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REMAPPING THE DOMAIN OF PROPERTY IN AFRICA

*L. Amede Obiora**

I. OVERVIEW

Our increasingly globalized world is marked by fluid boundaries and cross-border movements of labor, capital, goods, knowledge and ideas. While of peculiar scope and intensity in its present manifestation, the phenomenon is not unparalleled in history. Highlighting the historical context of contemporary global restructuring, Anthony King observes that “for the past three centuries at least, world-economic, political, and cultural forces have been major factors in shaping” seemingly local institutions.¹ A heightened evolution of forms and contexts of property is one of the hallmarks of the transnational enterprises. Although the restructuring of the physical and spatial environment by changing concepts and patterns of ownership is integral to the process of global exchange, the lessons of past experiences refute the inference of an essential correlation between massive global transformations and the liberalization of constructions of property.

Within a historical framework, this essay reflects on the implications of global transformations for the function and meaning of property. The first arm of the essay demonstrates how colonial interventions in the regime of property in Africa considerably clouded understandings of the nature and dynamics of property, at once encouraging and constraining individual initiative. The concluding section addresses the gender dimension of the simultaneous restriction of property-holding prerogatives and canonization of liberal norms and values. Noting the role and impact of written records (such as the deed of conveyance and registered title) on property relations, the section discusses the inadequacy of mere access to land for substantive gender equity to critique a perfunctory paradigm for gender inclusion which marks policy intervention patterns in many African countries.

II. BACKGROUND

In a basic introductory course in Property law, students systematically explore how property that counts arises and the incidents thereof. They learn that an owner of property rights enjoys the consent of the community to deal

* Associate Professor, University of Arizona College of Law. LLB, 1984, University of Nigeria; LLM, 1988, Yale University; JSD, 1999, Stanford University.

1. ANTHONY D. KING, *URBANISM, COLONIALISM AND THE WORLD-ECONOMY* 1 (1990).

with the object of property within specified limits, and expects the community to enjoin acts which are inconsistent with or violative of his or her rights.² The core proposition can be represented in a triadic formula in which A owns X against C. This assertion is meaningless unless there is a common understanding in the society regarding both the bundle of rights to which A is entitled and the nature (or for that matter, the sanctions) of the acts of infringement.³ A prerequisite for consent and protection is establishing a recognizable interest in an item of property. Acts of possession and ownership are contingent on social situations and ecological realities. In a given community, people tend to have at least an intuitive sense of how one comes into possession or ownership of property.

The dominant worldview in the West privileges acquisition by the first in time as a foundational principle of the institution of property. Several theories have been postulated to explain, justify and buttress why anyone should be obliged to respect the claim of the first possessor.⁴ Over the years, these theories have been tested by critics. In a provocative analysis of constructions of property, Professor Carol Rose argues that acts of possession are a text which does not have a natural meaning independent of some specific audience constituting an interpretive community, or independent of a range of texts and cultural artifacts that together constitute the symbolic system in which a given text must be understood.⁵ In this view, the fundamental principle of property in common law is the articulation of a specific text approved and understood by a specific audience.⁶ It is this commonly shared vocabulary within a structure of symbols that gives significance and form to what might seem the quintessentially individualistic act: the claim that one has by "possession;" property separated for oneself from the great commons of unowned things.⁷

In the realm of property, power and meaning are intricately intertwined; "power constitutes meanings, and meanings, power."⁸ In fact, critical

2. See Harold Demsetz, *Toward a Theory of Property Rights*, 57 AM. ECON. REV. 347, 347 (1967).

3. See WILLIAM CRONON, *CHANGES IN THE LAND* 58 (1983).

4. Chief among these theories is John Locke's labor theory. Roughly put, Locke contends that one acquires a property interest in pristine nature when "he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property." JOHN LOCKE, *TWO TREATISES OF GOVERNMENT*, BOOK II, CH. V. (Thomas I. Cook ed., Hafner Publishing Co. 1947) (1690).

5. See Carol Rose, *Possession as the Origin of Property*, 52 U. CHI. L. REV. 73, 84 (1985).

6. See *id.* at 84.

7. See *id.* at 84.

8. Sally Falk Moore, *Changing Perspectives in Changing Africa: The Work of Anthropology*, in *AFRICA AND THE DISCIPLINES: THE CONTRIBUTIONS OF RESEARCH IN AFRICA TO THE SOCIAL SCIENCES AND THE HUMANITIES* 3, 33 (Robert H. Bates et al., eds., 1993).

theorists have analyzed property as an idiom for power.⁹ As a mechanism for resource redistribution, property rights are an arena for conflict, doubling both as an instrument for disenfranchisement and as a vehicle for combating disenfranchisement. Tightly bounded definitions of property have engendered social struggles, judicial claims and much tension across cultures. Notions and regimes of property may be constructed in radically different modes. As a metaphor that signifies and determines social relationships, property cannot be understood in isolation from the contingencies of social and historical contexts.¹⁰ Evidently, the nature of laws regulating the institution of property often tends to be a function of relevant subsistence activities, settlement patterns, and social and political organization. The transformation of property in land into a marketable commodity, and the accumulation of its value, presupposes a society with institutionalized ways of recognizing abstract wealth.¹¹ Drawing on C.B. Macpherson's analysis of Western possessive individualism and the emergence of an ideal self as an owner who routinely engages in acts of collection and assemblage of the material world, James Clifford illuminates the extent to which the process "embodies hierarchies of value, exclusions, and rule-governed territories of the self."¹² But as Clifford indicates, the notion that gathering or "marking-off a subjective domain involves . . . the accumulation of possessions, the idea that identity is a kind of wealth (of objects, knowledge, memories and experience), is surely not universal."¹³

9. See RICHARD SCHLATTER, *PRIVATE PROPERTY: THE HISTORY OF AN IDEA* 130-31 (1951), maintaining that the "institution of property was an agreement among men legalizing what each had already grabbed."

10. See G. I. Jones, *Ibo Land Tenure*, XIX AFRICA 309, 309 (1949): "[L]and tenure can properly be described only in relation to the social structure, and neither can be understood unless they are seen as continuous processes adapting themselves to . . . [conditions which] vary very considerably in different localities . . ."

11. This observation is brought home by the decisive distinction between Anglo and Native American land tenure systems. In an ecological history of colonial New England, Cronon details the evolution from a conception and usage of land as public commons to its legal abstraction as private commodity. See CRONON, *supra* note 3, at 74. With territories quantified in surveys, delineated in deeds and recorded in official registry, a person owned everything on a relevant parcel, not just a right to conduct certain activities within the confines of that parcel. See *id.* This configuration of factors facilitated the alienation of land as a commodity. *Id.* at 62, 74.

12. JAMES CLIFFORD, *THE PREDICAMENT OF CULTURE: TWENTIETH-CENTURY ETHNOGRAPHY, LITERATURE, AND ART* 217, 218 (1988). The inclusion in all collections reflect wider cultural rules of self and "other."

13. *Id.*

III. THE COLONIAL ENCOUNTER

Bringing the issue closer to the context which informs this essay, Elizabeth Colson reports that throughout most of Africa during the pre-colonial period, people "saw themselves as linked to the land through membership in social groups" and "were more concerned with maintaining themselves in good standing in society than obtaining rights in land as such."¹⁴ In her insightful article, Colson relies on a number of anthropological studies to identify the two fundamental characteristics of most pre-colonial land systems as: (1) each citizen has a "right of direct access to the resources of the territory controlled by the political unit to which he belonged;" and (2) an individual has an inheritable right to anything he created.¹⁵ Members of a family, irrespective of sex, were entitled to occupancy and user rights subject to good behavior.¹⁶ While rights accruing via citizenship could not be ceded any more than the citizenship on which they rested, persons could transfer their interest in land that they improved. However, there was a practical restraint on alienation insofar as the transferee had to be someone acceptable to the local community because the spatial proximity and the conditions of production meant that the transferee invariably associated with and was incorporated into the community. In this sense, political affiliation modified particular rights based on creative preemption. The need for security, a need which was eventually superseded

14. Elizabeth Colson, *The Colonial Period and Land Rights in COLONIALISM IN AFRICA 1870-1960 VOL. 3 PROFILES OF CHANGE: AFRICAN SOCIETY AND COLONIAL RULE* 197, at 200 (Victor Turner ed., 1971); see also JOHN MBITI, *AFRICAN RELIGIONS AND PHILOSOPHY* 108 (1970):

In traditional life, the individual does not and cannot exist alone except corporately. He owes his existence to other people . . . He is simply part of the whole. . . . the child must go through [the] rite of incorporation so that it becomes fully integrated into the entire society . . . It is a deeply religious transaction. Only in terms of other people does the individual become conscious of his own being, his duties, his privileges and responsibility . . . The individual can only say: I am, because we are; and we are, therefore I am.

MBITI, *supra*, at 141.

15. Colson, *supra* note 14, at 194.

16. See T. O. ELIAS, *NIGERIAN LAND LAW AND CUSTOM* 167 (1962). "An unmarried daughter has, like her brother, the right to live in her father's house subject to all the normal incidents of local tenure." A married woman may be given a gift of land *inter vivos* by her father. There are various ways of establishing ownership. Any person may settle or acquire ownership of a portion of bush or unappropriated land after a series of cultivation. "In some areas women may also hold direct right in land by purchase or pledge, or she can personally lease the land." *Id.* at 168; see also S.N.C. OBI, *THE IBO LAW OF PROPERTY* 37 (1963); C. K. MEEK, *LAW AND PROPERTY IN A NIGERIAN TRIBE* 203 (1950).

by other guarantees, encouraged the conceptualization of land relationships in political terms.¹⁷

Because the conditions that made individual proprietorship exigent were not yet pervasive, social groups were founded on principles other than the possessive estate, which provided the basis of the common law system in the feudal era. Villages did not claim land, they claimed men who would enhance their viability or security and “assumed [that] they could find land for the men to use.”¹⁸ Eminent personalities exploited large domains of land because they controlled a large clientele; they did not cultivate a large clientele because of their landholdings. Therefore, a “big man’s” landholding often reflected his place in the social system; his status was not necessarily determined by the expanse of acreage he claimed.¹⁹ This was especially so among pastoralists and communities that practiced shifting cultivation where the social unit endured regardless of migratory tendencies and trends. In West Africa and a few parts of East Africa, ecological and material realities favored the founding of estates, while elsewhere Africans tended to use land or to exploit a range of territory rather than to claim exclusive rights in perpetuity in a set territory.²⁰ It was only when villages or other communities became anchored that a long-term concern with land as an economic asset appeared. When long-term interests in specific terrains evolved, general usufruct metamorphosed into the hereditary estate of the first settler. This estate ultimately passes to the settler’s heirs who usually form “a corporate descent group with common rights.”²¹

Rapid and radical socio-economic and political changes that came on the heels of colonialism altered perceptions about, and relations to, land in Africa. As African “communities became increasingly incorporated in a

17. See Colson, *supra* note 14, at 205.

18. Colson, *supra* note 14, at 202.

19. *Id.* at 203. Cf. CLIFFORD, *supra* note 12, at 218:

The individualistic accumulation of the Melanesian “big men” is not possessive in Macpherson’s sense, for in Melanesia one accumulates not to hold objects as private goods but to give them away, to redistribute. In the West, however, collecting has long been a strategy for the deployment of a possessive self, culture, and authenticity.

CLIFFORD, *supra* note 12, at 218.

20. Because earth was considered a sacred entity which was autonomous from humanity, calculated interventions to subdue and control it might very well amount to sacrilege. See Colson, *supra* note 14, at 199. “Earth in this sense was unbounded.” Where the emphasis on usufruct necessitated the demarcation of boundaries, they were flexible and temporary. Even in some areas where land-holding estates existed, the earth was deified in ways that had repercussions for land relations. *Id.*

21. *Id.* at 203.

Western-oriented trade economy, property became more commercialized²² and “the basis of holding land [shifted] from one of community and custom to one of individualism and contract.”²³ The colonial imperative created a surplus of demand for land coupled with a limited land supply.²⁴ The scarcity of productive resources enhanced the chances of conflicts between competing claims. These claims were submitted to colonial courts which felt the need to shy away from unstable and contestable notions of property by developing a reproducible system of rules for the adjudication of disputes. Steeped in specific worldviews, the colonial officers who presided over the process adopted frames of reference that privileged European concepts of land tenure as if they were universal.²⁵ At the same time they were obviously compelled to demonstrate allegiance to the colonial policy of indirect rule.²⁶ This conflict played out in an interesting manner, pulling and pushing in ways that were at odds with crucial interests.

Colonial officials assumed that land must have an owner exercising a full range of rights parallel to those covered by the European concept of proprietary ownership. Indirect rule implied a commitment to the collective as represented by a designated authority. Juxtaposed with the assumption that land presupposed some ownership, unclaimed land came to be considered that of the clan’s or the state’s by default. The fiction of “communal ownership” became a surrogate for the common law principle of first possession which was invoked to clarify any ambiguities and reconcile any tensions that posed a threat to the colonial mandate. As Colson put it:

22. Dorothy Dee Vellenga, *The Widow Among the Matrilineal Akan of Southern Ghana*, in *WIDOWS IN AFRICAN SOCIETIES: CHOICES AND CONSTRAINTS* 220, 227 (Betty Potash ed., 1986).

23. C.K. Meek, *LAND LAW AND CUSTOM IN THE COLONIES* v (1949).

24. See Phillip Mayer & Iona Mayer, *Land in the Making*, in *AFRICAN LAW: ADAPTATION AND DEVELOPMENT* 51, 52 (Hilda Kuper & Leo Kuper, eds., 1965) (“The Pax britannica brought in its wake three events that together made for land shortage: freezing of boundaries; population explosion; and, eventually the introduction of cash crops in a market economy.”).

25. Given the differences between indigenous African and European conceptions of property relations, some commentators even take exception to the characterization of African systems of land use as “land tenure.” Paul Bohannan argues that the term implies the English idea that land is something that can be measured, plotted, and subdivided into units which become “things” in themselves and subject to rights assigned to holders. See Paul Bohannan, ‘Land’, ‘Tenure’ and Land-Tenure, in *AFRICAN AGRARIAN SYSTEMS* 101, 102 (Daniel Biebuyck ed., 1963). While the underlying caution to respect the integrity of the African land system is sound, Bohannan may have based it on a problematic premise. Close analysis of extant research suggest that the “thingification” of land use and allocation may well predate European colonial intervention, even if its pre-colonial manifestation was marked by less extensive incidents. In other words, the difficulty is not necessarily with the transposition of the idea of land tenure to differing realms, but with the refusal to recognize the relativity or variability of key definitions and contents.

26. By virtue of this policy, British colonialism was furthered through reliance on indigenous institutions and structures of governance. For more elaborate discussion, see L. Amede Obiora, *Reconsidering Customary Law*, XVII *LEGAL STUD. F.* 217 (1993).

[T]he official search for the owners of all land encouraged the confusion of sovereignty with proprietary ownership and the creation of systems of communal tenure which came into being with precisely defined rules. These rules now inhibited the development of individual rights because it was deemed that such rights encroached upon the ancient right of some community, lineage, or 'tribal' polity.²⁷

Reinforced by the official control of many chieftains who operated as proxies for their polity, the ideology of communal ownership was an attractive recipe for colonial expansion as the restrictive construction of private interests inherent in communal-ownership stereotypes enlarged the expanse of land available for the purposes of the colonial enterprise.²⁸ To arrest or contain what they perceived as erosions of the bases for group sovereignty and to facilitate a scheme to extract tax revenue for administrative purposes, colonial officials gave precise definition to vague land claims, often converting use to ownership and mapping out novel systems of estate that were allotted to political communities.²⁹ Under the guise of shielding the communities from exploitation, the right of the political communities to dispose of their interests to all but the colonial government was curtailed. Conversely, the government enjoyed unlimited right of transfer. These transactions were a matter of record that informed judicial activity and were only subject to legislative change that, in turn, was the prerogative of the colonial administration. Thus, the ideology of communal ownership consolidated the power and control of the crown, legitimizing its expropriation.

It appears that in the wake of the stimulation of individual land sales and land claims which attended agricultural commercialization, the colonial

27. Colson, *supra* note 14, at 197. Cronon made a similar observation, contending that the popular idea that Europeans had private property unlike Native Americans distorts distinctions between sovereignty and ownership or between possession by communities and possession by individuals in European notions of property as much as Native Americans'. See Cronon, *supra* note 3, at 58-59. Cronon explains that while Native American property rights involve "individual ownership" (at least, vis-à-vis the way the inhabitants of a particular village conceived of property in relation to each other) and "collective sovereignty, how everyone in a village conceived of their territory (and political community) vis-à-vis other villages . . . ownership and sovereignty among Indian peoples could shade into each other in a way that Europeans had trouble understanding." *Id.* He illustrates this point by showing how, especially for nonagricultural areas, very flexible definitions of land tenure rights which shifted with ecological use meant that the concept of usufruct was crucial among Native Americans because different groups could have mutual rights of use for different purposes in the same tract of land, even though the land might be located beyond the ordinary bounds of their territory. See *id.* at 63.

28. See Colson, *supra* note 14, at 196-97.

29. See Colson, *supra* note 14, at 206-07.

administrators and anthropologists in many African communities grew fearful that uncontrolled expansion of private property rights would undermine chiefly power and produce massive social dislocations. Where indirect rule was the mode of governance, the colonial authority envisioned the integrity of both the policy and the community to be linked to the collective control of land. The ulterior purposes of the administration exaggerated the commitment to the collective, adding a sharper dimension to the right of the polity over that of the individual.³⁰ Thus entrenched, communal ownership offered the basis for restricting the recognition of individual tenure with negotiable rights and ratifying proprietary allocations which were purported to be on behalf of the collective by designated authorities such as the family head.

The corollary of the reinvigorated paradigm of communal property was the proposition that customary law did not permit the alienation of land for cash consideration. The truth of the matter, however, was that customary land law was not inherently disposed to market inalienability. If a family was the absolute owner of a parcel of land, there was no cultural decree against transferring its interest *in toto*, if there was a consensus between the family head and all the family members. However, because land was believed to be held by its present owners in trust for posterity or future generations, family landowners were ordinarily reluctant to alienate it to non-members of the group except for a short period of time for the cultivation of food crops only. While this attitude has promoted the view that land was inalienable under customary law, it is not clear from such observations whether what is meant is that alienation was forbidden by a positive rule of customary law or whether it was merely not the practice in former times to alienate land.³¹

Martin Chanock makes the point poignantly in his remark that "in precolonial times there had been no market, but in the colonial period it was government prohibition that stood in the way of sales."³² When Africans contested the legitimacy of sales, it was an effective strategy to massage colonialist prioritizations of communal ownership. With the gradual evolution of land into a scarce and jealously guarded commodity, it was convenient for Africans to reiterate the narrative of communal ownership to fortify their increasingly vulnerable interests. In this light, claims of individual ownership seemed to be rendered tenuous, not due to some fundamental aversion to the idea in traditional customs, but partly on account

30. In *Amodu Tijani v. Secretary, Southern Nigeria*, 2 Appeal Council 399 (1921), the colonial government conceded that the recognition of title as residing in the Chief as the custodian of collective values and interests was the outcome of deliberate policy.

31. See Elias, *supra* note 16, at 18; see also Lewis v. Bankole, 1 N.L.R. 82 (1908).

32. Martin Chanock, *Paradigms, Policies and Property: A Review of the Customary Law of Land Tenure*, in *LAW IN COLONIAL AFRICA* 61, 69 (Kristin Mann & Richard Roberts, eds., 1963).

of the resonance of the ideology and narrative of communal ownership. Thus the primary paradox of the colonial moment in the matter of land holding in Africa was that it affirmed an orthodox notion of collective ownership at the same time that it accentuated the conditions for individual ownership and furnished the paraphernalia for its security.

On some level, the demarcation between private and communal ownership blurs and becomes seamless. Intuitive analyses of the family property regime locate their origins in individual land holdings and rebut the presumption of absolute communal ownership. Estates in Africa have been traditionally originated by individuals. Hence, the attribution of the origins of the notion of individual ownership in Africa to English legal categories and ideas deserves some qualification. Commenting on the general pattern of landholding among the Igbos, J. O. Field states that "beyond sacred groves and markets . . . a great deal of the land held communally by extended families has now been divided amongst sub-families and again into individual holdings."³³ Field recounts a case in which a girl inherited land as the sole survivor of a patrilineage to underscore his argument that the interest retained in such land by the higher land-owning unit amounts to little more than a vague right of escheatage.³⁴

Notwithstanding the reducibility of holdings to individual units, the fact that "land ultimately belongs to the community and cannot be alienated from it without its consent" is typically identified as a cardinal principle of the Igbo land system.³⁵ In the preponderance of accounts, the radical title to land remains with the family or the community, while the individual member only has a right to its use. Colson suggests that the commodification of land and the scrutinization of resources deriving from it for revenue prompted vested interests to capitalize on a similar statement attributed to a Nigerian Chief: celebrated and transformed into an axiom, the dictum "land belongs to a vast family of which many are dead, few are living and countless members are still unborn," has come to define African land tenure even in a milieu that boasts a different historical experience.³⁶ To this extent, the crystalization of the rhetoric of communal ownership was a joint initiative of both Africans and the colonial administration.

Ultimately, the orchestration and enforcement of an institution of communal ownership could foreclose neither the commodification of land nor the proliferation of individual ownership. Despite the entrenchment of the

33. J.O. Field, *Sale of Land in an Ibo Community*, MAN 70 (1945).

34. *See id.*

35. Jones, *supra* note 10.

36. Colson, *supra* note 14, at 203. Highlighting the blindspot in this view, Colson observes that estate owning descent groups are hardly disinclined to accommodate non-threatening strangers or tolerate abandonment by one of their own, making the potential for continuity from first settler to the unborn future tenuous. *See id.* at 204.

institution of communal property, the individualization of land tenure made considerable inroads. The communal regime in its most favored iteration could not withstand the pressures exerted by the cash economy and the implications thereof. Rapid transactions, successive assertions of discrete interests, and recurrent conflicts over competing claims proliferated as more land was brought under cultivation to increase production for the market. Under the ensuing economic pressure, the holders of usufructs endeavored to magnify them and ensure their indefeasibility or circumvent their constraints. Interestingly, the alienation of land was not exclusively perpetrated by unscrupulous subjects and opportunistic impostors; the commercialization of land led to the "illegal" sale of communal land by family heads who were emboldened by the official presumption in favor of transactions they initiated. Ironically therefore, the same authorities that typically sought to preclude individual transactions engaged in them.

The colonial moment precipitated a crisis of accumulation which gave rise to a need to mobilize and consolidate control of productive resources. The development of new forms of property and technologies of production, the possibilities of individual acquisition, the acculturation of different values, reworked patterns of consumption and the like, redefined the socio-economic terrain, corroding kinship bonds and exacerbating the incidence of tension over kin-based property. The same conditions also distorted the dynamics of gender relations, occluding the agency of women and reifying gender as a stable and immutable fault-line in the determination of access to and control over land. As economic and political circumstances changed, a shift of practice pertaining to women took place. The shift was enabling to some and constraining to others. In systematizing the rules of law as an instrument of social ordering, the colonial administration deferred to what they perceived as the wisdom of the past. The orthodoxy that resulted from process was valuable in organizing, stabilizing and increasing the predictability of legal consequences. However, it created a model of a society which accommodated women only by making certain assumptions that hold contradictory elements constant.

Given the centrality of custom in the regulation of personal status, it was often through the discourse of "tradition" that both men and women differently situated and differently empowered in the social structure managed to appropriate and entrench their claims to land. The summoning into existence of the customary law regime accelerated the "rightlessness" of women.³⁷ Because rules governing property put a premium on the promotion

37. The variability of African women's rights, status and influence is detailed in many studies and can be inferred from the scope of their economic involvement in historical events. Caroline Ifeka-Moller's study of the Aba Women's War of 1929 shows that by the turn of the century, women on the riverine were already a force to be reckoned with in the local economy. See Caroline Ifeka-Moller, *Female Militancy and Colonial Revolt: The Women's War of 1929, Eastern Nigeria*

of family cohesion, estates in the laws of most patrilineal societies were typically perceived as the patrimony of sons. However, the rules were sufficiently flexible to accommodate the exercise of substantial prerogatives by women. Unfortunately, the incipient orthodoxy of agnatic bias and the reproduction of patriarchy as the definitive hallmark of real property rights and relations in many African societies remain untempered.

IV. MECHANICAL REDISTRIBUTION AND GENDER RESPONSIVENESS

As African countries contend with the forces of unprecedented socio-economic transformations, a number of them have implemented land tenure reforms aiming to more efficiently harness and regulate property rights and relations. Part of the impetus for the land reform processes and outcomes derives from an understanding that the traditional ethics which inform indigenous land tenure presuppose a degree of solidarity, a set of morals, and codes of behavior that are not consistent with or readily applicable to contemporary realities. With the acceleration in the individualization and the correlative commodification of land, the lack of (or rather the tentative allegiance to) documentation has been recurrently identified as a major explanation for the insecurity of property titles.

To address this problem, the institution of a procedure for the public registration of conveyances or for the maintenance of a public record of titles has become a common feature of many property systems. In various contexts, these changes have worked as a double-edged sword for women. On the one hand, the individualization of ownership through titling and registration is advantageous to women. For one, it irrigates both economic growth and the prospects for personal autonomy or upward mobility by making titles readily transferable and increasing trafficking in land. Written documentation and formalized conveyancing techniques afford a means of circumventing some of the strictures and drawbacks of indigenous land regimes. For example, testamentary dispositions, dying declarations, and inter vivos transfers have made it possible for women to designate specific successors for their self-acquired property.

Invariably though, individualization brings to light dilemmas of a different kind. It could give women equal opportunity to acquire, manage and control land. But a foregone alternative is the evaporation of the safeguards of auxillary interests and the relative security that women enjoyed vis-à-vis

in PERCEIVING WOMEN 127, 136-37 (Shirley Ardener ed., 1975). The centrality of the role of some of these women could also be deduced from the testimony before the Kingdon Commission of Inquiry which gave them credit as the source of the resources that were used to pay the bulk of the head-tax assessed on their male counterparts whom the colonials may have assumed to be the primary breadwinners. *See id.* at 140. It was the same centrality and the ancillary network which emanated as a result of it that enabled the women to achieve the large-scale mobilization required to launch and sustain the historic assault on the colonial system. *See id.*

the guarantee of their usufruct under the collective land tenure system.³⁸ While possession raises a rebuttable presumption of ownership, the advent of the title deed is apt to tilt the scale in favor of title holders. Scores of cases reveal how some shrewd persons capitalized on the development of such instruments to amplify their interests or to divest dutiful owners. Moreover, individualization is not much of a recipe for the equitable enjoyment of land if it is effected in isolation from broader concerns about patriarchal hegemony.

Presumably, documentation of ownership would provide incentives for women to grow permanent crops and make other long-term investments on the land. By the same token, their certificates of ownership can be pledged as collateral for credit. However, the findings of a cursory review of land registers which indicates the near absence of women seem to offer grounds for challenging these claims. Apparently, the low educational levels of women are a major factor in the explanation of this trend. The same educational deficit renders them susceptible to unscrupulous practices by credit facilitators who exploit their lack of ability to critically scrutinize credit instruments. The gender-differentiated impact of financial market regulations, practices and procedures can also be partially attributed to this factor.

Orthodox responses to campaigns for women's empowerment typically zero in on the economic productivity factor. In the context of Sub-Saharan Africa, where a vast majority of the population relies on land and land-based resources for their livelihood, this pragmatic bias is distinguished by the intensity of efforts which is devoted to policy dialogues and negotiations aimed at stimulating the review and reform of land tenure practices. With the increasing scarcity of natural resources that is compounded by the massive upheavals in the political economy, women's land rights are becoming more tenuous. In this light, gender-sensitive land reform processes are a commendable corrective. At the same time, it would be remissful not to point out that these processes, laudable as they are, signify only a first step.

Gender asymmetric rights and obligations manifest in differential management of productive assets of which land is only an element.³⁹ Women

38. Some commentators have criticized the individualization of ownership and the emergence of formal title assurances for redefining, jeopardizing and even extinguishing women's rights under the customary regime of corporate landholding. Outcomes were contingent on and subject to manipulation and adjustment insofar as practical considerations generated property distribution norms and values which deviated from the standard.

39. Other strands of the productive resource category are labor and financial capital. It is plausible to argue that able-bodied women have the basic labor input as they can always fall back on their own individual supplies, even if they suffer limitations in commanding the labor of others. In terms of access to financial services, women are inhibited by gender-specific barriers, including restrained mobility, low levels of functional literacy and numeracy as well as their lack of ample experience with skills, capabilities, and confidence-building trainings. Arguably, the availability of land can alleviate the diminished productive capacity caused by the paucity of capital because

confront systematic discrimination in competing for basic services and opportunities in the area of human capital formation, an area which is crucial to equip them to maximize their potentials and to compete and participate effectively as fully enfranchised citizens and subjects of their respective communities. An analysis of the gender gaps in human and productive resource endowment illuminates yet another asset dimension which is important to integrate in order to actualize any sincere gender equity agenda: social capital assets. A key proxy of social capital assets is the extent of participation in the institutions of governance. The incidents of male preference in gender relations cannot be dissociated from the relative absence of women's voices in decision-making and resource allocation.

Persistent gender differentials in political power, levels of education and training, and in health and nutritional statuses, as well as those in time burdens, access to financial services, infrastructural inputs, etc. all come with significant trade-offs which are hardly mentioned in most discourses on property rights and redistribution. Yet, it is obvious that these competing aspects all have significant implications for productivity. The degree to which redistribution is an effective antidote for age-old exclusionary gender practices cannot be separated from concerns about the interface between gender and other structural and cultural variables as a whole. Removing the constraints that women encounter vis-à-vis land acquisition, as critical a productive input as land is, does not suffice to facilitate their socio-economic integration, mobility and security. Land redistribution can be an effective tool for gender balancing if other corollaries which are necessary to harness the land and catalyze production are also present.

The focus on land redistribution is particularly complicated in spheres where historical conditions introduce a dimension that intensifies the scarcity of land. In a place like Zimbabwe, the ongoing struggle to secure more land for Africans from white settlers reduces gender to a secondary concern. This mode of balancing the equation is a typical characteristic of nationalism.⁴⁰ While one might quarrel with the prioritization of the struggle against racism over the struggle against patriarchy, the reality goes to show the appeal of an integrated approach to women's empowerment. It stands to reason that exposing women to opportunities to acquire other forms of assets besides land increases the options available to them. A well-educated woman is less tied to land than a subsistence farmer. Hence, land reform initiatives are best complemented with emphasis on human capital development and the like.

land title can be used as collateral. Additionally, greater access to land supplements labor (an ingredient for production which is endemic to women), and there is no denying the enhancement of subsistence that derives from the dividends produced by the synergy between the two.

40. For a discussion of this trend, see L. Amede Obiora, *New Skin, Old Wine: (En)Gaging Nationalism, Traditionalism and Gender Relations*, 28 IND. L. REV. 575 (1994).

By way of a conclusion, I would like to draw upon a pertinent anecdote about a childhood experience of mine that involved a comment by a certified lunatic named Owusu. At the height of his disturbance, he would arrogate to himself the role of policing morality around town and stomp around, armed with a whip we call Koboko to chasten putative delinquents. By some strange twist of fate, he had developed a soft spot for my mother and they always managed to have lucid exchanges. One day, Owusu demanded some money for bread from her. She dutifully obliged, only for him to retort “have you ever known anyone to eat bread alone? Where is the money for Bonvita (which is a popular malt drink)?” In childlike innocence, my jaw dropped for several reasons. To begin with, I’d often heard people articulate a proverb which connotes the Igbo worldview that those who are ordinarily prone to dismissal as demented often exhibit logical and instructive, even if bizarre, trains of thoughts. It took this incident for me to put this in perspective.

More importantly for our immediate purposes, the remark spoke eloquently of the essence of complementarity and the understanding of this grew on me through the years. It is this notion of complementarity that underlies my critique of contemporary land reform initiative which may well have been entitled “The Land is not Enough.” While the importance of stimulating the policy framework to initiate reform cannot be over-emphasized, what remains to be forcefully brought home is the improbability of transforming the lives of women through these processes alone. The ease of symbolic interventions can be very alluring. Yet the challenge is to figure out a feasible formula which can be used to temper a focus on largely academic exercises with the actual delivery of integrated packages to the ultimate beneficiaries of gender reform. Shifting from mere rhetoric and posturing about gender inclusion to concretely addressing problems and concerns relating to women’s well-being requires a multi-pronged approach which would tackle the complex layers of gender experiences.