat Dior, the right to travel on the railway for free with his entourage, 12 “beautiful Arab horses” per year, and the recognition of his lineage as the head of the Cayor state.<sup>27</sup> In exchange, the Damel promised salaried labor and land access. However, within three years, when he came to appreciate the military implications of a railway through the heart of his territory, the Damel retracted his agreement to cede the land (Pheffer 1975, 55). In response, the French invaded his land, forced him to flee to a neighboring kingdom and named his nephew as the new Damel. For years, Lat Dior and his supporters launched a resistance campaign against the French, which ended with the death of Lat Dior at the hands of the French in 1886. The French failed in their attempts to engage with and manipulate the existing systems of customary authorities to access the land they desired. Unable to use customary authority to mediate their control of land, they took it by force.

The French justified their control of Senegal’s land through the philosophies of rights of the victor and eminent domain (Verdier 1971). This approach allowed them to deny any violation of existing indigenous rights. Colonial officers supported their total control of land by writing extended reports to show that the indigenous populations only had usage rights because their sovereigns had complete rights over the land.<sup>28</sup> When a chief was conquered, his ownership rights over the land being used by indigenous populations would transfer directly to the French.<sup>29</sup> As a result the French considered their new control of land as a complete property right, and any

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<sup>27</sup> Ibid, 155.

<sup>28</sup> Pierret, G. 1895. *Essai sur la propriété foncière indigène au Sénégal*. Saint-Louis, Senegal: Government Printer; Doublier, Roger. 1952. *La Propriété Foncière en A.O.F.: Régime en Droit Privé*. Saint-Louis, Senegal: Government Printer, The National Archives of Senegal, Dakar.

<sup>29</sup> Griault, M. Arthur. *Le Régime Des Terres Dans Les Colonies Françaises*, 1887.

indigenous rights were precarious rights of occupation.<sup>30</sup> The administration formalized this philosophy in the Statutory Instrument of March 11 1865, which declared that all untitled land belonged to the state. Only by applying to state land titles could anyone—indigenous or European—have recognized land ownership. This nullified any indigenous systems of property rights. To reinforce this total state ownership of land, the French decreed in 1862 that the indigenous did not have the right to sell any land. Having inherited the rights of previous chiefs, only the state had the right to alienate land to prospective buyers.<sup>31</sup>

The French based their authority over land in Senegal on the rights of the victors for the entire territory. In both the areas with leaders overseeing bureaucratic pre-colonial states and those with no central organizations for hundreds of villages, the French claimed they had inherited the rights of all preexisting sovereigns. This right of the victor held regardless of whether they had a treaty with a chief, further evidence that for the French these treaties were largely meaningless. Instead, the colonial authorities reassured themselves that, as subjects to earlier sovereigns, none of the local populations had land ownership. This provided the foundation for the state to create land titles and alienate land, in hopes of stimulating agricultural colonization. The assertion that all pre-existing authority had transferred to the colonial state is the basis for the policy of not recognizing any customary authority over land in Senegal.

### **2.3.2 Zambia**

In contrast to the French attempts to erase preexisting systems of authority and property rights, the British preserved them to facilitate their control over the territory. While the British acknowledged the rights of the victor “even African peoples—whether Moslem or pagan—recognized that all land is at the disposal of the conqueror” (Lugard [1922] 1965, 288), they

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<sup>30</sup> Doublier, *La Propriété Foncière en A.O.F.*

<sup>31</sup> Arrête local du 28 février 1862, 103, Colonial Senegal Collection, The National Archives of Senegal, Dakar.

relied heavily on treaties with indigenous leaders to justify their occupation of land. Their agreements with the Lewanika were their most important foundation for British use and alienation of land.

As in Senegal, the first European treaties in Zambia were not for land. Instead they were agreements between representatives of the British Crown and local chiefs for mineral rights and royalties, commercial access, and protection. However, when the British Crown granted a charter to Rhodes' BSAC in 1889, the British agents' attempts to collect treaties to justify land occupation and alienation accelerated. In North Western Rhodesia, the British only engaged with the Lewanika, who claimed that all other authorities in the territory were under his jurisdiction. The first British treaty with the Lewanika, known as the Lochner Concession, made the Lewanika's territory a British protectorate in 1890. After they purchased an earlier mineral concession with a private prospector,<sup>32</sup> the British gained mining and commercial rights in the Lewanika's domain. In exchange, they provided the chief a yearly subsidy, a 4% royalty on minerals, and recognition of his authority.

In the following years, the terms of the Lochner Concession were clarified and renegotiated. Importantly, the later documents explicitly defined the Lewanika's territory as including not only ethnic Lozi areas but all of his subject tribes, extending his territory to cover Southern and Central Zambia.<sup>33</sup> Roberts (1976) reports that between the treaties, the Lewanika sent his Lozi officials to subject zones to the East and West to support his claims of empire (166-7). As discussed in the previous section, the Lewanika dictated in these treaties where the British

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<sup>32</sup> This 1889 mineral concession is known as the Ware Concession.

<sup>33</sup> Official correspondence defined the Lewanika's territory as everything west of the Kafue River plus the territory of the Bashukolumbwe and Ila tribal land east of the Kafue River. In 1904 and 1906 letters, the Lewanika also clarified that settlers can move into designated areas and that the BSAC can profit from land grants in Batoka and Bashukolumbwe areas. "Lewanika to BSAC Administrators Correspondences" 1904 and 1906. Box 363/68, Shelf A3/21, BSAC2 NWR Collection, The Zambia National Archives, Lusaka; See also: Government of Northern Rhodesia, "Pim Report," 49; and concessions with the Lewanika in 1900 and 1909.

had the rights to mineral prospecting, land alienation, and white settlement. He prohibited the British from accessing land in his direct zone of influence, Sesheke and the Barotse Valley or “Barotseland proper,” and sanctioned it in the rest of the vast area that composed North Western Rhodesia.<sup>34</sup> This formal recognition of the Lewanika’s authority allowed him a direct channel for influencing the colonial state’s control of land.

On the North Eastern side of modern Zambia, the British attempts to secure treaties were largely unsuccessful. In response to the charter for the BSAC, two British agents—a geologist and a big-game-hunting lawyer—traveled around North Eastern Rhodesia to negotiate a set of treaties known as the Thomson-Sharpe treaties. They collected twenty protection treaties between 1890 and 1891.<sup>35</sup> However, they failed in their attempts to enter contracts with the kings of the Bemba and Ngoni pre-colonial states as well as their primary target of mineral-rich Katanga, which came under Belgian control soon after. It was ultimately not through treaties but force that they gained control of the Bemba and Ngoni states in North Eastern Rhodesia. The Crown validated these treaties, despite overwhelming criticism of the legitimacy of the Thomson-Sharpe treaties from within the British administration itself (Hanna 1960, 115). When the British decreed in 1900 that all untitled land in the North Eastern Rhodesia was vested in the BSAC,<sup>36</sup> these treaties were used as the basis for British mineral and political rights in all of North Eastern Rhodesia. However dubious, the British relied on treaties with customary authorities to defend its rule.

Throughout colonial rule, the British relied heavily and explicitly on the agreements with

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<sup>34</sup> Fox, H. Wilson, “BSAC Memorandum: North Western Rhodesia: Proposed Land Law” 1903? Box 363/68, Shelf A3/21, BSAC2 NWR Collection, The Zambia National Archives, Lusaka.

<sup>35</sup> Government of Northern Rhodesia. 1964. “Northern Rhodesia White Paper on British South Africa Company’s Claims to Mineral Royalties (Concession Agreements; Succession of States).” *International Legal Materials* 3 (6): 1133–70.

<sup>36</sup> The North Eastern Rhodesia Order in Council of 1900, Article 16.

the Lewanika in North Western Rhodesia while making vague references to treaties with often unnamed chiefs in North Eastern Rhodesia. They were committed to justifying their control of land as authority derived from chiefs. For example, the British devotion to this basis for their authority manifested itself in self-consciousness about their claims in North Eastern Rhodesia. In 1938, a British report argued that the entire North Eastern region should be customary land because “It should be borne in mind in connection with North Eastern Rhodesia outside the concession areas that the natives have never resigned any rights in the land.”<sup>37</sup> By contrast, the British treated the agreements with the Lewanika as clear justification for their rights to allocate land actively used by indigenous populations in North Western Rhodesia. The first British permits of occupation for farmers name the Lewanika’s treaty as the source of their authority to grant titles.<sup>38</sup> Eventually, the questionable Thomson-Sharpe treaties are forgotten in British legal documents and the Lewanika’s agreement is used to validate British control of land in all of the unified Northern Rhodesia. The repeated preamble to Northern Rhodesia land policies states that the Crown is free to administer “all such rights and interests in lands as [the BSAC] claimed to have acquired by virtue of the concessions granted by Lewanika, upon which date the full and entire control of the lands throughout North Western Rhodesia as well as elsewhere in Northern

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<sup>37</sup> Government of Northern Rhodesia, “Pim Report,” 45; That the chiefs in NER never gave up any land rights except for the Tanganyika concession is also discussed in Creech Jones, Correspondence, 6 June 1939. Box 3/314 Native Reserves General Policy, Native Trust Lands Commission VOL 2. Secretariat Series. The Zambia National Archives, Lusaka.

<sup>38</sup> BSAC, “Permit of Occupation” 1902?, Box 363/68, Shelf A3/21, BSAC2 NWR Collection, The Zambia National Archives, Lusaka.

Rhodesia.”<sup>39</sup>

Faced with the same challenges of exerting authority over agricultural colonies with a diverse mix of pre-colonial polities, the British and French relied on different justifications for their rule. These initial discourses have long-term impacts on the role of customary authority in Zambia and Senegal. Throughout their colonial regime, the British emphasized the rights to land alienation that they gained through existing local authorities and were self-conscious that they had weaker rights where no such agreements existed. By contrast, the French used treaties briefly to facilitate colonial occupation, but not as a basis for their authority in Senegal. Their rights over land derived from the eminent domain of the state; they understood these as rights acquired from conquering customary authorities. Thus, starting at an early colonial period, the British land authority rested upon customary authorities while French land authority derived from replacing them.

## 2.4 Land Planning

These two distinct ways of exerting power in relation to customary authority shaped how the British and French organized the land in their colonies. The property rights systems they established coordinated with their different approaches to customary authority. The British implemented top-down land planning policies that divided the country into zones where statutory land titles were permitted and other zones under the control of chiefs. This allowed the colonial authorities unrestricted rights over land outside of Native Reserves while empowering chiefs

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<sup>39</sup> This preamble is used in The Northern Rhodesia (Native Trust Land) Order in Council 1945, The Northern Rhodesia (Crown Lands and Native Reserves) Order in Council 1928, The Zambia (State Lands and Reserves) Orders 1928 to 1964, among others. The full paragraph is, Whereas: “*The Company as from the 1st day of April, 1924, assigned and transferred to the Crown all such rights and interests in lands as it claimed to have acquired by virtues of the concessions granted by Lewanika, upon which date the full and entire control of the lands throughout North-Western Rhodesia as well as elsewhere in Northern Rhodesia should be taken over by the Crown and thereupon (subject to certain provisions with regard to the rights of the Company to lands and minerals contained in the said Agreement) lands in such manner as the Crown might in its discretion deem best in the interest of the native population and in the public interests generally.*”

within their own circumscribed domains. For the French, land planning instead reinforced the claim that the state had replaced all other forms of authority. Since the state owned all of the land, they did not need to implement specific zones for customary or state control. The French had a single system for accessing land and titles throughout the colony. By contrast, the British implemented a dual system for Zambia's land. Further, unlike the British who supported customary authorities' control over land to bolster the state's rule, the French encouraged a direct relationship between the population and the state. In turn, indigenous access to state land titles was promoted far more in Senegal than in Zambia. When the French did rely on customary authorities to facilitate agricultural production, they did so informally.

#### **2.4.1 Senegal**

Even before the official start of colonial rule in Senegal, the French had designated Senegal as an agricultural colony and established a system of land titling. By 1832, they had a functioning land registry in Saint-Louis and in 1861 opened a second registry office to serve the lower regions of the country on Gorée Island (later transferred to Dakar). Creating a system of statutory titles rights was a high priority to make the colony profitable; French legal experts believed this would only be possible with property rights security and a foundation for the colonists' credit.<sup>40</sup> Their goals were to create a system of property rights that would allow the French and French settlers to develop land and to replace the traditional system of land tenure (Verdier 1971, 92).

The French began their rule with clear opposition to customary land tenure regimes. In 1837, one lieutenant reported that the potential breadbaskets of Senegal would never be realized under the current "tyranny" of chiefs, because their subjects needed security of property rights.<sup>41</sup>

In line with this opposition to customary authority, the French instituted a single system of

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<sup>40</sup> Griault, *Le Régime Des Terres*, 126.

<sup>41</sup> Letter to the Minister from a lieutenant in 1837, as cited in: Hardy, Georges. 1921. *La Mise en Valeur Du Sénégal de 1817 À 1854*. Paris: Larose, 325.

property rights for indigenous and European alike. As early as 1865, the colonial regime mandated that the indigenous population could access land titles.<sup>42</sup> The French actively promoted land registration, as they saw customary tenure as “incompatible” with modern life and in need of being replaced by private, alienable rights.<sup>43</sup>

Due to both lack of interest and active resistance, the French failed to get indigenous populations to replace their customary tenure with titles. As a result, they were forced to shift their approach by making minor recognitions of customary property rights. Before 1904, the colonial state was the owner of all land. In 1904, they changed this to the state as the owner of all unused (*vacant et sans maître*) land and recognized some collective property rights.<sup>44</sup> Two years later, they reorganized the property rights regime across French West Africa by creating a separate and less onerous process of land registration and certificates for the indigenous population.<sup>45</sup> Much of the French emphasis on land registration was couched in the regime’s distrust of customary authorities. For example, in 1913 the French administration issued a circular stating that the indigenous population needs to be protected from chiefs and is too ignorant to understand the advantages of titling.<sup>46</sup> In a 1921 circular the governor insisted that the administration could not recognize any ownership rights that were not based on titles and that it was their “duty to regulate” against customary ideas of land tenure by facilitating indigenous access to title.<sup>47</sup> Yet de facto customary authority over land persisted and later decrees extended their recognition of customary land rights further, despite the regime’s continuing belief in the

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<sup>42</sup> Arrête du 11 mars 1865, under the authority of Governor Faidherbe.

<sup>43</sup> Doublier, *La Propriété Foncière en A.O.F.*, 162.

<sup>44</sup> Décret du 23 octobre 1904 sur le domaine, article 10, Sénégal.

<sup>45</sup> Décret du 24 juillet 1906, portant organisation du régime de la propriété foncière dans les colonies et territoires relevant du gouvernement général de l’AOF.

<sup>46</sup> Circulaire 250 du 5 mars 1913 au sujet de notre politique agraire à l’égard des indigènes, 102, Colonial Senegal Collection, The National Archives of Senegal, Dakar.

<sup>47</sup> Circulaire 9 du 17 décembre 1921, 102, Colonial Senegal Collection, The National Archives of Senegal, Dakar.

superiority of state property rights.<sup>48</sup> Although they gradually shifted from the state owning all land to recognizing some customary land rights, the French never provided formal powers to individual customary authorities in land allocation.

The French property rights regime in Senegal was founded on the principle that the state replaced the ownership rights of all preexisting authorities over land. Thus, even after they had taken steps in the direction of recognizing some customary land rights, the French privileged land titles and statutory land registration. When there were conflicts between customary landowners and the state or settlers, the legal system backed the state's interests. As a result, the state could easily access the land it needed; any resistance from customary authorities was informal. This basis in the rights of eminent domain made it unnecessary to create specific zones of customary or state land tenure as the British did in Zambia. As a result, French land planning was relatively ad-hoc. They could register pieces of land in the state's property rights system as they needed. Unlike former British colonies, there were no major resettlement or villagization schemes in Senegal. Instead, the only major reservations of areas as state controlled land was for classified forests.

In addition to supporting its attempts to undercut customary authority over land, the French approach to land planning also conformed with its smallholder-based groundnut economy. Despite the colonial authorities' attempts to attract agricultural settlers and experiments with plantation crops such as tobacco and cotton, they discovered early that smallholder production of groundnuts had high revenue potential for the colony. As early as 1854 the annual export of groundnuts was 4,820 metric tons; both the Saint-Louis and Gorée

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<sup>48</sup> The texts that increased recognition of customary rights include: Décret du 8 octobre 1925, Circulaire du 18 novembre 1925, Décret 55-580 du 20 mai 1955, Décret 56-704 du 10 juillet 1956.

ports were profiting from it.<sup>49</sup> By 1913 annual groundnut exports had reached 240,000 tons<sup>50</sup> and were the greatest source of profit for the French colonial state. This economic model did not require a major reorganization of the territory. Encouraging individuals to obtain land titles on their land was consistent with a smallholder-centered colonial economy. Thus the early identification of the economic potential of groundnuts produced by indigenous farmers in Senegal did not challenge their passive approach to land planning.

#### **2.4.2 Zambia**

The British implemented a much more active regime of land planning in Zambia, that supported their interest in upholding customary authority and their lengthier commitment to encouraging a settler agriculture economy. They established a dual land tenure system, dividing the country's territory into zones reserved for customary land rights controlled by chiefs and Crown Land under the jurisdiction of state property rights. The British approach to land planning relied on engineering different categories of land within a dual land tenure system and forming schemes for villagization and resettlement. Independent Zambian governments have continued the dual land tenure system and the active approach to land organization initially established by the British.

The Native Reserves were the earliest land divisions in colonial Zambia. They were an adaptation of the Reserves models implemented by the British in Southern Rhodesia and Nyasaland. The first Native Reserve was located in the area surrounding Fort Jameson, Eastern Province in 1907. At that time, there were a total of 26 European farmers and ranchers in North

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<sup>49</sup> Hardy, *La Mise en Valeur Du Sénégal*, 349.

<sup>50</sup> Roubaud, Emile. 1918. "L'état Actuel et L'avenir Du Commerce Des Arachides Au Sénégal." *Annales de Géographie*, 148–149.

Eastern Rhodesia.<sup>51</sup> While the British established Native Reserves first in areas with settler agriculture, they extended the policy throughout the entire territory. Colonial authorities argued that a widespread system of Native Reserves would facilitate European settlement by making it easier for the district staff to survey and allocate the land.<sup>52</sup> When Reserves were created, local populations were either threatened with future displacement or forced to move into the reserve immediately. This created large, available blocks of agricultural land for commercial farming. However, in 1924 there were only a total of 4182 Europeans in Northern Rhodesia and they were primarily concentrated in mining towns.<sup>53</sup> Despite the lack of demand for settler agricultural land, by 1929 the colonial authorities had established 39 Natives Reserves throughout the country.

By creating Native Reserves, the British divided the land into Crown Land, under the jurisdiction of the state, and Native Reserve Land under the jurisdiction of an officially recognized “Native Authority.” These reserves were individual blocks of land with established boundaries that ranged in size from 3885 ha to over 2 million ha.<sup>54</sup> Only indigenous populations could live in the Reserves. The British prohibited land titles there; the chief allocated all property rights. To facilitate the chiefs’ rule, the colonial authorities attempted to make them ethnically homogenous.<sup>55</sup> They incorporated chiefs into the regional Reserves Commissions that decided on the division and boundaries of the land. While this created opportunities for other chiefs to manipulate and protest the tribal boundaries (Meebelo 1971, 118), the Lewanika was the chief

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<sup>51</sup> BSAC, “Administrator’s Report for the Two Years Ending 31<sup>st</sup> March 1905” 1905, A8/1/1, North-Eastern Rhodesia Collection (BSAC1), The Zambia National Archives, Lusaka.

<sup>52</sup> BSAC, “Correspondence from the Secretary of the Land Board to the Administrator” 11 September 1920, B1/66/5, Northern Rhodesia Administrator Collections (BSAC3), The Zambia National Archives, Lusaka.

<sup>53</sup> Inspector of the Lands and Valuer of the Department of Lands, “Annual Report ” March 31 1924, Shelf 16/Box 93A Government Series, The Zambia National Archives, Lusaka.

<sup>54</sup> Government of Northern Rhodesia, “Pim Report,” appendix VIII.

<sup>55</sup> Government of Northern Rhodesia, “Report of the Land Commission [Eccles’ Report]” 1946, The University of Zambia (UNZA) Special Collections, Lusaka.

with the greatest influence on the delineation of boundaries. His land was functionally equivalent to the other Native Reserves but was permitted the special designation of “Barotseland” in colonial documents. Further, the Lewanika’s Native Reserve was larger than all of the other Native Reserves combined.<sup>56</sup>

During their colonial rule, the British created a range of other categories of land zoned and reserved for specific purposes. This includes game reserves, forest reserves, townships, even, for a short period, archeological reserves. Large areas with mining potential were designated as Crown Land and settler agriculture was discouraged or prohibited in such areas. By 1936, the British had divided the territory into 28.9 million ha of Native Reserves for an indigenous population of 1.4 million, 2.0 million ha of forest and game reserves and 3.6 million ha of land titled or leased to Europeans, including the mostly vacant massive land titles from the initial BSAC and other company charters.<sup>57</sup> While 11,464 Europeans lived in Zambia at that point, most were engaged in mining. In 1936, the British registered 1026 European farms.<sup>58</sup> The remaining 39 million ha of land in the colony were considered unallocated Crown Land until 1947 when the British created a new category of Native Trust Land.

This active approach to land planning supported British colonial governance through chiefs. The British created specific zones of customary authority and then designed land use policies to reinforce the rule of chiefs. In 1907 the colonial authorities attempted to make it harder for populations to evade their chiefs by prohibiting shifting agriculture (Meeblo 1971),

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<sup>56</sup> In 1936, when all of the Native Reserves had been established, the total land for all “Other Reserves” was 14,047,772 ha. For Barotseland, the total was 14,900,202 ha. Author’s conversion from acres to ha. Northern Rhodesia, Department of Land and Local Government, “Annual Report” 1936, Shelf 16/Box 93A Government Series, The Zambia National Archives, Lusaka.

<sup>57</sup> Government of Northern Rhodesia, “Native Affairs Annual Report for the Year 1934” 1934, Box 2/Shelf 8, African Affairs Annual Reports, Government Series, The Zambia National Archives, Lusaka.

<sup>58</sup> Northern Rhodesia, Department of Land and Local Government, “Annual Report” 1936.

which then led to famine.<sup>59</sup> They also amalgamated smaller villages to facilitate governance and taxation. In the Northern Kasama area, the British merged 282 villages into 74 villages, changing the average size from 95 to 200 per village (Kay 1967b, 10). The British colonial authorities actively reorganized the territory because they considered the spread of natives into small communities as “an evil which tended to break down all tribal authority.”<sup>60</sup>

Once the Native Reserves had all been established, the British formalized “Indirect Rule” as an official policy in 1930.<sup>61</sup> Native Authorities were responsible for governance within their Reserves including land allocation and conflict resolution. The chiefs were named as the recipients of all land rents, grazing fees, forest royalties on reserves and, by 1936, the British had established Native Treasuries resembling those in Tanganyika (Tanzania) and Nyasaland.<sup>62</sup> Further, while indigenous populations were legally permitted to access land titles outside of Reserve areas,<sup>63</sup> the administration discouraged individual land holdings by indigenous farmers to keep them under a chief’s control.<sup>64</sup> These British land policies worked in unison with their approach to rule through customary authorities.

As in Senegal, the British in Zambia became more permissive of customary land rights in the later colonial period. Prior to 1947, all land outside of Reserves was Crown Land, such that 38% of the territory was customary land.<sup>65</sup> However, in the later colonial era it became increasingly clear that agricultural settlement would never be a major economy in the colony,

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<sup>59</sup> Government of Northern Rhodesia, “Pim Report,” 19.

<sup>60</sup> BSAC, “Correspondence between BSAC Administrator to the High Commissioner for South Africa” 6 January 1915, HC/1/3/21 Northern Rhodesia Administrator Collections (BSA3), The Zambia National Archives, Lusaka.

<sup>61</sup> 1930 Native Authority and Native Courts Ordinance, Laws of Northern Rhodesia.

<sup>62</sup> The 1928 Northern Rhodesia (Native Reserves) Order in Council established Native Reserves Funds; Treasuries were established in the 1936 Native Authorities Ordinance, of the Laws of Northern Rhodesia.

<sup>63</sup> The Northern Rhodesia Order in Council 1924, Section 42 states that natives may acquire land under the same conditions as non-natives. This policy was designed to be different from Southern Rhodesia’s explicit racial land categories.

<sup>64</sup> Government of Northern Rhodesia, “Eccles’ Report.”

<sup>65</sup> Calculations based on Northern Rhodesia, Ministry of Land Annual Reports 1935-1946, Shelf 16/Box 93A, Government Series, The Zambia National Archives, Lusaka.

and the limited amount of land designated for indigenous agriculture could no longer be justified. From the start of the Reserves policy, district officers had documented the inadequacy of the Native Reserves; however, their reports on the injustices created by the partition of the land grew bolder in the later colonial period. This includes, for example: “ ‘Agriculture is a serious problem in Chief Shaiwila’s area....villages now line the Reserve side of the Mkushi River cheek by jowl, with hungry eyes at the unoccupied land opposite, behind them lies the commencement of a man-made desolation.’”<sup>66</sup> As a result of such serious overcrowding and the lack of European demand, the British transferred a large amount of Crown Land into a new category of Native Trust Land.<sup>67</sup> This shifted the percentage of Crown Land in the territory from 62% to 8%.<sup>68</sup> Trust Land was similar to the Native Reserves with the notable exception that statutory leases were permitted. After independence, the Zambian government maintained these areas of Trust and Reserve Land. In 1995, they were amalgamated into one category of “Customary Land.”<sup>69</sup>

The land policies designed by the British and French colonial authorities reinforced their different approaches to customary authority. The synergy between the land and chieftaincy policies is also manifest in the different types of institutional dualism in the two colonies. While the British implemented a dual system based on property rights, the French implemented a dual system of political membership. The French encouraged the entire indigenous population to directly engage with the state system of property rights in Senegal. However, they established a dual system where Senegalese born in the first 4 communes in the colony had a special status and could obtain French citizenship. Those outside of the 4 communes of Gorée, Saint-Louis, Dakar and Rufisque had a different political status, as French subjects. While the British in

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<sup>66</sup> Government of Northern Rhodesia, “Eccles’ Report.,” 21.

<sup>67</sup> 1947 Northern Rhodesia (Native Trust Land) Order in Council.

<sup>68</sup> Calculations based on Northern Rhodesia, “Ministry of Land Annual Reports” 1935-1946, Shelf 16/Box 93A, Government Series, The Zambia National Archives, Lusaka.

<sup>69</sup> 1995 The Lands Act, of the Laws of Zambia.

Zambia created a dual system through land policy, such that individuals were subject either to the state or to a chief for the provision of property rights, the divisions in Senegal disregarded any role for customary authorities. Although the French also divided the population into citizens and subjects, both statuses were in relation to the only recognized authority—the state. This is a further example of the differences between the colonial philosophies. The British used land engineering to build customary authority and maintain customary property rights. By contrast, the French formally ignored customary authority and customary property rights.

British and the French colonialism laid the institutional groundwork of modern Zambia and Senegal. Current land policies and practices developed out of the institutions established in this era. In modern Senegal, the state has continued the policy of tolerating customary control of land while encouraging land titling. In modern Zambia, the colonial system of dual land tenure overseen by formally recognized chiefs remains. The mutually reinforcing nature of customary and land policies established in the two colonies contributes to their longevity. The British and French colonial regimes established different processes for how the state extends control over land and how customary authority can influence it. Before further discussion of how this contributes to state-building, the next section identifies where the colonial states' property rights developed first and why.

## **2.5 Selection of Land**

Despite the European powers' different land planning strategies—with the French allowing any land to be registered into the state's system of property rights and the British dividing the land into a dual system of state or customary—by the end the colonial era the two countries had nearly identical proportions of state and customary land. At independence, 5% of Senegal's territory and 6% in Zambia were directly controlled by the state. The remaining land in each

country was under customary control. Today, these first areas of titled land continue to be state land. With few exceptions, land that was registered under the state's property rights system stayed state land even if the title was cancelled. Thus this initial division of land identifies the current sites of state land in the two countries and illuminates the factors that influenced the earliest land titling. While the accepted wisdom is that the Europeans selected the "best" land for their own use, their choice of land was conditioned by the context of diverse preexisting political institutions and limited information about land quality. This section unpacks how the colonial regimes designated which land to integrate into the state's authority and which would remain customary.

### **2.5.1 Colonial Science**

The colonial authorities selected land to title and reserve as state land prior to completing surveys that could identify land suitability for agriculture or mining within the territory. Due to the limits of 19<sup>th</sup> century agricultural sciences and the metropolises' scant budgetary allocations for surveys, the British and French colonial administration had fragmented knowledge of the territories, at best. Studies of soil type and fertility or water and mineral resources were compiled in areas where Europeans already lived or that had previously been identified as interesting to the colonial state. Few colonial officers had any scientific or agricultural training; instead their conclusions about land suitability were based on the reports of local farmers, explorers, and administrators. In both Zambia and Senegal, the colonial authorities took careful records of annual rainfall and temperatures at each of their administrative posts as the basis for agriculture potential and suitability for European settlement. This rainfall and temperature data is the only systematic information for the entire territory that the colonizers had until the late colonial period.

The colonial authorities' information on land suitability was greatest in the areas where they already had access to the land. For example, the first French study of soil suitability was on the land where they faced the least local resistance. Having quickly decimated the fragile Waalo kingdom, they selected an area in their territory near the Senegal River to create an experimental nursery in 1822. The nursery, known as Richard Toll, was located a little over 100 km from colonial headquarters at Saint-Louis. To test the suitability of the soil in Senegal, the French administrators sent 5 samples from within the Waalo zone to a scientist in France. He analyzed the soil by comparing it to Parisian soil and used this to draw conclusions about which crops (grown in Paris) would be suitable on the different types of land.<sup>70</sup> In addition to this first soil study, the French used the nursery at Richard Toll to study how different varieties of cash crops would grow, including cotton, coffee, vegetables and indigo. Their first conclusions about agricultural suitability were based on the land that was most politically accessible.

In the early 20<sup>th</sup> century, French interest in studying the land grew. The first agronomist arrived in 1897 (Bonneuil 1999). By 1903, the French had compiled a flimsy but systematic inventory of the natural resources in the AOF, which included a measure of suitability of the land for European exploitation and inhabitation. Eastern Senegal fared best on this scale, while the whole region of Saint-Louis, including Richard Toll, was rated as having “very mediocre richness” and “passible inhabitability.”<sup>71</sup> Outside of such broad generalizations derived from rainfall and temperature data, all reports on the land were limited to zones selected for other reasons until 1950. For example, *after* choosing the most strategic route for the railway, the colonial authorities compiled a memo “On the Nature of the Terrains Crossed by the Railway

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<sup>70</sup> Hardy, *La Mise en Valeur Du Sénégal*, 171.

<sup>71</sup> Dr. Barot, “Rapport sur la réalisation d’un inventaire méthodique des ressources de l’AOF” 1903, 1G286, AOF Collection, The National Archives of Senegal, Dakar.

Dakar to Saint-Louis” in 1897.<sup>72</sup> Consistent with this fragmented approach, trained scientists issued independent reports on the soil, water, and vegetation for the Casamance region in 1901,<sup>73</sup> the Djoloff and Ferlo regions in 1915,<sup>74</sup> and the zone between the Faleme and Niger Rivers in 1921.<sup>75</sup> The first geological studies were in the European-settled areas of Dakar and Saint-Louis; consequently mineable minerals were not discovered in Senegal until the 1945.<sup>76</sup>

The French knowledge of Senegal’s land was limited to reports on convenient locations and very broad generalization based on temperatures, rainfall, and elevation until 1943 when the Office de la Recherche Scientifique Colonial (ORSC) was created.<sup>77</sup> By then the agricultural economy had already been established in the Center-West region of Senegal. In 1950s and 1960s the administration systematically surveyed the soil across the country. Complete soil maps were only available for land use decisions in 1966. As a result, all divisions of land in the colonial era were established with patchy information on agricultural suitability.

British colonial science in Zambia was similarly limited. Until 1924, there was only one colonial officer educated in agricultural practices.<sup>78</sup> Instead, the administration relied on reports from district officers, who were responsible for diverse tasks including recording average rainfall, daily temperatures, observations on “native culture,” and tax receipts in their District Notebooks. These British district officers also occasionally documented geographic features of their districts including reports of tsetse fly. Lacking any agricultural training or scientific knowledge, the British district officers could only provide rudimentary information on easily observable factors. At this time, trial and error was the primary option for identifying the

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<sup>72</sup> Cited in: Brigaud, Felix. 1960. *Géologie*. Etudes Senegalaises N°9, Saint-Louis, Senegal: Centre I.F.A.N.

<sup>73</sup> Chevalier, Auguste and Cligny, A.D. 1901. “La Casamance.” *Annales de Géographie* 10 (50):165-176.

<sup>74</sup> Adam, Jacques. 1915. “Le Djoloff et le Ferlo.” *Annales de Géographie* 23 (132): 420-429.

<sup>75</sup> Chudeau, René. 1921. “Le plateau mandingue.” *Annales de Géographie* 30 (167): 362-373.

<sup>76</sup> Brigaud, *Géologie*.

<sup>77</sup> This was later renamed ORSTOM and now it is the Institut de Recherche pour le Développement (IRD).

<sup>78</sup> Government of Northern Rhodesia, “Pim Report,” 132.

suitability of land for agricultural production. The administration encouraged a range of different crops as experiments, including failed attempts by the BSAC to grow rubber in the Chambeshi area and sisal in Mazabuka.

The British were slow to fund any systematic study of the land in Zambia. As one colonial authority lamented in 1923: “Considerable areas in the more remote parts have been examined only in the perfunctory way, if they can be said to have been examined at all.”<sup>79</sup> An ecological survey of both North Western and North Eastern Rhodesia was not completed until 1938. While the report featured descriptions of local agriculture and analysis of the different soil types, it still lacked soil information on some areas, particularly in the Northeast of the colony. By the time a complete vegetation soil map of the entire colony was available (in 1949), the British had already selected land for the categories of Reserves, Trust, and Crown Land. While the British had discovered many mineral reserves through private prospectors and explorers, it was 1951 before they commenced a national geological survey.

By then, the British divisions of land were well established. Without scientific knowledge of the land’s value or suitability, the authorities relied on the testimony of nearby white farmers and chiefs to decide which land should be state or customary. During these negotiations, “not a single trained agriculturalist or ecologist served any of these bodies” (Gann 1969, 225). The administrators selected zones for Crown Land and colonial agricultural activities without scientific knowledge of the productive value of the land. Thus it is not surprising that in Kay’s exhaustive social geography studies, he finds no correlation between soil fertility and population density (Kay 1967a, 53).

The British and French decided which land to put under state control with very limited

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<sup>79</sup> Davis, Edmund. 1923. “Northern Rhodesia: Its Potential Mineral Resources.” In *The Story of the Cape to Cairo Railway & River Route 1887-1922*, edited by Leo Weinthal, Volume 4:297–304. London: The Pioneer Publishing Company, 297.

scientific knowledge of the quality of the land. The in-depth knowledge they gleaned during this time was through trial and error or on land selected for other reasons. As a result of this partial information, it was instead market access that determined the desirability of the land. In the early colonial era, railways were the critical link to markets. As a result, across these very different contexts, it was railways that determined where state control of land developed.

### **2.5.2 Railways**

The land along the railway lines became the prized agricultural land for the two colonies, yet the routes of the first lines were decided independent of any studies of soil or climate. Instead, it was commercial interests that determined which locations would be connected by the first railways in Zambia and Senegal. Customary authorities impacted their development in subtle ways. In Zambia, the Lewanika's approval of the land chosen for the railway, within his jurisdiction but far from his prohibited areas, accelerated the railway's construction. In Senegal, the resistance of Lat Dior slowed the construction of the railway and motivated the French to forgo the most direct route by extending the line farther into his territory.

As early as 1856, the French identified the benefits of connecting the ports of Saint-Louis and Dakar by railway (Charpy 2011, 302). These commercial centers were established and profitable for the French early in their occupation of Senegal. Saint-Louis was the French colonial capital until 1902, with access inland via the Senegal River. Dakar's natural bay made it a better port than Saint-Louis, which was surrounded by a sand bar. Linking the two by rail gave Saint-Louis better access to the Atlantic Ocean and connected the Southern areas of Senegal that were served by the Dakar port with the inland areas that could be reached by the Senegal River in the North.

However, it would not be constructed for another 30 years, due in part to the resistance of

the nearby customary authorities. The land connecting the two posts was almost entirely in the Cayor kingdom. As discussed earlier in the chapter, the French attempted to forge treaties with the Cayor for the railway land and labor in 1879. However, they were challenged by the leader, Lat Dior. Having faced the resistant Cayor customary authorities for years, the French chose to extend the railway east through the heart of the Cayor state before returning west to the coastline. They justified this indirect route as “peaceful penetration by rail” in order to dominate the Cayor state (Pheffer 1975, 40–48). This required additional rail and differed from the direct route between the two cities that the French had used earlier for their telegraph line. The customary authorities in the Cayor launched an organized resistance to this route and the French ultimately acquired the land by force. However, this exacerbated their problems in constructing the rail line by making it difficult to recruit local labor. The resistant chiefs were able to slow, but not stop railway development. The Saint-Louis-Dakar rail line opened in 1885.

The second railway in Senegal cut through the middle of the country, reaching deep inland to Kayes in present-day Mali. This connected Senegal to an inland rail that stretched from Kayes to the Niger River, inclusive of Bamako. Initially, the French Minister of the Navy and the Colonies proposed that this second rail extend from Saint-Louis to Kayes alongside the Senegal River (McLane 1992, 100). Another proposal advocated for the most direct route from the Saint-Louis-Dakar rail to Kayes, starting at the town of Louga (Pheffer 1975, 232). However, the French instead selected the military outpost of Thies, situated at the strategic junction of the Baol and Cayor states. The chosen route had the advantage of cutting through the territory of the Baol, Sine, and Saloum pre-colonial states to reach the inland Kaolack port.<sup>80</sup> French merchants in Southern Senegal were major proponents of this route to support the burgeoning groundnut industry in the area between Kaolack and Thies (McLane 1992, 105). The French government,

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<sup>80</sup> Du Sorbiers de la Tourrasse, Joseph. 1897. *De La Colonisation Du Sénégal*. Paris: Arthur Savaete.

who funded the railway, approved this second route in 1904, launched it in 1913, and the full distance from Thies to Kayes was completed in 1923.

Across the continent, in colonial Zambia, Cecil Rhodes dreamed of building a railway through the colony that would connect British territories from Cape to Cairo. In 1904 the Cape-Cairo railway extended 453 km, starting in South Africa, passing through a corner of Botswana, to Bulawayo (Zimbabwe), stopping at Victoria Falls, the Southwestern boundary of Zambia. By then, mineral reserves had been discovered in Zambia but were not profitable due to the high costs of transportation. Thus it was the imperative of connecting the mines that determined the path for extending the Cape-Cairo railway into Zambia. The first branch of the railway connected Victoria Falls to the Broken Hill Mine (present-day Kabwe) where zinc, lead and vanadium had been discovered. The construction of this line moved swiftly; over 600 km of railway was completed in just two years. The Lewanika consented to the construction of the railway in his 1900 agreement and the decentralized Tonga population who occupied the land had limited capacity to resist. As a colonial British land expert would later report “Where the railway line now runs there is little tribal authority, and this state of affairs existed before the coming of the Europeans.”<sup>81</sup>

From the Broken Hill mine, two paths were considered. One fulfilled the goal of Cape-Cairo line by passing through Northern Zambia to Tanganyika. The second option was to join the Belgian Congo railway through the mineral-rich Katanga area.<sup>82</sup> At the time the railway was constructed, the British had already determined that Zambia would not be profitable as a settler agricultural colony. In 1911 there were only 45 European farms (Weinthal 1923, 58). Instead, mining was the priority to make the colony profitable. As a result, the British authorities and

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<sup>81</sup> Government of Northern Rhodesia, “Pim Report,” 94.

<sup>82</sup> G. 1904. “Les Chemins de Fer Africains.” *Annales de Géographie*: 427–54.

railway investors chose mining over Cecil Rhodes' dream of empire. The British extended the railway to Katanga and it was functional by 1910. The proposed alternative route extending to Tanzania was eventually built in the 1970s.

While Katanga had already demonstrated mining potential, this railway helped to create the mining zone in Zambia that would later earn the name of the Copperbelt. There, important copper production began a decade after the Katanga route was operational. The railway line also created the modern Zambian economic and political capital, Lusaka. Lusaka began as a village along the railway that developed into an agricultural outpost occupied by small group of Afrikaaner farmers and Jewish traders (Gann 1969, 141). Over the next three decades it grew in size and importance until it was named capital of Zambia in 1935.

The railways in Zambia and Senegal transformed the value of land in the colonies and shaped which land came under state control. While existing groundnut production influenced the second rail line in Senegal, the locations of the routes were largely independent of agricultural potential. The authorities did not decide the paths based on soil or land value considerations; instead they were created to connect strategic economic locations. These commercial centers were ports in Senegal and mines in Zambia.

Customary institutions impacted the development of the railways in different ways. For the French, the customary institutions slowed their progress on a route they had long identified as their first priority. It took years of extended negotiations, violent campaigns, and ultimately killing the powerful chief before they could proceed with the Saint-Louis-Dakar railway. Further, the path of the railway was used as a political tool to pacify this resistant pre-colonial state. As the French government was the primary backer of the railway in Senegal,<sup>83</sup> these strategic political motivations trumped the cost of the construction of an indirect route. The Zambian

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<sup>83</sup> On the allocation of railway funding in Senegal, see Newbury and Kanya-Forstner (1969).

railway was funded by the private sector and took the most direct route to make the mines profitable. The builders of the British railway benefitted from weak customary authorities in the immediate path between their mining interests and the consent of the powerful Lewanika.

### **2.5.3 Division of Land**

The British and French followed two different logics for organizing property rights and customary authority. However, while their approaches to developing state control of land differed, the consequences for land titling converged. In both colonies, the division of land between customary and state property rights reflected the strategically chosen points of first European settlement presented earlier in the chapter, the lack of scientific knowledge of the suitability of the land, and the path of the railways. These historical factors have an important influence over where the state has the strongest control over land today.

#### **Senegal**

In Senegal, all land could legally be registered into the colonial state's system of property rights. The division of land between state and customary control was not engineered by the state, but driven by individuals seeking titles. Initially it was European farmers who propelled this land registration process, but later indigenous farmers also sought titles to establish their property rights.

Prior to the construction of the railway, the French established agricultural concessions in areas where they had the most secure access to land, free from powerful customary authorities or indigenous resistance. Along the Senegal River, these titles clustered in the area of the former Waalo kingdom (Dagana) and the former Guoye kingdom (Bakel), excluding the area between the two controlled by the resistant Fouta pre-colonial state.

Far inland along the Senegal River, the Guoye kingdom was quickly subdued by the

French. In a series of 8 treaties between 1821-1887 they agreed to the cession of land in exchange for tribute, recognition, and protection.<sup>84</sup> A French military post was active starting in 1821 and a missionary station since 1854. There, European settlement was permitted and the Colonial Governor Roger established some of the earliest colonial farms.

Most of the other colonial state agricultural projects developed in the period before the railway were in the former Waalo kingdom. Despite admiring the fertility of the land in the Casamance, Thies, Fouta areas, the colonial authorities felt they most had the most complete control the Waalo land as the result of an 1819 treaty.<sup>85</sup> Between 1822 and 1831, the French alienated over 10,000ha of the Waalo area land to establish 40 colonial farms, primarily for cotton production. These first concessions are important as an early form of state property rights;<sup>86</sup> however, they failed to be profitable and were abandoned by 1831. As one administrator lamented of the European farmers, “they were farmers the way Parisian grocers become gardeners on Sundays in their backyards.”<sup>87</sup> The colonial authorities stopped providing support to the European farmers when they realized they were vastly over-reporting their crops to gain subsidies. For example, in contrast to the 1825 the 4,573,000 Kg of cotton claimed by the farmers, there were 14,877 Kg of cotton ginned.<sup>88</sup> The garden at Richard Toll also failed, due in part to its problematic location squeezed between a big village and a military post. By 1850 the failed individual farms and government garden were razed to facilitate French military operations.<sup>89</sup> Other early agricultural concessions were attempted later in the 19<sup>th</sup> century far from Saint-Louis in the Casamance region, home of a diverse mix of small, independent pre-

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<sup>84</sup> Sabatié, *Le Senegal*.

<sup>85</sup> Hardy, *La Mise en Valeur Du Sénégal*.

<sup>86</sup> The French administration codified these first allocations with an 1822 statute that provided conditions for the size of plots and instructions for how to address indigenous occupation of the land. Arrêté Local du 15 mai 1822 sur les formes et les conditions des concessions de terrains qui seront faites dans le pays Oualo.

<sup>87</sup> Du Sorbiers de la Tourrasse, *De La Colonisation Du Sénégal*, 12.

<sup>88</sup> Ibid.

<sup>89</sup> Hardy, *La Mise en Valeur Du Sénégal*.

colonial customary institutions.

Notwithstanding these failures in settler agriculture, the French continued to encourage the development of state property rights in land. They had property registration offices in both Saint-Louis and Gorée in 1861. By 1911, Senegal had the most titled European farms in the entire AOF.<sup>90</sup> This included 3802 ha of land titled in the Saint-Louis registry zone and 2497 ha in the Dakar area. Prior to the railway, the Senegal River, and in particular the land in the weak Guoye and Waalo kingdoms, were focal points for land titling. Once the railway was established, the pattern of land registration in areas of first settlement and control of land shifted to areas along the railway.

Plantation agriculture did not take root but the export of groundnuts produced by smallholder farmers thrived. Exports of groundnuts to France began in 1841 and increased in magnitude when the Saint-Louis-Dakar railway opened new markets for purchasing groundnuts from farmers in the Cayor zone. By 1913, groundnut exports from Senegal reached 240,000 tons, accounting for half of the exports in the entire AOF.<sup>91</sup> That year marked the opening of the railway branch that reached East from Thies, providing access to the inland river port of Kaolack. Kaolack would subsequently become the country's center of groundnut exports and the zone surrounding it would earn the name of the "groundnut basin."

After the second railway line was functional, state property rights grew fastest in the heart of the groundnut basin, in an administrative division named after the ethnically Serer

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<sup>90</sup> The 43 European concessions on 6299 ha is the most in the AOF in 1911; next is Guinea with 46 concessions on 5917 ha; Côte d'Ivoire with 42 on 3290 ha; Haut Senegal-Niger with 20 on 2829 ha, and Dahomey with 6 on 1502 ha; total titled concessions for the entire AOF is 19,839 ha. It is notable, however that available data on indigenous titles show that there were far fewer indigenous titles in Senegal than in Guinea or Cote d'Ivoire in 1931. Gouvernement général de l'AOF, "Tableau Recapitulatif des concessions accordées dans les Colonies de l'Afrique Occidentale Française depuis 1899" 1911, and "Etat des titres foncieres indigenes delivrés pendant les années 1932-1934" 1935?, 1R/00050, AOF Collection, The National Archives of Senegal, Dakar.

<sup>91</sup> Roubaud, Émile, Chargé de mission. 1918. "L'état actuel et l'avenir du commerce des arachides au Sénégal." *Annales de Géographie* 27 (148-149), 357.

kingdoms of Sine and Saloum. The French advocacy of groundnut exports and the decreased costs of transportation that resulted from the new railway created high demand for this land. In the 7 years between 1912 and 1918, 238 new titles were registered in the Sine-Saloum district, ranging in size from small residential plots in towns along the railway to major agricultural concessions over 2000 ha in size. No other area of the colony compared in the growth of titles during that time period. This boom in titling continued through the middle colonial period. Between 1927 and 1935, the Kaolack land registry office (inclusive of Sine-Saloum) titled over 7000 ha of land, compared to 3490 ha in Dakar and 1115 ha in Saint-Louis. By 1943, the Sine-Saloum had established itself as the breadbasket of the country. It not only had the greatest groundnut production, but also the most rice and millet planted. That year, 230,000 ha of land were planted with groundnuts in the Sine-Saloum, with the Baol and Thies regions at a distant second and third with 75,000 ha and 66,000 ha under groundnut production, respectively.<sup>92</sup>

One subset of customary authorities helped to facilitate land titling in the groundnut basin: Islamic marabouts. These leaders within Islamic brotherhood associations gained increasing importance in the daily lives of Senegalese during the social upheaval of the colonial era. Spiritual ties between the marabout and his follower are the basis of the authority of Islamic marabouts. However, the colonial state's interest in developing the groundnut export industry created an opportunity for marabouts to parlay their spiritual power into agricultural projects using the labor of their followers. While other brotherhoods also established villages of disciples, the Mouride brotherhood was particularly important in using "the feudalism of the robe" to

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<sup>92</sup> Land titling data compiled from reports in "Tableau general de proprietaries de l'Etat, du gouvernement General et de la Colonie" 1837-1927, 208, Colonial Senegal Collection; "Statistiques foncières: assiette de la propriete foncière consistence du domaine de l'Etat, livres foncières" 1927-1935, 209, Colonial Senegal Collection, The National Archives of Senegal, Dakar; "Agriculture. Développement agricole du Senegal, programme plans, statistiques" 1930-1957, 1R 00382, AOF Collection; "Statistiques Foncières" L 62(132), L63(132), L(34), L(35) 1920-1928, AOF Collection, The National Archives of Senegal, Dakar.

develop new areas for groundnut production (M. Diop 1985, 177). This model of agricultural production through marabouts' religious schools or "daras" was the economic base of the Mouride brotherhood (O'Brien 1971, 163–187). Raison (1968) and others have argued that the marabouts were able to develop new areas for groundnut production by coopting the existing Wolof class system. The historically aristocratic Wolof ethnic group featured large, mobile landless classes; these populations were willing to enter into feudal relationships with their spiritual leaders, as they had previously with nobles. As Boone (1992) demonstrates, their ability to mobilize labor and influence their followers made them important intermediaries within the colonial state.

While the marabouts had a critical role in the groundnut economy, their customary land rights were often lacked historical roots. At times, marabouts accessed land as gifts from followers, and purchased or took land from nomadic Fulani (Pulaar) in the groundnut basin. As a result of their weak lineage-based land rights and their collaboration with the colonial state, marabouts were some of the first indigenous to title their lands in Senegal. The growth of land titles in the groundnut basin was further stimulated by the practice of marabouts seeking land titles in their names for land cultivated by their followers.

The growth of state property rights in Senegal developed along the railways and points of early colonial settlement. Large land concessions also clustered proximate to transportation networks; at independence in 1960, the land with the most large land titles (superior to 100 ha) was located in the Senegal River Valley region (registered in Saint-Louis), in the groundnut basin (registered in Kaolack and Kaffrine), and in Thies, respectively. During the colonial period, the state also designated the township land, railway perimeters, coastal perimeters, and forest reserves as state land. These areas of state land combined with the land registered into the

state's system of property rights through titling are the colonial foundation of Senegal's state land today.

## **Zambia**

Unlike the French in Senegal, the British actively divided Zambia's territory into customary and state land. They organized commissions, debated boundaries, and collected evidence to make definitive decisions about how the land should be partitioned. As a result, their reports and correspondences provide more direct evidence of their considerations in selecting the land than the French left behind in Senegal. As in Senegal, the arrival of the railway was a critical moment in determining the division of land.

Prior to the railway in Zambia, the primary determinants of where state control of land developed were proximity to the first British posts and customary authority. The first area to be titled in colonial Zambia was a massive 1.2 million ha concession known as the Tanganyika Estate in North Eastern Rhodesia. It extended from Fort Abercorn, a British post selected for its strategic political location on the road between Lake Tanganyika and Lake Nyasa. However, despite the non-agricultural determinants of its location, the land was used and alienated by the colonial authorities for a variety of agriculture and mining prospecting activities. Similarly, the second area of titled land in Zambia was located at the site of the second British military post, Fort Jameson. There, the BSAC granted the North Charterland Company a large concession, which became a 1.7 million ha title. These titles were the earliest Crown Land.

The first land titles in North West Rhodesia were on the land allocated by the Lewanika in the southwest of the territory. This area included the railway's proposed path between Livingstone and Broken Hill Mine. In letters from 1904 and 1906 the Lewanika explicitly gave

consent for the British to “dispose of land to settlers” in specified areas within his jurisdiction.<sup>93</sup> The British interpreted their treaties and correspondences with the Lewanika as “the right to make grants of land for farming purposes in any portion of the Batoka [Tonga] or Mashukulumbwe [Ila] country to white men approved by the King.”<sup>94</sup> The ethnic groups specified in this passage are based in the present-day Central province (Mumbwa district) and Southern Province. While the Ila district of Mumbwa was far from the proposed rail line, it hosts one of Zambia’s largest land titles. This land, known as the “Big Concession,” initially came under state control as a mining concession in 1895. However, like the large concessions in Fort Jameson and Fort Abercorn, while not selected for agricultural potential, it became an important zone of titled agricultural land.<sup>95</sup> The written consent of the Lewanika allowed the British to freely grant titles in these areas while blocking them from titling land farther west into his territory. In 1911 the British formalized the prohibition on giving land titles within the Lewanika’s heartland through an Order-In-Council.

Once the first branch of the railway was completed in 1906, the colonial authorities actively promoted titling in that zone and discouraged it elsewhere. The British believed settler agriculture had the greatest likelihood of success in close proximity to the rail. By 1908, the administration had created 68 land titles for farming, primarily in the “Batoka” [Tonga] District permitted by the Lewanika.<sup>96</sup> To encourage settlement there, they implemented a policy where settlers could acquire freehold title for agricultural land in the North Western Rhodesia railway

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<sup>93</sup> Lewanika, “Correspondence with BSAC Administrators” 1906, Box 363/68, Shelf A3/21, BSAC2 NWR Collection, The Zambia National Archives, Lusaka

<sup>94</sup> F.V. Worthington, Secretary for Native Affairs, “Right of Natives to Land” 13 March 1906, IN1/1/1/16, BSAC2 NWR Collection, The Zambia National Archives, Lusaka

<sup>95</sup> The “Big Concession” Land was formally converted to an agricultural title in 1921.

<sup>96</sup> BSAC Lands Department, “Farms: Northwestern Rhodesia” 19 June 1908, A3/24/4, BSAC2 NWR Collection, The Zambia National Archives, Lusaka

zone, but only 99-year leases in North Eastern Rhodesia.<sup>97</sup> While mining interests determined the railway route, the colonial authorities designated its periphery as Crown Land for agricultural use. As a result, it became and continues to be a zone with a large amount of titled land, particularly for commercial agriculture. The colonial authorities acknowledged this contradiction: “The course followed by the line was not primarily dictated by a knowledge of the agricultural possibilities but by a variety of mineral and engineering considerations. Its existence, however, largely determined the areas in which Europeans could farm with advantages and most of their farms are within 20 miles of the line.”<sup>98</sup> By 1921, 87% of total white population in Zambia lived in the railway belt (Kay 1967a, 31).

Land titling and European settlement began in Northern Zambia at the Tanganyika Concession, in Eastern Zambia at Fort Jameson, and in Southern Zambia, along the railway. In response to these early European settlements, these were the first locations where the British established Native Reserves. The national division of land can be traced to the first areas of European settlement, however the process for deciding the boundaries within each zone was less systematic. In each given location, the division of land between customary and state control was decided in local negotiations with chiefs and settlers, in a context of limited information about the land’s suitability.

The first land marked as exclusively for indigenous use was the Fort Jameson Reserves, near the North Charterland title where tobacco farmers had settled. At its peak, there were 161 tobacco planters at Fort Jameson.<sup>99</sup> There, provisional reserves were negotiated in 1907 and 1913 before the Land Commission officially allocated 9 areas as Native Reserves in 1924. The

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<sup>97</sup> Government of Northern Rhodesia, “Pim Report,” 16.

<sup>98</sup> Ibid, 11.

<sup>99</sup> Northern Rhodesia, “Report of the Land Commission on the North Charterland Concession Area” 1942, SEC 3/315, Secretariat Series, The Zambia National Archives, Lusaka.

Commission divided the land between indigenous and crown control without data on the soil or water resources; they had no agricultural advisor and made decisions based on partial or incorrect information, including the estimate that .5 ha (1.25 acres) per person was sufficient for subsistence agriculture.<sup>100</sup> As a result, the Fort Jameson Reserves had an average allotment of 6 ha per person and were almost immediately over crowded, especially for communities with cattle. The British organized their second Reserve Commission to divide the land in the railway belt. There 16 Reserves were assigned in 1926 with an average allocation of 38 ha per person. Finally, the Commission in the North near the Tanganyika concession created 13 Natives Reserves in 1927 with 30 ha allotted per person.<sup>101</sup>

Unlike the later commissions to designate Trust Land, for the Native Reserves there were no local ecological surveys or agricultural experts involved in the decisions. Only very basic and easily observable geographic features were considered in these decisions. This included the presence of rivers, the appearance of fertility, and whether there were rumors of tsetse nearby. To decide the boundaries of one reserve, an administrator reported having visited a European ranch and touring the area by foot and by wagon for a few days. He concluded that the area near the ranch should be declared Crown Land because, despite the claims of the local indigenous population, he did not see any evidence of their land use in the area. In his report, he further justified his decision to exclude indigenous use of the land because, in the more distant location that would be reserved for them, the grass looked better.<sup>102</sup>

The colonial officials' primary consideration was to create large areas of uninterrupted land to be directly controlled either by the state or a chief. This required looking for areas with

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<sup>100</sup> Ibid.

<sup>101</sup> Author's calculations based on Government of Northern Rhodesia, "Eccles' Report."

<sup>102</sup> Inspector of Lands and Valuer and Valuer's Office, "Mwembeshi Grazing Areas" 17 Nov 1919, B1/45/4, Northern Rhodesia Administrator Collections (BSAC3), The Zambia National Archives, Lusaka.

limited existing land titles to designate as Reserve land. They determined the amount of land needed in reserves by measuring the size of indigenous gardens and multiplying that by an estimated population size. Decided by colonial officers with no agricultural training and limited information, these calculations did not account for the impact of different types of soil or agricultural practices. The colonial authorities also prioritized creating buffers between indigenous and European farmers, particularly in areas where cattle were common, to prevent mixing.<sup>103</sup> They made limited attempts to represent indigenous interests in these decisions. At times, the British expressed concerns about the difficulty of displacing communities due to their size, levels of resistance, or number of cattle. It was a stated goal to minimize the movement of population, keep ancestral graves within the reserves,<sup>104</sup> and maintain the “tribal characteristic” of reserves.<sup>105</sup> Thus the existing indigenous settlement patterns were at times respected. For example, one area of land proximate to a river that had been proposed for European wheat farming was instead incorporated into a Native Reserve because the British official found it impossible “to face the natives to whom we have given the word of the Administration that they will not be further molested.”<sup>106</sup>

While chiefs were involved in determining these initial Native Reserves boundaries, their demands were not often respected. For example, when the British invited the Ngoni chiefs to discuss the Fort Jameson Reserves in 1913, they refused the chiefs’ request for one large area of land under Paramount Chief Mpeseni because the existence of previously titled land necessitated creating separate reserves. When the same chiefs then requested clear boundaries on

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<sup>103</sup> BSAC Magistrate Taggart, “Namwago Grazing Area” 14 October 1919, B1/45/4, Northern Rhodesia Administrator Collections (BSAC3), The Zambia National Archives, Lusaka.

<sup>104</sup> Government of Northern Rhodesia, “Pim Report,” 40

<sup>105</sup> Government of Northern Rhodesia, “Extract from Rhodesia-Nyasaland Royal Commission Report” March 1939, SEC 3/314, Secretariat Series, The Zambia National Archives, Lusaka.

<sup>106</sup> Mr. Taggart, BSAC Magistrate, as quoted in: “Proposed Mwembeshi Wheat Area: Summary of Mr. Taggart’s Views” 1919 B1/45/4, Northern Rhodesia Administrator Collections (BSAC3), The Zambia National Archives, Lusaka.

their land to prevent European settlers from encroaching, the Magistrate suggested they build their own ditches or fences.<sup>107</sup>

Once the boundaries of the Native Reserves were established, the decision to forcibly move villages into the Reserves was left to district-level colonial authorities. The Native Reserves Commissions had divided the entire regions extending out from the three areas with European settlement into Crown and Native Land. However, in 1921 when these Reserves were being established, there was a total white population of 3,634 people in the entire territory.<sup>108</sup> As a result, many Native Reserves had no nearby settlers or settler demand for the Crown Land. In many areas, local colonial authorities permitted continued indigenous settlement on Crown Land. For example, in the railway belt, the British categorized the entire area surrounding the railway between Livingstone and Broken Hill Mine as Crown Land, but allowed villages to stay because it was not otherwise being used. For some ethnic groups, including the Bemba and Kaonde/Ila, the colonial authorities were aware that the majority of the populations lived outside of Native Reserves.<sup>109</sup> Elsewhere, district authorities did force communities into their designated Reserves, to clear indigenous villages from Crown Land that no European farmers were interested in. For example, in Mkushi, villages were displaced from their land when there were only 3 white settler farmers in the entire district.<sup>110</sup> When the Trust Land Commissions were established years later, the British authorities denounced and ridiculed their predecessors for the arbitrary boundaries of the Reserves, lack of appreciation for differences in indigenous agriculture, and unnecessary

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<sup>107</sup> BSAC Magistrate Marshall, "A Meeting of Angoni Chiefs for Further Description of Native Reserves Questions" 28 June 1913, HC/1/3/21 Northern Rhodesia Administrator Collections (BSAC3), The Zambia National Archives, Lusaka.

<sup>108</sup> Government of Northern Rhodesia, "Pim Report," 6.

<sup>109</sup> "Memorandum: Native Reserve Fund, Note on Secretary of State's Despatch [sic] N. 380 of 17 August 1936" 1936?, SEC 3/315, Secretariat Series, The Zambia National Archives, Lusaka.

<sup>110</sup> Government of Northern Rhodesia, "Eccles' Report," Chapter 2.

displacements.<sup>111</sup>

Nearly as soon as the Native Reserve areas were made official, the British authorities recognized how inadequate they were and a debate began about which areas of Crown Land should be transferred to Native Trust Land. A few districts were automatically designated as Native Trust Land with no further discussion. The British decided that all of North Eastern Rhodesia, outside of the Northern Charterland and Tanganyika Concessions, should revert to indigenous control because no chiefs had ever agreed to the alienation of land there.<sup>112</sup> In addition, as a result of its established mining potential and timber reserves, entire districts of the Copperbelt were automatically made Crown Land. Throughout the division of land for both Native Reserves and Trust Land, no Crown Land could be established in Barotseland. Therefore, much of the debate on dividing the land between Native Trust and Crown Land was focused on the areas of North Western Rhodesia.

Within the former North Western Rhodesia, where the treaties with the Lewanika justified British control of land, the Commissions divided the land based on its potential value for European agricultural settlement or mining. This was generally applied with the assumption that the land was of value to the Crown unless proven otherwise. For example, land was categorized as Trust Land if it had already been surveyed and lacked minerals or if was unlikely that any new railway would be built there. Conversely, land that had not been surveyed or could potentially accommodate a new railroad remained as Crown Land.<sup>113</sup> The colonial officials judged land as suitable for European agriculture if it was not heavily wooded or prone to tsetse fly, and had fertile soil, a favorable climate, and proximity to the railway or other transportation

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<sup>111</sup> Government of Northern Rhodesia, "Pim Report."

<sup>112</sup> *Ibid*, 45.

<sup>113</sup> Trapnell, Ecologist for the Department of Agriculture, "Memorandum on the Suitability of Crown Land in North Western Rhodesia for European Settlement" 18 September 1935, SEC 3/283, Secretariat Series, The Zambia National Archives, Lusaka.

for access to internal and international markets.<sup>114</sup> The first national Commission to create Trust Land in 1938 particularly emphasized railways and potential railway construction. They argued that: “The difficulties of transport over most parts of the Territory are so great that even crops such as cotton and groundnuts which might be able to stand the long and expensive transit to the coast can at present only be grown profitably within a limited distance of the railway.”<sup>115</sup>

The two major national Land Commissions, in 1938 and 1946, made recommendations for the division of land by collecting local studies and recommendations. These reports included ecological and agricultural survey reports, interviews with farmers and chiefs and a few aerial surveys. The data available ranged by location. For the land in the railway belt, a British ecologist carefully mapped the different soils.<sup>116</sup> In Mkushi, which would later end up being a center of commercial agriculture in Zambia, the local Commission had no survey. They relied on the testimony of a missionary living there for data on soil quality. In addition to compiling local reports, the colonial authorities made site visits; the 1946 Commission boasted having visited 18 townships and traveling 7000 miles before making their recommendations.<sup>117</sup> The Commission held public meetings for their site visits to discuss the division of land that were publicized in General Government notices.

In addition to reserving land with potential for settler agriculture and mining as Crown Land, the Commissions had a stated goal of ensuring sufficient land for indigenous agriculture. Their criteria factored in water access, pastoral and agricultural land usage, methods of cultivation,<sup>118</sup> and the congestion of the existing Native Reserves.<sup>119</sup> For many of the Native

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<sup>114</sup> Ibid.

<sup>115</sup> Government of Northern Rhodesia, “Pim Report,” 10.

<sup>116</sup> Trapnell, “Memorandum on the Suitability of Crown Land.”

<sup>117</sup> Government of Northern Rhodesia, “Eccles’ Report.”

<sup>118</sup> Government of Northern Rhodesia, “Pim Report.”

<sup>119</sup> Eccles, “Memo on: Native Reserves. North Charterland Concession” 1938, SEC 3/303, Secretariat Series, The Zambia National Archives, Lusaka.

Reserves, the Commissions had detailed reports of land deterioration and erosion, the density of cattle and population, water supplies, and the types of agriculture in practice.<sup>120</sup> They also considered data on the de facto status of indigenous settlement, including whether most of that ethnic group was living on Crown Land outside of that reserve anyway. Such land was more likely to become Trust Land. Finally, some of the reports identified “congested” Native Reserves and argued that extending the area of indigenous land there was a serious priority to prevent famine.<sup>121</sup>

Nominally, the needs of European farmers and indigenous farmers were equal. The issue of which group was paramount was debated in correspondences by the British authorities. The language of the final recommendations held them at the same level. However, the content of the decisions made indicate that when European and indigenous interests were at odds, European interests were prioritized with the justification that the success of settler farmers was good for everyone. For example, the Commission assigned to make recommendations for Fort Jameson exhaustively documented how insufficient indigenous access to land was in their zone, particularly relative to the settler farmers who were lobbying to have more Crown Land reserved for them. As one Land Commission member acknowledged: “From the native point of view the whole of the land is required in Fort Jameson. If we take more land for Europeans, it would be taking it from the Natives.”<sup>122</sup> Despite acknowledging that their decision would create overcrowding to twice the estimated capacity of the customary land, the Commission chose to

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<sup>120</sup> Assistant Director of Agriculture W. Allen, “Appendix to Note for Executive Council on Mkushi District” 21 October 1944, SEC 3/314, Secretariat Series, The Zambia National Archives, Lusaka.

<sup>121</sup> Provincial Commissioner LA Russell, “Proposed Extension of Native Reserves. Eastern Province” 29 July 1938, SEC 3/303, Secretariat Series, The Zambia National Archives, Lusaka.

<sup>122</sup> Assistant Director of Agriculture W. Allen quoted in “Land Commission: Fort Jameson, Meeting Minutes” 27 August 1942, SEC 3/315, Secretariat Series, The Zambia National Archives, Lusaka.

reserve some of the land the Europeans requested as Crown Land.<sup>123</sup>

While the outcomes of the debates over Trust Land and Crown Land generally prioritized European farming interests, the boundaries of previous Native Reserves were respected even at the cost of European farmers. Throughout this process of dividing the land, the British demonstrated a commitment to precedence and the often arbitrary or fictitious designations of earlier colonial authorities. For example, in his report on the soil surrounding the railway, a British ecologist described how poor and unsuitable for European agriculture much of the zone's soil is. He argued that the remaining good land in the area is found within three of the Native Reserves. This is an expected outcome given that the Crown Land had been selected for proximity to the railway, without information on soil suitability. However, despite his recommendation and the arbitrary nature of the early Reserves boundaries, the administration refused to infringe upon the existing Native Reserves land. Such commitment to upholding the status quo characterizes the colonial and post-independence administration of Zambia.

The colonial authorities in Zambia and Senegal both relied on agriculture to make the colonies profitable. Yet, they did not choose the initial land that came under direct colonial state control based on suitability for agricultural. Neither colonial authority had the information to select the most fertile soil as state land. Instead, the first divisions of land reflect the initial sites of European settlement determined by commercial and geopolitical interests, influenced by existing systems of customary authority. Later it was market access—particularly through railways—that made land most valuable to the colonial state. While the railways connected commercial capitals and mining interests, the land surrounding it became the principal farming zones. There, state control of land grew in the form of agricultural titles and state reserved land.

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<sup>123</sup> Government of Northern Rhodesia, "Report of the Land Commission on the North Charterland Concession Area" 1942, SEC 3/315, Secretariat Series, The Zambia National Archives, Lusaka.

Although the railway is no longer the only efficient mode of transportation and communication, its early effect on the development of state property rights created the centers of agricultural production in contemporary Zambia and Senegal. In these two agricultural economies, it is non-agricultural attributes that shaped the colonial divisions of land and growth of land titles.

## **2.6 The Foundations for State-Building**

The colonial divisions of land, the role of customary authorities, and the state's approach to land planning have been remarkably resilient in the post-independence era. This is the result of their synchronicity. The colonial regimes designed complementary land and customary authorities policies, making them more effective and mutually reinforcing. However, this also made it harder to change them without calling into question the entire system of property rights and local governance in the two former colonies. As a result, the independent Zambia and Senegal governments have displayed a strong commitment to maintaining these initial colonial institutions. The status quo reigns; the changes made by independent Zambia and Senegal have been slow and marginal. These two different systems of customary authority established by the French and British colonial regimes are the basis for the two distinct channels through which the CAs in Senegal and Zambia can influence the development of state property rights.

By tolerating customary authorities, the French established a system of de facto customary authority over the untitled land in Senegal. The French colonial administrators considered CAs to be feudal lords, comparable to French feudalism, who undermined indigenous economic development.<sup>124</sup> But they also recognized their utility for general governance, maintaining stability, and facilitating the collection of taxes.<sup>125</sup> As a result, they did very little to

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<sup>124</sup> See, e.g., Doublier, *La Propriété Foncière en A.O.F.*; Geismar, *Recueil des coutumes civiles des races du Senegal*.

<sup>125</sup> On French administration's reliance on indigenous authorities for tax collection, see Zucarelli (1973, 237) and Firmin-Sellers (2000) on this strategy in French colonial Côte d'Ivoire.

disrupt customary systems of land management and, at times, tried to work with them. There was no massive reorganization of the territory or attempt to break up their spheres of influence through resettlement schemes as in independent Tanzania and Ethiopia.

As it became clear to the French that customary authority over land was resilient and useful for their governance, they relaxed their efforts to replace their authority over land with state titles. The French approach to customary property rights shifted from Governor Faidherbe's legislation that the indigenous population had only "precarious occupation rights" in 1865,<sup>126</sup> to reducing the state's domain to only land that is "vacant and unowned" in 1904,<sup>127</sup> and finally to the 1955 recognition of collective land tenure.<sup>128</sup> The French had created a regime where *any* land in the country could come under their direct control in the form of state property rights, while simultaneously allowing CAs and customary rules to allocate access to the rest of the land. This approach relegated the influence of CAs to informal channels. Unlike the customary authorities in Zambia, their continued social role was not dependent on the state's support.

The informal role of customary authority in land allocation continued after independence. In major post-independence legislation, Senegal instituted a policy that all untitled land was "National Domain" land, owned by the nation.<sup>129</sup> Decentralized local councils govern this land.<sup>130</sup> While this law was intended to undermine customary authorities' control over land by denying the recognition of any lineage-based rights, in practice it has allowed for continuing de facto control. Putting land allocation in the hands of locally elected councils, can, by contrast, "defend authority-based systems of control over land use rights" (Boone 1992, 108). Chapter 3

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<sup>126</sup> Arrêté du 11 mars 1865. In this text, Colonial Governor Faidherbe established that indigenous have the right to ask for titles and that in the future only land rights granted through titles will be recognized and protected (Doublie, *La Propriété Foncière en A.O.F.*).

<sup>127</sup> Décret du 23 octobre 1904.

<sup>128</sup> Décret 55-580 du mai 20 1955 and Décret 56-704 du 10 juillet 1956.

<sup>129</sup> Loi 64-46 du 17 juin 1964 relative au Domaine national.

<sup>130</sup> Loi 72-25 du 19 avril 1972 relative aux communauté rurale.

examines de facto influence of customary authority over land in Senegal in more detail.

While the French permitted customary control over land, the British enabled it. British colonial land policies and division of land supported this approach to customary authority. From the start of their occupation of Zambia, the British recognized existing systems of customary authority and used them to justify their rule. They relied on the treaties with the Lewanika as the foundation for their control of land and upheld the terms of their treaties. Conversely, they displayed reticence to penetrate land tenure systems on the North Eastern side of the country, where the Bemba, Ngoni, and Chewa leaders had refused the early British attempts to enter into treaties. There, they only granted shorter leases to European settlers for much of the colonial era, in contrast to North Western Rhodesia where they granted freehold title. Further, they cited the lack of treaties as justification for designating the land to the North Eastern as customary. However, while these existing systems of customary authorities influenced their decisions for dividing agricultural land, it is likely that the British would have used different justifications for land control if they had identified high value mining land in Northeastern Zambia. For example, despite their documented skepticism that it was actually in the Lewanika's domain,<sup>131</sup> the British authorities used his authority to justify designating the entire mineral-rich Copperbelt area of Northwestern Rhodesia as Crown Land (Gann 1958, 134–5).

Their early focus on identifying customary authorities to legitimize their rule and facilitate indigenous governance became an official policy of indirect rule in 1930, with the establishment of Native Courts and later Treasuries. The partition of land into Native Reserves directly supported this approach to colonial governance. The British designed ethnically homogenous Native Reserves that strengthened the role of the chief by making access to land

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<sup>131</sup> For example, in 1905 the Secretary of North Western Rhodesia reported that this northeastern part of the NWR was “a large area to which [the Lewanika] has absolutely no claim.” Secretary of the BSAC-NWR, “Correspondence” 19th June 1905. A3/21, BSAC2 NWR Collection, The Zambia National Archives, Lusaka

contingent on ties with the chief and the ethnic group. The British consolidated the authority over the land of thousands of smallholders in individual chiefs. This policy forced smallholders to comply with the chief's authority in order to access land. Today, this system of state-recognized customary authority over land remains.

After independence, the Zambian government did little to change the division of land and the land practices put in place by the British. The areas of "Native Reserve" and "Native Trust" Land were renamed "Customary Land." The titles of the state-recognized chiefs and the boundaries of each chief's domain remain the same today as those mapped in 1958. The British colonial regime created the foundation for Zambia's system of state-recognized chiefs. Like the Lewanika's treaties, state-recognition provides an opportunity for chiefs to shape where the state accesses land. Today, any new title on customary land must have the signed permission of a state-recognized chief. Without it, the state's system of property rights cannot extend. However, while the Lewanika could set some terms, his connection to the state also justified the state's acquisition of land. Similarly, the formal role for Zambia's chiefs means their authority depends, in part, on the state. This tames them and serves to reduce their incentives to resist the state's requests. Building on these colonial foundations, Chapter 4 demonstrates how customary authorities can influence the state in Zambia's context of state-recognized chiefs.

## **2.7 Links to Empire**

The British and French diverged in their approaches to land planning and the role of customary authority. This, in turn, has led to distinctive modern institutions in Zambia and Senegal. The national institutions developed over more than 70 years of colonial occupation have been resilient in the two independent states. These initial policies were formed in coordination with or reference to other French or British colonies. As a result, today, the systems of customary

authority and property rights in Zambia and Senegal more closely resemble countries with the same colonial power than each other's.

The French had an equivocal relationship with customary authorities and permitted the slow replacement of non-state authority over land by encouraging land titling in all areas of the territory. Their policies in Senegal were designed with reference to their North African colonies of Algeria, Morocco, and Tunisia and in parallel to their Sub-Saharan African territories. The French provided greater autonomy to existing state structures in the North Africa colonies, while, in the words of a key architect of French colonial policy, practiced “nonchalance” towards customary authority in Sub-Saharan Africa. There, kingdoms and chiefdoms were “left to die,” “abandoned to disrepair by our indifference” (Deschamps 1963, 303). They applied this general approach to the two French federations of colonies in Africa, and Madagascar, as well as Togo and Cameroon when they transferred from German control after WWII. Specific policies for land and customary authority were designed in reference to colonial officers' experiences in other French colonies, particularly Madagascar<sup>132</sup> and Algeria,<sup>133</sup> more so than the French Indochine territories.<sup>134</sup>

Colonial Senegal was integrated into the federation of French West Africa (AOF), which includes modern Guinea, Cote d'Ivoire, Burkina Faso, Benin, Niger, Mali, and Mauritania. The institutions established for Senegal most closely resemble these countries, as many of the policies implemented in colonial Senegal applied to the entire federation. However, governed from the same office building in Paris for the Ministry for the Colonies, colonial policies often

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<sup>132</sup> Griault, “*Le Régime Des Terres.*”

<sup>133</sup> Hardy, *La Mise en Valeur Du Sénégal.*

<sup>134</sup> Vietnam, Laos and Cambodia.

diffused between the AOF and the French Equatorial Africa (AEF)<sup>135</sup> federation. For example, the two laws annulling customary rights and creating the indigenous administrative posts of “chef de canton” were implemented in AEF within years of implemented in the AOF (Suret-Canale 1971, 323). However, although the AEF and AOF shared many policies, Senegal also had its own governors who created separate policies for the colony alone. Thus the legal framework that established Senegal’s customary authority and land policies is a mix of federal and local statutes.

As in Senegal, where the French colonial policies were designed in reference to other French colonies, the models for British policy in Zambia were other British colonies. Colonial Zambia was wedged between two Portuguese colonies and shared borders with Belgian and German colonies. Yet, the frame of reference for the colonial authorities in Zambia was other British territories. The British policies in Zambia were formulated with reference to land policies in the British Southern African colonies of present-day Malawi, Botswana, South Africa, and Zimbabwe and grounded in the examples of indirect rule from Nigeria and Tanzania.<sup>136</sup>

Throughout British colonialism, the administrations of colonial Malawi, Zimbabwe, and Zambia were tightly-linked; for a short time they were also part of a British Central African Federation (CAF). The British authorities in the three colonies shared the same governance approach of top-down land planning policies in order to empower state-recognized chiefs and support settler agriculture. However, the independent colonial administrations adapted this strategy, learning from the examples in the neighboring British colonies. For example, Zambia adopted the division of land into categories of Crown and Native that had previously been put in place in Zimbabwe. However, with fewer prospective settlers they modified it to allocate a

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<sup>135</sup> Griault, “*Le Régime Des Terres.*”; The AEF encompasses the Central African Republic (CAR), Cameroon, the Republic of the Congo, Gabon, and Chad.

<sup>136</sup> Government of Northern Rhodesia, “Pim Report.”

greater percentage as Native Land and to remove racial restrictions on access to titles in Crown Land. Later, Zambia copied the Native Trust Land policy implemented in Malawi. Instead of a blanket application of the new land category as Malawi had done, the colonial Zambia government organized commissions to select more land to hold back as Crown Land.

The British engineered these land tenure categories to support their approach to ruling through customary authorities. They justified the initial Native Reserves as a means of making land available for European settler agriculture. Yet the strategy of building and circumscribing the power of CAs through land policy is not unique to their Southern African colonies with agricultural settlement. In the British colonies in West Africa and East Africa (particularly Uganda), the colonial authorities also established the foundations of state-recognized customary authority. The British doctrine of indirect rule started in Nigeria and spread to Tanganyika, despite the lack of European settlement. Similarly, British colonial policy is the foundation for the strong powers of state-recognized chiefs in Ghana today, independent of any settler agriculture goals.

While the colonial administrations in Zambia and Senegal had discretion over their laws, they were embedded the political, social, and economic networks of their metropolises. The British and French philosophies on customary authority and land titling differed; this established the distinct national institutional contexts that exist today. As a result, the channels through which customary authorities influence modern land titling are a legacy put in place by these two colonial powers.

## CHAPTER 3

# Customary Authority and Coordination in Senegal

### 3.1 Introduction

In 1964, the Senegalese government decreed that the state owns all of the land within its boundaries. However, in practice, most of the territory within Senegal remains under customary control. Today, depending where you are, citizens may report that land is owned by an individual customary authority, a family lineage, the entire community, or the state.<sup>137</sup> The proclamations of the state's control over land have not made it a reality. Only by registering new areas of land in the state's property rights system is the state able to replace *de facto* customary authority. Yet the process of converting land from customary to state property rights through land titling has been slow and contentious, with communities resisting ceding their control over natural resources. This chapter is the first of two on how customary institutions affect land titling outcomes, with attention to recent large-scale land deals. The case of Senegal demonstrates how customary authorities can shape this state-building process in contexts without formal customary control of land.

Senegal is one of many African countries that chooses not to recognize customary authority over land. The 1964 National Domain Law in Senegal was part of a wave of post-independence “land tenure nationalism” laws that sought to disrupt customary property rights systems by declaring state ownership of all untitled land (Diaw 2005, 49). Similar laws were passed in Mali (1960), Cote d'Ivoire (1968), Cameroon (1974), and Burkina Faso (1984), among

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<sup>137</sup> Honig, Senegal Smallholder Dataset 2014. Rural farmers reported the landowner is: A Customary Authority (39.4%), Individuals or Families (24%), The State or Rural Council (24%), Everyone in the Village (12%). Sampling discussed in Chapter 5.

others. However, despite these legal reforms, customary authorities have maintained informal control of land. States had limited capacity to immediately register all land under state property rights; in the interim they tolerated and at times informally supported the continuation of customary land tenure because of the stability it provided. Such long-standing systems of customary authority offered efficient resolution of land tenure conflicts at a low cost to the state. Yet, in these systems of unrecognized CAs, the state treats the continuation of de facto customary control of land as an interim phase. The implication of such land tenure nationalism laws is that the state could register *any* land under customary control in the future, because it has the legal right as its formal owner.

Despite their lack of formal recognition in land allocation, customary authorities in Senegal condition where state property rights develop. In contrast to the de jure systems of customary control of land represented in the following chapter on Zambia, in contexts of de facto customary authority CAs do not have a formal channel to resist land conversions. Instead, they influence the development of state property rights through their ability to collectively act. CAs can overcome the individual incentives to title land and force accountability to the collective goal of keeping land in the customary domain. This in turn shapes where the state is able to access land with the least resistance. In this chapter, I argue that CAs with greater levels of historical political organization can more effectively mobilize against the loss of customary control over land. Customary control of land is more likely to be replaced by state land titles where such organization is absent.

This chapter links the local dynamics of land negotiations to national trends in land titling to show how the modern state's authority is affected by historical customary institutions. First, I introduce the theoretical implications of the proposed model of customary authority as a

coordination mechanism. This is followed by an overview of land policy in Senegal. The next section examines the negotiations over one large-scale land deal attempted in two customary institutional contexts in the Senegal River Valley. This paired comparison shows how the organization of the customary institution shapes community resistance to the cession of land from the customary domain. I then analyze an original dataset of all new land titles between 2007-2013 in Senegal to find that variation in pre-colonial customary organization influences the state's extension of property rights today. This dual empirical strategy provides evidence that customary institutions shape where the state faces the most and the least resistance to converting land from customary to state control. The location of land titles is not determined by land values or the state's strategic selection of land alone. Instead, local institutions can slow the development of state property rights in their zones, contributing to long-term spatial differences in the state's authority within its boundaries.

### **3.2 Theory**

The conventional wisdom on land titling is that the most valuable land should come under state property rights first. When land is abundant, competition is low and state land titling is not efficient. The more valuable the land, the more incentives actors have to bear the costs of converting customary to state property rights. This logic of institutional change is detailed in Chapter 1. The implication is that for land titling directed by the state, individuals, or investors, we can expect that land with greater value should come under title first. The least valuable land should remain under customary control the longest.

However, while increasing land values may provoke greater demand for land titles, customary authorities can shape the supply. By resisting the conversion of land out of the customary domain, they can make it more costly to access land titles in some zones than others.

In this way, customary authorities exert agency in this process of institutional change. Yet, customary authorities are not of one kind; some have greater institutional capacity to preserve their control over land. In this and the following chapter, I argue that historical institutions endow some CAs with greater ability to organize resistance to the conversion of land from customary to state property rights.

Where CAs lack a formal role in the land conversion process, their effect on land titling is by way of informal influence on members of the institution. The challenge for CAs seeking to maintain customary control of land is to prevent landowners—either lineage heads or individual customary authorities—from accepting the individual incentives to land titling. This requires enforcing accountability to the collective goal of preserving customary control of land by mobilizing local populations against land conversions and socially censuring individuals who do not comply with the group's interest.

Some customary authorities have greater capacity to coordinate group resistance relative to their neighbors. They are embedded in customary institutions with greater organizational capacity. Such institutions benefit from members with greater expectations of conformity to institutional rules, a sense of group identity, and ties to a larger community. Thicker networks facilitate communication and censuring across both lineages and villages. These characteristics of highly organized institutions allow them to coordinate to resist land deals. Such organizational capacity is a legacy of the historical origins of the institution. In particular, experience with pre-colonial state-building and bureaucracy endows modern customary institutions with greater organizational capacity today than customary institutions that have never had any centralized political organization.

The institution's current level of organization is the result of a long process of historical

development. While these traditional institutions have changed in important ways in the past 150 years,<sup>138</sup> colonial era institutions have considerable impacts on modern economic outcomes (van de Walle 2009; Pepinsky 2016; Acemoglu, Johnson, and Robinson 2001; Mahoney 2010). Despite attempts to co-opt and replace customary authority, these systems of local authority display remarkable resilience (Bruce and Knox 2009; Logan 2009; Logan 2013). As a result, the initial institutional endowment at the moment of colonization is the starting point for understanding the current organization of customary institutions. Decentralized pre-colonial customary institutions are less likely to have organized networks now, whereas state-like customary institutions are more likely to have organizational capacity for accountability to collective goals today. This generates the expectation that customary institutions linked to pre-colonial states will have greater capacity to prevent land titling and, as a result, these zones will have lower rates of land titling today. By contrast, land titling should develop more rapidly in areas with a legacy of decentralized customary institutions.

### **3.3 Land and Customary Institutions in Senegal**

A variety of customary institutions exist in Senegal today as a result of two processes: the imposition of the colonial state on top of existing political organizations, and the growth of Islamic brotherhoods.<sup>139</sup> While these two systems of non-state political authority coexist and overlap, they have different impacts on land administration. The role of the Islamic brotherhood marabouts is discussed further in Chapter 5. In the current chapter, I focus on the differences in organizational capacity across the modern customary institutions that are a legacy of pre-colonial kingdoms and political organizations based on ethnic ties.

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<sup>138</sup> For reviews of the literature on the debate about the invention and reification of customary authority and its changing role over time see Boone (2014), Englebert (2002), Spear (2003), Ubink (2008).

<sup>139</sup> See, for example, Beck (2001), Diop (2006), Villalón (2006).

The 1964 National Domain Law divided the territory into 3 categories: privately-held State Land, publicly-held State Land and National Land. By definition, National Land is land that has not been registered or titled,<sup>140</sup> and therefore remains under de facto customary systems of property rights. Legally, the allocation of National Land is the jurisdiction of elected Rural Councils,<sup>141</sup> who represent, on average, 35 villages and 50,000 hectares of land each.<sup>142</sup> However, these Rural Councils often defer to their local customary property rights systems (Lavigne-Delville 1999, 6; Traoré 1997, 96).

While the government of Senegal does not officially recognize customary institutions, they continue to play a central role in the management of National Land. They maintain influence by dictating how land is allocated in the village, who has which types of land rights, and who makes the decision on the conversion of land from customary to state land. Village chiefs, groups of village elders, spiritual guides, and lineage heads protect these customary rules. Officially, village chiefs are selected by the head of each household and confirmed by the government,<sup>143</sup> but in practice most village chiefdoms are inherited positions reserved for one family. These village chiefs must be consulted by the Rural Council but have no legal veto power over land conversions, unlike the case of Zambia's state-recognized chiefs.

The vast majority of the land in Senegal falls into this category of National Land; at independence, it was estimated to be 95% of Senegal's territory (Sall 2012, 22). However, this pool of customary land is slowly chipped away as each new land title or lease registers the land in the state's system of property rights, converting it from National Land to State Land. Thus

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<sup>140</sup> Defined as any land that is not registered (*immatriculé*) or part of the public domain of the state. Loi 64-46 de 17 juin 1964 relative au domaine national.

<sup>141</sup> Loi 96-07 du 22 mars 1996 portant sur le transfert des compétences.

<sup>142</sup> Author's calculations based on administrative shapefile maps provided by the Centre de Suivi Ecologique (CSE), Dakar. 2014.

<sup>143</sup> Décret 96-228 du 22 mars 1996.

each new title signifies the permanent loss of customary and lineage-based authority over that piece of land. This conversion process begins with an application for written recognition of usage rights from the Rural Council, known as an Extract of Proceedings (*extrait de délibération*). Once land has been granted an Extract, the recipient has the right to apply for state property rights, in the form of lease, and the community no longer has any authority in the conversion process. This is the first step in the extension of state property rights.

When an individual applies for a lease, the land is registered and enters the state's domain as a title in the name of the state, which is then leased out for a fixed amount of time.<sup>144</sup> Leased land can be sold, but it must be put to use within 2 years and requires yearly payments to the state. Nearly all land titles are in the state's name; since 1994 agricultural land is not eligible for private title.<sup>145</sup> The rare titles in private names are also subject to taxes and can be sold. By contrast, National Land cannot be bought, sold, taxed, or used as bank credit until it has been converted to State Land. As a result, the state has a clear financial and political interest in the conversion of land. While all land titling increases state revenue, agricultural investments promise even greater opportunity for such benefits to the state. Thus failed attempts to access desired land areas for agricultural investments reveal the limits of the state's authority over customary land.

### **3.4 A Comparison of One Land Deal in Two Institutional Contexts**

#### **3.4.1 The Case of the Northern Agricultural Company**

The next section examines a pair of neighboring districts in Northern Senegal to illustrate how customary institutions affect community responses to land conversions. This analytical approach

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<sup>144</sup> This is generally for 18, 50, or 99 years depending on the zoning of the land and the year when the lease was acquired.

<sup>145</sup> Loi 96-64 du 22 aout 1994 autorisant la vente des terrains domaniaux à usage industriel et commercial.

relies on the similarities between the two districts to help identify the mechanisms that lead to divergent property rights outcomes. Dagana and Podor both border the Senegal River, have similar population densities, and occupy the Sahelian climactic zone. However, as a result of distinct institutional endowments, Dagana's customary institutions have limited organizational reach across villages, while Podor is the heartland of a well-organized customary institution. This difference in customary institutions shapes their responses to attempted land conversions and, consequently, the systems of property rights in these districts. The case of one state-supported, internationally-funded agricultural company's attempts to access a large parcel of land for rice production in both districts illustrates how CAs can affect the conversion of land from customary to state property rights. This section begins with a brief description of the historical differences in customary institutions in Dagana and Podor, followed by the case of one land deal that engaged both districts, and an analysis of de facto land ownership in each district. I conclude by discussing some important competing explanations.

By 1855, French colonizers had aggressively dismantled the organization of the small Waalo kingdom in Dagana. In contrast, the Fouta Toro organization in Podor remained intact throughout the colonial period (Gellar 2005, 30). The difference between the two pre-colonial organizations at first European contact shaped each institution's survival. In the early 1800s, the Fouta Toro launched enough resistance to prompt the French administrators to declare war on them; in the Waalo, the same administrator observed that weakness made the Waalo leader "easy to satisfy" with customary tribute (Barry 2012, 161). The Fouta was a large state, with over 6 times as much territory as the Waalo,<sup>146</sup> and internal peace and stability (Delaunay 1984, 26). Neighboring Waalo was a small state undergoing an "irreversible process of disintegration" (Barry 2012, 131) as a result of internal civil war, and attacks from the Fouta kingdom and from

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<sup>146</sup> Author's calculations based on Senegal Department of Territorial Administration map, from (Diop 2006).

the Moors.

When the French colonial authorities sought land for colonial agricultural production, their first choice location was in the Fouta. As the Northern Agricultural Company would experience 200 years later, opposition from the Fouta's leadership forced them to shift strategies and seek land in the Waalo (Barry 2012, 168). With limited chances of survival as an organization, the Waalo leader then signed a treaty allowing the French "perpetual possession" of any land they wanted within the kingdom.<sup>147</sup> Whereas the powerful Fouta state resisted, the fragile Waalo organization ceded its land. The French agricultural project in the Waalo ultimately failed when local populations did not comply with their leader's treaty by supplying land or labor (Barry 2012; Delaunay 1984, 29).

Soon after, the Waalo was conquered by the French and the Waalo elites fled to other kingdoms (Barry 2012, 226, 231). While the weak and incoherent Waalo state broke down, the Fouta's consolidated political organization remained intact even after annexation in 1860 (Robinson 1975). Colonialism fixed the customary institutional trajectories in these two districts. Where Podor was endowed with a unified, organized customary institution, the kingdom of Waalo was extinguished, leaving behind fragmented, village-level customary institutions. This is the foundation for the variation between modern customary institutions in two otherwise similar zones of Northern Senegal when the Northern Agricultural Company commenced its large-scale land conversion.

The focal period of this study is 2007-2013, an era of booming demand for agricultural land in Africa for investment and speculation (see Thaler 2014; Cotula 2012; Deininger, Hilhorst, and Songwe 2014). Like many African governments, including Zambia, the Senegalese

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<sup>147</sup> Hardy, Georges. 1921. *La Mise en Valeur Du Sénégal de 1817 À 1854*. Paris: Larose, 71.

government responded to the spike in global demand by facilitating access to agricultural land for investors to develop commercial agriculture industries. Between 2007-2013, over 200,000ha of land in Senegal were processed for new land titles and more than 50 new commercial agricultural projects were registered with the government's investor support agency,<sup>148</sup> on over 120,000 ha of land. Less conservative measures from civil society organizations suggest large-scale land deals in excess of 800,000 ha of land between 2000-2013, with a peak period of 2008-11 (Sy, Cisse, and Ba 2013).

The Northern Agricultural Company (NAC)<sup>149</sup> is one of the new agricultural investors in Senegal active during this time period. NAC is a project of a French investment company and has received funding from the African Development Bank for the production of rice.<sup>150</sup> The company is closely engaged with and supported by the Senegalese state. Due to its potential as a source of foreign direct investment (see Koopman 2012) and to reduce the country's dependence on rice imports, the Prime Minister's office created a committee to oversee the success of the project.<sup>151</sup> It is also officially registered with the country's investor-support agency. With this political and financial support, in 2011, the NAC began looking for an area of land between 2,000 and 4,500 ha (or 4,942 to 11,120 acres) in the Senegal River Valley. To put this size into perspective, in Northern Senegal this significant land area would host over 1000 people, on average.

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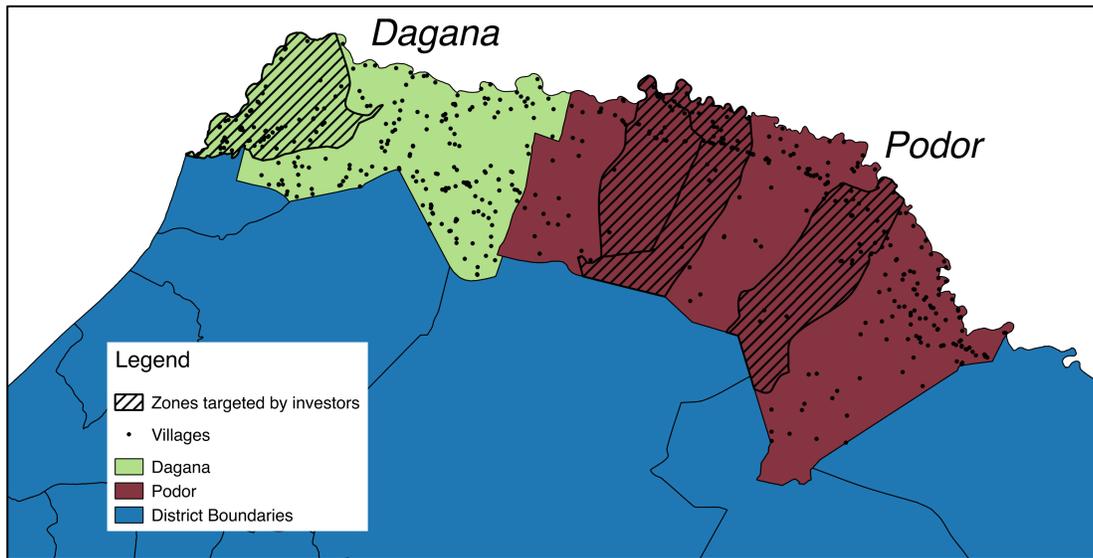
<sup>148</sup> L'agence pour la promotion des investissements et grands travaux (APIX).

<sup>149</sup> Name changed to preserve confidentiality of sources.

<sup>150</sup> NAC Action Plan submitted to the Ministry of Environment and Sustainable Development (2014).

<sup>151</sup> Interview INV-101.

**Figure 2: Map of Dagana and Podor Districts, Northern Senegal**



The NAC selected Podor for its agricultural project. It borders the Senegal River, enabling the NAC's irrigated commercial rice production. Further inland and with minimal agricultural investments or infrastructure, Podor seemed to be a prime location for this project. The NAC investment should have been an easy sell to local communities eager for economic development. However, Podor is also the heartland of the pre-colonial Fouta Toro kingdom.<sup>152</sup> The CAs' mobilization to maintain power over land prevailed over economic incentives.

The Company entered into negotiations and was rejected by three different Rural Council zones of Podor between 2011-13. In the first Rural Council area, they spent more than a year in negotiations with elected Rural Councils, village chiefs, and large customary landowners. The NAC requested 4000 ha of land in an area of interest they had identified. They offered cash compensation for the landowners, assistance for the Rural Council, infrastructure development in the form of schools and health clinics, and the hiring of local labor. In individual meetings,

<sup>152</sup> Boutillier, Jean-Louis, and Jean Causse. *La Démographie Du Fouta-Toro (Toucouleurs et Peulhs)*. Dakar: Mission Socio-économique de la Vallée du Fleuve Sénégal, 1959 ; Gouvernement général de l'Afrique occidentale française (AOF Colonial Government). "Mission D Aménagement Du Fleuve Sénégal. Les Hommes Du Fouta-Toro." Dakar: Division Socio-Economique, 1960.

landowners and council members expressed support for the project. The negotiations were far enough along that the Company had mapped and completed an environmental study of the land by the time the Rural Council met to vote on the allocation of the land. The NAC had privately surveyed the individual councilors and expected a “yes” vote. However, when the same landowners, chiefs, and councilors who had privately supported the project came together for a public vote on the land conversion, it was firmly refused. The Company interpreted these failed negotiations as an unconditional resistance to ceding community land to investors.<sup>153</sup>

For the next set of negotiations in Podor, the Company engaged two Rural Council areas at once for leverage. They reduced the amount of land they were asking for to 2500 ha. The incentives they offered for the conversion of land remained the same. In the first of these two areas, the Company identified land they wanted but negotiations failed due to the community’s high demands. In their meetings with the NAC, the village chiefs, customary authorities, and customary landowners had coordinated their conditions for the release of customary land to insist on the same requirement. In addition to the other infrastructural commitments and compensation, they wanted 750 ha of the 2500 ha of the land the Company requested to be irrigated and planned out for community use. The NAC estimates that this type of land planning costs 3-4 million CFA (5-7000 USD) per hectare; thus this demand would cost between 4.5 and 6 million USD. Further, the community’s condition was that this development be provided immediately, before the NAC could start its project. Despite this steep condition, the Company was invested in this process and continued trying to access land in this zone. They wrote up a draft of the Memorandum of Understanding to bring to the Rural Council with the amount of irrigated land for the community left blank. The Company was willing to irrigate up to 500 ha of land for the community, in addition to the other infrastructure commitments. However, the final meeting between the NAC,

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<sup>153</sup> Interview INV-101.

the Council, and the population ended in a heated disagreement over the amount of land to be irrigated for the community. The NAC was once again blocked in Podor.<sup>154</sup>

As negotiations were failing in the second site, the investors switched focus to their third Rural Council zone in the Fouta customary domain. While the amount of land to be irrigated for the community was again a contentious issue in these negotiations,<sup>155</sup> the majority of the population also seemed to be against the project on principle.<sup>156</sup> One village proposed that the land be in the name of the village chief's family, not the NAC. They would then lend out the land to the NAC for a limited 15-year contract with the stipulation that the Company would be required to leave all equipment behind.<sup>157</sup> In another village some elders seemed willing to cede the land, but the younger generation in the village firmly refused. All of the village chiefs in this third zone met to discuss the project and the Company initiated multiple meetings with landowners and village chiefs.<sup>158</sup>

My interviews with key actors involved in the negotiations reveal that residents who were interested in accepting the agricultural investment were silenced by the powerful majority. A bureaucrat working with the Rural Council saw technical merit in the proposed development and supported the project, but sensed that as an “outsider” (*allochtone*) he did not have a right in this decision-making process.<sup>159</sup> Councilors who supported the NAC project trod carefully in expressing this or were subject to criticism, rumors, and threats.<sup>160</sup> Ultimately, it was the issue of the conversion of property rights that blocked the land deal. One village chief argued that they could never accept the permanent loss of land that would occur if the Company had papers for

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<sup>154</sup> Interview INV-101.

<sup>155</sup> Interview INV-101.

<sup>156</sup> Interview RC-104.

<sup>157</sup> Interview RC-103.

<sup>158</sup> Interview INV-101.

<sup>159</sup> Interview RC-104.

<sup>160</sup> Interview RC-104.

the land in its name. To metaphorically illustrate his point, he argued that allowing the land to be titled to the Company would have been like putting another man's name on his marriage certificate to his wife.<sup>161</sup> Stated differently by a bureaucrat, the population feared that the Company would register the land in their name and grab it: "they understood that once the land was given, the populations would become their slaves."<sup>162</sup>

Despite the NAC's serious negotiation attempts and the support of the Senegalese state, they were unable to access customary land in Podor. Resistance was expressed through demands for multi-million-dollar community investments and absolute refusals to convert the land to state property rights. If the Company had been willing to accept only usage rights to the land, they likely would have accessed the land they identified as optimal for their project in Podor. Critically, the issue in these negotiations was not the *availability* of land but the conversion of that land out of the customary domain. Instead, the Company accepted that it would be too costly and difficult to access the land in the zone they preferred. The organized CAs had blocked the land deal.

After facing resistance in Podor, the investors shifted their attention west to the more accessible and valuable land in neighboring Dagana. In both locations, the rural populations are primarily engaged in subsistence agriculture of rice and cowpea, with about a third of households owning cattle.<sup>163</sup> However, in Dagana cash crops have a larger role, with 15% of cultivated land devoted to production of hibiscus and watermelon.<sup>164</sup> The majority of agricultural households in both locations rely on a mix of irrigated and rain fed agriculture. These districts have the highest

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<sup>161</sup> Interview CA-105.

<sup>162</sup> Interview RC-104.

<sup>163</sup> Rice and cowpea are first and second crops in both districts. 32% of agricultural households in Podor have some cattle, 34% in Dagana. Government of Senegal. 1999. "Recensement National de L'agriculture 1998-1999." Ministère de l'Agriculture/Food and Agriculture Organization (FAO); Average cattle holding is 7 for both Dagana and Podor (O. Diop, Fofana, and Fall 2008).

<sup>164</sup> Calculations based on the national agricultural census. Government of Senegal. "Recensement National de L'agriculture."

usage of irrigated land in the country due to the presence of two state development agencies that organize irrigation for the Senegal River Valley;<sup>165</sup> this access is slightly greater in Dagana than Podor.<sup>166</sup> While population density on rural land is only marginally lower in Dagana than in Podor,<sup>167</sup> there is a stark contrast in average plot size and production outcomes. In Dagana the average agricultural household farm is over twice as large as in Podor, as are Dagana's crop outputs.<sup>168</sup> This has food security consequences; Podor has one of the highest rates of severe malnutrition in the country at 17%, in contrast to 11% in Dagana.<sup>169</sup> This difference in size of production can be attributed in part to better access in Dagana to agricultural technology such as tractors and harvesters (O. Diop, Fofana, and Fall 2008). However, this is also a product of the more liberal access to land in Dagana that results from its customary institutions. As a result of the French colonizers toppling the small, struggling Waalo kingdom, the customary institutions in Dagana have limited organization across villages. While Dagana should have more costly land than Podor due to its high productivity and proximity to the cities of Saint-Louis and Dakar, the NAC had easier and less expensive access to this more valuable land because of its nearly anarchic constellation of customary institutions.

In Dagana, the Company's negotiations were swift and successful, with minimal resistance to the extension of state property rights. The Company first approached the Rural

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<sup>165</sup> These organizations are the Organisation pour la Mise en Valeur du Fleuve Senegal (OMVS) and the Societe d'Aménagement et d'Exploitation des terres du delta du Fleuve Senegal (SAED). On SAED, see Boone (2003, 303–313); Adams (1977); van der Laan (1984).

<sup>166</sup> Households practicing some irrigated farming: 71% in Dagana, 67% in Podor. Government of Senegal. "Recensement National de L'agriculture."

<sup>167</sup> The rural population per hectare is .29 in Podor and .27 in Dagana. Agence Nationale de la Statistique et de la Demographie, Senegal. 2002. "Resultats Definitifs Du Troisieme Recensement General de La Population et De l'Habitat." Dakar: ANSD.

<sup>168</sup> The 1999 agricultural census estimates average land cultivated as 2.02ha in Dagana and .68ha in Podor. Government of Senegal. "Recensement National de L'agriculture." More recent survey data confirms this pattern: the average size of cultivated land is 3.75 ha of a total 5.13 ha available to the household in Dagana. In contrast, cultivated land is .98 ha in Podor of 3.02 ha available (O. Diop, Fofana, and Fall 2008).

<sup>169</sup> 2013 data, as cited in World Food Program. 2014. "Analyse Globale de La Vulnérabilité, de La Sécurité Alimentaire et de La Nutrition (AGVSAN): Sénégal." Rome: World Food Program, (July).

Council to present the project. With the Council's consent, they began directly negotiating with individuals who had previously registered their usage rights with the council. Unlike in Podor, these landowners were not only customary landowners but individuals who had, over the previous decade, obtained Extracts from the Rural Council. The land was still National Land, but had already passed through this first stage of the land conversion process. There was no group mobilization to prevent the land deal. Landowning families and village chiefs decided independently to cede land to the Company.

When they accepted the NAC's offer, the landowners were individually compensated. They each submitted letters to the Rural Council withdrawing the usage rights codified in their Extract documents. Over 75 individuals and 15 farmers' unions in 3 villages in the zone accepted this deal. Compensation was 180,000 CFA (\$360 USD) per hectare; the amounts each landowner allocated ranged from 2 to 100 ha.<sup>170</sup> A fourth village provided 100ha of land (without a previous Extract) in exchange for an irrigated community space equivalent in cost to the per hectare price. There, negotiations were directly with the village chief.<sup>171</sup> Then, per the conditions of this extralegal quid pro quo, the Rural Council voted to approve 3 Extracts for the Company in 2013-2014 for 2024.5 ha of land. The company considers this a preliminary stage and expects to access 4500 ha of land in Dagana.<sup>172</sup>

Where the Podor negotiations failed, the NAC was able to obtain more desirable land for less money in Dagana. Residents in the two zones responded differently to the NAC's request; these reactions reflect the distinct customary institutions in each area. One NAC employee posited that "the difference is that the populations of Podor are less accessible in terms of

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<sup>170</sup> NAC Action Plan (2014).

<sup>171</sup> Interview INV-101.

<sup>172</sup> NAC Action Plan (2014).

bargaining for the acquisition of land than in the zone of [Dagana].”<sup>173</sup> This accessibility in bargaining is a function of the ability of the customary institution to enforce members’ accountability to its goal of maintaining control over land. Where individual landowners and village authorities in Podor were pressured to conform with the institutional goal, in Dagana, the customary system has limited links beyond the village level. There, customary landowners’ decisions are atomized, and based primarily on their perceptions of individual benefits.

This land deal is part of a broader pattern between the two districts. In 2007-2013, Dagana converted 10% of its land from customary to state property rights while Podor converted 0.7%.<sup>174</sup> In this time period, Podor had 2 state-supported agricultural investments while Dagana had 32. Further, the same pattern of consent in Dagana and resistance in Podor occurred in another agricultural project on 20,000 ha of land for ethanol production.<sup>175</sup> In that case, state engineers, Senegalese investors, and Italian investors selected a parcel in Podor (in a different Rural Council area than the ones featured in the NAC case). The investors had advanced in negotiations for the land before popular protests in Podor forced them out. Similar to the NAC investors, they were pushed to Dagana by the resistant communities. In Dagana, they established their commercial farm on land that had previously been a state-classified forest. At least 6 villages were displaced, but the communities in Dagana did not mobilize to prevent the loss of their land. A comparison of these neighboring districts provides evidence that the extension of state property rights has been constrained by the customary institutional structure in Podor and facilitated by that of Dagana.

### **3.4.2 De Facto Land Ownership**

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<sup>173</sup> Interview INV-102.

<sup>174</sup> Honig. Senegal Land Titles Dataset. 2014. Details in the appendix.

<sup>175</sup> Due to its large size, this ethanol land deal has been well documented as a possible land grab by researchers and civil society. See: Koopman (2012); Sy, Cisse, and Ba (2013); CRAFS, GRAIN, and Re:Common (2013).

Where a resistant and unified customary institution in Podor slows the state's ability to extend control over land, in Dagana the state has had far more success in accessing land. This is evident in local understandings of land ownership. Throughout Senegal, there is variation in how state attempts to weaken customary control of land through the 1964 Land Law has been applied (Troaré 1997; Diop 2012). In Dagana, this law has had more success in penetrating local understandings of property rights than in Podor. Where land of the same de jure status is often treated as the property of "the nation" in Dagana, it is treated as the property of customary landowners in Podor. As in the negotiations over the NAC land deal, this difference in de facto land ownership is the result of the organization of customary institutions.

Local elected authorities and village chiefs in Dagana understand property rights on untitled land as usage rights for land that is owned by the nation or any official resident of the village. In this former pre-colonial Waalo zone, land is controlled by the Rural Council and customary authorities allocate local usage rights. In interviews, village chiefs reported that the land "belongs to the nation" and is owned by whoever is using it,<sup>176</sup> anyone who lives in the village and pays residential taxes,<sup>177</sup> or anyone who has the financial means to use the land.<sup>178</sup> These definitions are consistent with the spirit of the National Domain Law, which seeks to transform all land rights based on inheritance and customary law to rights based on usage only. Although the Rural Council and its President consult village chiefs for their advice in land allocations, the Council members understand that they can allocate land without the CAs consent.<sup>179</sup> Here, customary rights are contingent on usage and the role of the village chief is limited.

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<sup>176</sup> Interview CA-106.

<sup>177</sup> Interview CA-168.

<sup>178</sup> Interview CA-164.

<sup>179</sup> Interview RC-107.

By contrast, in Podor, extended families with inheritance rights own the land. Even the Rural Councilors and Council Presidents responsible for administering the state's laws report that the customary supersedes the legal. When asked who owns the land, councilors distinguished between the legal "nation" and the reality that in practice all of the land has customary owners.<sup>180</sup> Some customary authorities who acknowledge the existence of the 1964 Law indicated that they have actively resisted it to maintain their customary property institutions,<sup>181</sup> that the law is "just lies,"<sup>182</sup> or hiding a hidden government interest.<sup>183</sup> Others made no reference to the law and cited that the land belongs individuals, families, or the descendants of the village founders. In contrast to the text of the 1964 Land Law, this ownership is not contingent on usage; unused land is often rented out by the customary landowners to other residents or to migrants. Nearly half of agricultural households in Podor stated in a government census that they access some land by way of "rental;"<sup>184</sup> this indicates a recognition of customary ownership rights that contradicts the state's assertion that all land rights derive from use. These customary land rights are widely recognized such that the Rural Council "is obliged, not for legality but for legitimacy"<sup>185</sup> to engage the customary authorities. This is most often the village chief, who descends from one of the village's founding families. A Rural Council President cannot allocate land without the consent of the chief; to prove his point, one village chief joked, "if he did that, the women of the village would beat him to death!"<sup>186</sup>

The divergent responses to large-scale land conversions in Podor and Dagana are a direct

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<sup>180</sup> Interview RC-108.

<sup>181</sup> Interview CA-153.

<sup>182</sup> Interview CA-105.

<sup>183</sup> Interview CA-149.

<sup>184</sup> Only 2% of households in Dagana access any land through "rental," in contrast to 49% in Podor. Over 90% of households in both districts report that they also access land through "ownership." Government of Senegal. "Recensement National de L'agriculture."

<sup>185</sup> Interview RC-109.

<sup>186</sup> Interview CA-110.

result of these different understandings of ownership that have facilitated the state's control over territory. In Dagana, where historically weak and fragmented CAs oversee the customary land institutions, residents had already turned to the Rural Council to seek Extract documents in higher numbers than in Podor. These papers represent an exit from reliance on the customary system of property rights, towards obtaining state property rights. The prevalence of residents with Extracts in Dagana facilitated the NAC's negotiations there. In contrast, National Land in Podor had fewer Extracts or conversions because customary elites had succeeded in preventing the erosion of their system of customary property rights by refusing to participate in the statutory system. As one Podor village chief indicated "I don't need papers for my land. These lands have been our property for centuries."<sup>187</sup>

Customary authorities in Podor actively resist the cession of land from their customary property institutions. Village chiefs, customary elites, and community members are unified in their goal of protecting the customary property rights institution. In negotiations with the NAC investors, they mobilized against land conversions and used social pressure to prevent individuals or councilors from ceding customary control of land. This included tactics such as threatening elected councilors to prevent them from agreeing to cede land.<sup>188</sup> In this way, the community enforced accountability to the institution. In contrast, such horizontal accountability towards the goal of protecting customary property rights is limited in Dagana due to its detached customary institutional structure. Village chiefs and customary elites function independently; consequently, there is less resistance in the zone to land conversions. This helps explain why state property rights can more easily replace customary authority on land in Dagana. While the outcomes exemplified by the NAC case are consistent with some of the predictions of existing

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<sup>187</sup> Interview CA-110.

<sup>188</sup> Interview RC-104.

theoretical frameworks, these frameworks are incomplete without considering the effect of customary institutions in negotiations over the control of land.

### 3.4.3 Competing Explanations

Dominant approaches to the extension of state property rights assume similarity across customary institutions and instead focus on economic and geographic conditions that contribute to variation in outcomes. In the Boserup (1965) framework, statutory property rights gradually replace customary land tenure systems as increasing population density and land values make access to land more competitive. Dagana and Podor have nearly equal population densities<sup>189</sup> but demand for land should be greater in Dagana as it is closer to the capital.<sup>190</sup> While National Land cannot be legally sold in Senegal and therefore has no market price, one proxy for land values is the government's price list for leases and indemnities in the two district townships. The government fixes equal rates for rural land in each district, but township land is more valuable in Dagana's principal town than Podor's.<sup>191</sup> Thus by approximation of land value, the land in Dagana should have been more costly. However, the different CAs made the cost of land to the NAC investors far higher in Podor than Dagana. For example, based on just the value of the demand for an irrigated area of land for the community, the per hectare cost of land in Podor would have been 2,600 USD. This compares to the per hectare price of 360 USD that the investors paid in Dagana.

The outcomes of this deal are consistent with the prediction that state property rights develop first on more valuable land. However, these sets of negotiations demonstrate that local

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<sup>189</sup> The rural population density per hectare is .29 in Podor and .27 in Dagana. ANSD, "Resultats Definitifs Du Troisieme Recensement General."

<sup>190</sup> The townships in Dagana and Podor are 78 km apart. Dagana to Dakar is 373 km. Podor to Dakar is 450 km.

<sup>191</sup> List price per square meter in Dagana for township land is 6000CFA (12 USD) and in Podor 2000CFA (4 USD). While township land in these two districts has different values, the Government values rural land in both districts the same, at 500 CFA. Loi 2010-439 du 6 avril 2010.

structures of authority can influence how land transfers between customary to state property rights. In Podor, the community coordinated their negotiations with the NAC and mobilized around a shared goal of preventing the loss of land. They blocked the evolution of land titles in their zone by increasing the cost of institutional change in Podor relative to Dagana. Further, the sequence of these negotiations is contrary to the induced innovation hypotheses. If land values matter, the more valuable land in Dagana should have been the first choice for developing state property rights, not the second. Instead of a gradual process of statutory replacing customary property rights as demand arises, these cases demonstrate that customary institutions can intervene to change the costs of accessing customary land. In doing so they dictate where state property rights can develop more quickly.

Herbst's (2000) predictions that state power extends out from core to periphery are also consistent with the outcomes of these two cases. Podor, the district with more customary control over land, is also farther geographically from the current capital (Dakar) and the early colonial capital (Saint-Louis). Herbst expects that difficult geography constrains weak states from replacing customary authority. However, the case of NAC demonstrates that CAs themselves initiate different levels of resistance to the state's authority and its attempts to replace them. It is not physical geography but active resistance from customary authorities that leads to this regional variation in state presence. One counter-argument using Herbst's framework might suggest that the initial proximity to Saint-Louis contributed to the French colonial authority's ability to decimate the Waalo customary organization. However, the weak and divided nature of the Waalo kingdom relative to the Fouta Toro suggests that the initial organization of the customary institution is the key causal variable. Further, in these cases the state-supported investor and the French colonial authorities, (see p. 96) sought *first* the more hinterland zone

before being pushed to the more valuable, accessible land. This suggests that geographic conditions are secondary in determining where the state replaces customary authority.

This study also has implications for the theories of sub-national variation in devolved customary power (Baldwin 2014; Boone 2003). This case is representative of a broader pattern of the state, investors, and farmers attempting to replace customary land tenure systems but meeting resistance that forces them to implement their projects in more cooperative areas. The NAC is a state-supported land-deal; that they chose land in the Fouta zone and were refused by multiple villages within the institution suggests that the agency of customary authorities can have a significant impact on outcomes. The possibility of the state failing to achieve its aims or being constrained is outside of the scope of theories of strategically devolved power.

While existing theories can explain some of the features of Podor and Dagana, and some of the differences between high land conversion areas and low land conversion areas, the NAC case provides evidence that the organization of customary institutions shapes where large land titles can develop. The state-backed investors sought out less valuable land for their major land conversion but were forced to more valuable land as a result of the variation in customary institutions in the two zones. Organized customary authorities can present a united resistance to land conversions, which shifts the trajectory of both state-directed and induced innovation processes of extending state property rights.

### **3.5 National Land Conversions**

If customary institutions can constrain the state's extension of property rights, the proposed relationship between historical customary institutions and property rights outcomes should be observable across Senegal. To test this, I assembled an original dataset of all land conversions in Senegal from 2007-2013. The findings indicate that zones with pre-colonial states are less likely

to have land titles today. State property rights are more likely to develop where customary institutions have historically been decentralized. This is evidence in support of the argument that pre-colonial political institutions endow contemporary CAs with different capacities to coordinate for collective goals, and that this conditions how state property rights develop.

### **3.5.1 Measurement**

The outcome of interest in this analysis is how much land is ceded from the customary domain to the state. I measure this as the percentage of land per district that has passed through local-level consent for land conversion from National Land to State Land. This variable includes all applications for leasehold tenure on non-registered land from 2007-2013. The data comes from the minutes of the government's bi-monthly National Land Commission meetings. In addition, this measure includes land ceded by communities for new private, parastatal, and state farms in this period using data from the government agencies charged with agriculture and investor-support. This generates the numerator of my measure of land conversion. The denominator is the total amount of territory in a district *available* for conversion. This is the district's total land minus classified forests and parks, which are outside the jurisdiction of local communities. This outcome variable ranges from 0 to 14% of total land in the district. Because the outcome is a proportion, I model it using a Fractional Logit specification (Papke and Wooldridge 2008).

The predictor of interest is the organization of the historical institution. I measure this at the moment of colonization. This allows me to identify an effect of variation in customary institutions prior to the influence of the modern state. I constructed historical institutions predictor variables by overlaying georeferenced maps of pre-colonial political communities with the contemporary administrative map to assign the dominant customary institution in each

district.<sup>192</sup> These are then coded based on customary institutional endowments. This includes a binary measure of pre-colonial state or not in 1854, a tiered measure of the type of organization in 1854 (unified state, federation of chiefdoms, chiefdom, small diverse ethnic groups), pre-colonial state territorial size (small or large), and whether the pre-colonial organizations was considered to be independent of colonial authorities in 1905.

I rely on a range of measures to control for any confounding effects of land values and geography on the relationship between customary institutions and land titling. As proxies of higher land values, I constructed measures of infrastructure and market access, including the percentage of the district within 10km from a paved road, the percentage of the district within 10km from a railway, the distance from the capital, and population density. Distance to the capital is important measure of land values as resources, jobs, and infrastructure are concentrated in Dakar. The size of the district is included to account for any bias created by district size. I rely on a measure of the estimated number of prior conversions from regional land registers (*livres fonciers*) to ensure that the variation between 2007-2013 is not caused by earlier titling patterns. The percentage of the district's population that identify with the three largest ethnic groups (Wolof, Pulaar, and Serer) are included to test for any effect of customary institutions independent of ethnicity. Finally, average yearly rainfall over the 3-year period from 2005 to 2007 and soil type measure agricultural suitability and land values. Descriptive statistics, data sources and details of measurement are reported in the appendix.

### **3.5.2 Results**

Land is less likely to be converted to state property rights where pre-colonial states existed.

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<sup>192</sup> As the administrative boundaries of Senegal have largely followed the customary institutional boundaries (Diop 2006), only 7 of 42 districts had multiple customary institutions. These were then coded as the institution with the majority of the territory or in the case of 4 neighboring districts with multiple small kingdoms, as the small Tambacounda chiefdoms.

Table 1 identifies the effect of state-like organizations at the start of colonial intervention on current land conversions rates. The first model is the full model of pre-colonial statehood including all control variables. The second model includes a dummy for the Waalo state, which was the first and most aggressively dismantled by the French. These models predict a significant and negative relationship between the legacy of state-like customary organizations and current conversions to state property rights. The second model indicates a similar effect of pre-colonial states when the Waalo exception is considered in the model.

The third model uses a restricted set of control variables to help address concerns about multicollinearity and small sample size. Of particular theoretical interest are any correlations with our primary predictor: whether there was a pre-colonial state in that district. Soil type and rainfall are moderately correlated with the type of customary institution. Pre-colonial states are correlated with the fertile soil measure ( $r = .516$ ) and inversely correlated to rainfall ( $r = -.654$ ). The possibility that state-like institutions are more likely to develop in certain climates is a concern, as the climate could drive both land titling and institution type. However, the directions of these correlation coefficients are evidence against a relationship between pre-colonial institution type and the agricultural potential of the land.

For predictable reasons, some of the different measures of land values are correlated in the dataset; distance to Dakar, roads, and average rainfall all have high variance inflation factors (VIF) in the full States Model 1. Multicollinearity within the dataset increases the risk of unstable estimates and inflated standard errors. Yet, excluding control variables may increase the risk of mis-specifying the model. Therefore, I address this issue by reporting both restricted and full models. As the States Model 3 demonstrates, omitting control variables reduces the size of the coefficient of effect of pre-colonial statehood. Critically, it does not change its direction or

significance.

**Table 1: States Models**

Fractional Logit Regression Predicting Percentage of New Land Conversions per District 2007-2013

	States Model 1	States Model 2	States Model 3
<b>I. Customary Institutions</b>			
HISTORICAL CUSTOMARY STATE	-4.518** (.753)	-4.653** (.809)	-2.024** (.656)
WAALO DUMMY	—	1.225 (.654)	—
<b>II. Control Variables</b>			
DISTANCE FROM CAPITAL	.157** (.035)	.139** (.033)	.027 (.015)
POPULATION DENSITY	-.040** (.008)	-.036** (.010)	-.032** (.009)
PRIOR CONVERSIONS	.104** (.035)	.083* (.040)	.161** (.035)
DISTRICT SIZE	-.005 (.011)	.000 (.010)	-.007 (.009)
IRON-RICH SOIL TYPE	2.112** (.610)	2.118** (.591)	—
ROADS	7.940** (2.098)	8.134** (2.26)	—
RAILS	-.615 (1.190)	-.755 (1.53)	—
AVERAGE YEARLY RAINFALL	-.858** (.264)	-.700* (.308)	—
CONSTANT	-7.368** (1.668)	-8.054** (1.91)	-4.752** (.847)
OBSERVATIONS	42	42	42

Notes: \*p<0.05; \*\*p<0.01;  
Robust standard errors clustered by region presented in parentheses.

Other measures of the customary institution's structure provide additional insight into the effect of historical institutions. First, a dichotomous variable for the pre-colonial states in the upper 50% of territorial size is considered, as the ability to control more territory is suggestive of greater organizational capacity. As predicted, this also has a significant negative effect on contemporary land conversions (Large States Model, Table 2). Another measure divides organization of the customary institution into four categories: small diverse ethnic groups, small unfederated chiefdoms, federated chiefdoms, and unified states. This model demonstrates that land conversions become less likely as the institution ascends organizational levels (Level of

Political Organization Model, Table 2). Finally, the status of the chiefdom in 1905 provides further evidence of the relationship between institutional endowment and land conversions. This model considers the seven heads of pre-colonial states who remained in power in 1905, according to reports from the colonial government. This model tests if the institutional legacy of the longest autonomous CAs, who, in the words of the Colonial Governor, “create an insurmountable barrier between the indigenous and the European administration,”<sup>193</sup> affects land titling in 2007-2013. The significant, negative results indicate that land is less likely to be converted *now* where an autonomous customary organization existed in 1905. This is evidence that the customary institutions that had the organization capacity to resist French authority are the same ones that constrain the state’s extension of property rights today (1905 Status Model, Table 2).

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<sup>193</sup> Author’s translation. Xavier, Camille Lucien, “Report by Senegal Colony Governor to A.O.F Governor” 1 June 1907, 13G, AOF Collection, The National Archives of Senegal, Dakar.

**Table 2: Alternative Measures of Pre-Colonial Institutions**

Fractional Logit Regression Predicting Percentage of New Land Conversions per District 2007-2013

	Large States Model	Level of Political Organization Model	1905 Status Model	States Model, with Dominant Ethnicities and Dakar
<b>I. Customary Institutions</b>				
HISTORICAL CUSTOMARY STATE	—	—	—	-1.353** (.439)
LARGE STATES (UPPER 50% TERRITORIAL SIZE)	-1.649* (.764)	—	—	—
LEVEL OF POLITICAL ORGANIZATION	—	-2.051** (.476)	—	—
1905 STATUS	—	—	-3.021** (.884)	—
<b>II. Controls</b>				
DISTANCE FROM CAPITAL	.086 (.051)	.106** (.037)	.076 (.040)	.137** (.031)
POPULATION DENSITY	-.023 (.016)	-.043* (.017)	-.033* (.020)	-.052** (.011)
PRIOR CONVERSIONS	.094 (.052)	.179** (.069)	.088 (.059)	.159** (.047)
DISTRICT SIZE	-.000 (.011)	-.010 (.013)	.007 (.009)	.004 (.012)
IRON-RICH SOIL TYPE	1.043 (1.836)	.578 (.567)	1.940+ (1.041)	2.257** (.496)
ROADS	3.093 (1.986)	3.794** (1.170)	5.048** (1.742)	5.905** (1.556)
RAILS	1.446 (1.428)	2.102 (1.631)	.959 (1.794)	-.138 (1.605)
AVERAGE YEARLY RAINFALL	.053 (.178)	-.690** (.188)	.110 (.239)	.074 (.227)
WOLOF	—	—	—	.017 (.020)
SERER	—	—	—	-.017 (.019)
PULAAR	—	—	—	.022 (.013)
DAKAR REGION	—	—	—	3.894** (1.030)
CONSTANT	-9.673* (3.893)	-2.795 (3.249)	-10.829** (3.11)	-15.052** (2.871)
OBSERVATIONS	42	42	42	42

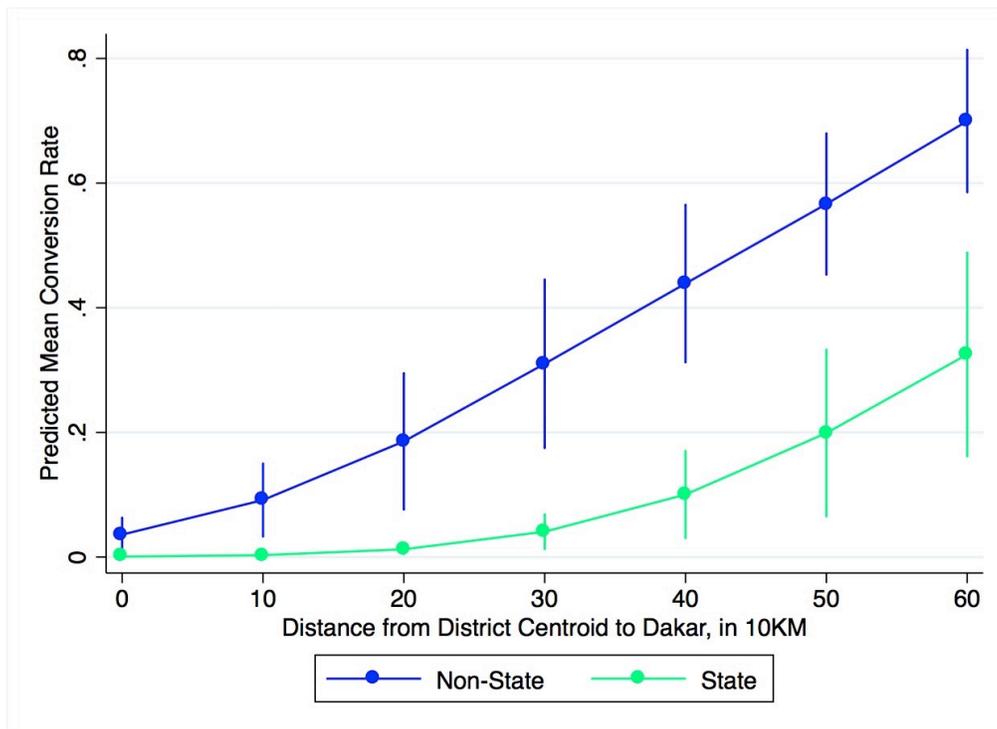
Notes: \*p<0.05; \*\*p<0.01;  
Robust standard errors clustered by region presented in parentheses.

The fourth model in Table 2 adds ethnicity and a dummy variable for the capital region to the full States model. Within the dominant ethnic groups in Senegal, there existed multiple independent political organizations at colonization. As a result, communities can be embedded in

different types of customary institutions within the same ethnic group. The States model in Table 2 indicates that ethnic groups are neither significant predictors of land titling outcomes, nor do they interfere with the significant effect of customary institution type.

This model also includes a dummy for an important outlier in this dataset, the Dakar region.<sup>194</sup> Its particularly high rates of land titling should be attributed to its proximity to the bureaucratic institutions of the state and development of peri-urban land titles. Considering the effect of Dakar does not change the direction or significance of the predictor variable. However, influential observations are a concern in a small dataset. To address this issue, I use robust regression analysis to decrease the influence of outliers and I test models with omitted outliers to ensure that no individual observations significantly change the findings.

**Figure 3: The Effect of Pre-Colonial Institutions on Land Titling**



These results demonstrate the limitations of the induced innovation hypothesis and

<sup>194</sup> To save space, the ethnicity and Dakar dummy are reported in the same model. The robustness of the relationship between pre-colonial state and land titling is unaffected by analyzing these variables in separate models.

geographic determinants of property rights. Considering the marginal effect of pre-colonial institutional endowment on land titling provides insight into the relationship between land titling and land values (Figure 3). This tests for the effect of the binary measure of pre-colonial state or not, at different distances to the capital, with all other values held at their means. The findings demonstrate, first, that at all distances to the capital, districts with pre-colonial states are less likely to cede land to state property rights than districts without such institutional legacies. Second, they show that the predicted likelihood of land titling is higher at increasing distances to Dakar.

While we should expect that there be higher rates of land titling at higher population densities and land values, instead population density and distance to the capital are either insignificant or have the wrong sign in this Senegal dataset. The models of the effect of customary institutions in Table 1 and 2 identify that a higher proportion of land is converted from customary to state where population densities are lower and at farther distances to the capital. Another land value measure, average yearly rainfall, either has no significant relationship or a negative effect on the likelihood of land titling. Table 3 (Appendix) reports the economic variables alone; there, population density and distance to the capital have no significant effect on titling. This suggests that large-scale land conversions are a major driver of land titling in Senegal and that, when controlling for the effect of customary institutions, land titles are more likely to occur on lower value land. The economic models that do not consider customary institutions do not identify an effect of land value measures because they are underspecified. This indicates that the predictive power of land values is not very strong, but, within the same customary institutional type, titling is more likely to occur on the land that is farther from the capital, with lower population density, and rainfall. However, the presence of a paved road

increases the likelihood of land conversions in the models that consider the effect of customary institutions. This suggests that accessibility may still be a factor in the selection of which land is converted.

This analysis demonstrates that the structure of the historical customary institution affects contemporary property rights outcomes, and that the effect of these political institutions is stronger and more consistent in determining property right institutions than the predictions of the induced institutional innovation hypotheses. Despite the challenges of a small dataset and similarity among land values indicators, the predictive power of customary institutions on property rights outcomes is robust to model specifications. It is also consistent across different specifications of the concept of organization of the institution at colonization.

The influence of omitted variables is a serious concern with such observational data; control variables are included to address the possibility that the type of customary organization and property rights systems are endogenous to the density of the population in that zone, soil types, road and railroad infrastructure, rainfall and distance to the capital. This national analysis tests the mechanisms illustrated in the case study, providing evidence that the customary institutional structure has an effect on the state's control of territory, independent of the value of land and proximity to the seat of state power.

### **3.6 Conclusion**

In Senegal, the state's authority over land is more likely to develop in zones with historically decentralized customary authorities. In areas with the institutional legacy of pre-colonial states, modern customary authorities have been more successful at maintaining customary control over land. Their success is the result of a greater capacity to resolve the coordination issue inherent in each individual land deal. Organized customary authorities are able to enforce accountability to

the collective goal of preventing the slow eradication of customary power over land allocation. The case of one land deal attempted in two customary institutional zones provides evidence for this mechanism. The analysis of an original dataset of all land titles indicates that the relationship between customary institutional endowment and the development of state property rights holds nationally. Further, this effect of customary institutions is independent of demand for titles predicted by land values or the potentially confounding effects of land quality.

This effect of customary institutions on the development of property rights in Senegal persists despite the state's attempts to suppress customary authority over land. With no formal channel for customary authorities to stop land conversions, they slow land titling by influencing a broad network of customary landowners to resist or refuse land conversions. The next chapter presents the case of Zambia, where, by contrast, the formal role of CAs concentrates the decision to title land in an individual customary authority. Where CAs must exert influence on a more diffuse group of customary landowners to maintain customary control of land in Senegal, the customary institution's impact in Zambia is exerted over state-recognized CAs. The next chapter examines the effect of customary authority in this very distinct national institutional context.

## Chapter 3 Appendix

**Table 3: Economic Models**

	Full Economic Model	Restricted Economic Model
DISTANCE FROM CAPITAL	.092 (.055)	.018 (.024)
POPULATION DENSITY	-.018 (.022)	.002 (.006)
PRIOR CONVERSIONS	.121* (.057)	—
DISTRICT SIZE	-.004 (.011)	—
IRON-RICH SOIL TYPE	.673 (2.230)	—
ROADS	2.852 (1.940)	—
RAILS	.892 (1.131)	—
AVERAGE YEARLY RAINFALL	.085 (.135)	—
WOLOF	—	—
SERER	—	—
PULAAR	—	—
CONSTANT	-10.005* (3.921)	-4.682** (.872)
OBSERVATIONS	42	42

Notes: \*p<0.05; \*\*p<0.01;

*Robust standard errors clustered by region presented in parentheses.*

**Table 4: Senegal Land Titles Dataset**

Variable	Measurement	Source	Mean	SD	Min	Max
LAND TITLING RATE	<p>Total land conversions from 2007-2013 per district, divided by District Size variable.</p> <p>Note: Districts denote <i>Départements</i> in Senegal's administrative system.</p>	<p>Data compiled from three data sources:</p> <p>The first component is all new titles and leases 2007-2013 on National Domain land. This is extracted from the minutes of all meetings of Senegal's centralized land commission [<i>Commission de Controle des Operations Domaniales (CCOD)</i>] that oversees applications for conversion. These applications for conversions have already received consent for conversion from the local level when they are submitted to the CCOD by regional land offices. Data from 62 meetings were compiled and all duplicate applications were removed. This includes 1670 unique conversions of land from customary to state land for a total of 98935ha.</p> <p>The second component of this variable is new agricultural investments of 100ha or more from 2007-2013. This data comes from the government's Investment support agency [APIX, <i>Agence de Promotion de l'Investissement et des Grands Travaux</i>]. This data was compiled from the APIX database of agricultural investors with 100ha of land, by year with duplicates removed. There were 89 agricultural investments of this size in this period. 34 or 13,223ha for farmers' unions and 53 or 120,770ha for private investors. This data represents land conversions in an earlier stage of progress than those that have reached the CCOD meetings. While the large land deals in this dataset have not yet completed the lengthy process of titling, the land must be have been alienated from the community before they can be registered in the government's investor database.</p> <p>The third component of the land conversions variable is new state farms developed between 2007-2013 through the Ministry of Agriculture's ANIDA [<i>Agence Nationale D'insertion et de developpement Agricole</i>] program. These 39 projects range from 1-1000ha, for a total of 3,796ha. Like APIX investments, these require at minimum local council consent papers.</p>	.015	.033	0	.137

STATE	<p>Dominant political organization in the district in 1854 was pre-colonial state.</p> <p>For all pre-colonial organization measures, I coded the dominant organization as the customary organization that occupies the majority of each district's territory.</p>	<p>Georeferenced 1854 map of political organizations in Senegal. Concerns about reliability and map quality led me to selection of a map from the Senegalese government's own records that represents an early period in colonial intervention. (Department of Territorial Administration, as provided in (D. Diop 2006)). The selected map is consistent with other maps of pre-colonial and colonial Senegal.</p> <p>The form of political organization for each customary organized was compiled by cross-referencing 2 national descriptions of pre-colonial kingdoms (Phillips 1981; D. Diop 2006) with a range of colonial reports on specific chiefdoms and treaties from the Senegal National Archives.</p>	.595	.497	0	1
PRE-COLONIAL POLITICAL ORGANIZATION LEVELS	The above measure divided into 4 categories with increasing levels of unification: small diverse ethnic groups, small unfederated states, federated small states, and unified state.	Ibid.	2.238	1.055	0	3
LARGE STATE	Dominant political organization was pre-colonial state and in upper 50% of state territory sizes.	Ibid.	.381	.492	0	1
1905 STATUS	<p>The political organization was considered to be autonomous of the French colonial regime in 1905.</p> <p>This encompasses: Baol, Cayor, Diambour, Djoloff, Fouta Toro, Sine, and Saloum.</p>	Camille Lucien Xavier. "Report by Senegal Colony Governor to A.O.F Governor" June 1 1907, Box 71-Organization administrative et territorial, 13G, A.O.F Collection (1895-1959, Senegal National Archives, Dakar.	.524	.505	0	1
DISTANCE FROM CAPITAL	Distance from the centroid of the district to Dakar in 10km units	All administrative boundary data from the Centre de Suivi Ecologique (CSE) Shapefiles. 2014.	26.400	16.230	0	63.880
DISTRICT SIZE	This is calculated in 10000ha units and excludes national parks, state forests and any other classified land. This is the denominator for the outcome variable.	Ibid.	35.484	29.969	.762	143.356

POPULATION DENSITY	Total population per hectare (exclusive of state parks and classified forests), per district	(Agence Nationale de la Statistique et de la Demographie, Senegal 2002)	6.700	25.612	.039	123.602
SOIL	Iron-Rich Tropical Soil type.  Calculated the majority soil type per district; identified soil type for district with highest rate of land conversions; Created dummy variable to control for the impact of this top soil type (“Iron-Rich Tropical”) on land titling.	National soil data is derived from the shapefiles of the government-affiliated the Centre de Suivi Ecologique (CSE). 2014. This is the soil data used by the government for their agricultural projects.	.548	.504	0	1
ANNUAL RAINFALL	Average annual rainfall per district from 2005-2007, in 100mm units	Food and Agriculture Organization/GeoSTAT raster files for 2005-2007; total monthly rainfall data (FAO-Agrometeorology Group 2008).	5.878	1.844	2.763	9.664
ROADS	Percentage of the district within 10km of a paved road	Centre de Suivi Ecologique (CSE) Shapefiles. 2014	.534	.303	0	1
RAILROAD	Percentage of the district within 10km of a rail line	USAID Shapefiles. 2014.	.209	.289	0	1
PRIOR CONVERSIONS	Approximate measure of rate of land conversions in the district prior to 2007 using regional and district-level land titling data, depending on availability.  The measure is the count of land conversions of 100ha or above. For some districts the land register is unique for the district and for others it is combined into a regional register. Where only regional data was available, a district level indicator of prior land conversions was approximated.	District and Regional land registries ( <i>livre foncier</i> ).	5.214	7.152	0	25

WOLOF	Percent per district who identify as Wolof ethnicity	(Agence Nationale de la Statistique et de la Demographie, Senegal 2002)	31.729	28.966	.151	85.976
PULAAR	Percent per district who identify as Pulaar ethnicity	Ibid.	33.566	28.429	2.889	94.812
SERER	Percent per district who identify as Serer ethnicity	Ibid.	13.849	21.909	.074	88.793

## CHAPTER 4

# When Chiefs Punish Chiefs: Historical Hierarchy in Zambia

### 4.1 Introduction

Despite rapid growth and significant urbanization, Zambia's capital city cannot extend East or South. Instead, it sprawls to the Northwest. This is not a product of geography, uneven infrastructure or demographics. The growth of Lusaka is determined by the customary authorities whose land borders the city. The chieftainess to the Southeast refuses to allow the land in her domain to transfer from customary control to state land titles.<sup>195</sup> By contrast, the chieftainess on the Northwest side of Lusaka freely allows new titles in her domain; this includes the conversion of 33,136 ha or 26% of her customary land between 2007 and 2013.<sup>196</sup> These Lusaka-area chieftainesses<sup>197</sup> are a highly visible example of how Zambia's state-recognized customary authorities can constrain the state and shape the development of property rights.

A diverse mix of customary authorities reign in Sub-Saharan Africa. Through the case of Zambia, this chapter examines one key difference in types of customary authorities: their recognition by the state. Customary authorities are middlemen, situated between the demands of the state and local communities (Clough 1990). State-recognition pulls chiefs closer to the state, making them reliant on it for status and benefits. This empowers chiefs with an official role in land titling and, therefore, a direct channel for blocking it. However, by codifying and legalizing the position of chiefs, the state also creates explicit limits on their authority. This accelerates the

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<sup>195</sup> Between 2007 and 2013, she consented to titles for a paltry 95 ha, or .04% of her land.

<sup>196</sup> Calculations based on all applications for titles that had consent of chief between 2007-2013 from District Council Minutes. Total land for each chiefdom from the Ministry of Land's chiefdom boundaries map.

<sup>197</sup> Although there are 3 chieftainesses in the area bordering Lusaka, Zambia's state-recognized chiefs are primarily male. In 2013, 32 of 286 were women. Female leadership pre-dates the colonial state in some ethnic groups in Zambia.

state-building process of replacing customary with state authority over land through land titling. In comparison to the CAs without state recognition featured in the previous chapter on Senegal, Zambia's chiefs exemplify how customary authorities can shape the state's control of land, despite depending on the state for their status.

This variation in state recognition of customary authorities is a legacy of colonial rule. As presented in Chapter 2, the French colonizers had an ambiguous relationship with customary authority, while the British relied on self-governing chiefs even where they had not previously existed.<sup>198</sup> This initial colonial policy set the trajectory for the role of chiefs in independent African states.<sup>199</sup> Former British colonies are more likely to have state-recognized customary control of land now than former French colonies.<sup>200</sup> In former French colonies such as Senegal, pre-colonial political organizations could, and did, die, leading to village CAs that function independent of any greater network of customary authority. In contrast, under the British policy of indirect rule, even illegitimate chiefs could survive through the support of the government. Now, state-recognized chiefs can maintain authority independent of popular support or governance capacity. As this chapter will demonstrate, this has important implications for downward accountability between chief and subject.

This chapter demonstrates that, despite this critical difference in national institutions between Zambia and Senegal, historical hierarchy has a consistent effect on modern land titling outcomes. In both contexts, land titles are less likely to develop in zones with pre-colonial states. In Zambia, all chiefs have incentives to comply with state and investor requests for land titles to maintain their official recognition. However, one set of chiefs is also constrained by ties of

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<sup>198</sup> See Crowder ([1978] 2012); Lee and Schultz (2012); Firmin-Sellers (2000); Young (1994).

<sup>199</sup> Portuguese colonial policy fits the French model of chiefs as administrative agents; Belgian colonial governance provided slightly more autonomy to chiefs than the French or Portuguese (Crowder [1978] 2012, 131,138).

<sup>200</sup> States that formally recognize CA authority over land allocation include: Zambia, Malawi, South Africa, Ghana, Namibia, Mozambique, and Niger (Alden Wily 2003).

vertical accountability—to hierarchical customary institutions. Chiefs who are embedded in historical hierarchies are subject to punishment by superior chiefs and their councils. As a result, these historical hierarchies have the capacity to coerce state-supported chiefs to comply by institutional goals of maintaining control of land, over the individual benefits of titling. These internal accountability mechanisms are not present in the customary institutions that were formed by the state; they are a legacy of the bureaucratic structure and hierarchy of pre-colonial states. The four pre-colonial states in Zambia were recognized by the colonial authorities as paramount chiefdoms. By contrast, the nominally hierarchical chieftaincies created by the state, united under senior chiefs, should have no systematic effect on land titling outcomes. This chapter provides further evidence that historically hierarchical customary institutions can constrain the state's extension of authority over land and property rights. Even in national contexts where chiefs have an official role in governance and receive salaries from the state, their pre-colonial institutional endowment contributes to variation in their ability to preserve control over land.

The chapter begins with a brief introduction to how and why customary authority over land is replaced through land titling in Zambia. This is followed by a discussion of the chieftaincy system in Zambia, with attention to the ties of accountability that shape chiefs' land conversion decisions. The central argument of this chapter is that hierarchical customary institutions can self-monitor to maintain control of land by resisting land titling. To illustrate how chiefs embedded in customary hierarchies can censure each other, I compare two neighboring customary institutions in Northern Zambia with divergent pre-colonial centralization. While the decentralized Bisa chiefs are autonomous from each other, the hierarchical Bemba chiefs can be punished or dethroned by the customary institution. As a result, hierarchical chiefs are systematically less likely to cede land from the customary domain to state

titles and multi-national agricultural investments. Analysis of a database of all land titles in Zambia provides evidence of this relationship. The chapter concludes with additional clarifying examples and discussions of the implications for state-building.

## **4.2 The Conversion of Land in Zambia**

Every hectare of non-state land in Zambia is under the official authority of a chief. At independence this Customary Land accounted for 94% of the territory. In Zambia's dual land tenure system, State Land is defined as all land under titles, plus areas reserved as Crown Land by the colonial state, national parks, some forest reserves, townships, resettlement schemes, and farm blocks. What remains is customary land. In order for land to have a title, it must be permanently converted from customary to state land. Thus each new title shifts control over land allocation and the protection of property rights from a chief to the state.

The official recognition of individual chiefs as the custodians of customary land empowers them with nearly complete autonomy in their domains. It also circumscribes their power with precise boundaries and a procedure for shrinking, but never increasing, their authority. The 1995 Land Act is the prevailing legal instrument. It states that the president owns all of the land, while also reinforcing the dual nature of property rights in Zambia. Per the Act, the government cannot interfere with existing customary rights and the president cannot convert land without the consultation of the area's chief (Mulimbwa 1998, 89). In practice, no land can be converted from customary land to state title without the signature of the chief. The Act also clarifies that any conversion of land from customary to state land is permanent. Even if an individual title is cancelled, the land can never revert to customary land. While land cannot transfer out of the customary domain without the consent of the individual chief, once the chief consents, the land is permanently ceded to the state. This provides for the progressive expansion

of state control of land. As a result of new titles and other land conversions, customary land has decreased from 94% at independence to an estimated 60% of the total land today (Honig and Mulenga 2015).

#### **4.2.1 Consent and Resistance to Land Conversions**

Zambia's chiefs are aware of the permanent loss of authority that accompanies land titling. The sentiment among chiefs that big land conversions reduce their power<sup>201</sup> and that "the more land I give away, the more power I give away"<sup>202</sup> is pervasive. They publicly discourage their peers from ceding land and campaign to convince the public of their importance in effective land allocation. In newspaper articles, chiefs warn each other to be careful of allowing land conversions, because titling "is a one-way traffic and so we find that one of the consequences is that we ourselves risk becoming landless."<sup>203</sup> In another public statement, a chief warns his fellow chiefs that they need to prevent "the evil manifestations of the powerful and merciless forces both local and foreign who are day and night scheming ways to alienate customary land and consignee [sic] the poorest of the poor to slavery far worse than death itself."<sup>204</sup> Echoing this sentiment that keeping land under customary authority is pro-poor, another chief reported in the media that "We are worried because you can't be a chief without land. If the land goes in the hands of the President or the government, most of our people won't have an opportunity to have land. We are interested in helping those that can't manage to buy."<sup>205</sup>

How to maintain customary control of land is also regularly discussed in the House of Chiefs (HoC), an advisory body composed of chiefs. The HoC has mobilized to block elements

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<sup>201</sup> Interview CA-644.

<sup>202</sup> Interview CA-507.

<sup>203</sup> 2012. "Land in Zambia Will Soon Be in Foreign Hands, Warns Chief Mumena," *Post* (Lusaka, Zambia), June 18; 2014 "Putu Warns of Shocking Consequences Over Land," *Post* (Lusaka, Zambia), March 11.

<sup>204</sup> Senior Chief Mwamba Kanyanta-Manga II (Henry Sosola). 2011. "A Paper Presented to the Participants at a Workshop on the Review of the Land Administration Circular No. 1 of 1985." Chrismar Hotel, Livingstone, August 15.

<sup>205</sup> 2014. "Draft Land Article Annoys Nkomeshya," *Post* (Lusaka, Zambia), March 12.

of the 2012 and 2014 draft constitutions that, in the words of their Chairwoman “erode chiefs’ powers over customary land by converting it into state land.”<sup>206</sup> Chiefs from multiple customary institutions were quoted in the press speaking out against an article in the draft constitution that expands the definition of state land to include surface rights for minerals and natural resources.<sup>207</sup> Further, even the government’s proposed land audit is understood by CAs to be part of the “battle between the government and the chief.”<sup>208</sup>

In order to prevent the erosion of customary power through land titling, some chiefs have developed their own “customary titles.” This is an innovation to address demands from their subjects<sup>209</sup> for recognition of individual tenure, without the chief having to cede control over customary land to the state. These documents are unique to each chiefdom and developed without coordination. Examples collected during fieldwork include maps stamped by the chief, handwritten letters with oral descriptions of the land, color-printed certificates, and a registry book to keep track of the land of the subjects. In Western Province, for example, the Lozi customary title is a letter with a picture of the customary institution’s symbolic elephant (Muyakwa, Munalula, and Mudenda 2003, 85). Similarly, one Northern Bemba chief’s customary title features his clan’s token crocodile. Chiefs have taken the initiative to develop their own non-state land papers<sup>210</sup> in order to improve tenure security for local populations without ceding authority over the land.

While chiefs publically decry the titling of customary land and understand its implications for their own power, they consented to the conversion of millions of hectares of

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<sup>206</sup> 2014. “Chiefs Call for Calm,” *Times of Zambia* (Lusaka, Zambia), March 14.

<sup>207</sup> 2014. “Chiefs Reject Draft Constitution” *Post* (Lusaka, Zambia), March 7.

<sup>208</sup> Interview CA-556.

<sup>209</sup> My use of this term is consistent with how it is used in Zambia. During fieldwork, I quickly learned that “constituent” and “resident of your chiefdom” were less clearly understood by local populations or CAs in Zambia.

<sup>210</sup> This type of institutional innovation in property rights has also been documented in West Africa and Madagascar. See Koné and Chauveau (1998), Lavigne-Delville (2002), and Bellemare (2013).

land between 2007-2013. This includes land ceded directly to the state for government programs such as the Farm Blocks Program (757,000 ha) and the Resettlement Program (490,000 ha).<sup>211</sup> In the three of nine provinces closely examined during fieldwork, chiefs had consented to convert 1,147,156 ha of land for private investments and individual titles, plus an additional 123,054 ha for the extension of township boundaries in a 6-year period.<sup>212</sup> However, it would be incorrect to assume from this flood of land conversions that chiefs must convert land when asked. They can and often do refuse, as in the case of the Lusaka chieftainess referenced earlier. Chiefs are adamant that the government cannot convert their land without their permission.<sup>213</sup> District Council minutes document repeated pleas between the local state authorities and neighboring chiefdoms for land to extend their townships<sup>214</sup> and bureaucrats report that “the chiefs have the government on their knees begging for land.”<sup>215</sup>

As in Senegal, Zambia’s chiefs are torn between competing incentives to maintain the institution’s power over land or to access the goodies of ceding land. When asked, chiefs most often cited development as the reason for converting land. One chieftainess reported ceding 100,000 ha to the state because “we were told that bridges would be built, roads will be

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<sup>211</sup> Documents shared by the Ministry of Agriculture and Cooperatives and the Department of Resettlement.

<sup>212</sup> Data collection discussed in footnote 196.

<sup>213</sup> For example, “No, the government doesn’t come to anyone to say ‘convert these things to state land.’” (Interview CA-537); “When you don’t want to convert land there is no offense, you don’t want.” (Interview CA-582); and “[if the chief says no to the council] It ends up there. We’ll put a full stop. They will not have that land. It’s law. It’s mandatory actually when a chief says no, even if the President comes to me and says ‘I want this land.’ The law tells me that I’m the authority.” (Interview CA-542).

<sup>214</sup> For example, in one council meeting’s opening speech in 2007, “As Honorable Members are aware, the demand for land various development purposed [sic] in the district has more than trebled since the year 2000....I therefore wish to make an appeal to our traditional rulers who are the custodians of most land in the district to surrender part of their land to the council, to enable the council to re-plan it for various development activities required in the district.” Three years later they lamented that “Although the government has already funded the council for the re-planning of the township, the exercise cannot be done until more land is secured for the expansion of the township.” By the end of the study period in 2013, they still had not accessed land from chiefs for expanding the township. (Chongwe district council minutes, 30 March 2007, April 2010). Such examples are very common.

<sup>215</sup> Interview BUR-634.

improved, electricity will come over and there will be plenty of developments.”<sup>216</sup> Others reported potential job creation.<sup>217</sup> Agricultural investors are expected to bring jobs, the state to bring roads. Chiefs believe it is their role to attract development and negotiate with the state for resources in their areas (Gould 2010). In many ways, Zambia’s chiefs are “development brokers” (Baldwin 2015). However, rural citizens also suspect that chiefs are ceding customary land for the individual benefits, saying “the chief agrees any time...any time there is money,”<sup>218</sup> “the chief can convert the land because he loves money. So, if one of you has a lot of money, approach the chief to give you land and all of us here will be displaced,”<sup>219</sup> and “we just hear that land has been sold and sometimes you see the chief driving a small car, exchanged for a very big piece of land where people have fields.”<sup>220</sup> As in Senegal, in Zambia customary land cannot legally be sold. It must first be converted to title before the land itself holds any market value.<sup>221</sup> As a result, any transactions are clandestine (Sitko 2010) and compensation is directly to the chief (Nolte 2014). These payments to the chief for land, known as “customary tribute,” can include vehicles, “palaces” (chiefs’ residences), and money (Brown 2005). For chiefs who are often living in the same or only slightly better economic conditions than their subjects, these negotiations have high stakes. Thus while chiefs understand the long-term institutional implications of land deals, the short-term incentives to cede land are powerful.

### **4.3 Hierarchy in Zambia’s Chiefdoms**

The British colonial authorities formalized and, at times, created the political units that are the foundation of Zambia’s 286 chiefdoms. This includes three official titles for customary

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<sup>216</sup> Interview CA-586.

<sup>217</sup> Interviews CA-644, CA-562, CA-520.

<sup>218</sup> Focus group interview FFG-543.

<sup>219</sup> Focus group interview FFG-566.

<sup>220</sup> Focus group interview FFG-565.

<sup>221</sup> Any compensation is for displacement or the cost of improvements to the land, but not the land itself unless it is under title or leasehold.

authorities: Paramount Chief, Senior Chief, and Chief. Paramount and senior chiefs oversee networks of subordinate chiefs, while some chiefs remain independent of such hierarchies.<sup>222</sup>

The boundaries and statuses established by the British are largely unchanged today.<sup>223</sup> Today, the official government map of chieftaincies used to adjudicate disputes and inform boundaries for administrative units is the same British colonial map of Native Authorities. The boundaries that define the jurisdiction of individual chiefs were frozen at independence. On average, this allocates 190,000 ha of land per individual chief. This is land used by thousands of smallholder farmers. For comparison, the average smallholder household in Zambia uses 2.3 ha of land.<sup>224</sup>

At the start of British exploration and occupation, there was a heterogeneous mix of political organizations in the territory. Scholars have categorized these diverse pre-colonial societies as kingdoms, autonomous villages, centralized chieftaincies, communities ruled by elders, loosely organized chieftaincy systems, and stateless societies<sup>225</sup> or divided them into kingdoms with established bureaucracies and populations who had never been part of a centralized political organization (Gould 2010). The British policy of indirect rule was accompanied by a preoccupation with cataloguing and mapping pre-existing political systems. These extensive early anthropological studies were deemed necessary for efficient colonial rule through chiefs. The British documented a variety of similarities and differences between ethnic groups including succession processes, land tenure rules, and oral histories. This effort to classify and make legible (Scott 1998) different pre-colonial groupings informed the British recognition of chiefs that maintains today.

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<sup>222</sup> There are 43 chiefs outside of any hierarchy (independent chiefdoms), 187 in senior chieftaincy systems, and 56 in paramount chieftaincy systems.

<sup>223</sup> The one significant change is the Lozi consolidation of their chiefdoms in Western province from 84 to 11.

<sup>224</sup> Zambia smallholder dataset presented in more detail in Chapter 5. Central Statistics Office/Ministry of Land/Indaba Agricultural Policy Research Institute. 2012. "Rural Agricultural Livelihoods Survey Dataset." Lusaka, Zambia: IAPRI.

<sup>225</sup> Brelsford, William Vernon. 1956. *The Tribes of Northern Rhodesia*. Government Printer, South Africa.

The British ruled through hierarchical organizations where they could and struggled to create chiefdoms where none existed in order to implement a coherent policy of indirect rule throughout the territory (Meebelo 1971, 101). Four hierarchical organizations pre-existed the colonial state: the Bemba, Lozi, Chewa, and Ngoni.<sup>226</sup> The British acknowledged these pre-colonial states as paramount chiefdoms. Elsewhere, they formed hierarchies under a Senior chief for all but the smallest ethnic groups. Some Senior chiefdoms represent pre-existing customary organizations without state-like hierarchy, while the British created others based on group size alone. The Tonga, for example, was a loosely connected ethnic group without any unifying organization beyond small village clusters. Thus the British chose chiefs and a Senior chief from high status men in the area; these came to be known by their subjects as “Government Chiefs” (Colson 1948). The colonial authorities and Zambian governments bolstered both the historical hierarchies represented by paramount networks and the created hierarchies of senior chieftaincies. For example, the senior or paramount chief is the government’s first contact for their ethnic group. Further, these superior chiefs receive greater government benefits than their subordinates.

All chiefs, regardless of whether they were initially government chiefs or pre-colonial heads of state, have been supported by the state to facilitate its rural governance. As a result, the customary authority’s survival in power is not dependent on his or her constituents, which undermines the accountability of chiefs to their populations. Across seven ethnic groups in two provinces sampled for qualitative interviews, there is limited variation in downward accountability between the chiefdoms. Regular citizens have no role in the selection, censuring, or dethronement of their chiefs. Instead, the chief is chosen by a royal family from within its

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<sup>226</sup> In Murdock’s often-referenced ethnographic dataset, his statehood variable correctly identifies Bemba, Lozi, and Ngoni as states but leaves Chewa uncoded for lack of data (1967).

ranks. While the population can have a role in selecting the headmen and headwomen who oversee individual villages within a chiefdom, the chief must approve their choice.<sup>227</sup> Less commonly, the chief directly chooses the headmen. The chief also has discretion over the selection, function, and dismissal of internal groups of advisors. Most importantly, populations have limited recourse for censuring bad behavior by chiefs. Citizens and chiefs alike say that a chief is a chief until death,<sup>228</sup> unless he murders someone or goes insane.<sup>229</sup> In an ethnic Ila chiefdom, subjects argued that the chief cannot be dethroned by his population because he is “protected by the Government.”<sup>230</sup> As one group of Bisa subjects said, “Only death can remove him. Whether good or bad...you will just keep on complaining until death.”<sup>231</sup>

The population cannot censure its chiefs, but the state can. Chiefs are recognized or “gazetted” by the state. This recognition comes with a monthly salary, employment by the government of two to four retainers, and other intermittent perks. The state can and has occasionally removed this recognition. Between 2003 and 2013, 14 chiefs were de-gazetted by the state.<sup>232</sup> Both gazettement and de-gazettement of chiefs is made public as a Statutory Instrument. To preserve the impression of objectivity, the state’s justification for dethroning a chief is generally procedural and is adjudicated in a courtroom or by the staff of the House of Chiefs. For example, the Karanga/Tonga Chief Sikoongo was degazetted by the government in 2013 for not following the correct bloodline within the royal family, despite having ruled for over 14 years. At other times, the state rules in favor of the sitting chief, effectively blocking any popular attempts to

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<sup>227</sup> Interviews in 15 chiefdoms from two regions with 45 traditional authorities (chiefs, headmen and counselors) and 15 focus groups of subjects.

<sup>228</sup> Interview CA-546 and Focus group interview FFG-536.

<sup>229</sup> Interview CA-537.

<sup>230</sup> Focus group interview FFG-585.

<sup>231</sup> Focus group interview FFG-547.

<sup>232</sup> Based on all statutory instruments from 2003 and 2013. There were 128 chiefs recognized by the government in this period. Data sources: the offices of the Government Printer, Lusaka and the Zambia Legal Information Institute, coordinated by the Southern African Institute for Policy Research (SAIPAR).

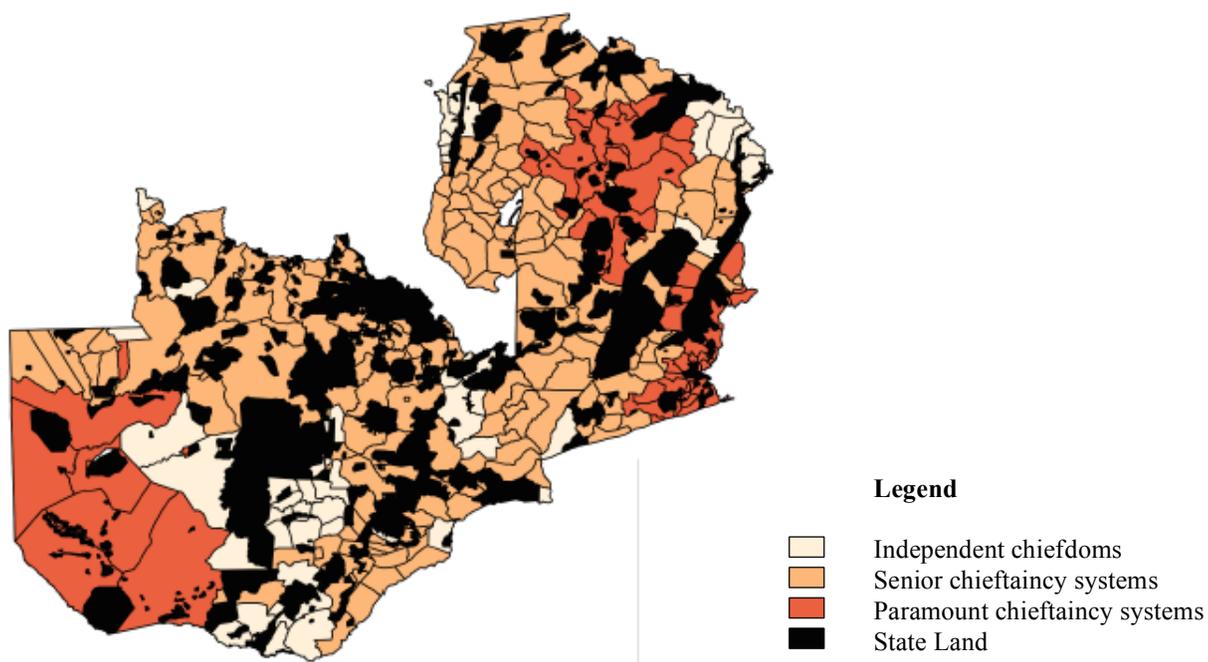
dethrone a chief. As a result of this power to gazette and degazette a chief, the state establishes influence over the decisions of chiefs. The state's ability to distribute official recognition is a latent threat for all chiefs.

In addition to the influence of the state, some chiefs are also subject to the authority of superior chiefs from within their customary institution. Hierarchical CAs are able to impose their own internal ties of vertical accountability on chiefs. In the pre-colonial states, now paramount chieftaincies, chiefs can be selected, punished, and dethroned by superior chiefs (and their councils). They feature tightly linked networks of chiefs who regularly interact through shared ceremonies and are united under the authority of the paramount and the royal family. As a result of their historical bureaucracy, laws, and identity ties, paramount chieftaincies can legitimately monitor the behavior and decisions of their chiefs. If they disapprove of a chief's behavior, or a case is brought to them from subjects, they can intercede. Examples of this are presented in the next section. For chiefs embedded in paramount institutions, their authority and survival as chiefs derives from the hierarchical customary institution, not the state alone.

While paramount chieftaincies feature historical hierarchies, senior chieftaincies are an example of new hierarchies, molded by the colonial state. For nearly a century, the state has reinforced these senior hierarchies to facilitate governance. Some senior chieftaincies are larger than paramount chieftaincies and could be expected to have greater bargaining power. However, without the historical hierarchical institutions of paramount chieftaincies, senior chieftaincies are unable to enforce accountability to institutional goals. All chiefs are under pressure to please the state, but chiefs in paramount systems have an extra constraint, the customary hierarchy. As a result, in this nearly zero-sum struggle between chiefs and the state over land, independent chiefs and chiefs embedded in senior chieftaincies should be more likely to cede land. Due to their

internal ties of accountability, chiefs embedded in paramount systems should be most likely to preserve customary control of land. Figure 4 illustrates the locations of Paramount, Senior, and Independent chieftaincies in Zambia.

**Figure 4: Map of Customary Hierarchy, Zambia**



#### **4.4 Customary Constraints in Hierarchical and Non-Hierarchical Chiefdoms**

To illustrate how hierarchical chiefdoms can constrain chiefs through ties of vertical accountability, I leverage the comparison of two distinct customary institutions that share an ecological zone and language in Northern Zambia. The Bemba and the Bisa ethnic groups are often considered as one ethnic group or political faction as a result of their shared language and regional similarities (Posner 2003). The domain of these two neighboring chieftaincy systems is accessible and strategic; the railroad and highway from Lusaka to the nearest port, Dar as Salaam traverses both Bemba and Bisa territory. Both have been targeted for agricultural investments as

areas with unused, fertile land.<sup>233</sup> However, despite their similarities, there are stark differences in the structure of their customary institutions. The Bisa is a historically decentralized customary institution. Today it is nominally hierarchical, under by a senior chief. By contrast, the Bemba is a historical hierarchy. The chiefs within the Bemba institution are accountable to the Bemba Royal Council, headed by a paramount chief. Their neighbors, the Bisa chiefs, are functionally autonomous. As a result of these different types of institutions, Bemba chiefs can be coerced into complying with institutional goals over individual incentives. Bisa chiefs have no such constraints. In the following section, I present the historical origins of the two institutions and provide examples the differences in accountability between the Bemba and Bisa customary institutions.

#### **4.4.1 Institutional Origins**

At the earliest colonial occupation, the British identified the Bisa as an independent ethnic group<sup>234</sup> and the Bemba as a state-like kingdom to be feared, the “one power that should be broken,” and “the strongest in the northern part of the territory.”<sup>235</sup> These historical differences are the foundations of their modern organizations. When the British implemented indirect rule, they were able to rule through the efficient Bemba hierarchy. They recognized the Bemba head of state, called Chitimuluku, as a paramount chief and described him as a powerful force with unified chiefs.<sup>236</sup> His official role as a superior chief coexisted with a functional internal

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<sup>233</sup> Interview INV-603.

<sup>234</sup> BSAC, “Report from Mr. J. Thomson on His Expedition in BSAC Report 1889-1892: Presented to Shareholders at the Second Annual General Meeting, 29th November 1892” 1892, Shelf 8, Government Series, The Zambia National Archives, Lusaka.

<sup>235</sup> BSAC, “Report from the Administrator, Major PW Forbes, on Affairs in Northern Rhodesia during 1896 in BSAC Reports 1896-1897” 1897, Shelf 8, Government Series, The Zambia National Archives, Lusaka.

<sup>236</sup> Government of Northern Rhodesia, “Native Affairs Annual Report for the Year 1935” 1935, Box 2/Shelf 8, African Affairs Annual Reports, Government Series, The Zambia National Archives, Lusaka.

hierarchy which allowed “an almost sacerdotal hegemony.”<sup>237</sup>

Elsewhere in the territory the British struggled to create hierarchical customary organizations where none existed in order to facilitate their indirect rule. The Bisa were one such case of major ethnic groups without clear structures of authority. The British chose one chief, Chief Kopa, as senior chief, with objections from other Bisa chiefs (Meebelo 1971). Despite the official hierarchy, the Bisa never developed the organizational capacity for administrative and financial autonomy; put modestly by one colonial officer “The efforts to unite the Bisa tribe under Chief Kopa have not proved entirely successful.”<sup>238</sup> Similar to other areas with decentralized customary institutions, the administration had difficulty collecting taxes in the Bisa zone (Gann 1969, 104). Without the established institutions of historical states such as the Bemba, the British attempts to create hierarchical organization in the Bisa were unsuccessful.

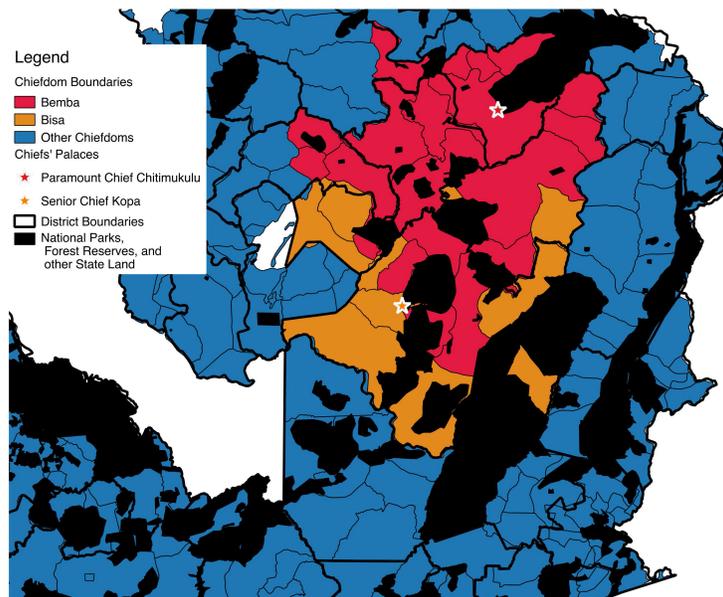
The official hierarchy and land boundaries codified by the British during colonialism remain in place today. Although the autonomy, influence, and state benefits for chiefs have fluctuated under different Zambian governments, the recognition of chiefs has been constant. Throughout these different regimes Senior Chief Kopa remains the seat of the superior Bisa authority and Paramount Chief Chitimukulu is the senior Bemba authority. Figure 5 maps the boundaries of the neighboring customary institutions in Northern Zambia and the seats of their superior chiefs.

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<sup>237</sup> Government of Northern Rhodesia, “Native Affairs Annual Report for the Year 1938” 1938, Box 2/Shelf 8, African Affairs Annual Reports, Government Series, The Zambia National Archives, Lusaka.

<sup>238</sup> Ibid.

**Figure 5: Map of Bemba and Bisa Chiefdoms, Northern Zambia**



#### **4.4.2 Punishment in Bembaland**

The modern Bemba customary institution is a hierarchical organization, under the leadership of the Bashilubemba Royal Council. Within the institution are 18 chiefs who hold the titles of Chiefs, Senior Chiefs, and Paramount Chief. The Royal Council is a 72-person committee divided into smaller sub-committees, with lineage-based membership. The Council is headed by paramount Chief Chitimukulu and headquartered near his palace. The Royal Council chooses all 18 of the Bemba chiefs, guided by traditional succession rules. They have the authority to select the chief and to replace him.<sup>239</sup> They monitor each chief's behavior and can censure him by investigating a case against him, suspending him, dethroning him,<sup>240</sup> and preventing him from being promoted to a higher-level chiefdom.<sup>241</sup> Bemba chiefs report that they can be dethroned by this council for a wide variety of reasons, including: mistreating people, lack of integrity, adultery, if the people complain to the Royal Council, going against tradition, insulting priests,

<sup>239</sup> Only a man can be a chief in the Bemba customary institution. There are other specific leadership positions for women, particularly the title of Queen Mother or "Chanda Mukulu."

<sup>240</sup> Focus group interview FFG-539.

<sup>241</sup> Interview CA-570.

having a bad character, use of vulgar language, drunkenness, and misuse of land.<sup>242</sup>

The punishment and promotion of two Bemba chiefs provide an example of the influence of this hierarchical structure. First, a chief with profligate land conversions was suspended in 2012. Between 2007-2013, the chief consented to the conversion of 136,000 ha or 88% of his land. This far surpassed the Bemba chiefdom average of a 10% rate of land conversion in that period.<sup>243</sup> His land had not previously had a large number of titles or major agricultural investments; the allocation of large plots of land was a new development under this individual chief's 4-year tenure.<sup>244</sup> The land deals he accepted include the allocation of 2 plots of 30,000 ha and 88,000 ha to German biofuels investors in 2009<sup>245</sup> and 9400 ha to an American sugar company. State agents report that he agreed to give an additional 28,000 ha in 2013 for a new Resettlement Scheme.<sup>246</sup> While none of these projects had yet materialized during the study period, they are consistent with his reputation for being very willing to cede vast areas of land. His subjects attribute land deals in their area to him as an individual, saying that "The present chief is selfish,"<sup>247</sup> and "if you have two cars and you give him one, saying 'give me this piece of land,' he would do it."<sup>248</sup> In contrast, "other chiefs before him did uphold the traditional norms and we were blessed in the land."<sup>249</sup>

When the Royal Council punished him in 2012, their justification was adultery and mistreatment of his subjects. A group of traditional councilors traveled to his chiefdom and

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<sup>242</sup> Interviews CA-570, CA-571, CA-573, CA-564, FFG-565, and CA-553.

<sup>243</sup> District Council Minutes from Northern Province.

<sup>244</sup> He was selected by the Bemba Royal Council in October 2007. His reign was formally recognized by Statutory Instrument No. 43 of 2009 - The Chiefs (Recognition) (No. 6) Order, 2009.

<sup>245</sup> This land deal is also featured in the civil society reports by Chu (2012) for the Zambia Land Alliance and Schoneveld (2011) for CIFOR.

<sup>246</sup> Interviews BUR-599 and BUR-609. Note that this is not included in the figure of 136,000 ha, which counts the district council's data only.

<sup>247</sup> Interview CA-564.

<sup>248</sup> Interview FFG-565.

<sup>249</sup> Interview FFG-565.

informed him that he had been censured. They suspended him and warned him of possible dethronement.<sup>250</sup> The effect of their decree was immediate and treated as law. The Royal Council and paramount chief were able to censure him because his authority is derived from this hierarchical customary institution. However, the state also has a role. According to one version of this case, the president of Zambia intervened to prevent the Council from fully dethroning him.<sup>251</sup> This is an example of a chief who had repeatedly cooperated with the state's requests to cede land out of the Bemba customary domain being punished by the customary institution and protected by the government. While neither the intervention of the Royal Council nor the state were nominally a response to the chief's land conversions, the timing of these events are suggestive.

Another example of vertical accountability in the Bemba institution occurred in 2013, this time rewarding a senior chief with a reputation for refusing land conversions. The government removed its recognition of the senior chief by executive order.<sup>252</sup> They attributed the decision to his improper installation process, not to his vocal and public opposition to converting customary land to state land. Despite the government's attempted interference, the Royal Council promoted him to the paramount chief of the Bemba. Although the senior chief's land surrounds the Northern Province capital, which should see high demand for land titles near its superior transportation infrastructure and higher population density, the senior chief had refused most conversion attempts, allowing 0% (2271 ha) to be titled between 2007 and 2013. This included

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<sup>250</sup> Interviews CA-562 and FFG-565.

<sup>251</sup> "That one was supposed to be completely dethroned but what happened is that the chief went to the President and so the President gave him consent to come back as chief, saying that even in the olden days a chief had the right to grab a subject's wife if the chief loved her." FFG-565; also reported by CA-564.

<sup>252</sup> This removal occurred via Statutory Instrument 34 of 2013. The justification was that: "The withdrawal of the recognition of Mr. Sosala was based on the fact that the appointment was signed by the Vice President, contrary to the provisions of Section 3 of the Chiefs Act." *Zambian National Assembly*. 2013. "Report of the Committee on Delegated Legislation for the Third Session of the Eleventh National Assembly Appointed on 25th September 2013," 15.

74 small titles and one title greater than 250ha.<sup>253</sup> When the state repeatedly tried to extend the township boundaries for the Northern Province capital into his land, he refused any conversion unless the state would trade him the nearby classified forest. The state wanted to extend the township in order to plan the land and sell individual commercial and residential plots; instead the senior chief has overseen such plot development while insisting the land remain customary. Further, in an unprecedented case, this senior chief pushed for an unused title on land that had formerly been in his chiefdom's domain to be canceled by the state. When the state expropriated the undeveloped land from the absentee investor, he successfully petitioned for the right to allocate (and benefit from) half of the plots.<sup>254</sup>

The senior chief was punished by the government and rewarded by the customary institution for maintaining customary control over land. Within two months of the government degazetting him, the Royal Council named him as their paramount. The Council defended and promoted a Senior chief who had prevented the loss of Bemba control over land, even as the state attempted to wield its latent power over uncooperative chiefs. This became a public battle between the Royal Council and the administration of President Michael Sata, which led to the resignation of the defense minister who had acknowledged the new paramount. Ultimately the customary institution's choice of paramount prevailed, despite the attempted state interference.

The influence of the state and the paramouncy on chief are evident in these two cases. While the interference of the state in customary affairs is relatively rare, it occurs. As a result, chiefs have a constant incentive to build rapport with the state. However, hierarchical chiefdoms can constrain their chiefs through strong ties of vertical hierarchy. Only chiefs in hierarchical systems have the additional consideration of rewards and punishments from their superior chiefs.

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<sup>253</sup> District Council Minutes from Northern Province.

<sup>254</sup> Interviews BUR-612, BUR-611, BUR-615; Kasama District Council minutes 2011.

The Bisa chiefs lack institutional constraints. They exemplify chiefdoms without hierarchical institutions developed over years of pre-colonial state-building.

#### **4.4.3 Accountability in Bisaland**

Despite their shared language and territory, the Bisa customary institution does not have the Bemba's ability to coerce compliance with group goals. The seat of power established in the early colonial era, Senior Chief Kopa, continues to be the superior authority for the 10 Bisa chiefdoms. However, unlike the Bemba paramount, he cannot name, monitor, or dethrone other Bisa chiefs. With no clear chain of authority and succession, Bisa CAs cite a variety of different processes for coming to power. None acknowledge censuring or monitoring from within the institution as a possibility.<sup>255</sup> One came to power by being chosen by the predecessor, others by a royal family for the individual chiefdom; some include headmen in the succession decision. This decentralization means that each individual chief is autonomous in his governance, including his decisions about land. For example, one Bisa chief reported that he can cede land even if his headmen or counselors refuse because "sometimes they will refuse because of ignorance, but the chief knows what is to bring development."<sup>256</sup> Both Bisa and Bemba chiefs are similarly unconstrained within their chiefdom by headmen and subjects. The critical difference is that the Bisa chiefs' decisions are not subject to scrutiny by the Senior chief or any other superior customary authority.

One major palm oil project in Northern Zambia provides an example of the limited constraints of decentralized chiefdoms in land allocation. ZamPalm is a state-supported investment of the largest beef supplier in Zambia, ZamBeef. Multiple Bemba and Bisa chiefs were initially involved in negotiations for land, yet the project was ultimately shared between

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<sup>255</sup> Interviews CA-546, FFG-547, CA-548, CA-549, CA-567, CA-568, CA-569, and FFG-566.

<sup>256</sup> Interview CA-567.

two Bisa chiefdoms. From an initial memorandum of understanding for 25,000 ha of customary land in 2005, the company converted and obtained title to a little over 20,000 ha in order to start operations in 2009. The decision to cede the land was the chief's alone to make. In return for the land, he accepted compensation for displaced smallholders, an ambulance for the community, and a vehicle for the chief. The headmen could refuse the chief's conversion decision.<sup>257</sup> The traditional councilors report not being part of the decision making process for this large land title. Despite later concerns about the deal, they reported that they could do nothing because "it was just between the chief and the government."<sup>258</sup> These councilors are selected and replaced by the chief.<sup>259</sup> Thus the decision to convert a major portion of Bisa customary land to state title for an investment project was concentrated in the individual chief. In other cases, this Bisa chief reported refusing investors seeking land based on his analysis that the community compensation and the project idea were not good.<sup>260</sup> Whether accepting or a refusing a large-scale land deal, for Bisa chiefdoms the decision to cede land is independent of customary constraints. Key differences between the Bemba and Bisa systems are summarized in Table 5.

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<sup>257</sup> Interview CA-549.

<sup>258</sup> Interview CA-548.

<sup>259</sup> Interviews CA-546 and FFG-547.

<sup>260</sup> Interview CA-546.

**Table 5: Summary of Attributes of Bisa and Bemba Institutions**

	<b>BISA</b>	<b>BEMBA</b>
<b>Total Population</b> <sup>261</sup>	200,421	2,630,526
<b>Number of Chiefdoms</b>	10	18
<b>Level of Official Hierarchy</b>	Senior	Paramount
<b>Pre-Colonial Organization</b>	Decentralized	State-like
<b>Selection of Chief</b>	Family lineage, within individual chiefdom	Bemba Royal Council, for all 18 chiefdoms
<b>Removal of Chief</b>	None, “Only death”	Bemba Royal Council
<b>Customary Accountability Mechanisms</b>	None	Punishment and Reward by Council, Senior and Paramount Chiefs

Bisa chiefs are autonomous from any constraints from the customary institution; Bemba chiefs are accountable to the paramount and the Royal Council. Although the differences between these two customary institutions contribute to variation in vertical accountability between CAs, both customary systems feature limited accountability between chiefs and their populations. In both customary institutions, the chief is understood to be the owner of the land and subjects express powerlessness to influence them. In Bemba chiefdoms: “Whether he is wrong or right, he is a chief to chiefs and within chiefdoms we are still slaves. Independence is only to the country’s political independence but to our chiefs we are still slaves.”<sup>262</sup> And “We do not have power over our chiefs.”<sup>263</sup> In Bisa chiefdoms: “we don’t have the powers to decide.”<sup>264</sup> “Sometimes, you can be seated comfortably on that land, then later the same land will be given out to somebody else and they displace you” or “In other cases, many of you can be displaced and squeezed on a smaller land.” If they disagree with a chief’s decision: “Even if we say

<sup>261</sup> Central Statistical Office (CSO). “The 2010 Census of Population and Housing.”

<sup>262</sup> Focus group interview FFG-572.

<sup>263</sup> Interview CA-564.

<sup>264</sup> Focus group interview FFG-547.

something, nothing can be done,” “There is nothing we can do, so we just observe as slaves.”<sup>265</sup> In these two systems and across Zambia,<sup>266</sup> downward accountability between chief and population is contingent on the individual chief’s leadership style. There are no structures that enforce it.

Zambia’s system of state-recognized chiefs centralizes the control over hundreds of thousands of hectares of land in individual chiefs. This concentration of power, legitimized by the state, undermines ties of downward accountability to local populations. Instead, it is the authority to coerce from within a hierarchy that can constrain these powerful chiefs. Like other chiefs, those embedded in paramount organizations have an incentive to curry the favor of the state, gain financially, and promote potential development by agreeing to land titles. However, they have additional ties that structure their decisions—accountability to the customary institution’s interest in maintaining control over land, beyond the tenure of any individual chief. As the two Bemba examples illustrate, hierarchical chiefdoms can punish and reward their chiefs. Without such hierarchy the individual chief’s decisions are unconstrained, as the Bisa case exemplifies. As a result of this additional constraint, it should be harder and costlier to title land in areas with hierarchical customary institutions. By contrast, land should convert more quickly to state property rights where such historical hierarchy is absent.

#### **4.5 Rates of Land Titling and the Structure of Customary Institutions**

To examine whether there is a systematic effect of customary institutions on the state’s ability to replace customary with state control of land, the following section tests the relationship between hierarchy and land titling across Zambia. As in Chapter 3 on Senegal, I rely on a national dataset

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<sup>265</sup> Focus group interview FFG-566.

<sup>266</sup> Focus group interviews of small-scale farmers in 15 chiefdoms in Lusaka Province and Northern Province of Zambia reiterated this same sense of powerlessness.

of land titles. Analysis of this national land titling data indicates that land titles are more likely to develop in zones that are outside one of the four different paramount customary institutions.

Within customary land, titles are less likely to develop where hierarchical chiefs reign.

#### **4.5.1 Measurement**

Titling converts land from customary to state land. In doing so, it shifts the authority over property rights on that land from a chief to the state. In this analysis, the proportion of customary land that has been titled in each of the 61 districts with chiefs is the outcome of interest. To construct this measure of the state's control of land, I rely on the Zambian government's national database of all non-residential land titles, updated through 2012. The total titled land per district is considered as a proportion of the total land available for conversion (total land minus classified forests and national parks). As with the titling data in Chapter 3 on Senegal, I model this proportional outcome using a Fractional Logit (Papke and Wooldridge 2008). Unlike the analysis of titling in Senegal, which measured new titles from 2007-2013, the outcome of interest in Zambia is all land titles since the colonial era. For the primary sample of the 61 districts with official chiefs, the proportion of titled land per district in Zambia ranges from 0 to .54, with a mean of .07 and standard deviation of .12.<sup>267</sup>

The hierarchy of the customary institution is the key predictor variable in this analysis. To construct this measure, I georeferenced the 286 chiefdom boundaries from the Ministry of Land's official maps. I then confirmed these locations with data from the Ministry of Chiefs and Traditional Affairs and the agency with the greatest spatial knowledge of rural areas, the Zambia Wildlife Authority (ZAWA). Each chiefdom was coded for ethnicity and institutional type in

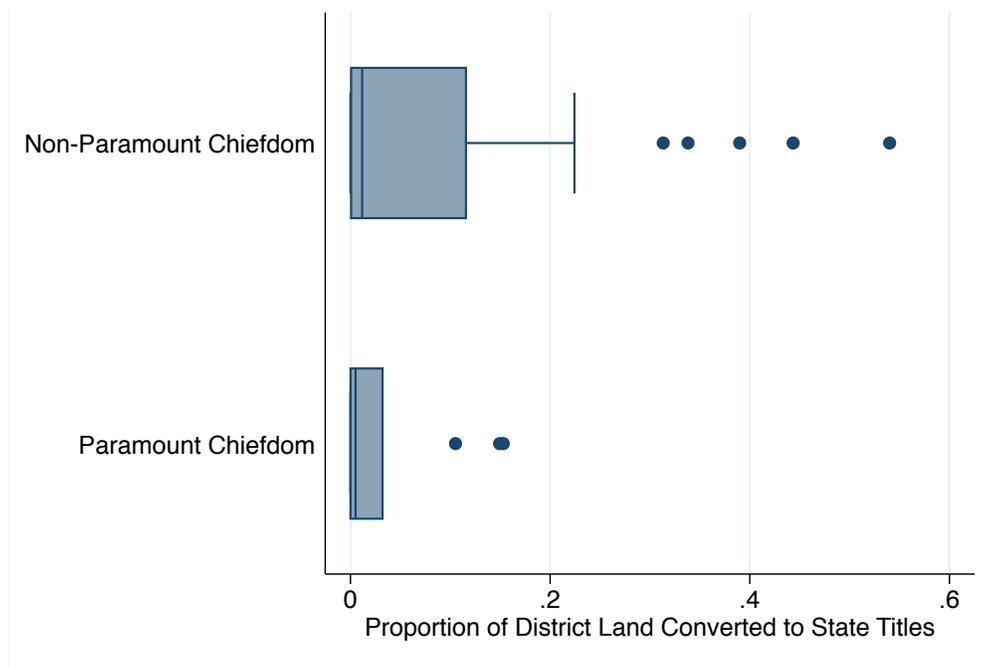
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<sup>267</sup> Zambia has a total of 72 districts. The 11 districts excluded from this analysis have only state land, as a result of the colonial state's decision to reserve for them for mining and European agricultural settlement (see Chapter 2). These districts have no recognized chiefs or customary control over land. For the full sample of 72 districts, the maximum proportion of titled land reaches 1.0 and the mean is .14.

order to assign a dominant customary institutional type to each district. Of the 61 districts, 8 have independent chiefs, 38 are part of senior chiefdoms, and 15 are part of paramount chiefdoms. My theory predicts that districts with paramount chiefdoms should be less likely to have converted land to titles.

An initial distribution of the outcome variable supports the theory. Figure 6 presents the distribution of the rates of land titling by chiefdom type. The range of outcomes is considerably smaller for chiefs embedded in a paramount customary institution. The chiefdoms without historical hierarchies are unrestricted in their land titling decisions, leading to a wider distribution of outcomes. While this distribution is not conclusive because it includes more data points in the non-paramount category, the smaller range for the paramount category is what we would expect if paramount chiefdoms were more constrained in their responses to land conversion requests than non-hierarchical chiefdoms.

**Figure 6: The Distribution of Land Titling Outcomes, by Institution Type**



A range of control variables help to separate the effect of customary institutions on land titling from land value and demand. Land value indicators include average annual rainfall between 1950-2000, the distance to the capital, percentage of the district within 10km of a road, the presence of railway in the district, and soil type. Population density per district is a control variable that also serves as a test of the induced institutional change hypotheses. As in the Senegal data analysis, the size of the district is included to prevent any confounding effect of small versus large districts. Descriptive statistics, coding descriptions, and data sources are presented in the appendix.

#### **4.5.2 Results**

State land titles are less likely to develop in zones with historically hierarchical CAs. Where chiefs are independent or embedded in senior-level institutions, there is significantly more titled land. Four models of the effect of customary institutions are presented in Table 6. Model 1 is the full model of this relationship. When controlling for all available measures of demand for land, there is a negative and significant relationship between being part of a paramount customary institution and the amount of land under state title.

Model 2 omits transportation infrastructure to ensure that the results are not confounded by post-treatment bias. While other measures of land value such as distance to the capital, population density, soil type, and rainfall are independent of the state's control, the development of transportation infrastructure is an outcome of the state-customary relationship. As established in Chapter 2, the development of transportation networks was shaped by political considerations. Thus infrastructure variables can be endogenous to the state-building process modeled here. Model 2 excludes railways and roads, the infrastructure most dependent on state investment. When these transportation networks are excluded, Paramount, representing historical hierarchy,

maintains its negative effect on the likelihood of land conversions.

**Table 6: Hierarchy Models**

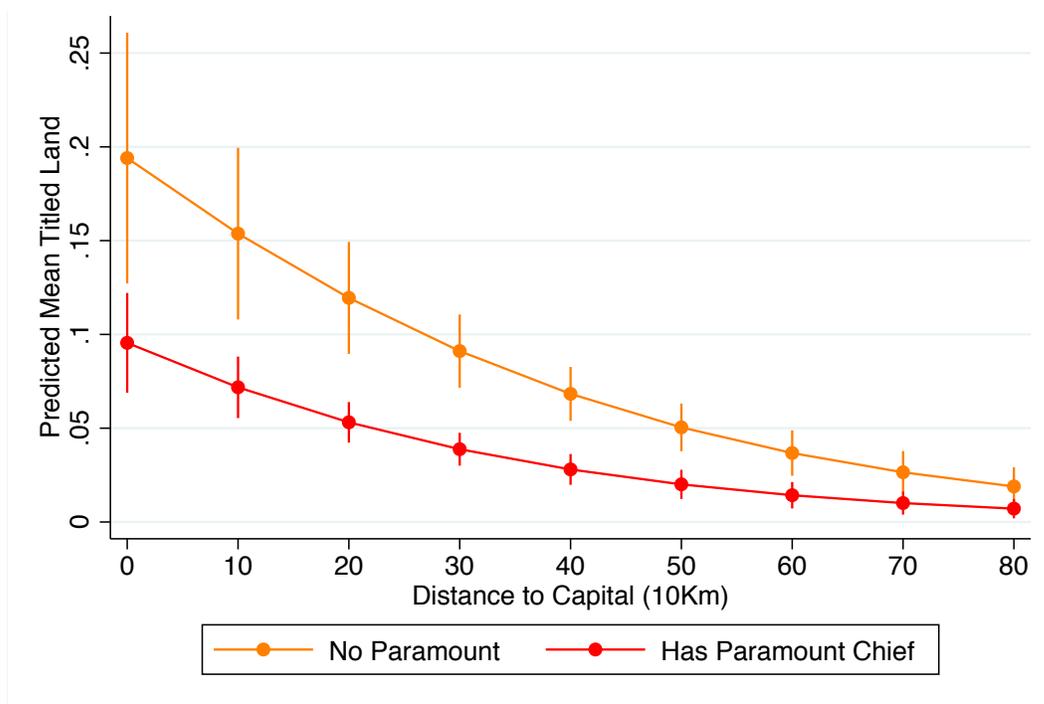
Fractional Logit Regression Predicting Percentage of Titled Land per District				
	Paramount Model 1	Paramount Model 2	Senior Model 3	Group Size Model 4
<b>I. Customary Institutions</b>				
PARAMOUNT	-1.019** (.232)	-1.351* (.687)	-.977** (.266)	-1.046** (.261)
SENIOR	—	—	.044 (.281)	—
INDEPENDENT	—	—	—	—
LANGUAGE GROUP SIZE	—	—	—	.006 (.012)
<b>II. Control Variables</b>				
DISTANCE FROM CAPITAL	-.036** (.006)	-.041** (.009)	-.036** (.006)	-.035** (.006)
DISTRICT SIZE	.004* (.002)	.001 (.004)	.004* (.002)	.004* (.002)
POPULATION DENSITY	5.170** (.973)	6.583** (1.765)	5.164** (.972)	5.205** (.980)
SOIL	1.089** (.141)	1.318** (.302)	1.078** (.171)	1.102** (.127)
AVERAGE YEARLY RAINFALL	.290** (.094)	.208 (.115)	.287** (.099)	.253* (.124)
ROADS	4.648** (1.715)	—	4.643** (1.739)	4.661* (.500)
RAILS	.986* (.438)	—	.980* (.446)	.958* (.499)
CONSTANT	-9.850** (1.335)	-4.962** (1.301)	-9.847** (1.339)	-9.669** (1.398)
OBSERVATIONS	61	61	61	61

Notes: \*p<0.05; \*\*p<0.01;  
Robust standard errors clustered by region presented in parentheses.

Chiefs embedded in a paramount system are more constrained in their land conversions than those in senior or independent customary institutions. While senior chiefdoms are nominally hierarchical, they lack the historical pre-colonial organization of paramount chiefdoms in Zambia. As a consequence, being embedded in a Senior chiefdom (Model 3) or independent chieftaincy (unreported) has no significant effect on land titling. This is the result of the wider range in the responses of non-paramount chiefs to land conversion attempts. Such chiefs are free to make liberal or illiberal land titling decisions. While there are a variety of incentives that may

affect a chief's willingness to cede land, chiefs within paramount systems are more constrained than other types of chiefs. Figure 7 plots the predicted probabilities of land titling between historically hierarchical and non-hierarchical customary institutions at different distances to the capital. Distance to the capital is an important proxy of land values and desirability, in a context where infrastructure and jobs are concentrated in the capital. Across this range of land values, paramount chiefdoms are consistently less likely to title land.

**Figure 7: The Effect of Hierarchy on Land Titling**



### 4.5.3 Group Size

One alternative mechanism for the effect of hierarchy on land titling outcomes is group size. It is possible that hierarchical chiefdoms have greater bargaining power as a result of controlling a larger population (Boone 2003). Larger group size could make the government less likely to demand land, for fear of any electoral consequences of upsetting the customary authority. Or the inverse, that chiefs with a larger network of followers may be more confident in resisting state

requests for land. In order to test whether the relationship between paramount and land titling outcomes is the result of group size instead of the proposed mechanism of internal ties of accountability, I constructed three measures of group size. This includes the current sizes of the ethnic group and language group,<sup>268</sup> as well as a historical measure of “tribe” size, from the colonial era. Tribe size is derived from the first ethnic census in Zambia and includes a larger number of ethnic groups.<sup>269</sup> By 2010, the categorizations of ethnicity have consolidated, such that individuals self-identify with a smaller number of ethnic groups. These cleavages are further aggregated in the language groups measure.

None of the group size measures predict land titling outcomes or dent the significant effect of customary hierarchy. Model 4 of Table 6 includes the language group size variable in the full paramount model. The others are presented in Table 7 in the appendix.<sup>270</sup> This is evidence of the importance of the institutional structure, in particular the historically established internal ties of accountability. While a large ethnic group may have some advantages in bargaining, the ability to maintain customary control over land requires the ability to coerce chiefs into complying with group goals over individual incentives. It is historical hierarchies that can constrain chiefs this way. For example, representing 14% of the population, the Tonga are one of the largest ethnic groups in Zambia. However, they have historically had decentralized customary institutions. As each chief functions autonomously, they have limited ability to prevent the conversion of customary land. By contrast, the Lozi ethnic group account for only 6% of the Zambian population but their strong internal hierarchy blocks individual chiefs from

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<sup>268</sup> Central Statistical Office (CSO). “The 2010 Census of Population and Housing.”

<sup>269</sup> Government of Northern Rhodesia, “African Affairs Annual Report for the Year 1955” 1955, Box 4/Shelf 8, African Affairs Annual Reports, Government Series, The Zambia National Archives, Lusaka.

<sup>270</sup> Ethnic group size is correlated with Paramount ( $r=.4597$ ). Language group size and 1955 Tribe size have a limited correlation with Paramount ( $r= -.0390$  and  $r= .1755$ , respectively). I report only the language model with group size and paramount to save space. None of the three significantly change the effect of paramount when added to the full model. These are reported in the appendix.

ceding land out of customary control.

#### **4.5.4 Economic Factors**

As established in Chapter 1, the induced institutional change approach to land titling predicts that land titling occurs first at higher population densities and higher land values (Boserup 1965; North and Thomas 1973; Ensminger 1997). In the Zambia land titling analysis, these land values indicators have the predicted effects when customary institution type is in the model. At greater distances to the capital and lower population densities, land titling is less likely. One reason that this effect is present in the Zambia data but not the Senegal data is related to the size of the country. Zambia is over 3 times larger than Senegal. The importance of distance to the capital on market access and resources is compounded when it takes considerably longer to reach the capital in Zambia. Such peripheral land is less desirable for investors. Access to roads and railways is consistently associated with higher rates of titling. These models suggest that less valuable and accessible land is more likely to stay under customary control.

However, these results also demonstrate that the induced institution change model alone is insufficient for predicting land titling. On two plots of land with the same value, it is the land without a historical hierarchy that is more likely to be titled. This effect is consistent across a range of model specifications. These findings suggest that we need to add decentralized customary institutions to soil fertility and infrastructure access as factors that make titling more likely. The costs of accessing land controlled by a hierarchical institution are higher because they have greater resistance to ceding their control over land. As a result, it is harder for investors or the state to access land there.

This national analysis of all titled land in Zambia indicates that the development of state property rights is conditioned by customary institutions. While taking into account the effects of

land quality, land values, infrastructure access, and demography, the type of customary authority in a given zone determines its likelihood of having land titles. Where historically hierarchical chiefs reign, land titles are less common today. In districts with historically decentralized customary institutions or nominal hierarchies created by the state under senior chiefs, state property rights have more rapidly replaced customary control of land.

## **4.6 Discussion**

The previous two sections make two contributions to the analysis of how hierarchical customary institutions shape land titling in Zambia. First, the comparison of Bemba and Bisa institutions demonstrates why customary institutions vary in their ability to censure chiefs and enforce accountability. Second, the analysis of all land titles in Zambia identifies a strong relationship between historical institution type and land conversions. The following section provides specific examples from different regions of the country to illustrate the relationship between the state, chiefs, and subject in land relations. The section concludes with implications for state-building.

The Zambian government's Farm Block program demonstrates the challenges the state faces in negotiating for land from CAs. In 2007, to encourage foreign direct investment and expand the commercial agriculture sector, the government established a project of converting 100,000 ha blocks of customary land in each province to lease to investors. After the policy was established and the budget allocated, state agents were sent to find chiefs willing to cede their land. These negotiations were met with resistance in some chiefdoms and welcomed in others.

Negotiations with two different paramount chiefdoms, on the Western and Eastern boundaries of the country, provide an example. The Lozi (or "Barotse") paramount chiefdom of Western Province states in its constitution that, "Land, water, natural resources (animate and

Inanimate) within Barotseland, shall forever belong to the Nation and People of Barotseland.”<sup>271</sup> Their concern for maintaining control over customary land is explicit. When the state tried to negotiate with the Lozi CAs for a Farm Block in Western Province, the chiefs refused to give them the area of land that the state desired for the project. Instead, the CAs offered up the land controlled by a minority ethnic group in the province. Unsurprisingly, the non-Lozi chief was not amenable to being treated as a subject of the Lozi and to ceding any land from his domain. As a result, progress on a Farm Block in Western Province stalled. In Eastern Province, home of the Chewa and Ngoni paramount chieftaincies, agents of the Ministry of Agriculture also faced difficulties accessing land. After arriving with gifts and following the protocol of addressing chiefs, the Nsenga and Chewa chiefs refused to give any land for the project. Per one bureaucrat’s report of the events, the CAs “chased” away the land surveyors.<sup>272</sup> The state agents were forced to shift the project to another area in the province; they later identified two chiefs elsewhere in the province willing to split the 100,000 ha contribution between them.

The official recognition of chiefs as the authority over land makes such decisions a negotiation between the chief and the state, with a limited role for local populations. In theory, the chief is the representative of the ethnic group and advocates on its behalf. This, in turn, absolves the state of responsibility when smallholders are displaced in land conversions. While both the state and customary authorities are motivated to promote economic development, they are also functioning within the incentives of a system of official chiefs designed by the colonial authorities to maximize control over the local population. In effect, the chiefs’ protection from the government undermines any need to consult the population and pulls the chief closer to the state. They are not dependent on the populations of whom they are legally custodians. This leads

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<sup>271</sup> 2012. The Constitution of Barotseland, Article 8.2. Accessible at <http://www.barotseland.info/Constitution.html>.

<sup>272</sup> Interview BUR-656.

to a customary-state alliance that excludes the citizens, who perceive that “the problem we are facing is that when Government and the chief agree and plan something over land, there is nothing that the people can say which can be heard. Nothing at all.”<sup>273</sup>

One Lusaka Province chieftainess<sup>274</sup> exemplifies the limits of downward accountability between chief and citizens. Her consent to multiple large-scale land deals and smaller titles for tourism on prime riverside land has prompted multiple unsuccessful attempts by her subjects to dethrone her. One member of her royal family publically criticized her for evicting villagers and punishing her critics, saying “If it means dying we will die to protect this land for the future generation.”<sup>275</sup> In response to these very public complaints against her land governance, the local member of parliament and provincial minister declared that as a representative of the state, he cannot get involved in disputes over her customary land. Instead he encouraged her subjects to complain directly to her.<sup>276</sup> The chieftainess herself acknowledges her liberty to cede any land within her chiefdom, saying in a public interview ““They cannot remove me. I have not done anything wrong unless they are trying to kill me [The only way I will leave is if I die]. I haven’t done any criminal act which can make me step down, I haven’t killed anybody, I haven’t done anything, I am not insane so why should they take me out?””<sup>277</sup> In this independent chiefdom, the chief’s decisions are only subject to censuring from the state; yet, the state representative made it clear that they would not intervene to stop her from ceding land to state property rights, despite her subjects’ disapproval. If this were paramount system, the subjects would have the option of appealing to a superior chief, and the chieftainess could be punished from within the institution.

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<sup>273</sup> Focus group interview FFG-539.

<sup>274</sup> This is a different Chieftainess than the two from the start of the chapter.

<sup>275</sup> 2013. “Mwaliteta Implores Goba Royal Foundation to Resolve Chiawa Land Wrangles.” *Post* (Lusaka, Zambia), Nov. 7.

<sup>276</sup> 2013. “Mwaliteta Proposed Review of Customary Land Act.” *Post* (Lusaka, Zambia), Nov. 25.

<sup>277</sup> 2013. “Chieftainess Chiawa in Coup Threat,” *Lusaka Voice* (Lusaka, Zambia), Oct. 20.

This formal recognition of the authority of individual chiefs over large areas of land facilitates state-building. In effect, the decision to convert the land occupied by thousands of smallholders is centralized in relatively few individuals: 286 for a country larger than France. Further, these individual chiefs are beholden to the state, dependent on the state's monthly salaries and continuing recognition. When the state or an investor seek a large area of land, they only legally need the consent of the chief, instead of having to negotiate individually with farmers occupying the land. Combined with the permanent nature of land conversions, this allows for the rapid extension of state property rights. This system of official customary control over land, concentrated in individual chiefs, is conducive to conversions of large areas of land; this includes over 2.5 million ha converted between 2007-2013 (see p.132). It has also facilitated a rush towards state and private agricultural investments, some of which have been highlighted as examples of land grabbing by advocacy organizations and NGOs.<sup>278</sup>

However, while the recognition of chiefs simplifies the process of shifting land out of customary control, it also provides chiefs with a clear mechanism for refusal. As the legal authority over land, chiefs also have the right to deny land titles and conversions. Individual chiefs are able to resist the extension of state control over land and push the development of state property rights to more willing chiefdoms. The state and investors can access large areas of land through negotiations with only one individual chief, but in certain chiefdoms customary land is more costly or completely inaccessible. The price of accessing land is often unrelated to its value. The illustration at the start of this chapter is a particularly visible and contentious example of the power that these state-recognized customary authorities have to shape land titling. The growth of the capital is determined by variation in the compliance and opposition of two neighboring customary authorities to the conversion of land.

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<sup>278</sup> See, for example, Chu (2012), Schoneveld (2011), Nolte (2014).

This chapter has argued that historical customary institutions have a systematic effect on resistance to land conversions. Dependence on the state for recognition and salary has not erased the agency of CAs or the historical differences between customary institutions in Zambia. As the example of two neighboring chiefdoms demonstrates, different institutional endowments have a persistent effect on the organization of customary institutions today. The hierarchical institutions that developed over years of pre-colonial state-building have greater ties of accountability and ability to censure members. The hierarchies established by the colonial state and independent chiefdoms never developed the organizational capacity of pre-colonial states.

As a result of these different capacities to enforce accountability to the institutional need to protect its control of land, land titles cluster in zones with historically decentralized CAs. Across Zambia, there is a significant inverse relationship between pre-colonial states and land titling. This is demonstrated through the analysis of all land titles in the country. All things being equal, land is less likely to leave the customary domain if it is controlled by a pre-colonial hierarchy. The national analysis provides additional support to the argument that hierarchies created by the state are weaker than those that pre-existed the state.

## **4.7 Conclusions**

The recognition of chiefs in land allocation circumscribes their authority and tames them. Chiefs are middlemen between state and population; this recognition draws customary authorities closer to the state. For this reason, Herbst (2000, 173-198) identifies legal recognition of customary tenure as evidence of the state's ability to disrupt the power of customary authorities. Consistent with the central claim of this dissertation, that land titling is a modern form of state-building, recognizing chiefs increases the state's authority by expediting the land conversion process.

While state-recognized and unrecognized chiefdoms have divergent mechanisms for

influencing the state, in both Zambia and Senegal historical hierarchies contribute to lower rates of land titling. This is evidence of a long-term legacy of pre-colonial customary institutions that shapes the development of property rights and the state's authority within its territory. This legacy is independent of the state's attempts to manipulate, control, or create customary institutions. The pre-colonial institutions that the early colonial authorities identified as powerful, organized, and hierarchical are the *same* chiefdoms that are more likely to resist ceding land a century later. These historical institutions continue to influence modern African politics and state-building.

This chapter and the previous chapter focused on negotiations over large land deals with customary elites in Zambia and Senegal. However, a second major process converts land from customary to state property rights—mass, individual land titling by smallholder farmers. The next chapter addresses the role of the citizen in extending state systems of property rights.

## Chapter 4 Appendix

**Table 7: Alternative Explanations**

Fractional Logit Regression Predicting Percentage of Titled Land per District			
	Economic Model	Ethnic Group Size	Senior Model 3
<b>I. Customary Institutions</b>			
PARAMOUNT	—	-1.030** (.266)	-.962** (.283)
ETHNIC GROUP SIZE	—	.001 (.013)	—
1955 TRIBE SIZE	—	—	-.016 (.015)
<b>II. Control Variables</b>			
DISTANCE FROM CAPITAL	-.046** (.009)	-.036** (.006)	-.034* (.004)
DISTRICT SIZE	.003 (.002)	.004* (.002)	.004* (.002)
POPULATION DENSITY	3.845** (1.063)	5.189** (1.095)	5.101** (1.023)
SOIL	.981** (.204)	1.091** (.146)	1.093** (.156)
AVERAGE YEARLY RAINFALL	.276** (.093)	.292** (.099)	.258* (.100)
ROADS	4.533** (1.658)	4.635* (1.822)	4.865** (1.835)
RAILS	1.071** (.355)	.979* (.441)	1.013* (.402)
CONSTANT	-9.074** (1.320)	-9.870** (1.247)	-9.583** (1.323)
OBSERVATIONS	61	61	61

Notes: \*p<0.05; \*\*p<0.01;  
*Robust standard errors clustered by region presented in parentheses.*

**Table 8: Zambia Land Titles Dataset**

<b>Variable</b>	<b>Measurement</b>	<b>Source</b>	<b>Mean</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>
DISTANCE FROM CAPITAL	Distance from the centroid of the district to Lusaka in 10km units.	Administrative Boundaries Shapefiles, the Zambia Wildlife Authority (ZAWA). 2014.	42.72	21.41	3.57	80.66
LAND TITLING RATE	Combined area of all non-residential land titles per district, divided by the District Size variable.	Ministry of Lands. "Lands Information System (LIMS) Dataset." Lusaka, Zambia, 2013.	.07	.12	0	.54
DISTRICT SIZE	This is calculated in 10000ha units and excludes national parks, state forests, and other state or former crown land. This is the denominator for the outcome variable.	Administrative Boundaries, National Parks, Classified Forest Shapefiles. Zambia Wildlife Authority. 2014.	96.64	55.51	10.99	250.39
POPULATION DENSITY	Total population per hectare (exclusive of state parks and classified forests), per district.	Central Statistical Office (CSO). "The 2010 Census of Population and Housing." Lusaka, Zambia: Central Statistical Office, 2012.	.18	.15	.03	.76
SOIL	Soil class Pu19/Lixisols  Calculated the majority soil type per district; identified soil type for district with highest rate of land conversions; Created dummy variable to control for the impact of this top soil type on land titling.	Soil Shapefile, Zambia Wildlife Authority. 2014.	.07	.25	0	1
ANNUAL RAINFALL	Average annual rainfall per district from 1950-2000, in 100mm units.	WorldClim. "Global Climate Data Version 1," 2016. <a href="http://worldclim.org">www.http://worldclim.org</a> .	10.19	1.90	7.00	14.01
ROADS	Percentage of the district within 10km of a road of any surface.	Roads Shapefiles, Zambia Wildlife Authority Shapefiles. 2014.	.68	.16	.27	.96

RAILROAD	Binary variable of whether the railroad passes through the district.	Railway Shapefile, Zambia Wildlife Authority Shapefiles. 2014.	.33	.47	0	1
GROUP SIZE: LANGUAGE	Language group as percentage of total Zambian population in 2010.	CSO (2012)	21.08	14.68	3.20	41
GROUP SIZE: ETHNICITY	Ethnic group as percentage of total Zambian population in 2010.	Ibid.	5.10	5.87	.10	21
GROUP SIZE: TRIBE IN 1955	Size of “tribe” as reported in colonial census, divided by 10,000.	Government of Northern Rhodesia. “African Affairs Annual Report for the Year 1955.” Lusaka, Zambia, 1955. African Affairs Annual Reports 1951-55. National Archives of Zambia.	8.05	6.19	.40	20.06
PARAMOUNT	Dominant chiefdom system in the district (by percentage of district territory) is part of a Paramount system.	Maps of Chiefs Boundaries from the Ministry of Land; Lists of Chiefs’ Titles from the House of Chiefs	.25	.43	0	1
SENIOR	Dominant chiefdom system in the district (by percentage of district territory) is part of a Senior system.	Ibid.	.62	.49	0	1
INDEPENDENT	Dominant chiefdom system in the district (by percentage of district territory) is independent of Senior or Paramount chiefs.	Ibid.	.13	.34	0	1
<i>Note: Descriptive statistics are for the 61 districts with Chiefs, not the full set of 72 Zambia districts</i>						

## CHAPTER 5

# Selecting the State or Choosing the Chief? The Political Determinants of Smallholder Land Titling

*“Us landowners don’t need title because it’s our land.”*– Smallholder farmer, Zambia<sup>279</sup>

*“I don’t feel the need to seek out this type of paper because the land already belongs to me. It’s a way of calling into question my rights to ownership and usage.”* –Smallholder farmer, Senegal<sup>280</sup>

*“Even if you are poor, you should find the money to get the papers or you will be removed. Sometimes you are even afraid to develop the area for fear that you will be removed. So we would like the Government to come to our rescue so we are safe.”*–Smallholder farmer, Zambia<sup>281</sup>

### 5.1 Introduction

The mass land titling of thousands of small parcels of land is a second major route for replacing customary with statutory property rights. This state-building process is propelled by the individual decisions of smallholder farmers to exit the customary regime and enter the state’s system of property rights by titling their small plots of land. In contrast to the top-down negotiations presented in earlier chapters, in which elites make land conversion decisions for large areas of land, individual smallholder farmers (or “peasants”) drive this expansion of state property institutions. In this chapter, I argue that the decision to stay or exit the customary system of property rights is conditioned by the individual’s status within the institution.

Existing scholarship on smallholder titling has largely relied on induced institutional change to explain titling decisions (Feder and Noronha 1987). Much of this work is aimed at identifying if and when land titling promotes investment (Besley 1995; de Soto 2000). However,

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<sup>279</sup> Focus group interview FFG-543.

<sup>280</sup> Respondent, Honig Senegal Smallholder Survey (2014).

<sup>281</sup> Focus group interview FFG-565.

scholars also acknowledge that the costs of such institutional innovations can be shaped by ideology and influential groups (Ruttan and Hayami 1984, 205) and that culture dictates what communities accept as legitimate (Firmin-Sellers 2000). While individual resources and local factor values do influence land titling decisions, customary institutions structure social relations within the community. Some smallholder farmers have greater privilege in the customary institution, which increases their land tenure security and commitment to continued customary control of land. By contrast, those without such privilege are more likely to seek the protections of state land titles. The titling decision is not only a response to local competition over land and access to resources but the individual's status within the customary regime.

In this chapter, I examine smallholder titling in both Zambia and Senegal to demonstrate how customary institutions shape this bottom-up process of converting land from customary to state property rights. Geocoded surveys of smallholder farmers in the two countries are the empirical foundation for this chapter, supported by interviews with customary authorities, open-ended smallholder survey questions (in Senegal), and focus groups of smallholder farmers (in Zambia). Across these diverse institutional and agricultural contexts, I find that the citizen's relationship to the customary authority and the type of CA ruling their community predicts land titling outcomes, perception of land tenure security, and perceived access to land titles.

These titling decisions are shaped by customary institutions and aggregate to a citizen-driven transfer of land from customary to state property rights. Each individual smallholder titling decision involves a political calculation, which contributes to a larger, national state-building process. To property rights and land titling scholarship, these findings are a novel contribution on the systematic effect of customary institutions. Further, for literature on state-building and political institutions, they highlight the important social influence of customary

authorities by demonstrating how relations between citizens and the state are channeled through customary institutions. While insiders in the customary institution reinforce its authority over land, those with lower status are more likely to engage with the state for property rights protections.

## **5.2 Smallholder Titling and Status within the Customary Institution**

Land titling is costly, particularly for smallholder farmers who primarily rely on family labor.

Acquiring title to one's land requires initiative, payment, and time. Yet there are also benefits for smallholders; a title is a stronger recognition of land ownership in state courts and banks. Given the costs and advantages, why do some smallholders choose to title their land while others remain in the customary system? Current explanations suggest that the material costs of land titling are the primary constraint. Consequently, the individual's wealth and the value of his or her land should predict the likelihood of titling. However, land titling occurs within a local institutional context that privileges some residents over others. Smallholders who seek land titles are selecting to exit a system of property rights adjudicated by a CA in favor of the protections of state property rights. Not titling reflects a greater belief in the credibility of customary property institutions and signals a commitment to the continuation of customary control over land. By structuring social relations within the community, CAs shape who selects the state's institutions.

Although maintaining customary control over land has collective benefits, it is not egalitarian. Security of customary tenure—the ability to continuously use the land without fear of encroachment or expropriation—varies within and across communities. It is the role of the customary authority to interpret institutional rules for land ownership and adjudicate conflicts over land usage. As a result, the individual's protection under the customary regime is shaped by his or her status within it. Those with privileged status in the customary institution can have

greater confidence in their land tenure security than those with less privilege. With lower status, smallholder customary outsiders see fewer benefits to remaining under customary property rights and should be more likely to exit. State property rights are more appealing for those who are not privileged by the customary institution. By contrast, for insiders, their social status is contingent on the continuing relevance and power of the customary institution. Individuals with greater privilege in the customary institution should be the most invested in its continuation, as insiders who benefit the most from customary control of land. The farmer's status within the customary institution shapes his or her choice to exit and seek state land title.

A range of attributes can affect the individual's status within the customary institution. In many customary land tenure systems, descent from the individuals who first cleared the land is one characteristic used to legitimize land rights (Ensminger 1997). In Senegal, this is known as the right of the axe or the right of fire.<sup>282</sup> Identification with an ethnic group native to the area is another basis for insider status within the customary institution. This distinction is often represented by the politicized terms *allochtone/autochtone* in Francophone countries and stranger/native in Anglophone countries (henceforth “non-local”/ “local”). The social exclusion of non-locals in customary institutions has been observed across a range of African countries (see, e.g., Jacob and Le Meur 2010; Lentz 2013). In effect, this means that migrants and their descendants often have lower tenure security than locals (Brasselle, Gaspart, and Platteau 2002). Scholars have also focused on gender in determining privilege within customary institutions; women's land rights are often treated as secondary (Hilhorst 2000; Meinzen-Dick and Mwangi 2009). As Peters (1994) shows in the case of Malawi, customary land tenure systems systematically exclude women from inheritance. In some customary institutions, youth are

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<sup>282</sup> Interview RC-124; For further discussion of the rights of fire (*les droits du feu*) in Senegal, see Galvan (2004, 107).

outsiders relative to their elders (Atwood 1990). Economic activity, particularly whether land usage is sedentary agriculture or nomadic pastoralism can shape the individual's status within the institution. Wealth may also determine status within the customary institution; those with more material resources can be expected to have greater influence in the community. While the norms of customary land ownership may differ between communities and over time (Chanock 1998; Pottier 2005), the role of CAs as the arbiters of the different institutional rules is a defining feature of customary land (Chauveau 1998).

As customary authorities interpret and adjudicate the norms of land access, they create differential status within the community. This, in turn, shapes the individual's commitment to the customary institution or desire to exit. Individuals who are privileged by the customary institution are more invested in its continued control of land and should be less likely to seek state titles. Conversely, individuals who are systematically excluded or lack privilege within the customary institution have less incentive to remain. Low status within the customary institution drives individuals to seek protection from state property rights. If customary institutions shape smallholders' land titling decisions, we should see that even when taking into consideration a variety of measures of wealth and land values, the individual's status within the institution predicts the likelihood of titling.

### **5.3 Data and Measurement**

To identify any generalizable impacts of customary institutions in diverse contexts, I rely on two datasets of smallholder land titling in Zambia and Senegal. In contrast to previous chapters that focused on large land deals, this chapter identifies how customary institutions affect *individual* smallholder farmers and their decisions to title their land. The Zambia dataset allows for national breadth, including a nationally representative set of customary institutions. The Senegal dataset

concentrates on smallholder titling decisions in just two agricultural zones. The Senegal sample features two types of customary institutions, those with origins as pre-colonial polities and Islamic brotherhood marabouts. While many of the questions in the Zambia and Senegal surveys are the same, the datasets rely on different and complementary sampling methods. This section describes the two geocoded farmer surveys, sample selection, and additional qualitative data sources.

The Zambia dataset is the national Rural Agricultural Livelihoods Survey (RALS) of 8,839 smallholder farmers implemented in 2012 by the Indaba Agricultural Policy Research Initiative (IAPRI) in collaboration with the Zambian Central Statistics Office (CSO) and Michigan State University.<sup>283</sup> IAPRI provided institutional support to me during the Zambia fieldwork portion of this dissertation. The survey samples agricultural households using less than 20 ha of land. It is designed to be representative at the provincial level.<sup>284</sup> The survey includes a variety of questions related to agriculture, land use, income, and socio-economic attributes.

The RALS survey is geocoded, allowing me to assign spatial attributes to each household. Using digital chiefdom maps (discussed in Chapter 4), I associated each household with its corresponding chiefdoms and chiefdom attributes. This allows me to examine the impact of different types of customary institutions on land titling outcomes. Other spatial attributes calculated from the individual household GPS coordinates include distances to the capital, to roads, and to railroads. I supplement this survey data with focus groups of smallholder farmers and interviews with customary authorities in 15 chiefdoms in the Northern Province and Lusaka Province of Zambia. The national survey sample identifies relationships that maintain across a

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<sup>283</sup> Central Statistics Office/Ministry of Land/Indaba Agricultural Policy Research Institute. "Rural Agricultural Livelihoods Survey Dataset." Lusaka, Zambia: IAPRI, 2012.

<sup>284</sup> Eastern Province alone was designed to be representative at the District level. This oversampling in Eastern Province is accounted for by weighting the regression analyses.

wide variety of agricultural zones, but provides less leverage for effects within these zones.

The Senegal smallholder survey is an original survey that replicates many of the questions of interest in the Zambian RALS questionnaire and includes additional questions about land tenure security. The Senegal survey also features open-ended responses that provide more detailed information on the smallholder's individual experience of accessing land. The sample for this survey of 1001 farmers represents two diverse ecological zones: one in the North and one in the Central region. In an effort to minimize confounding ecological factors within each zone, I limited the study to just one district in each region. I then randomly selected 5 Rural Council areas per district and 2 villages per Rural Council area for the smallholder survey. With a team of enumerators, I surveyed 50 households per village. Villages with less than 50 households were paired with a neighboring village in the sample selection<sup>285</sup> or excluded. As a result of this pairing, the final sample is 22 villages. The survey also includes the GPS coordinates of the respondents and village chiefs to calculate spatial attributes for each household. In each Rural Council area, I also visited the Rural Council office, collected land titling data, and interviewed elected Rural Council members. I completed a minimum set of three structured qualitative interviews per Rural Council area, of two CAs and the Rural Council president. This provided a total of 37 interviews of Rural Council members and customary authorities in the two districts.

The two zones in Senegal were selected with attention to representing different and significant types of customary institutions. While Chapter 3 examines the customary institutions that are a legacy of pre-colonial states, this sample selection highlights variation in an additional customary authority with a role in local governance: the village marabout. Marabouts are leaders from Sufi Islamic brotherhoods who have both “spiritual and temporal authority” over their followers (Villalón 2000, 475). While their authority derives in part from Islam, their political

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<sup>285</sup> This was done to help address the bias towards large villages in the sample.

influence distinguishes them from village imams. The Senegal sample includes marabouts from the Tidjane (Tijaniyyah), Khadrya (Qadiriyya), and Mouride (Muridiyyah) brotherhoods. The Mourides have a strong hierarchical organization, bolstered by a strong ethic of obedience by followers. Their powerful organization has been a preoccupation of much literature.<sup>286</sup> Mouride village marabouts are inherited positions with direct links to the Mouride ruling family. While marabouts from the Tidjane and Khadrya Muslim brotherhoods have an important presence in the daily lives of Senegal citizens, their organizations function with more autonomy than the Mouride brotherhood.<sup>287</sup>

As Senegal has no formal recognition of a customary authority over land, multiple CAs can play a role in land allocation. The lineage of the village founder, known by the Wolof term *borum dek*, exerts customary authority over the community's land. Often the title of *borum dek* is synonymous with the village chief, however, at times marabouts can hold this title. This is particularly true of the marabouts who cleared land for their followers (Rocheteau 1975). Within the Senegal sample, 84% of households indicated that village chiefs have a role land administration,<sup>288</sup> and 95% percent of households reported that there is a marabout in their village. However, there is wider range in the influence of marabouts than village chiefs; just 48% of the respondents reported that the marabout had a role in land allocation.

The two districts in the Senegal survey sample are Podor, in the northern Saint-Louis region, and Mbacké, in the central Diourbel region. Podor is the home of the Fouta pre-colonial

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<sup>286</sup> Copans (1980) provides an excellent review of this literature. Important recent works include: Guèye (2002); Villalón (2006); Beck (2008).

<sup>287</sup> Most Senegalese citizens identify as members of a Sufi brotherhood (90% of the population). This includes the hierarchical Mourides with 32% of the population; the Khadrya have members across West Africa and represent 9% of the population in Senegal. The Tidjane is the largest brotherhood in Senegal (49%), divided among different semi-autonomous branches. Agence Nationale de la Statistique et de la Demographie, Senegal. "Resultats Definitifs Du Troisieme Recensement General de La Population et De l'Habitat." Dakar: ANSD, 2002.

<sup>288</sup> The village chief is the most consistently cited authority in land allocation. The President of the Rural Council, the legal authority over the land, is reported to have a role by 82% of respondents.

state (presented in Chapter 4) and marabouts from the Tidjane brotherhood. While Mbacké is within the zone of the Baol pre-colonial state, is also the heartland of the Mouride brotherhood. In addition to Mouride marabouts, Mbacké also features marabouts from the Tidjane and Khadrya brotherhoods. Thus this sample allows me to examine the effect of Mouride or non-Mouride marabouts within Mbacké as well as individual level variation within the same agricultural zones. Relationships that maintain across these different customary institution types and ecological zones suggest the generalizability of the findings.

### **5.3.1 Measuring Status: Kinship**

To test the argument that privilege within the customary institution makes individuals less likely to title their land, I focus on an immutable measure of insider status: kinship. Here, insider status is operationalized as social proximity to the institution's leader, derived from ties of parentage. This measure of social proximity to the arbiter of customary rules captures the concept of customary privilege, yet is independent of the content of those rules, which may vary across institutions. Across a wide range of different customary systems, the blood relatives of the authorities who interpret, protect, or create the customary property rights institutions for the community should have greater privilege than non-relatives.

This measure is constructed from responses to a question featured in both surveys of whether a member of the household is related to the CA. In Zambia, each village features a headman who is subject to a state-recognized chief. The Zambia measure of kinship with CAs includes the headman and the chief, in accordance with the Zambian concept of "Traditional Authority." In Senegal, the CAs of interest are the village marabout and the village chief. Consistent with Senegal more generally, in all villages sampled the village chiefs are either

hereditary or less commonly, are appointed as a representative of a hereditary marabout.<sup>289</sup>

Other key indicators of privilege within the customary institution included in the analysis are the gender and age of the household head, local or non-local ethnicity, and economic activity. However, while these attributes are critical determinants of privilege in many customary institutions, they are not universally applicable. A variety of measures of wealth are also included. Wealth is an important control variable, to ensure that an effect of kinship on land titling is not the result of systematically higher wealth for relatives of the chief. Wealth also has predictive value, as it may increase the individual's influence on customary authorities. While also considering these additional signifiers of privilege, I operationalize privileged status through kinship ties. This aspect of an individual's relationship with the CA is the most reliable identifier of an elite status that is structured by the customary institution.

### **5.3.2 Land Outcomes**

#### **Land Titling**

The primary outcome of interest is whether the household has state property rights or customary property rights. In Zambia, this measures whether the household has a title to any of the fields it uses. Only smallholders who are subject to customary authorities are included in the models used here. This excludes the smallholder farmers in zones historically designated as State or Crown Land. In Senegal, the land titling measure includes anyone with a plot that has state property rights—including titles, leases, and Rural Council registration papers, the first step to titling.

#### **Ability to Title**

To better understand the constraints on land titling, I include measures of the respondent's reported ability to access to title on his or her land. In Zambia, this is a response to the question:

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<sup>289</sup> The title of village chief is hereditary in 20 of the villages sampled and named by a hereditary Mouride marabout considered to be the village founder in 2 villages.

“Is it possible to change the status of customary land in this village? (i.e. to convert customary land into titled property)?” For Senegal, I use the response to: “Is it possible for your household to obtain Rural Council papers?”<sup>290</sup> The Senegal survey includes an additional open-ended follow-up question of “if not, why?”.

**Table 9: Summary of Land Titling Outcomes, Zambia and Senegal**

	ZAMBIA	SENEGAL
<b>Titled Land</b>	7.58% <sup>291</sup> N=8420	7.09% N=1001
<b>Ability to Title</b>	32.37% N=8407	72.83% N=1001
<b>Median Size of Land Owned</b>	2.31 ha	2.53 ha

### Land Tenure Security

The Senegal survey includes additional questions on land tenure security in order to help identify how individuals’ perceptions of their property rights shape the land titling process. For Zambia, no quantitative measures of land tenure security are available, but focus group interviews provide some clarification on the experiences of smallholder farmers.

There are two primary land tenure security indicators in the Senegal survey. First, whether the household has secure usage rights to the land they use.<sup>292</sup> An additional survey question on the probability of expropriation allows a wider range of responses and verifies the

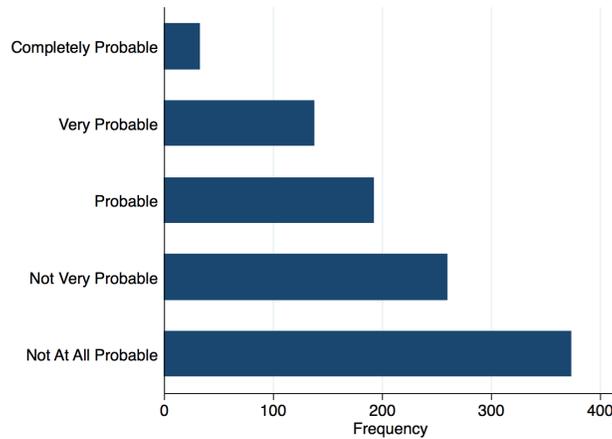
<sup>290</sup> The survey included 3 separate questions for different types of state land documents: Rural Council Extracts, Leases, and Titles. However, the responses to these 3 questions are nearly identical, in part because there is no difference in the words for these 3 documents in the local languages used during enumeration. As a result we had to use the French terms for title, lease, and Rural Council extract to differentiate between the three questions during survey enumeration.

<sup>291</sup> This excludes 419 smallholder households in the RALS survey who reported that they are not subject to customary authorities. In the full sample, including areas without customary authorities, land titling is 10.59% and reported ability to title remains the same as the sub-sample, at 32.47%.

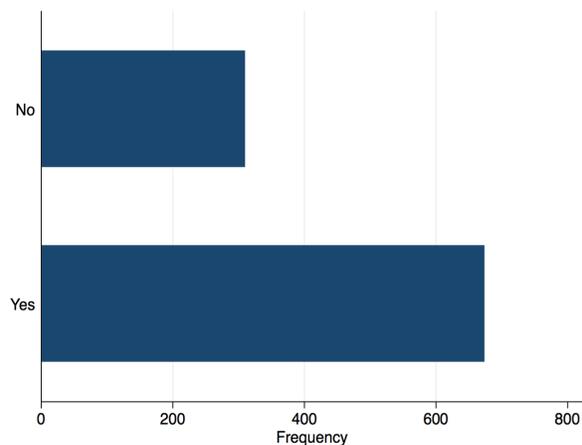
<sup>292</sup> E6. “*Concernant la terre que vous cultivez, pensez-vous être en possession de vos droits d’usage en toute sécurité?*”

respondent’s comprehension of the first question.<sup>293</sup> Respondents were also asked who is the most likely to take their land; the state is the primary threat (72%), followed by customary authorities (21%).

**Figure 8: Likelihood of Expropriation, Senegal**



**Figure 9: Respondent Has Complete Land Tenure Security, Senegal**



### 5.3.3 Control Variables

A variety of measures of land values and individual wealth are included as control variables. For both countries, I constructed measures of distances to markets, roads, railways, schools,

<sup>293</sup> E7. “*Quel est le degré de probabilité relative à l’expropriation de votre terre par un tiers sur une échelle de 1 and 5: 1 pour complètement probable et 5 pour pas du tout probable.*”

improved water sources, electricity, and health clinics to measure land value. However, due to high measures of similarity between these variables, I use indices to operationalize infrastructure access. This is particularly important for the Senegal data, which are concentrated in a smaller geographic area. There, an infrastructure index variable incorporates all of the above proxies for land value. The Zambia data feature a greater range of variation between observations on the different infrastructure measures due to the national sample. Therefore, I include separate measures for distance to the capital, distance to markets, distance to railways, distance to roads, and an index variable for schools, water, electricity, and health clinics. For Zambia, I also include a measure of population density in the district where the household is located. The sample areas in Senegal are prohibitively small for a population density measure to be meaningfully applied. Household-level wealth measures include employment outside of family farming, the highest level of formal education in the household, reported income from crop sales and other employment, and the size of landholdings. Descriptive statistics and measurement details are included in the appendix.

## **5.4 Results**

If smallholder land titling is a strategic response to the individual's status within the customary institution, we should see that those without privileged status are more likely to seek the protections of the state by titling. Individuals with privileged status—the kin of the CA—should be more likely to maintain customary property rights. To test this hypothesis, I first identify the effect of kinship with a chief or headman (in Zambia), village chief (in Senegal) or marabout (in Senegal). Second, I examine land titling outcomes for alternative measures of privilege in the customary institution including ethnically local and migrant households.

### **5.4.1 Individual Status within the Customary Institution, Zambia**

In Zambia, individuals with privilege, the blood relatives of customary authorities, are less likely to have state land titles. The significant and negative relationship between kinship and titles is robust across a range of model specifications.

Table 10 reports three models of the impact of kinship on land titles. The full model, Model 1, demonstrates that the kin of customary authorities are less likely to have land titles when taking into account a full set of land values indicators and measures of individual wealth. It is plausible, for example, that customary kin are more likely to maintain customary property rights because they do not have access to cash income from off-farm employment to pay the fees of titling or that, as insiders, they would have systematically larger land holdings. However, this analysis indicates that these measures of wealth and education are not driving the relationship between customary kin and the lack of state property rights. Similarly, the decreased likelihood of customary kin to title their land is independent of the value of land. Model 1 includes a full set of land values controls while Model 2 omits them, providing evidence that this finding is not overly sensitive to model specification. The omission of the land values indicators increases the number of observations, which result from the missing household data on market access. Model 3 reports the full model with market access omitted in order to test the hypothesis on the maximum available data. Individuals without privilege are consistently more likely to title.

**Table 10: Effect of Kinship on Smallholder Titling, Zambia**

Logistic Regression Predicting Current Land Titles			
	Model 1	Model 2	Model 3
KINSHIP	-.563** (.125)	-.720** (.119)	-.593** (.122)
POPULATION DENSITY	.158** (.046)	—	.182** (.046)
DISTANCE TO THE CAPITAL	-.024 (.028)	—	-.014 (.028)
DISTANCE TO MARKETS	-.011** (.003)	—	—
INFRASTRUCTURE DISTANCE INDEX	-.016 (.010)	—	-.034** (.009)
RAILROADS	-.002** (.001)	—	-.002** (.001)
ROADS	-.045* (.019)	—	-.052** (.019)
EDUCATION	.441** (.086)	.496** (.081)	.437** (.083)
EMPLOYMENT	.491** (.133)	.584** (.129)	.495** (.130)
SIZE OF LAND OWNED	.017* (.008)	.017* (.007)	.018* (.009)
INCOME	.126** (.046)	.128** (.045)	.136** (.045)
CONSTANT	-2.876** (.246)	-3.793** (.180)	-3.141** (.222)
OBSERVATIONS	7849	8420	8320
PSEUDO R <sup>2</sup>	.0881	.0631	.0847

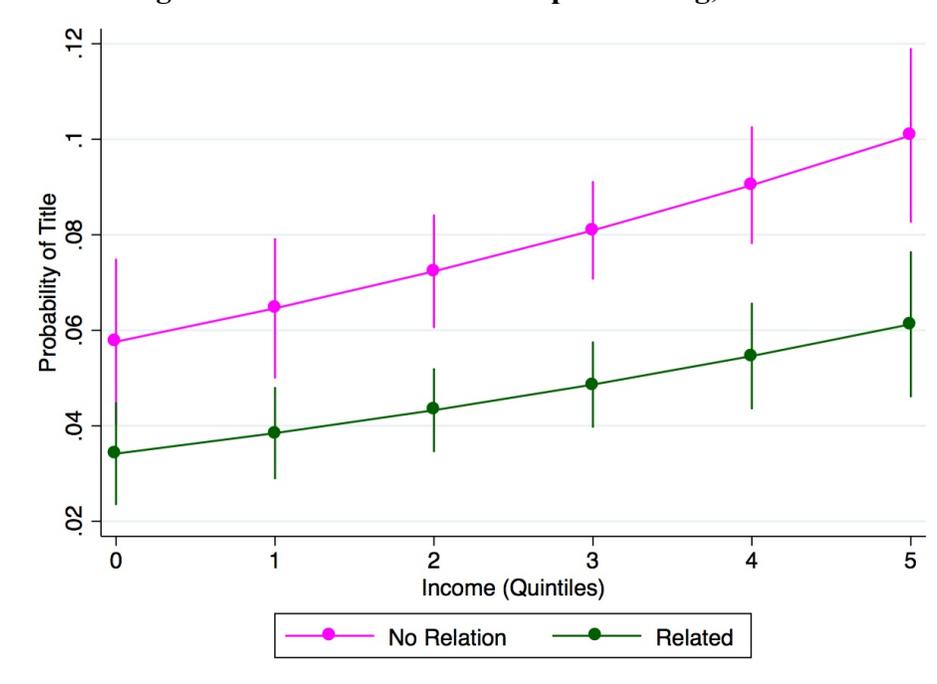
Notes: \*p<0.05; \*\*p<0.01;

*Robust standard errors adjusted for survey weights presented in parentheses.*

If land titles were equally desirable to all residents, independent of status within the customary institution, the ability to pay should be the primary constraint to land titling. Figure 10 graphs the predicted probability of land titling at different income levels for individuals with and without kinship ties to the CA in Zambia. At all income levels, the kin of customary authorities are less likely to have titles. As we would expect, having greater income does increase the smallholder's likelihood of titling for both kin and non-kin. However, the impact of kinship is as important as income in determining who titles. The predicted probability of a non-relative farmer in the *lowest* income category having title is on par with that of the *wealthiest* relative of a CA

(probabilities .058 and .061, respectively). This is evidence that the incentive of high status individuals to support the continuation of customary control over land impacts land titling outcomes at all income levels. Customary status is as important as wealth in determining land tenure outcomes.

**Figure 10: The Effect of Kinship on Titling, Zambia**



Other attributes that can affect privilege within the customary institution are examined in Models 4 and 5 (Appendix, Table 13). Model 4 adds the effects of migrant, local, youth-headed, and female-headed households to the kinship model. First, this model provides evidence that the strong effect of kinship is not due to local ethnicity. Second, it identifies how these other attributes affect titling outcomes. Households who migrated to the community within the past 10 years are more likely to title. Membership in youth and female-headed households has no significant impact on the likelihood of titling. While these attributes are important to test given their prominence in scholarship on land tenure in Africa (Atwood 1990), the lack of predictive power on land titling across all customary institutions in the Zambia is not surprising. While they

may have important impacts on privilege and land access in some communities, their impact on land titling outcomes is not systematic.

Model 5 further explores the role of local ethnicity. This variable is derived from the household's response to the question: "Is the household head considered local or non-local?" As a measure of how the household members identify that the community perceives them, this captures the social aspects of privileged status in the customary institution. Considered together, Models 4 and 5 provide evidence that the effect of local ethnicity on titling is dependent on wealth. The interaction term for local and wealth in Model 5 indicates a significant difference in the effect of being local at different income levels. For low-income households, being ethnically local decreases the likelihood of titling. Ethnic outsiders are more likely than insiders to seek title at low income levels. As income increases, the impact of local status on land titling decreases. This suggests that the double burden of being relatively poor and non-local provokes smallholders to exit customary property rights institutions. As status within the local community increases as a result of wealth, this drive to obtain state property rights is reduced. While wealth mediates the effect of local ethnicity on land titling, it is important to note that for farmers with local ethnicities, wealth consistently increases the likelihood of titling.

#### **5.4.2 Perceived Access to Titles, Zambia**

Changing the outcome variable to the respondent's perceived *ability* to title land reinforces these findings (Table 14, Appendix). This measures whether the respondent reported to the survey enumerator that it is possible to change land from customary to state titles. While the two different outcome variables—titles and reported ability to title—only have a minor correlation ( $r=.1012$ ), they provide a remarkably similar picture of how privileged status affects land titling. Customary kin are significantly more likely to report that land titling is *not* possible (Model 1,

Table 14). Migrants are more likely to report that land titles are accessible (Model 2, Table 14) and the effect of being local on the perceived accessibility of titling is again concentrated at lower-wealth households (Model 3, Table 14). It is plausible that the earlier finding that the measures of youth and female-headed households have no effect on land titling outcomes is due to their difficulty of accessing titles. However, these results indicate no systematic decrease in the likelihood of reporting access to title for youth or female household heads.

### **5.4.3 Individual Status within the Customary Institution, Senegal**

Across a wide range of customary institutions in Zambia, individuals with privileged status within the customary institution are less likely to title their land. Testing this hypothesis in a very different national context provides evidence that this phenomenon is not the result of something unique to Zambia but is indicative of a broader pattern; smallholder farmers strategically select to title or not based on their status within the customary institution. Those with greater privilege invest in the continuation of customary control over land by not seeking title. Those without privilege are quicker to exit. Examining this relationship in two regions of Senegal that feature a mix of types of customary institutions provides additional insight into how customary authorities structure mass smallholder land titling.

The case of Senegal confirms that those with privileged status in the customary institution are less likely to seek land titles. An important exception is the Mouride customary institution, where CAs are known to title their own land.<sup>294</sup> This section reports first the effects of two indicators of privileged status measured through relationships with village chiefs, then privilege that results from relationships with marabouts, followed by other individual attributes

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<sup>294</sup> The unique land titling practices of the Mourides can be traced back to a large title issued in 1930 for in the Mouride capital city of Touba. Senegalese geographer Cheikh Guèye (2002, 286–290) argues that the Mourides reinterpreted the state’s land laws, using this title to exert independence from the state. The farms at Khelcom are another example of Mourides titling land to obtain autonomy from state law.

that are associated with low or high status.

Village chiefs in Senegal are the guardians of customary property rights. They adjudicate land conflicts and interpret customary rules, often with reference to lineage-based land ownership. The village chief's kin gain privileged status from this relationship and are less likely to have state property rights than farmers without such close ties to the local CA. Model 1, Table 11 reports the full model of this relationship between kinship with the village chief and the likelihood of having title. Independent of income,<sup>295</sup> land size, wage employment, infrastructure access and formal education, there is a significant and negative effect of kinship with the CA on state land titling. Given two households with the same level of education and income, it is the farmer who is not related to the chief who is more likely to have title. Similarly, while we should expect individuals to title better land (Besley 1995), on plots of equally high value land, the kin of the CA will be slower to title than their non-kin neighbors.

Model 2, Table 11 reports an alternative test of whether individuals with insider status in the customary institution are less likely to title, using the spatial relationship between the households of the respondent and of the village chief. The Relative Proximity to the Chief measure is the distance from the respondent to the chief's households, derived from GPS coordinates taken during survey enumeration. This is then divided by the distance from the chief's house to the farthest household in that village, creating a range of 0 to 1 of proximity to the chief. The relative distance to the CA is a proxy for the household's status in the institution. Being physically closer to the chief's household signifies a stronger relationship with the chief. This implies either early settlement in the village or the chief having consented to the household

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<sup>295</sup> The Senegal income variable is a PCA index of household building materials, cattle ownership, staple crop yields, and reported additional cash income. The amount of land owned is considered as a separate variable. By contrast, the Zambia survey quantifies income from each crop yield and other income sources more precisely. As a result, I operationalize the Zambia income variable in quintiles groups. Descriptive statistics are reported in the appendix.

moving to an inner location in the village. Further, having proximity to the chief's household allows for communication and shared responsibilities in maintaining pathways, water sources, etc. This proxy for relationship to the chief is a useful confirmation of the self-reported measure of kinship. Model 2, Table 11 reports a positive and significant relationship between the relative distance to the chief's house and land titling. The individuals in the chief's inner circle maintain customary property rights; those in his outer circle are more likely to exit.

**Table 11: The Effect of Kinship with a Customary Authority on Land Titling in Senegal**

Logistic Regression Predicting Land Titles

	Chief Kinship Model 1	Chief Proximity Model 2	Marabout Kinship Model 3	Marabout Kinship Model 4
KINSHIP WITH CHIEF	-.398** (.021)		—	—
(RELATIVE) PROXIMITY TO CHIEF	—	.400* (.169)	—	—
VILLAGE POPULATION SIZE	—	.248 (.149)	—	—
KINSHIP WITH MARABOUT	—	—	-.506** (.085)	-.426** (.130)
MOURIDE MARABOUT	—	—	-1.771** (.258)	-1.662** (.157)
MOURIDE MARABOUT * MARABOUT KINSHIP	—	—	—	1.161** (.128)
MARABOUT'S INVOLVEMENT IN LAND ALLOCATION	—	—	—	-.951** (.045)
MARABOUT'S INVOLVEMENT IN LAND ALLOCATION * MARABOUT KINSHIP	—	—	—	-.540* (.239)
INFRASTRUCTURE DISTANCE INDEX	-.883** (.328)	-.742 (.416)	-.802* (.406)	-.766 (.408)
EDUCATION	.003** (.001)	-.035** (.012)	-.024 (.046)	-.069** (.006)
EMPLOYMENT	.067 (.128)	-.076 (.154)	.088 (.071)	.117 (.127)
WEALTH INDEX	.109 (.230)	.123 (.214)	.022 (.206)	.007 (.166)
TOTAL LAND OWNED	-.002* (.007)	-.000 (.002)	.000 (.002)	.002 (.002)
CONSTANT	-2.711** (.280)	-3.418** (.437)	-2.383** (.160)	-2.080** (.273)
OBSERVATIONS	932	907	888	872
PSEUDO R <sup>2</sup>	.0970	.1259	.1291	.1578

Notes: \*p<0.05; \*\*p<0.01;

Robust standard errors clustered by district presented in parentheses.

The majority of villages in the Senegal sample have a marabout as well as a village chief.<sup>296</sup> Marabouts and village chiefs are collaborators within the community. In some cases, they are related. Overall, kinship with a marabout does not predict land titling outcomes; the negative coefficient on this relationship does not attain accepted levels of statistical significance (Model 6, Table 15). Instead, the effect of kinship with a marabout on land titling depends on the marabout's customary institution.

Model 3, Table 11 controls for the effect of Mouridism, demonstrating that all subjects of Mouride marabouts are less likely to have titles than subjects of Tidjane or Khadrya marabouts. The Tidjane and Khadrya marabouts differ from the hierarchical Mouride marabouts. They are more independent of customary hierarchies and have longer historical roots in their villages. Some are members of one of the founding families of the village. In this model with the dummy for Mouride marabout included, kinship with a marabout decreases the likelihood of titling. In communities with Tidjane or Khadrya marabouts, being related to the CA decreases the likelihood of title. Unlike the other brotherhoods, the Mouride marabouts are distinctive in their land use practices. While 49% of the respondents reported that a marabout has a role in land allocation in their village, in the subsample of villages with Mouride marabouts, this jumps to 80%. As discussed in chapter 2, Mouride marabouts have historically founded new villages and attracted spiritual followers to live on land. As newcomers on customary land, some Mouride marabouts have titled land in their own names then allowed smallholders to use it.

As a result of this practice of Mouride marabouts titling their land, kinship with a Mouride marabout predicts titling while kinship with a non-Mouride marabout makes titling significantly less likely (Model 4, Table 11). The significant and positive interaction of kinship

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<sup>296</sup> 51 respondents reported that there is no marabout in the community, this reduces the number of observations in models that include measures related to marabouts.

and Mouride marabout indicates that the relatives of Mouride marabouts are more likely to have title. However, this is an extremely rare event within the data and therefore must be interpreted with caveats. Only 5 of the 300 individuals with Mouride customary authorities reported titles, of which 3 are kin. Mouride marabouts have a uniquely high level of control over their followers and are linked into a powerful hierarchy. This accounts, in part, for the limited titling in their communities.

To identify if this difference between marabouts is the result of Mouride marabouts having greater involvement in land allocation than Tidjane and Khadrya marabouts, this model also considers whether the household reported land management as a role for the marabout. The results indicate that Mouridism still predicts the likelihood of not titling when controlling for the marabout's involvement in land allocation. This is indicative that the unique structure and land practices of the Mouride marabouts are meaningful beyond greater involvement in land allocation. Further, the negative and significant coefficient for the interaction between the marabout's involvement in land allocation and kinship in this model indicates the effect of kinship with the CA (in this case a marabout) is stronger if the CA has a recognized role in land allocation. This is what we would expect to find if it is true that status within the customary institution shapes the individual's decision to title land.

Other measures of privilege within the customary institution are reported in Models 7 and 8 (Table 15, Appendix). This includes whether the household migrated within the last 10 years and whether they are considered a local. Neither of these characteristics predict the likelihood of having title. Model 5 includes local and kinship in the same model as confirmation that the effect of kinship is independent of a local ethnicity. Model 8 tests for any effects of pastoralism,

female-headed household, and youth.<sup>297</sup> While bivariate regressions (unreported) with titling and youth suggest that younger households are less likely to title, a full model indicates that this correlation is caused by lower wealth in the younger households. Female-headed households (16% of the sample) are not significantly correlated with titling outcomes under any model specification. Contrary to expectations, pastoralists, those whose primary agricultural activity is animal husbandry, are slightly more likely to have land titles. However, the data make no distinction between sedentary pastoralism and nomadic pastoralism. It is the latter which are expected to have lower privilege and tenure security.

#### **5.4.4 Perceived Access to Titles and Land Tenure Security in Senegal**

As in the Zambia analysis, examining smallholders' perceptions of their access to titles enriches our comprehension of the individual demand for state property rights. The Senegal survey allows me to examine both reported ability to title and tenure security as alternative outcome variables. The measure for tenure security is whether the household reports feeling completely secure in their access to the land where they currently farm.<sup>298</sup> While kinship with the village chief does not significantly predict the individual's response to whether titles are available or their levels of land tenure security, relative distance to the chief's household does (Table 16, Appendix). Individuals who are closer to the CA are more likely to have secure property rights and less likely to report that land titling is accessible. This mirrors the finding in Zambia that customary kin are less likely to report the availability of land titles. The significant decrease in security of customary property rights for the chief's outer circle is evidence that social power and privilege are distributed spatially within the village with the CA at the core. Privilege in the community

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<sup>297</sup> Household head is 40 or under.

<sup>298</sup> An alternative measure of this model is the response to the likelihood of expropriation. This measure is correlated ( $r=.4347$ ) with the Security variable and ordinal logistic regression models with reported likelihood of expropriation as the outcome do not identify any major differences.

radiates out from the CA.

While kinship with a marabout does not affect the household's tenure security or ability to title, Models 1 and 2 (Table 17, Appendix) indicate that individuals with Mouride marabouts and with marabouts who are involved in land allocation have greater land tenure security. These are the same attributes that decrease the likelihood of having title; this supports the theory's implication that individuals choose to remain in the customary system of property rights because they have greater tenure security.

The analyses reported in Table 17 (Appendix) also indicate that individuals who migrated to the village in the last 10 years are more likely to report tenure insecurity (Model 3). This is a minor population within the sample, representing 4.6% of respondents. Of these migrants, 57% identify as non-local. These families should have lower status within the customary institution as a result of their briefer history in the community. Consistent with expectations, this attribute of lower privilege in the customary institution predicts lower tenure security. However, contrary to predictions, there is no significant relationship between belonging to a local ethnicity and land tenure security (Model 5, Table 17). Further, pastoralism and female-headed households are not significant predictors of land tenure security, but youths are more likely to report land tenure security (Model 5, Table 17).

The household's perceived access to land titles illuminates the question of who titles their land and why. In Senegal, the relatives of chiefs and marabouts are just as likely to report that they have access to titles as other citizens (Model 3 Table 16 and Model 2 Table 17). The decreased likelihood of state land titles is not the result of decreased access customary kin; this is evidence that these individuals with privilege are *selecting* not to title.

Pastoralists and female-headed households are significantly more likely to report that

titles are unavailable to them and, while the relationship is not statistically significant, the direction of their coefficients is consistent with the hypothesis that they have lower tenure security. Pastoralism is a land-extensive activity, which can often be best accommodated by shared management of grazing lands and waterways. This may account for the perception among pastoralists that they cannot title their land. However, it is somewhat surprising that while there is no systematic difference in land titles for female-headed households, pastoralists have an increased likelihood of having state land titles (Model 8, Table 15, Appendix). This suggests that pastoralism is not a generalizable indicator of an individual's status within the customary institution.

#### **5.4.5 Resistance to Titling in Senegal**

When individuals reported that state titles are not accessible, I followed-up with an open-ended question to better understand the logic underlying these beliefs. As expected, individual barriers such as wealth and limited information were often cited as reasons why titles are not accessible. However 24% of the 267 individuals who said they could not access titles reported that the limitation was not material, but that state land registration and titling is unwanted or inappropriate in their village. If privileged status within the customary institution leads to greater commitment to the continuation of customary property rights, kinship should also increase the likelihood of reporting resistance to titles. To examine if customary institutions shape this resistant attitude to titling, I tested the effect of the key independent variables on this subset of respondents who report that state titles are unavailable (Table 12). Responses such as “that’s not our practice in this community” or “we don’t need those, the land belongs to me” are coded as a category of resistance to land titling. Table 12 reports these results. Individuals who are insiders in the customary institution are more likely to have a resistant attitude towards state land titles.

Kinship with the village chief or a marabout increases the likelihood of reporting that titles are not accessible because they are unwanted.<sup>299</sup> This is further evidence that smallholder farmers make a strategic choice in their decision to title land and that this decision is based on their status within the customary institution.

**Table 12: Determinants of Resistance to Titling in Senegal**

Logistic Regression Predicting Resistance to Titling		
	Model 1	Model 2
RELATED TO CHIEF	.679* (.340)	—
RELATED TO MARABOUT	—	.793* (.355)
WEALTH INDEX	-.054 (.128)	-.055 (.130)
INFRASTRUCTURE DISTANCE INDEX	.039 (.132)	-.009 (.134)
EDUCATION	.322* (.125)	.272* (.128)
CONSTANT	-2.074** (.343)	-2.064** (.353)
OBSERVATIONS	247	234
PSEUDO R <sup>2</sup>	.0409	.0401

Notes: \*p<0.05; \*\*p<0.01;  
Robust standard errors presented in parentheses.

The analysis of these three different but related land tenure outcomes illuminates the individual-level drivers of land titling in Senegal. A close relationship with the chief, measured as kinship or as spatial proximity, decreases the likelihood of having land title. Kinship alone has no significant effect on land tenure security or perceived access to title. The family members of chiefs feel as secure in their tenure as other citizens. This suggests that increased tenure security is not the sole cause of their decision to remain under customary property rights. Increased social pressure on kin may be an additional factor that leads these insiders to signal their commitment

<sup>299</sup> Note that while all previous results in this chapter rely on a more conservative model specification with clustered standard errors to account for intra-regional dependence, for this reduced sample size I elected to use the un-clustered robust standard error model. However, Table 18 (Appendix) reports these findings with clustered standard errors; there the effect of kinship with the chief on resistance is in the predicted direction but not statistically significant at p<0.05.

to the group's collective goal of maintaining customary control of land.

That the kin of CAs are just as likely to believe that they can access titles as other citizens is strong evidence that those with privilege in the customary institution are *selecting* not to title. It should be easier for the chief's kin to access title, as the legitimacy of their land ownership derives from the same origin story as the chief's claim over the village. Further, it is the chief who must bear witness and approve that the individual owns the land before accessing title. Thus the consistent finding that the CA's kin are less likely to title suggests they are choosing customary property rights.

#### **5.4.6 Economic Factors**

While the political determinants of land titling are the focus of these analyses, these results provide important insight into the economic drivers of land titling. The induced institutional change approach predicts that where demand for land is greater—as a result of increasing population densities or higher land values—titling should develop first. Smallholder titling in Zambia and Senegal provides some evidence for this approach, but indicates that the individual's status within the customary institution shapes how these economic motives for titling translate into state property rights.

Across the diverse state and customary institutional settings in Zambia and Senegal, citizens are more likely to have land titles at higher population densities and closer to infrastructure. Infrastructure access is a critical measure of land values in the developing country context. Further, on more densely populated land and more proximate to infrastructure, citizens are more likely to report that titles are accessible. This is evidence that competition over land, especially good land with access to roads and schools, does increase the benefits of titling relative to its costs.

Individual measures of wealth also increase the likelihood of titles and reported access to titles. The Zambia smallholder data present a consistent correlation between wealth and titling. Income, size of land holdings, and wage employment increase the likelihood of titling. In the Senegal data, the measure of wealth is in the expected direction, but does not reliably predict titling. In particular, wealth is not robust to the inclusion of the infrastructure index variation with the Senegal data. The relationship between wealth and titling is intuitive; wealthier individuals have more resources to pay for titling and those with larger plots of land have more resources to protect. While proponents of De Soto's (2000) theory that equates untitled land with "constrained capital" argue that land titling causes wealth, this data only provide suggestive evidence for causal pathways between wealth and titling. In Zambia, wealthier households, even those without titles, are more likely to believe they *can* access titles. This is evidence of wealth being a precursor to titling.

One key difference between the countries is the role of distance to the capital. Distance to the capital is a proxy for land value, as markets, jobs, and infrastructure are concentrated in the capitals of these developing countries. Further, this provides insight into core-periphery theories of African politics that suggest that state authority extends out from the core and is weaker in peripheral lands (Herbst 2000). In Zambia, proximity to the capital is consistently a significant predictor of perceived access to land titles and, at times, to titles. Smallholders living closer to Lusaka are more likely to believe they have access to titles, independent of measures of infrastructure access.

By contrast, in Senegal, distance to the capital does not predict smallholder land titling or perceived access. In part this is a result of the difference between the two countries' samples. Zambia is nationally representative, allowing for a greater range of distances to the capital. The

Senegal sample, by contrast, encompasses just two regions. Thus it is not possible to see national patterns in land titling from this sample. As a result of the sampling strategy and consistent lack of predictive power, the distance to the capital was omitted from the final models reported in this chapter. However, even within the two regions sampled here, there are more smallholders with titles in the more distant region of Podor than there are in the more proximate region of Mbacké. This is consistent with the national data on land titling in Senegal from chapter 3, which finds that districts farther from the capital are more likely to have titled land. While this is inconsistent with the expectations of the induced institutional change hypotheses, it provides evidence of the importance of local customary institutions for filtering how economic decisions are made related to land tenure.

#### **5.4.7 Hierarchy in Zambia**

The national sample of smallholder titling for Zambia allows me to test the hypothesis that historically hierarchical customary institutions are less likely to title land. When controlling for the size of the chiefdom, land values, and wealth, smallholder farmers who are subject to hierarchical customary institutions are significantly less likely to have titles. The negative and significant coefficient for Paramouncy (Model 6, Table 13, Appendix) indicates an inverse relationship between smallholder titling and being subject to a historically hierarchical customary authority.

This reinforces the findings from Chapter 4 on the relationship between institutions with state-like pre-colonial origins and land deals in Zambia. The data used in this current chapter's analysis is a binary, self-reported measure of whether a smallholder has title or not, which I then

geocoded and affiliated with a customary institution.<sup>300</sup> By contrast, the measure employed in Chapter 4 is the proportion of land per administrative unit under state property rights, derived from the government's own data on land titling. It is strong support for the theoretical argument that two very different datasets, collected from different sources, identify the same pattern of historically hierarchical customary institutions conditioning land titling outcomes.

#### **5.4.8 Customary Control of Land and Tenure Security in Senegal**

Unlike the Zambia sample, which provides geographic breadth and a nationally-representative range of customary institutions, the Senegal case selection is geographically focused, allowing for attention to household-level variation within similar geographic and customary institutional conditions. One important implication that can be tested from the Senegal survey is the relationship between customary authority over land within the village and tenure security.

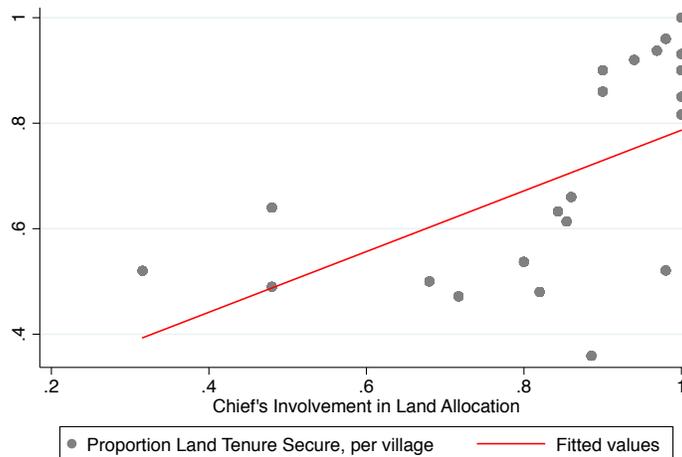
Where customary authorities have a role in land allocation, smallholders report greater land tenure security. On an individual-level, smallholders who indicated that a marabout is involved in land allocation were more likely to report land tenure security (Model 1, Table 17, Appendix). However, by examining the community-level dynamics within the 22 villages in the sample, a clearer picture develops of how different systems of property rights in the same community affect smallholders. Figure 11 plots the percentage of the village who indicated that the village chief is involved in land allocation, by the proportion of the village who reported complete land tenure security. Figure 12 plots the percentage of the village who indicated that a marabout is involved in land allocation, with the same land tenure security indicator. Figure 13 plots the relationship between the village's land tenure security and the proportion of respondents with titles.

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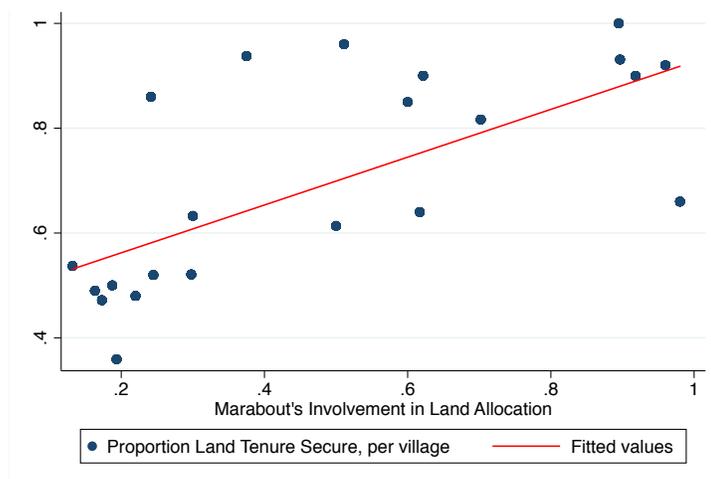
<sup>300</sup> Note that this analysis drop 647 observations. These smallholders reported being subject to chiefs but are outside of the boundaries from the chiefdom maps. This is an indication of the discrepancy between official boundaries from 1958 and de facto customary authority.

The trend lines in Figures 11 and 12 illustrate a positive relationship between customary control of land and land tenure security at the community level. The upper right cluster on Figure 11 indicates that when there is consensus within the village about the chief's role in land titling, tenure security is very high. Where fewer community members report that the CA has a role in land allocation, land tenure security is lower. Figure 13 illustrates an inverse correlation between land tenure security and the percentage of the village with land titles. The more land under customary property rights, the more secure the village residents are.

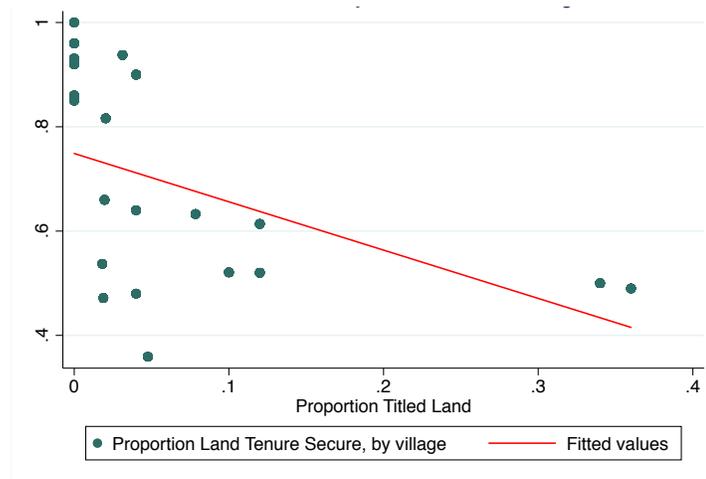
**Figure 11: The Role of the Chief and Land Tenure Security Per Village, Senegal**



**Figure 12: The Role of the Marabout and Land Tenure Security Per Village, Senegal**



**Figure 13: Rate of Titling Per Village and Land Tenure Security, Senegal**



These three plots suggest that villages with greater consensus about who controls the land have greater land tenure security. This is evidence that land tenure security breaks down when there is a mix of control over land between customary and state property rights. The more community members have titles, the less secure the village is. Overall, this should motivate those community members to seek state property rights by decreasing the credibility of customary property rights institutions. As no village in the sample has more land under state titles than customary property rights, we cannot evaluate the expectation that tenure security should improve if *everyone* has titles. Together, these three graphs provide evidence that the evolutionary model of land titling (Platteau 2000b) is inherently insecure. This is consistent with the observations by Brasselle, Gaspart, and Platteau (2002) who argue that while customary institutions can provide a high level of tenure security, land titling is effective where the customary or informal institutions are weakest (403).

## 5.5 Discussion

Customary control of land is sustained by smallholders with privilege in the institution and reduced by those who lack such insider status. Across two country contexts and a wide range of

customary authorities, land titling is conditioned by the individual farmer's status within the customary institution. It is the individuals with low privilege within the institution who are most likely to exit in favor of the state's property rights protections. By contrast, those who are closest to the customary institution are the slowest to title. These insiders are more invested in the continuation of the CA's control of land, and more broadly, in the customary institution's continuing role in structuring social relations in the community. This is consistent with Goldstein and Udry's (2008) findings in Ghana, that customary elites have higher land tenure security. Critically, the relationship between individual status within the customary institution and the decision to land title is consistent across both the de facto and de jure systems of customary authority over land in Zambia and Senegal.

This analysis underscores the important role of customary authorities in structuring citizens' relationships with each other and with the state. Rural citizens are not a homogenous group; their social differentiation is channeled through customary institutions. Kinship is an important measure because it remains as a source of elite status regardless of the different norms for land ownership in the community. However, these results also provide evidence of other characteristics that are salient for privilege within the customary institution that would not be for the state's legal institutions. Belonging to a non-local ethnic group or having arrived more recently to the village can decrease tenure security and increase interest in obtaining state property rights. Migrant families report lower land tenure security (in Senegal) and are more likely to title (in Zambia). Similarly, being a poor non-local increases the likelihood of titling in Zambia. The individuals' relationships with the customary institution shape their status within the community and their commitment to retaining customary control over land.

This has implications for the individual's relationship with the state. Those who have

lower status in relation to the customary institution are more likely to exit in favor of state institutions. These smallholders without privilege are seeking the protection of the state at a higher rate than those with privilege, all things being equal. Under both the state-recognized and the unrecognized customary institutions of Zambia and Senegal, CAs are shaping citizens' connection to the state. Those who have lower status in the customary institution are more engaged with the state; those with more customary privilege are less likely to seek the state's protections.

These results also provide greater insight into the limited role of the state in the lives of rural citizens in Africa. Wealth predicts land titling, suggesting that for poorer citizens the protection of state property rights is not accessible. Citizens who have limited contact with other forms of state provided goods—including schools and infrastructure—are also consistently less likely to have land titles. Formal education, in government schools,<sup>301</sup> predicts land titling, independent of wealth and employment. This is evidence that greater interaction with other state institutions can pull citizens closer to the state in different ways. Experience with the state may increase citizens' trust in the credibility of state property rights relative to customary property rights. The strong relationship between land titling and proximity to infrastructure such as roads, schools, and health clinics supports this explanation. Further, the relationship between distance to the capital and land titling in Zambia is indicative that the state is not connecting with citizens who live farthest from the seat of government.

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<sup>301</sup> The Zambia survey does not differentiate between types of schools. However, in Zambia over 80 % of schools are government schools. This is followed by the increasingly prevalent community-organized schools, with private schools and mission schools a small minority. Government of the Republic of Zambia, Ministry of Education, Science, Vocational Training and Early Education (MESVTEE). 2015. "Education for All 2015 National Review Report: Zambia," Prepared for UNESCO and the World Education Forum.; In Senegal, many rural citizens attend informal Coranic schools instead of secular, Francophone government schools. The Senegal survey specified which type of education system the respondent attended. The formal education measure used in this chapter is a measure of years in a government school. See Bleck (2015) for discussion of the effects of Coranic and government school systems on citizenship in West Africa.

### **5.5.1 Linking Individual Titling to Hierarchy**

This chapter argues that customary institutions shape the state's extension of control over land by structuring social relations in the community and the decision to title land. The smallholder masses are strategically titling their land in response to their status within customary institutions. As earlier chapters established, CAs can also slow the land titling process by refusing to cede land to state property rights. The organizational capacity to prevent land from leaving the customary domain through increased collective action (in Senegal) and hierarchical authority (in Zambia) protects smallholders from expropriations by outsiders. However, in maintaining their grip on the control of land, hierarchical CAs also slow the process of individual smallholder titling. The Zambia survey data indicate that smallholders subject to historical hierarchies are less likely to have titles. The same customary institutions that resist large land deals are also the slowest to undergo smallholder titling. This is in part due to the CA's attempts to prevent it.

In Zambia, there are two principal ways that CAs can discourage smallholder titling. First, by creating alternative property rights documents or "Chief's Titles." These written records of customary rights respond to the demand from citizens for documented land rights, without converting the land to statutory titles. This creates a perception of increased tenure security, which reduces the incentive to obtain protection from state property rights. However, chiefs' titles are improvised, extra-legal, and entirely at the discretion of the chief.<sup>302</sup> Second, CAs in Zambia can prevent land titling by refusing to approve the individual applications. The chiefs in Zambia have a formal channel for preventing smallholder land titling. The local council cannot advance a land titling application without the documented approval of the chief.

When asked about when and why they supported smallholder titling in their domains, Zambia's CAs indicated that they consider themselves to be the owners of the land used by

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<sup>302</sup> The phenomenon of chief's titles are covered in more depth in Chapter 4.

smallholders and discussed their responsibility to make decisions for the good of the community. The customary authorities that allow smallholders to title land in their zones reported that they do so because it can help farmers access credit markets.<sup>303</sup> Some chiefs reported being selective about giving smallholders titles according to the location or size of the plot,<sup>304</sup> or deciding based on what the smallholder proposes to do with the land and how much how he has already developed it.<sup>305</sup>

More common in the Zambia sample are chiefs who refuse smallholder titling in their areas. Most of the 15 chiefs interviewed stated that they discourage it in their chiefdoms. One chieftainess reported that she refuses smallholder title applications because she fears that her subjects will then quickly sell the titled land and become landless.<sup>306</sup> Another tells his subjects who want titles that they will be then be responsible for paying ground rents and, consequently, the state will seize the land for non-payment.<sup>307</sup> Other chiefs indicated that they only approve titles for projects that will create employment<sup>308</sup> or community benefits, such as hospitals and schools.<sup>309</sup> Another chief feared that allowing smallholder titling would reduce community access to resources on that land: “If anyone ever strays there to get mushroom, caterpillars or firewood, that is an offence and they can even be shot and killed and the chief would be answerable. So in chiefdoms we wouldn’t punish the people like that by giving title deeds anywhere anyhow. So we don’t give title deeds here.”<sup>310</sup>

Underlying these reported reasons for refusing smallholder titling is an awareness of the long-term implications for the chiefdom and customary land tenure. In the words of one Zambian

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<sup>303</sup> Interview CA-571.

<sup>304</sup> Interview CA-576.

<sup>305</sup> Interview CA-538.

<sup>306</sup> Interview CA-537.

<sup>307</sup> Interview CA-556.

<sup>308</sup> Interview CA-582.

<sup>309</sup> Interview CA-553.

<sup>310</sup> Interview CA-562.

chief: “We, as villagers, we depend on land, our living depends on land. So if we get a title to every piece then we’ll have problems. So we are restricted, myself, in my chiefdom...I’m strict on that one. Because I cannot allow anyone to get a title for a small piece of land. Why? That land can only be given to him, use it, if he fails, he fails and then somebody else takes over.”<sup>311</sup>

One Northern chief compared land titling to neighboring Tanzania, where chiefdoms were made irrelevant by villagization schemes and socialist land redistribution. He explained that if he allows smallholders to title their land “everyone will jump at it and they’ll just get 2 ha, 5 ha, and the whole place will just be titled and the chieftainship is as good as being killed...I don’t know if that’s what development wants to lead us to be like Tanzania where you have no chieftainships anywhere.”<sup>312</sup> These resistant views on titling can translate directly into fewer conversions in Zambia because chiefs have a formal role in land titling.

By contrast, the influence of Senegal’s CAs on smallholder land titling outcomes is informal. The local council *can* advance land titling applications without the consent of CAs. While this should make it easier for smallholders to access land titles in Senegal than in Zambia, smallholder land titling rates are very similar across the two countries at between 7% and 8%. Customary authority is a powerful social influence in Senegal. As a result, the de facto rules of land ownership often trump the de jure regulation.

For smallholder land titling applications, the village chief is invited to bear witness on the status of the land and its occupation to the Rural Council. Legally, customary land can have no individual owners<sup>313</sup> so the right to title a parcel is based on usage rights. However, in practice, village chiefs instead interpret and apply their own customary land tenure rules when they make

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<sup>311</sup> Interview CA-546.

<sup>312</sup> Interview CA-553.

<sup>313</sup> The 1964 National Domain Law nationalized all customary land. It is owned by the nation and farmers can only have usage rights. See Chapter 3.

their recommendations to the local government. In general, CAs explain customary land ownership as inherited rights to the land<sup>314</sup> derived from being part of the lineage that cleared the land<sup>315</sup> or that the inherited owner has given the land to the applicant.<sup>316</sup>

When asked the same questions as Zambia’s CAs about smallholder titling, the Senegal CAs’ responses focused on their interpretations of who has the right. While Zambia’s CAs discussed usage rights or development goals, Senegal’s CAs highlight customary rules of land ownership for how they decide who can title. At times it is a CA who has all rights to the land. In one Mouride village, the chief reported such tight control over titling from the marabout that “No local (*autochtone*) would dare title land in this village, including myself. The ‘Master of the Village’<sup>317</sup> holds property rights for all of the land in this village.”<sup>318</sup> Similarly, a village chief in Podor reported that only his family has “full rights. Those with other names, they don’t have full rights.”<sup>319</sup> In Senegal, the logic that informs CAs’ recommendations on land titling applications is, in the words of one CA: “How can someone title land that he does not own?”<sup>320</sup> Customary authorities in both sampled districts in Senegal repeated the idea that, contrary to state law, usage is insufficient for the right to title the land.<sup>321</sup> While Chapter 3 established that some CAs have greater capacity to collectively organize resistance to losing customary control over land, individual village chiefs in Senegal can also influence smallholder titling in their reports to the Rural Council.

Why would the Rural Council abide the chief’s interpretation of land ownership instead

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<sup>314</sup> Interview RC-127.

<sup>315</sup> Interview RC-151.

<sup>316</sup> Interviews RC-124 and RC-152.

<sup>317</sup> He uses the Wolof term *Borom Dek* here to mean the village marabout. This is generally a reference to the village chief. However, when it is used for the marabout or another elder, this indicates that they are the highest customary authority for that village.

<sup>318</sup> Interview CA-126.

<sup>319</sup> Interview CA-138.

<sup>320</sup> Interview CA-121.

<sup>321</sup> Interview RC-151.

of the state's law of who can access title? These state agents implement customary law in order to maintain stability and peace. Allowing a farmer who has been using the land to title the parcel without recognition from the local CA that he or she is the landowner could lead to conflict. One repeatedly cited example occurs when a customary landowner has left the village and another smallholder farmer uses his abandoned land. In state law, the user can obtain title. However, many CAs would argue that the customary landowner maintains his land rights such that the user can never title without the explicit permission of the previous owner.

Prioritizing the customary over the statutory in land titling is such a well-established practice in Senegal that it has a name. In both regions in the Senegal sample, Rural Council members raised and explained the concept of "Massla" in their interviews.<sup>322</sup> This term represents making decisions based on social expediency or moral relativism, even if it diverges from the law.<sup>323</sup> As one Rural Council President reported:

The Massla is a strategy for preserving social peace. Instead of applying the law the way it is supposed to be, you apply the spirit of the law. But not the law in that way, in a way of contributing to social cohesion because if you must apply the law precisely, it will mean that there will be a lot of social problems. That's the Massla: what you need to do but you avoid doing it so you don't disappoint or create problems.<sup>324</sup>

The local councils in Senegal abide by the recommendations of village chiefs, marabouts, and other customary authorities because they fear the social backlash. When asked if they could give a title without the approval of the village chief, Rural Council presidents responded that they "wouldn't dare...nothing can move forward without his consent"<sup>325</sup> and "it's impossible."<sup>326</sup>

The village chiefs reported that this could never happen because "it's the village chief who

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<sup>322</sup> Interviews RC-108 and RC-127.

<sup>323</sup> While there is limited scholarly literature on the concept of Massla (or Masla), there is an active debate on it in the Senegalese press and social media. See for example: 2002. "Sénégal: Laxisme, 'masla' et gestion informelle de l'état: le Cpc tient Me Wade pour premier responsable." *Sud Quotidien* (Dakar, Senegal), 15 October.

<sup>324</sup> Interview RC-127.

<sup>325</sup> Interview RC-151.

<sup>326</sup> Interview RC-109.

declares the truth of the property rights of the applicant. Therefore, the Rural Council president cannot do anything without him.”<sup>327</sup> Even higher levels in the Senegalese government, such as the *Prefet*, ignore misapplications of state land law in favor of the customary system in order to preserve social peace (Traoré 1997, 97). While Zambia’s CAs have a formal channel for refusing smallholder land titling in their zones, Senegal’s CAs’ only tool for preventing smallholder titling is informal influence over the Rural Council and the individual farmers seeking to exit the customary system of property rights.

## **5.6 Conclusion**

Previous chapters have established that in both Zambia and Senegal, strong, hierarchical CAs are more likely to resist large-scale land deals and the conversion of land out of customary control. This chapter contributes an additional way that customary authority affects the development of state property rights. Within the community, customary institutions structure power relations. Citizens with closer ties to the CA have higher privilege and benefit the most from continuing customary control of land. These customary insiders invest in the institution that has protected them by not titling their land. Outsiders to the customary institution are more likely to seek out the protections of state property rights. This differentiation in privilege created by customary institutions helps to extend the state’s system of property rights. The following chapter addresses the implications of the findings of this dissertation in greater depth.

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<sup>327</sup> Interview CA-149.

## Chapter 5 Appendix

**Table 13: The Determinants of Land Titling in Zambia, Additional Attributes**

Logistic Regression Predicting Current Land Titles (ZAMBIA)			
	<b>Kinship Model 4</b>	<b>Local Model 5</b>	<b>Hierarchy Model 6</b>
KINSHIP	-.539** (.129)	—	—
ARRIVAL WITHIN 10 YEARS	.266 (.137)	.367** (.135)	—
LOCAL	.159 (.188)	-.853* (.417)	—
LOCAL*INCOME	—	.287* (.116)	—
PARAMOUNT SYSTEM	—	—	-.380* (.187)
SENIOR SYSTEM	—	—	.435 (.255)
SIZE OF CHIEFDOM	—	—	.011** (.002)
POPULATION DENSITY	.156** (.046)	.164** (.048)	-.047 (.207)
DISTANCE TO THE CAPITAL	-.024 (.029)	-.023 (.029)	.090** (.034)
DISTANCE TO MARKETS	-.011** (.003)	-.012** (.003)	-.006 (.003)
DISTANCE TO INFRASTRUCTURE	-.016 (.010)	-.017 (.010)	-.028* (.011)
RAILROADS	-.002** (.001)	-.002** (.001)	-.004** (.001)
ROADS	-.045* (.018)	-.047* (.019)	-.041* (.020)
EDUCATION	.432** (.089)	.484** (.095)	.319** (.097)
YOUTH HEADED HOUSEHOLD	-.018 (.129)	-.013 (.128)	—
FEMALE HEADED HOUSEHOLD	.074 (.160)	.105 (.161)	—
EMPLOYMENT	.465** (.136)	.498** (.135)	.735** (.155)
SIZE OF LAND OWNED	.017* (.009)	.016* (.008)	.017** (.006)
INCOME	.132** (.050)	.188** (.050)	.196** (.054)
CONSTANT	-3.104** (.343)	-3.419** (.305)	-4.300** (.362)
OBSERVATIONS	7843	7843	7196
PSEUDO R <sup>2</sup>	.0899	.0857	.0919

Notes: \*p<0.05; \*\*p<0.01;

*Robust standard errors adjusted for survey weights presented in parentheses.*

**Table 14: The Determinants of the Ability to Title in Zambia**

Logistic Regression Predicting Ability to Convert Land (ZAMBIA)

	<b>Kinship Model 1</b>	<b>Other Attributes Model 2</b>	<b>Local Model 3</b>	<b>Hierarchy Model 4</b>
KINSHIP	-.316** (.063)	—	—	—
ARRIVAL WITHIN 10 YEARS	—	.192** (.072)	.216** (.071)	—
LOCAL	—	.116 (.105)	-.351 (.229)	—
LOCAL * INCOME	—	—	.161* (.066)	—
PARAMOUNT SYSTEM	—	—	—	-.293** (.099)
SENIOR SYSTEM	—	—	—	.902** (.114)
SIZE OF CHIEFDOM	—	—	—	-.007** (.001)
POPULATION DENSITY	.032 (.029)	.034 (.029)	.033 (.030)	-1.085** (.215)
DISTANCE TO THE CAPITAL	-.070** (.018)	-.074** (.018)	-.072** (.018)	-.071** (.020)
DISTANCE TO MARKETS	-.006** (.001)	-.006** (.001)	-.006** (.001)	-.007** (.002)
INFRASTRUCTURE DISTANCE INDEX	.014** (.004)	.013** (.004)	.013** (.004)	.019** (.004)
RAILROADS	.002** (.000)	.002** (.000)	.002** (.000)	.003** (.000)
ROADS	-.039** (.008)	-.039** (.008)	-.039** (.008)	-.041** (.009)
EDUCATION	.021 (.047)	.039 (.048)	.043 (.048)	.057 (.050)
YOUTH HEADED HOUSEHOLD	—	.049 (.065)	—	—
FEMALE HEADED HOUSEHOLD	—	-.016 (.082)	—	—
EMPLOYMENT	.060 (.078)	.042 (.079)	.060 (.078)	.031 (.083)
SIZE OF LAND OWNED	.002 (.004)	.003 (.004)	.002 (.004)	.002 (.004)
INCOME	.188** (.025)	.164** (.025)	.188** (.025)	.157** (.025)
CONSTANT	-1.128** (.138)	-1.064** (.147)	-1.128** (.138)	-1.406** (.182)
INDIVIDUAL OBSERVATIONS	7833	7831	7833	7193
PSEUDO R <sup>2</sup>	.0254	.0245	.0254	.0513

Notes: \*p<0.05; \*\*p<0.01;

Robust standard errors adjusted for survey weights presented in parentheses.

**Table 15: The Determinants of Land Titling in Senegal, Additional Attributes**

Logistic Regression Predicting Current Land Titles (SENEGAL)

	<b>Chief Kinship Model 5</b>	<b>Marabout Kinship Model 6</b>	<b>Other Attributes Model 7</b>	<b>Other Attributes Model 8</b>
KINSHIP WITH CHIEF	-.427** (.024)	—	—	—
KINSHIP WITH MARABOUT	—	-.265 (.154)	—	—
INFRASTRUCTURE DISTANCE INDEX	-.879** (.328)	-.940* (.374)	-.924** (.341)	-.958** (.350)
EDUCATION	.009 (.005)	-.011 (.012)	-.014* (.006)	-.008** (.002)
EMPLOYMENT	-.052 (.139)	.012 (.109)	.040 (.141)	.039 (.131)
WEALTH INDEX	.110 (.231)	.090 (.236)	.114 (.231)	.120 (.226)
TOTAL LAND OWNED	-.003 (.008)	-.001 (.005)	-.002 (.005)	-.002 (.005)
LOCAL	.191 (.180)	—	.193 (.134)	—
ARRIVAL WITHIN 10 YEARS	—	—	.506 (.428)	—
YOUTH HEADED HOUSEHOLD	—	—	—	.108 (.111)
PASTORALIST	—	—	—	.717* (.323)
FEMALE HEADED HOUSEHOLD	—	—	—	.220 (.364)
CONSTANT	-2.877* (.094)	-2.854** (.274)	-3.187** (.129)	-3.133** (.317)
OBSERVATIONS	930	888	948	942
PSEUDO R <sup>2</sup>	.0980	.0950	.0918	.0956

Notes: \*p<0.05; \*\*p<0.01;  
Robust standard errors clustered by district presented in parentheses.

**Table 16: The Effect of Village Chiefs on Tenure Security and Access to Titles in Senegal**

Logistic Regression Predicting Tenure Security and Access to Titles

	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>	<b>Model 4</b>
	<b>Outcome: Land Tenure Security</b>	<b>Outcome: Land Tenure Security</b>	<b>Outcome: Ability to Title</b>	<b>Outcome: Ability to Title</b>
KINSHIP WITH CHIEF	.081 (.247)	—	.083 (.373)	—
(RELATIVE) DISTANCE TO CHIEF	—	-.374** (.087)	—	.367** (.142)
VILLAGE POPULATION SIZE	—	-.092 (.128)	—	.082 (.068)
INFRASTRUCTURE DISTANCE INDEX	.031** (.000)	.028 (.035)	-.010 (.007)	.037 (.104)
EDUCATION	-.170 (.105)	-.168 (.126)	.147 (.289)	.148 (.294)
EMPLOYMENT	.473 (.339)	.494 (.371)	-.166 (.467)	-.276 (.577)
WEALTH INDEX	.023 (.041)	-.047** (.015)	.014 (.022)	-.046 (.028)
TOTAL LAND OWNED	.081* (.034)	.078* (.038)	.010 (.019)	.008 (.016)
CONSTANT	.302 (.569)	.631 (.837)	.786 (.463)	.817 (.659)
OBSERVATIONS	918	894	932	907
PSEUDO R <sup>2</sup>	.0631	.0722	.0097	.0139

Notes: \*p<0.05; \*\*p<0.01;

*Robust standard errors clustered by district presented in parentheses.*

**Table 17: The Effect of Marabouts on Land Tenure Security and Access to Titles in Senegal**

Logistic Regression Predicting Land Tenure Security and Access to Titles (SENEGAL)

	<b>Model 1 Outcome: Land Tenure Security</b>	<b>Model 2 Outcome: Ability to Title</b>	<b>Model 3 Outcome: Land Tenure Security</b>	<b>Model 4 Outcome: Ability to Title</b>	<b>Model 5 Outcome: Land Tenure Security</b>	<b>Model 6 Outcome: Ability to Title</b>
KINSHIP WITH MARABOUT	.383 (.404)	.629 (.890)	—	—	—	—
MOURIDE MARABOUT	.506** (.080)	-.005 (.030)	—	—	—	—
MARABOUT'S INVOLVEMENT IN LAND ALLOCATION	.993* (.417)	-.183 (.475)	—	—	—	—
INFRASTRUCTURE DISTANCE INDEX	.007 (.010)	.001 (.005)	.040** (.002)	-.017** (.003)	.047* (.018)	-.017 (.023)
EDUCATION	-.085 (.088)	.172 (.246)	-.162 (.103)	.165 (.286)	-.148 (.098)	.143 (.284)
EMPLOYMENT	.519* (.234)	-.196 (.345)	.477 (.354)	-.176 (.444)	.437 (.367)	-.241 (.475)
WEALTH INDEX	.090+ (.050)	.055 (.045)	.014 (.048)	.029 (.053)	.020 (.069)	.011 (.015)
TOTAL LAND OWNED	.043** (.016)	.005 (007)	.084* (.034)	.012 (.021)	.089* (.041)	.009 (.018)
LOCAL	—	—	—	—	.769 (.564)	.293 (.761)
ARRIVAL WITHIN 10 YEARS	—	—	-.358* (.141)	-.393 (.663)	—	—
YOUTH HEADED HOUSEHOLD	—	—	—	—	.793* (.317)	.156** (.041)
PASTORALIST	—	—	—	—	-.494 (.767)	-1.468** (.434)
FEMALE HEADED HOUSEHOLD	—	—	—	—	-.130 (.285)	-.613* (.252)
CONSTANT	-.408 (.308)	.605 (.680)	.323 (.733)	.813 (.767)	-.529 (.308)	.798** (.042)
OBSERVATIONS	869	881	934	950	924	940
PSEUDO R <sup>2</sup>	.1135	.0234	.0664	.0130	.0978	.0454

Notes: \*p<0.05; \*\*p<0.01;

*Robust standard errors clustered by district presented in parentheses.*

**Table 18: The Determinants of Resistance to Titling in Senegal (Alternative Specification)**

Logistic Regression Predicting Resistance to Titles (SENEGAL)		
	Model 1	Model 2
KINSHIP WITH CHIEF	.679 (.512)	—
KINSHIP WITH MARABOUT	—	.793* (.391)
WEALTH INDEX	-.054 (.126)	-.055 (.108)
INFRASTRUCTURE DISTANCE INDEX	.039 (.282)	-.009 (.280)
EDUCATION	.322** (.017)	.272** (.035)
CONSTANT	-2.074** (.731)	-2.064** (.726)
OBSERVATIONS	247	234
PSEUDO R <sup>2</sup>	.0409	.0401

Notes: \*p<0.05; \*\*p<0.01;

*Robust standard errors clustered by district presented in parentheses.*

**Table 19: Zambia Smallholder Dataset**

<b>Variable</b>	<b>Measurement</b>	<b>Source</b>	<b>Mean</b>	<b>SD</b>	<b>Min</b>	<b>Max</b>
LAND TITLE	Household has a title or not on any field	Indaba Agricultural Policy Research Institute, Central Statistics Office, and Ministry of Agriculture and Livestock (IAPRI/CSO/MAL). 2012. Rural Agricultural Livelihoods Survey (RALS12). Lusaka, Zambia: IAPRI/CSO/MAL.	.08	.27	0	1
ABILITY TO ACCESS TITLE	Household reports that it is “possible to change the tenure status of the land in this village, (i.e. to convert customary land into titled property)”	RALS12	.32	.47	0	1
KINSHIP WITH CA	Household head or spouse is related to the chief or the headman (binary).	RALS12	.51	.50	0	1
POPULATION DENSITY	2010 Total population of the district over the size of customary land in the district (district size excluding national parks and forest).	Central Statistical Office (CSO). 2012. The 2010 Census of Population and Housing. Lusaka, Zambia: Central Statistical Office.	.45	2.11	.04	40.56
DISTANCE TO THE CAPITAL	Distance in 100KM from household to Lusaka .	Author’s calculations based on household GPS location and Zambia Wildlife Authority (ZAWA) shapefiles. 2014.	4.40	2.10	.10	8.33
DISTANCE TO MARKETS	Index of reported township (“boma”) distance and reported market distance	RALS12	33.81	29.08	0	330
DISTANCE TO INFRASTRUCTURE	Index of reported distances to basic school, health clinic, electricity, improved water source	RALS12	8.95	9.95	0	145
RAILROAD	Distance in KM from household to a railway	Author’s calculations based on household GPS location and ZAWA shapefiles.	139.38	105.02	.00	492.40
ROADS	Distance in KM from household to a road of any surface	Author’s calculations based on household GPS location and ZAWA shapefiles.	3.61	4.62	.00	53.48
EDUCATION	Highest formal education level achieved; categorized as primary, secondary, tertiary	RALS12	1.60	.68	0	3

EMPLOYMENT	Household member has employment outside of family agriculture (binary)	RALS12	.19	.40	0	1
SIZE OF LAND OWNED	Total land owned by the household in hectares, as reported by Respondent	RALS12	3.86	8.79	0	502.44
INCOME	Quintiles of net household income from agricultural and livestock production and sales and off-farm income	RALS12	2.98	1.41	1	5
YOUTH HEADED HOUSEHOLD	Household head is 40 years or under (binary)	RALS12	.45	.50	0	1
FEMALE HEADED HOUSEHOLD	Household head is female (binary)	RALS12	.19	.40	0	1
NEWCOMER	Household arrived within the past 10 years (binary)	RALS12	.26	.44	0	1
LOCAL	Household is considered local (binary)	RALS12	.12	.31	0	1
PARAMOUNT	Household is located within a chiefdom headed by a Paramount Chief	Author's calculations using chiefdom information from the Zambia House of Chiefs and boundary maps from the Ministry of Land	.28	.45	0	1
SENIOR	Household is located within a chiefdom headed by a Senior Chief	Ibid.	.87	.33	0	1
CHIEFDOM AREA	Size of the Chiefdom where household is located, in 10000ha units	Ibid.	30.38	42.09	.20	250.92

**Table 20: Senegal Smallholder Dataset**

Variable	Measurement	Source	Mean	SD	Min	Max
LAND TITLE	Household reported having a form of statutory property rights (title, lease, or Rural Council <i>extract de deliberations</i> )	Honig Senegal Smallholder Survey (2014)	.07	.27	0	1
ABILITY TO ACCESS TITLE	Respondent reported that it is possible for their household to obtain an <i>extract</i> for their land (binary)	Ibid.	.73	.45	0	1
LAND TENURE SECURITY	Respondent reported complete security to continuing using the land they cultivate (binary)	Ibid.	.69	.46	0	1
KINSHIP WITH VILLAGE CHIEF	Respondent reported that a member of the household is related to the village chief (binary)	Ibid.	.64	.48	0	1
KINSHIP WITH MARABOUT	Respondent reported that a member of the household is related to the marabout (binary)	Ibid.	.61	.49	0	1
MOURIDE MARABOUT	Village marabout belongs to the Mouride Islamic brotherhood (binary)	Ibid.	.30	.46	0	1

MARABOUT'S INVOLVEMENT IN LAND ALLOCATION	Respondent reported that marabout has a role in land management in the village (binary)	Ibid.	.49	.50	0	1
RELATIVE DISTANCE TO CHIEF'S HOME	Meters from village chief's residence divided by distance to the farthest household in the village; calculated based on GPS points collected during the survey	Ibid.	.29	.26	0	1
VILLAGE POPULATION SIZE	Village Population size, per 1000 residents	Programme National de Développement Local, "Répertoire des Villages Officiels" 2014, Government of Senegal	1.25	1.37	.15	6.37
EDUCATION	Highest level of formal schooling of anyone in the household; categorized as primary, junior high school, high school, post-secondary	Honig Senegal Smallholder Survey (2014)	1.37	1.25	0	4
EMPLOYMENT	Household member has employment outside of family agriculture (binary)	Ibid.	.60	.49	0	1
WEALTH	PCA of measures of building materials, cash income, staple crop yield 2013, number of cattle	Ibid.	.00 Median: .2832	1.29	-1.96	4.14
TOTAL LAND OWNED	Total land owned by the household in 2013 in hectares, as reported by Respondent	Ibid.	7.83 Median: 2.54	35.11	.01	1009
INFRASTRUCTURE DISTANCE	PCA of distance to Paved Road (calculated using GPS coordinates), distance to dirt road (calculated using GPS coordinates), reported distance to a market, improved water source, electricity, health clinic with nurse	Ibid.	.00 Median: -.33	1.58	-1.66	22.10
YOUTH HEADED HOUSEHOLD	Household head is 40 years or under (binary)	Ibid.	.32	.47	0	1
FEMALE HEADED HOUSEHOLD	Household head is female (binary)	Ibid.	.16	.36	0	1
NEWCOMER	Household arrived within the past 10 years (binary)	Ibid.	.05	.21	0	1
PASTORALIST	Primary economic activity is animal-rearing	Ibid.	.06	.23	0	1
LOCAL	Household is considered local (binary) Response to survey question "Is your household considered non-local ( <i>allochtone</i> ) or local ( <i>autochtone</i> )?"	Ibid.	.87	.34	0	1

# CHAPTER 6

## Conclusion

### **6.1 Summary of Findings**

This dissertation demonstrates that the conventional wisdom that land titling evolves from economic rationality or state choice is incomplete. Customary institutions shape the development of state property rights. The political institutions that pre-date the state in Zambia and Senegal have long-term impacts on how modern customary authorities respond to the conversion of land to statutory titles. In doing so, they condition which land remains in the customary domain and which transfers to the state's authority. As a result, the state's control of land and citizens' direct engagement with state institutions does not extend evenly from core to periphery, from urban hubs, or from high to low value land. Instead, the spatial reach of the state's authority over land reflects the geography of customary institutions.

The argument advanced here is that customary institutions structure resistance to land titling, either through coordinating collective action or through ties of hierarchical authority, and this in turn shapes where state property rights over land develop. The historical organization of the customary institution—measured here as its level of centralization at colonization—endows the modern customary institution with relative differences in organizational capacity. As a result, CAs in zones with historically hierarchical customary institutions have a higher capacity to resist land titling. This increases the costs of converting land there relative to zones with decentralized customary authority. Where CAs with a legacy of decentralized institutions control the land, it is easier for state property rights to develop.

The French and the British assessed and codified the local systems of authority in their

colonies before implementing divergent strategies to govern them. The French initially attempted to eradicate customary authority in Senegal by banning it and encouraging indigenous populations to seek land titles. However, customary authority proved to be resilient and, over time, the French colonial authorities shifted to a tolerant attitude toward CAs. Nonetheless, the French colonial state never engaged in formal recognition of individual chiefs or acknowledged their rights over land. While the French derived their power from replacing customary authority, the British gained legitimacy through collaborating with pre-existing authorities. They supported CAs to facilitate their rule of colonial Zambia. Their land policies strengthened the power of individual chiefs by consolidating the indigenous populations into chief-controlled zones and discouraging any indigenous land titling. Chapter 2 addresses the colonial roots of the two different channels available to CAs today for influencing land titling. This comparison of colonial land histories in Zambia and Senegal also provides an early example of a theme repeated throughout the dissertation—that the divisions of land between customary and state property rights are political and do not reflect agricultural productivity or economic values alone.

In Senegal, customary institutions constrain the state by coordinating collective action. Chapter 3 demonstrates that in Senegal pre-colonial centralization endowed customary institutions with the shared identity, communications networks, and ability to censure that allows for strong ties of horizontal accountability among group members. As a result, CAs with a legacy of pre-colonial statehood can coordinate to maintaining the institution's control over land by overcoming the individual incentives to land titling. Chapter 4 examines this process in a context with state-recognized chiefs, established by the British colonial regime. I find that state-recognition of CAs undermines their ability to collectively organize by concentrating authority in individual chiefs. Instead, it is through strong, hierarchical relationships between superior and

inferior chiefs that some customary institutions are able to maintain their control of land. With large quantities of land under their formal control, the individual incentives to Zambia's chiefs for ceding land to state property rights are great. While customary hierarchies created by the colonial state cannot overcome these individual incentives to title, the hierarchical customary institutions established through pre-colonial state-building can. As a result, less land has exited the customary domain in the chiefdoms with a legacy of pre-colonial statehood. This is evidence that even in states where chiefs have been tamed by the recognition of a formal role in the administration of land, historical institutions maintain an independent influence. Under both models of state-customary relations, the customary institutions with historically high levels of political organization constrain the transfer of land from customary to state property rights.

Chapter 5 examines the role of customary institutions from the perspective of citizens in Zambia and Senegal. Across different national and local institutional configurations, it is the insiders to the customary institution who sustain its control over land. Insiders—measured as the kin of village chiefs, marabouts, headmen, and chiefs—resist the conversion of land from customary to state property rights. They are less likely to choose to exit the system of customary rights by titling. Instead, it is the smallholder farmers who are the peers to the customary insiders in all other observed ways that seek the state's property rights. Customary institutions structure status within the community and in doing so, influence who chooses to engage with the state's institutions. In both Senegal and Zambia, individual status in relation to the customary institution conditions the decision to seek title.

The broader question I have addressed here is how post-colonial states are built. These cases provide two representative examples from within Africa of how states address the challenge of consolidating political power given numerous deeply-rooted customary institutions

and inherited state boundaries. Both states seek to be the ultimate authority within their boundaries and have designed policies that extend the state's control over property rights through land titling. At the same time, the politicians in Zambia and Senegal recognize that CAs are a source of stability and political influence such that they can only be replaced slowly. In Zambia, the state's strategy is to recognize customary authority and put boundaries on it. In this way, the state can slowly extinguish the influence of CAs by reducing the territorial jurisdiction of their authority. Senegal, by contrast, exemplifies the tactic of ignoring or tolerating customary institutions. There, customary institutions are relegated to informal influence. Unsupported by the state, their authority can wane (or wax) depending on the engagement of citizens.

One central claim advanced here is that land titling should be understood as a form of modern state-building. The development of property rights is part of a political struggle over authority between the state and non-state authorities. This dissertation has argued that customary institutions shape citizens' engagement with the state, revenue from new land titles, and the locations of commercial land deals. In two very different national contexts, the type of customary institution on the ground determines the likelihood of land titling, independent of the differences in land values, population density, and infrastructure access. This supports the generalizability of its conclusions. How and where land titles develop is a reflection of local political institutions.

Land titling is a negotiation of political authority.

This dissertation finds that the post-colonial state-building process is geographically uneven as a result of historical political institutions. The authority of the state in the lives of citizens differs depending on the type of CAs in a given zone. In the cases examined here, the state's authority extends more quickly in zones endowed with decentralized customary institutions; the state-building process is slower where there is a legacy of pre-colonial states.

That the pre-colonial roots of these customary institutions determine modern state-building outcomes is evidence of both the resilience of historical institutions and the path-dependence of property rights regimes.

## **6.2 Implications for Property Rights and Institutional Change**

### **6.2.1 The Effect of Customary Institutions**

Property rights regimes have consequences for how economies grow, how politicians extract resources, and the dividing lines of social conflict. Different institutional configurations are understood to be critical to how states develop; to address major questions about the long-term effects of property rights, a large literature has isolated diverse short-term effects. Much literature has focused on the consequences of property rights institutions for investment and credit access. Others have found that, for example, whether an individual has title or not can shape her beliefs about the economy and society (Di Tella, Galiani, and Schargrotsky 2007) and his choice of crops (Besley 1995). While there is a rich literature on the macro and micro consequences of property rights, we now “know less about the sources of institutions than their effects” (Onoma 2009, 206). This dissertation contributes to the very large body of literature on the consequences of property rights with new insights and empirics on how different systems of property rights develop.

The dominant approaches to changes in property rights institutions highlight factors that create demand for new processes and rules. Converting land from customary to state property rights is costly, but increasing competition for land increases the benefits of shifting property rights institutions. Where the land is more valuable, as the result of higher population density, crop values, market access, and soil quality, actors should be more willing to bear the costs of institutional change. The dissertation findings providing partial support for theories of

evolutionary, spontaneous property rights innovation (Boserup 1965; North and Thomas 1973; Platteau 2000b). Proximity to the capital and population density predict the percentage of land that converts from customary to state property rights in Zambia. In both countries, it is the individuals with the highest income and largest plots of land who exit the system of customary property rights first. However, by shaping rural power structures and smallholder investment in maintaining customary authority, customary institutions are an additional factor that affects the demand for land titles. As Chapter 5 demonstrates, individuals who are systematically disadvantaged in relation to the customary institution are more likely to seek titles. Being without privilege in the customary institution increases demand for institutional change.

However, increased *demand* for titles is not the whole story. The local institutional context also shapes the *supply* of state property rights. Customary authorities—both the formally recognized and the informally influential—can make it more difficult to access titles, even when the demand exists. Densely populated, peri-urban land can have as few titles as peripheral, low-value brush land depending on the customary authorities controlling the land. Customary authorities can mobilize to prevent changes in property rights institutions; in doing so, they block their supply. This is consistent with the expectation that the old rural elite should subvert land tenure reform (Lipton 2009, 151).

The combination of different types of data, on both small and large-scale land conversions and in two different countries, indicates that the Boserup hypothesis is an incomplete model of land titling. Over both the longer historical period (Chapter 4) and the recent period of booming markets for large-scale land acquisitions (Chapter 5), the conventional model of land titling is improved by accounting for the influence of pre-colonial institutions. Customary institutions condition land titling outcomes. This provides strong evidence that

historical customary institutions should be added to this literature on land titling as a new variable that has an independent effect on changes in property rights institutions. While the Boserupian approach highlights the institutional changes that occur as a result of rising factor values, the dissertation has identified an effect of customary institutions that is not endogenous to land markets. The heterogeneity in local political institutions influences both the supply of and demand for shifts in property rights.

The dissertation finds that the elites who lose from institutional change seek to block it, and that their ability to do so varies in predictable ways depending on their organizational structure. This leads to different land titling outcomes. This research concentrates on customary authorities whose ability to organize is a legacy of pre-colonial institutions. However, the argument applies to other forms of local institutions. By facilitating mobilization against the loss of control over land, local institutions can make it harder for property rights to evolve. Where there is lower organizational capacity to resist, institutional change should occur more rapidly than in communities with greater organizational capacity. The analysis of Zambia and Senegal indicates that taking into account the relative capacity of local institutions to mobilize against change improves our understanding of how property rights evolve.

### **6.2.2 The Persistence of Plural Property Rights**

This dissertation explains how pluralism in property rights develops and why it persists. Dual and plural systems of property rights are a feature of all African states and many of the post-colonial and former socialist states (Alden Wily 2011). In Afghanistan's dual system of state titles and customary property rights, a diverse set of CAs allocate land access and resolve land disputes (Murtazashvili and Murtazashvili 2016). In Indonesia and the Philippines, millions of smallholder farmers access their land through customary claims and various community-based

agreements on land rights, established by non-governmental actors (Li 2002). In Latin America, most state constitutions acknowledge customary land rights.<sup>328</sup> Common across these contexts of institutional pluralism is the struggle between maintaining customary control of land and the demand for land by the state or private investors. This dissertation demonstrates that customary institutions can structure how communities respond to such encroachments and, consequently, where customary institutions maintain control over land. Further, this is true of both customary institutions that are recognized by the state and those that have no formal recognition.

A diverse literature within anthropology, sociology, law, and economics has documented the phenomenon of institutional pluralism, without explaining its persistence (Meinzen-Dick and Pradhan 2002; Benjamin 2008; Sousa Santos 2006). In the economic literature on property rights, the phenomenon of plural and mixed property rights is often treated as an aberration or as a short-term issue that will ultimately be resolved through “evolution” towards modernity (Platteau 2000b). Akin to the evolutionary approach, Herbst (2000) posits the slow replacement of customary authority over land. As the state’s capacity to build infrastructure and overcome difficult geography grows, institutional pluralism should decrease (Herbst 2000). By contrast, the theory of strategically devolved power presented by Boone (2003) and Baldwin (2014) suggests that institutional pluralism persists because it is in the interest of state politicians.

This dissertation provides an additional reason for the persistence of plural property rights—that customary institutions constrain the state’s ability to convert land to a unitary system of state property rights. CAs have an interest in maintaining control over land, for the practical benefits to local populations and as a means of exercising political power. They are able mobilize towards this goal, pushing back against attempts to replace customary property rights. While

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<sup>328</sup> This includes: Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Guyana, Honduras, Mexico, Paraguay, Peru, and Venezuela (Cuskelly 2010).

institutional pluralism may begin as an accidental, temporary, or transitional state, it becomes self-sustaining. For dual property rights regimes in Africa, plural institutions are sustained by customary authorities and their communities. We can expect plural property rights regimes to persist because CAs organize to maintain them.

However, land markets require the conversions of land from customary to state property rights. In the current global climate, land is treated as the last domain in globalization. The findings of this dissertation suggest that when demand for land to title shrinks the customary domain, it should follow a specific geography. The geography of large-scale land deals will not reflect the most valuable land, but its political accessibility. This pattern has historical antecedents; chapter 2 argues for the non-agricultural determinants of colonial agricultural zones. In his study of pre-colonial institutions in Latin America, Mahoney observes that indigenous resistance shaped the location of the colonial sugar production zones in Brazil (2010, 245). My dissertation indicates that customary institutions continue to condition where agricultural projects develop. In doing so, they can channel how the high global demand for agricultural land affects local systems of property rights. Where customary institutions have the greatest organizational capacity, property rights pluralism will persist; elsewhere it will be extinguished by land markets.

### **6.3 The Persistence of Customary Authority**

An important theme in the literature on authority in Africa is the ways in which customary authority has been created and transformed by states and colonial authorities (Ranger 1983; Geschiere 1993; Chanock 1998). Chanock (1998) and Miller (1968) use “neo-traditional” to denote that tradition has been reinvented. Boone (2014) prefers the term “neo-customary” to emphasize a distinction from pre-colonial institutions (25). For Mamdani (1996), tradition is an

invention of the colonial state, established to reinforce social divisions. However, this dissertation demonstrates that despite the state's attempts to codify, shape, and manipulate customary authority, there remains a historical institutional legacy that is independent of the state. Customary authorities do not function today as they did 200 years ago, but the strong organizational ties developed through pre-colonial state-building inform how the customary institutions function today *relative* to those with no legacy of hierarchical organization.

My findings suggest that recent scholarship on customary authority in Africa has underestimated the continued influence of pre-colonial institutions. The argument that contemporary CAs have been so transformed by the state that they bear no resemblance to their historical predecessors gains the strongest support from countries with state-recognized chieftaincies such as Zambia. There, official chiefs are buttressed by and accountable to the state. The British colonial authorities contrived to consolidate chiefs' power to facilitate governance. At times, they created chiefdoms. However, the pre-colonial institutions determined how they codified chiefdoms. In zones with decentralized polities, the colonial state chose leaders as representatives of the ethnic group and attempted to create hierarchy where none existed. In zones with pre-colonial states, they co-opted pre-existing customary institutions. Despite the effects of formal recognition by the state, the different origins of these customary institutions led to long-term differences in how customary authorities function today. Within Zambia, the customary institutions derived from pre-colonial states continue to have stronger organizations and can constrain the state, as demonstrated by their ability to maintain control of land.

These findings counter "disembodied ideas of invention" of customary authority (Spear 2003, 26). Contrary to the neo-traditionalism literature (Mamdani 1996), customary authorities are not of one kind. The variation between different types of customary institutions has important

effects on the state's control over property rights, and therefore the relationship between state, citizen, and customary authority in that area. This research employs comparisons across and within colonial regimes to identify clearly how the role of CAs is transformed by the state; yet it also supports the argument for the persistent effects of historical differences between customary institutions. In doing so, this project helps bridge the neo-traditionalism literature with the scholarship on pre-colonial legacies (Englebert 2000; Gennaioli and Rainer 2007; Michalopoulos and Papaioannou 2013). While the colonial and the post-independence states changed the role and function of customary authority in society, the legacy of pre-colonial institution types has a real, independent impact on sub-national variation in political outcomes.

The literature on the persistence of pre-colonial institutions has established an empirical relationship between pre-colonial centralization and modern development outcomes, with less attention to the mechanisms that drive these outcomes. Michalopoulos and Papaioannou (2013) find evidence of the effect of pre-colonial institutions on long-run economic development through a test of the relationship between centralization and contemporary light density in Africa. They find that historical customary institutions are consistently correlated with sub-national economic development, independent of a variety of geographic and economic factors. For Gennaioli and Rainer (2007), the focus is on centralization and access to public goods. Their argument is that pre-colonial centralization increases CAs' accountability to the colonial state and ability to coordinate across districts. The dissertation challenges this mechanism by analyzing accountability between CA and state when their interests are in opposition, over the control of land. I find that centralized authorities exhibit *less* accountability to the state than their decentralized peers. Instead, they have greater ability to enforce accountability to the institution's interests, which presents an alternative mechanism linking hierarchy to beneficial community

outcomes.

Although historically hierarchical customary institutions increase the community's ability to coordinate, the implications for economic development are not clear-cut. The organizational capacity that allows such customary institutions to resist land conversions should help the community mobilize for other outcomes, including the provision of public goods. Yet the resistance to releasing control of customary land can also have detrimental effects on economic development in that area. It can make it harder for wealthy migrants or commercial farmers to establish state property rights there. Thus while zones with pre-colonial states may have improved public goods provision, but they should also have fewer outside investments. How customary institutions affect development outcomes will depend on the ramifications of the developmental agenda for the continuing power of the CAs.

Further, the dissertation provides in-depth analysis of how these historical institutional differences present themselves today and why they persist. The internal organization of modern customary institutions differs, such that communities respond with different levels of resistance to land conversions. These institutions vary systematically, as a result of their historical origins. The initial institutional structures were resilient because the centralized CAs had greater ability to resist their own elimination by the state and to reinforce their purpose in the every day lives of citizens. Barring the complete restructuring of society through a national-level forced resettlement program, the British and French colonial authorities had little choice but to work within the existing system of political organizations. As Chapter 2 describes, both tried to manipulate the individual CAs that headed customary institutions; yet in in doing so, they responded to and upheld the prevailing system. When the British codified the chiefdoms in Zambia, they treated the existing organizational differences as a given, naming the pre-colonial

states as Paramount systems. At independence and during later periods with potential for political transformation, the differences between historical customary institutions persisted because of the high costs to the state of changing the status quo, and the self-reinforcing nature of the relative differences in the customary organizations.

The persistence of customary authority in Zambia and Senegal has implications for studies of customary authority elsewhere. First, this research provides empirical examples of two ways that customary institutions can enforce compliance. Customary authorities can overcome individual incentives that are contrary to the institution's interests through coordination (in Senegal) and through internal ties of vertical hierarchy (in Zambia). While the challenge for poor, rural farmers to collectively act is well established in the literature (Lipton 1977; Bates 1981), customary institutions can resolve collective action dilemmas. The example of a coordination mechanism in Senegal contributes to the literature on the effect of ethnic homogeneity for collective action (Habyarimana et al. 2009; Fearon and Laitin 1996). In the Senegal case multiple distinct pre-colonial customary institutions exist within the large Wolof and Pulaar ethnic groups. This allowed me to identify an effect of customary institutions on land titling outcomes that is independent of ethnicity. These findings suggest an alternative mechanism driving the established correlation between co-ethnicity and coordination: shared customary institutions.

Second, the dissertation highlights the importance of heterogeneity among customary institutions and the impact of relative strength of the organization. While states may seek to establish similar roles for customary authorities throughout the territory, the historical variation between customary institutions has important impacts on how they function. This echoes the findings of influential scholarship on solidarity groups in China (Tsai 2007) and chiefdoms in

Sierra Leone (Acemoglu, Reed, and Robinson 2014). Acemoglu, Reed, and Robinson (2014) find that chiefdoms with lower historical levels of political competition are less constrained in their governance and have worse development outcomes today. However, by examining an outcome that can be distributed elsewhere in the territory, my study of land titling also identifies the importance of relative differences between customary institutions within a given national context. As a result of relative differences in ability to mobilize for or against an outcome, customary institutions affect how it will be distributed within the territory. In Zambia and Senegal, stronger customary institutions are able to shift the location of undesirable large-scale land deals to the domains of weaker customary institutions. The persistence of customary control over land is a reflection of its organizational capacity *relative* to other customary institutions in the country. The second institution loses land because it is relatively weaker than the first. This attention to relative capacity between local institutions in the same national context has important implications for distributional outcomes such as the allocation of public goods and state resources.

Finally, this project illuminates the sources of support for customary institutions. Scholarship has highlighted the utility of customary authorities to the state, suggesting the state determines their persistence (Baldwin 2015; Mamdani 1996; Williams 2010). While this explains national policies towards chiefs, these findings show that the internal characteristics of the institutions themselves help explain sub-national differences in the power of CAs. CAs mobilize to maintain the resources and the jurisdiction of the institution. Further, the analysis of land titling data in Chapter 5 provides strong evidence of the continuing salience of customary authorities in the every day lives of African citizens. By apportioning status, customary authority shapes citizens' land tenure security as well as their relationships with each other and the state.

Those who are closest to the institution are the most supportive of it and the last to engage with state law. This is evidence in support of scholarship that indicates that individuals rely on customary authority as an alternative to the state, and suggests who is most likely to resist engaging with the state.

## **6.4 Implications for Rural Citizens**

This dissertation has focused on the political negotiations over the control of land between customary and state authorities. However, these findings have important normative implications for rural citizens. Land titling is not a panacea for smallholder farmers; statutory property rights are not necessarily more secure than customary rights. There has been limited empirical support for the argument that land titling contributes to improved rates of smallholder investment and economic development (Bellemare 2013), because customary property rights can be very secure for smallholder farmers (Brasselle, Gaspart, and Platteau 2002). Further, land titling can create tenure insecurity by replacing complex and inclusive land tenure arrangements with exclusive rights (Platteau 2000a, 67). Instead, whether titling improves tenure security for vulnerable rural populations depends on the political context (Lipton 2009, 175–176). These dissertation findings suggest how different configurations of customary authority affect smallholder property rights security.

In Senegal, Zambia, and much of the developing world, smallholder farmers on customary land only have usage rights in the eyes of the law. When threatened with the loss of land from commercial agricultural projects, two circumstances can make smallholders more secure. Either the smallholders have individual land titles that must be purchased by the investor before anyone can be displaced or their land is under the jurisdiction of a strong customary institution that increases the relative costs of accessing customary land. As the dissertation finds,

highly organized CAs can prevent large land deals in their zones, making them more likely in zones where CAs have limited capacity to resist. When threatened by major land deals, the smallholders in the least secure position have customary rights derived from weak and disorganized customary institutions.

Strong, hierarchical customary institutions can protect smallholder farmers from the displacement that accompanies many large-scale land deals. Their ability to mobilize to maintain control of land translates into greater tenure security for smallholders from outside threats such as state and private land deals. These CAs are not more democratic, more concerned with the well-being of their citizens, or less interested in the gifts offered by investors. Instead, they are embedded in highly organized customary institutions that can hold them accountable for the loss of customary land. Historically hierarchical institutions can protect smallholders from displacement because they have the organizational capacity to overcome individual incentives to cede land out of customary control. By contrast, in zones where customary institutions have a weaker capacity to organize against the loss of customary land, such large land deals cluster. As a result, rural citizens with decentralized customary authorities are more vulnerable to displacements from large land deals.

Yet, the same organizational factors that protect smallholders from large land deals also make it harder for those smallholders to access title. This is important because smallholder land tenure is also subject to threats from within the community. Smallholders may be vulnerable to expropriations within the customary property rights system that result from conflicts within families, among neighbors, and with extractive elites. Seeking title is one way smallholders can mitigate against inefficient or non-equitable customary land tenure. However, the mechanism that prevents the conversion of land for large land deals also makes it harder for smallholders to

access title. By mobilizing to maintain customary control of land, hierarchical customary authorities both prevent displacements from large land deals and make it harder for smallholders to seek title if they desire. This creates a paradox for rural citizens. Strong customary institutions can protect citizens from state-sponsored land deals that displace them; however they also impede the state's ability to protect citizens from injustices of the customary institution through individual land titles.

The implication of these findings is that smallholders with customary rights under weak customary authorities are the most vulnerable in the current era of global land markets. They have neither the protection of relatively strong CAs nor the state. There, titling should be most effective in increasing tenure security for smallholder farmers. Given the framework proposed in this dissertation, titling should also be more likely to occur there. Where customary organizations have lower capacity to block land conversions, smallholders' customary property rights are less secure from external threats (increasing demand for state protection) and more easily converted into individual titles.

Customary authorities shape which citizens are displaced by land deals, who seeks land titles, and where the state establishes control over land. Their ability to direct the demand for agricultural land to different zones within the state and constrain the state's control over an increasingly valuable resource is indicative of their agency. As a result, customary authorities can neither be ignored in contemporary African governance nor treated as uniform political actors. The differences between customary institutions are critical to their ability to influence the state's authority and the development of property rights. As global and local land markets grow, we can expect that the enduring legacy of historical political institutions will continue to affect how institutional change occurs.

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#### **IV. Archives Consulted**

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