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Land Rights

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Land rights are the socially sanctioned actions that individuals and social groups are permitted to undertake in a given space and/or associated resource. They are not reducible to ownership, tenure, or usufruct. Land rights are defined by the norms set by a given political community and enforced by its authorities. They carry social obligations. Access to land and natural resources is regulated by various authorities but also by various forms of institutional and personalized power, any of which might also entail violence.

Individual and collective land rights consist of elementary rights to use a given resource (i.e., to hunt, gather, sow, plant, develop, sell produce from, etc.) or administer these use rights (i.e., distribute them within the group, include or exclude third parties, transfer, etc.). They are partly specific to each resource or type of land use (extraction, pastoralism, slash-and-burn or sedentary agriculture, irrigation, plantation, etc.). They may be transferred within groups, assigned to third parties through a range of institutional arrangements, and renegotiated according to the pressure on resources and social and political power relations. Describing land rights in a given context requires distinguishing between state norms, local norms, and people's practices, and understanding the interplay between these different registers. Analyzing the changes in individuals' and groups' bundles of rights and their level of inclusivity or exclusivity provides an in-depth understanding of changes in land tenure and processes of individualization and commodification, which are more complex than is assumed by the standard economic evolutionary theory of land rights.

The institutions that control land and resource access and use cover diverse and dynamic combinations of territorial control and individual and collective land rights, at various levels: small or extended family groups, political communities of

various scales, and society as a whole. Land institutions reflect the ways in which each political community retains access to certain resources for its members and/or allows third parties to access them, manages the tension between individual rights and collective regulations, and defines the nonmarket or market transactions for transferring these rights. This diversity still shapes responses to the dynamics of migration, competition for land, conquest, and the spread of market and capitalist relations. Tensions between social norms and socioeconomic developments, inefficiencies and competition within and between land institutions, and demands for institutional innovation are played out as power relations between actors and frequently lead to the politicization of land issues; such relations may involve protracted conflict, including the use of force.

Controlling territories and reconfiguring local land institutions, through force or by legal means, is part of the state-building process. In certain societies—particularly Western countries regulated by common law and Roman law—the long historical process of incorporating local norms into state law on the one hand, and the progressive documentation of land relations on the other, led to the idea that private ownership is the most complete form of ownership rights. However, private ownership rights in these countries are limited by legal restrictions, while statutory laws also include norms from other value systems or the collective regulation of certain resources, and still leave some room for informal practices.

Because of their histories, many states have only partial control over their national territory and over local land practices, especially where land laws are built on a colonial legacy of legal dualism. Across places and time periods, states have tried to either consolidate or destroy local land institutions. “Extralegal” land situations (which operate partly or wholly beyond the reach of the state) are common, and often predominant, in both rural areas and urban peripheries. The plurality of norms regarding land tenure is a structural characteristic that public policies take into account to varying degrees. Local land institutions compete with state norms and

administrative frameworks, and partially merge with them. Inequalities in the distribution of land rights reflect social and economic inequalities in a society.

In settings where individualized ownership and market mechanisms prevail, inequalities arise from unequal land entitlements through inheritance and the effects of the market. The liberalization of land markets (through policies to privatize common resources, formalize private ownership rights, or decollectivize land) frequently leads to rapid land concentration and growing numbers of landless farmers. Where individual private ownership is not widespread, individuals' and groups' access to land and natural resources is linked to their social identity, whether they are firstcomers, indigenous families, or latecomers; aristocrats, commoners, artisans, or captives; older or younger; men or women; landholders or landless; and so on. Land is often regarded as a common asset held by extended family groups, to which households are allocated certain use rights. "Outsiders" may gain access to land through patronage relationships with landholders claiming to be indigenous. Where land reserves exist, the amount of land cultivated by each household is mostly determined by its capacity to mobilize labor. Land rights are renegotiated in response to various factors such as pressure on land, technical changes, public policies, and the development of market transactions, all of which may lead to new forms of inequality.

Land policies can reduce or expand land inequalities. In early twentieth-century Latin America, they were focused on tackling inequalities and agrarian reforms, as were those developed in the 1950s to 1970s in Asia, the Middle East, and the United States in the context of the Cold War. Since the fall of the Berlin Wall, the new

dynamics of globalized capitalism have led to a resurgence of policies aimed at formalizing exclusive private ownership rights. This development is leading to unparalleled processes of exclusion and land concentration in both former socialist republics and so-called global South countries.

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wbiea1852
wbiea1917
wbiea2302

REFERENCES AND FURTHER READING

- Colin, Jean-Philippe. 2008. "Disentangling Intra-kinship Property Rights in Land: A Contribution of Economic Ethnography to Land Economics in Africa." *Journal of Institutional Economics* 4 (2): 231–54.
- Godelier, M. 1978. "Territory and Property in Primitive Society." *Social Science Information* 17 (3): 399–426.
- Hall, Derek, Philip Hirsch, and Tania Murray Li. 2011. *Powers of Exclusion: Land Dilemmas in Southeast Asia*. Singapore: National University of Singapore Press.
- Lund, Christian. 2002. "Negotiating Property Institutions: On the Symbiosis of Property and Authority in Africa." In *Negotiating Property in Africa*, edited by K. Juul and C. Lund, 11–43. Portsmouth, NH: Heinemann.
- Polanyi, Karl. (1944) 2001. *The Great Transformation: The Political and Economic Origins of Our Time*. Boston: Beacon Press.
- von Benda-Beckmann, Franz, Keebet von Benda-Beckmann, and Melanie Wiber, eds. 2006. *Changing Properties of Property*. New York: Berghahn Books.



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ABSTRACT

Land rights define socially recognized modes of access to land and natural resources within a given society. They are made up of bundles of elementary rights that differ according to the resources concerned. Shaped by the historical interplay of power, wealth, and identity, they combine variable and dynamic configurations of individual prerogatives and collective regulations. Land rights, the principles of justice that legitimize them, and the authorities responsible for their regulation are changing in response to state power, public policies, and market dynamics. In the many contexts that are characterized by a plurality of norms, and where access to land and resources depends on social status, (neo)customary regulations compete with state norms and administrative frameworks, and partially merge with them, reflecting the tensions, conflicts, and negotiations in each society and local modes of state control.

KEYWORDS

conflict (political and economic); customary law; economic anthropology; legal pluralism; political anthropology; rights