

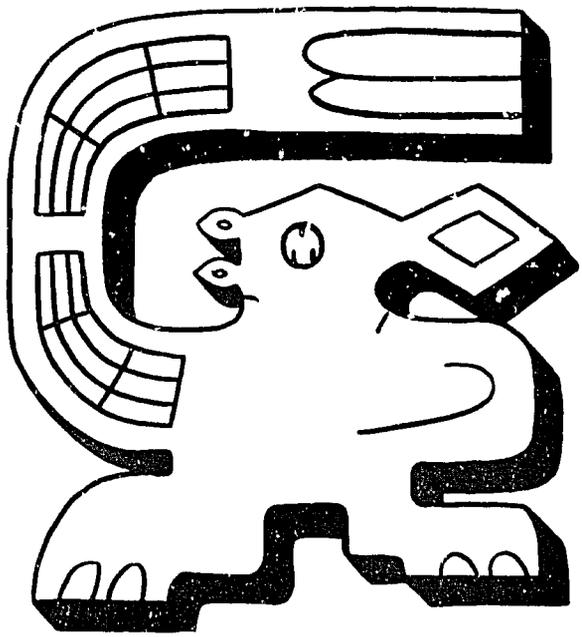
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'LAND', 'TENURE' AND LAND-TENURE

Paul Bohannan

It is probable that no single topic has exercised so many students and men of affairs concerned with Africa as has that of land. It is equally probable that no single topic concerning Africa has produced so large a poor literature. We are still abysmally ignorant of African land practices. That ignorance derives less from want of 'facts' than that we do not know what to do with 'facts' or how to interpret them. The reason for this state of affairs is close at hand: there exists no good analysis of the concepts habitually used in land-tenure studies, and certainly no detailed critique of their applicability to cross-cultural study.

Thinking about land has been and remains largely ethnocentric. Although many investigators have been meticulously careful in pointing out that one must not use European concepts like 'leasehold' or 'fee simple' in describing an African situation, rarely has anyone gone so far as to ask what we mean by the terms 'land', 'tenure' and 'rights'. The notion of 'land-tenure' may have distorted as much as it has clarified.

The term 'land-tenure' in its widest sense covers several implications. First, we must ask what 'land' means. Every people, including ourselves, must have some view of its physical milieu--some 'folk geography' of the world and their part of it. It is a principle of long standing in anthropology that before we can understand human behaviour we must understand the interpretation put on behaviour by the behavers. In line with this principle, we must investigate what each people means by 'land', and the cultural concepts in terms of which they speak about it. Only by asking 'What is Land?' can a reasonable cross-cultural comparison of land practices be begun.

It is instructive to pursue the Western ethnographic situation in the matter of conceptualization of 'land'. Westerners divide the earth's surface by use of an imaginary grid, itself subject to manipulations and redefinitions. We then plot the grid on paper or on a sphere and the problem becomes one of correlating this grid to the physical features of land and sea. We have perfected instruments for locating ourselves on the earth's surface in relation to the position of the stars. There are precise rules for symbolizing the information from the instruments with which we do so and for transferring it to the gridded map. We have, for this and other purposes, perfected a system of measurement which allows us to repeat precisely operations that have been carried out in the past; thus we have been able to locate and measure pieces of the earth's surface and to record our computations on maps. These measured pieces become, for some purposes at least, identifiable 'things'.

It is obvious that the grid must be completely rigid. To achieve precision, it is defined astrally, with overtly assigned relationships

to quite arbitrary points on the earth's surface. It is specifically not defined terrestrially by earthly landmarks, except as such landmarks have first been located astrally. The Western map, like the Polynesian, was created by sea-farers. Thus, culturally, land--whatever else it may also be--is a measurable entity divisible into thing-like 'parcels' by means of mathematical and technical processes of surveying and cartography. This complex notion of 'land', with its accompanying technology, is an absolute essential to the Western system of land-tenure.

'Tenure' presents even more difficulty because it contains a more tangled ambiguity than does 'land'. It assumes that 'land' (divisible, as we have seen, into parcels) can be 'held', thus implying a 'relationship', so-called, between a person (be he individual or social group) and a 'parcel of land'. I shall call this relationship the man-thing unit. In English we describe such units in property terms and use such verbal concepts as 'own', 'rent', 'sell'. At the same time, students of African land and law such as Gluckman and Possoz, following the best jurisprudential example, have pointed out that 'tenure' has to do with rights utilized against other persons.¹

'Rights' is the concept we use when social relationships are of primary consideration. There is, thus, a man-man unit to be considered as well.

The confusion comes in the word 'rights'. 'Rights' are attributes of persons against other persons. But 'rights in land' are attributes of a piece of land. The most important feature of the Western system is that it assumes that rights of people to space and to exploit the environment have automatically as their counterparts, rights in land. Thus, we assume that for every man-man unit with a spatial dimension or a right to exploitation there automatically goes a man-thing unit. As we shall see, this is precisely not the case in Africa.

To complete the assumptions, we note that Westerners' 'rights' are not directly to 'land', but rather to a piece of the map. Should the map be legally declared 'wrong' as a result of erroneous survey or should the definitional points of the grid be changed, we 'own' the piece of land which corresponds to the map under the new survey, not the piece of land that we earlier demarcated by terrestrial signs. We 'own' a piece of a map and have reasonable assurance that the relationship between map and terrestrial surface is a permanent one.

We have found, then, that three factors are important in studying 'land-tenure' cross culturally:

- (1) a concept of land;
- (2) a mode of correlating man with his physical environment, and
- (3) a social system with a spatial dimension.

¹ Gluckman, 1944 and 1945; Possoz, 1944.

In some instances--Western land relationships is a case in point--the spatial aspect of society is of the essence. In other instances, the spatial dimension may be unimportant, but that in itself is an ethnographic fact.

In the past, Westerners have approached the study of African land custom by searching for 'rules of tenure' based on three a priori judgments regarding these factors:

- (1) that the Western type 'map' must be initiated in the area, or else more naively that it is already present but unknown to the people;
- (2) that property concepts provide an adequate means for expressing all types of man-thing unit, and
- (3) that contract and law of succession are the basic mode for dealing with social relationships in a spatial context.

Only the last of these three assumptions has ever been seriously questioned in any large number of publications dealing with African land problems. Just as it has repeatedly been proved inadequate, so may the first two assumptions prove inadequate.

It is our purpose here to replace these assumptions with some others more generalized and less ethnocentric. The ethnocentric 'folk assumptions' outlined immediately above can be fitted under the following rubric, but so can many other folk assumptions. The analytical assumptions may well need to be changed as more folk ideas are brought to light and compared. But for purposes of initiating the study, they are these:

- (1) that people have a representational 'map' of the country in which they live;
- (2) that they have a set of concepts for speaking about and dealing with the relationship between themselves and things, and
- (3) that the spatial aspect of their social organization has some sort of overt expression in word and deed.

In sum, land-tenure is, from an ethnographic point of view, the way a people associate these three factors.

We shall find that, whereas the Western system correlates assumptions (1) and (2), allowing Westerners the more easily to question assumption (3), many African systems correlate assumptions (1) and (3), allowing Africans to question assumption (2), thereby making possible very rapid strides in approaching certain aspects of Western property law.

In short, we must look at a folk view of geography, at a folk view of the relationship between men and things, and at a folk view of a social system. For each society, we must determine the folk

correlations on these points and the way in which the ideas and the correlations are being changed by contact with and better or worse understanding of Western conceptualization. When we have finished comparing these various points, we shall be able to formulate a theory of 'land-tenure', not merely a reapplication of our own folk beliefs to fit, better or worse, an African pattern.

Here we shall examine briefly land practices of three African peoples from the point of view outlined above. I have chosen the Tiv, the Plateau Tonga, and the Kikuyu.

The Tiv² see geography in the same image as they see social organization. The idiom of genealogy and descent provides not only the basis for lineage grouping, but also of territorial grouping. Tiv group themselves according to a lineage system based on the principle of segmental opposition. Every 'minimal lineage'³ is associated with a territory. In my samples, 83 per cent of the adult males living in the territory are agnatic members of the lineage. This minimal lineage, made up of men descended from a single ancestor, plus their wives and unmarried daughters, is located spatially beside another of precisely the same sort, descended from the brother of the ancestor of the first. In reference to the father of the two apical ancestors of the minimal lineages, the two minimal lineages together form an inclusive lineage and their adjacent territories form a spatial unit. This process of inclusion both genealogically and spatially continues for several generations until all Tiv are included; it continues geographically until the entirety of Tivland is seen as a single area, segmenting into further segmenting lineage areas. Tiv have no place names for natural features except streams and hills. Otherwise they use the names of lineages living in the area.

I have documented elsewhere the fact that this 'genealogical map' of Tivland moves about the surface of the earth, in sensitive response to the demands of individual farmers as they change from year to year and the way in which this capacity for the particular kind of spatial readjustment has led to patterns of migration. The 'map' in terms of which Tiv see their land is a genealogical map, and its association with specific pieces of ground is of only brief duration--a man or woman has precise rights to a farm during the time it is in cultivation, but once the farm returns to fallow, the rights lapse. However, a man always has rights in the 'genealogical map' of his agnatic lineage, wherever that lineage may happen to be in space. These rights, which are part of his birthright, can never lapse. A mathematician with whom I discussed the Tiv mode of viewing geography suggested that whereas the Western map, based on surveys, resembled geometry, the Tiv notions resembled topology, which has been called 'geometry on a rubber sheet'. Whereas the Western map is rigid and precise, the Tiv map is constantly changing both in reference to itself and in its correlation with the earth.

²Laura and Paul Bohannon, 1953; Laura Bohannon, 1952; Paul Bohannon, 1954 (1) and (2).

³Paul Bohannon, 1954 (2), pp. 3-4.

The Tiv concepts for discussing the spatial aspect of their social organization are simple ones: the term tar means the 'map on a rubber sheet'--tar is the people, the compounds and the farms. This is quite different from the earth or nya. The tar changes its position on the nya, which is itself immutable. Every Tiv has a right to an adequate farm on the earth which holds his tar. This is a right to a farm, not to a specific piece of land. A farm lasts only for two or three years, then reverts to fallow and the specific right lapses. However, the right to some farm in the tar never lapses. Thus, the position of a man's farm varies from one season to the next, but his juxtaposition with his agnatic kinsmen, and his rights to a farm, do not change. Tiv might be said to have 'farm-tenure', but they do not have 'land-tenure'.

Thus, the man-man unit relevant to land is based on agnatic kinship. The man-thing unit relates a man not to a 'parcel of land' but to a temporary 'farm'. This generalization will probably be found to hold for all peoples who practise shifting cultivation.

Something should also be said about the fact that lineage membership implies sufficient farmland. Every year when new fields are selected, a man who needs more land expands in the direction of the neighbour most distantly related to him, then disputes the precise boundary of his new farm if necessary. Judges, either those recognized by the Administration or some other, then settle the disputes and the situation remains more or less static until the next year, when similar adjustments must again be made.

So far, we have two patterns: the Western pattern of an astrally based grid map in terms of which people are, by a legal mechanism, assigned rights to specific pieces of earth--pieces which maintain their integrity even when the owners change. The other is the Tiv pattern of a genealogical map, free-floating on the earth's surface, in terms of which people are assigned, on the basis of kinship position, to specific farms for periods of only two or three years.

The Plateau Tonga of Northern Rhodesia⁴ supply a third variant. Their 'map' is a series of points, each representing a rain shrine. Rain shrines are of two sorts: either natural features that have been consecrated or specially built small huts. A rain shrine never changes geographical location, though it may and probably will be forgotten after a generation or two. In former times, if a man lived within the area associated with a rain shrine, he was required to participate in its ritual. Rain-shrine neighbourhoods were the basic territorial grouping, and they changed constantly as allegiances shifted with the creation of new shrines or the shifting efficacy of old ones, as well as with people moving in and out of the area.

The rain-shrine area composes usually from four to six villages. A village is a group of people, each owing some sort of allegiance to the headman. That allegiance may be based on kinship, affinity or on friendship. People change the villages of their residence with great

⁴Colson, 1948, 1951 (1) and (2), 1954, and 1958.

alacrity and frequency, so that there is a constant movement from one village to another. Concomitantly, but in longer time span, the villages themselves change locations.

Residence in a village carries with it rights to clear farms in the vicinity. The headman shows a newcomer the land that is already claimed, but does not have authority to allot him rights in any unclaimed land. Rather, every man selects his own site and works it. Once he has cleared it, he has rights in it until he abandons it to fallow or moves to another village. If he moves, he may assign it to someone else. Like the Tiv, Tonga have 'farm-tenure' rather than 'land tenure'.

The Tonga village is not a territorially contained unit. In Dr. Colson's terms, it has a spatial dimension but is not a territorial unit. Farms of members of different villages may be intermixed.

In sum, Tonga country is hooked to the social organization at a series of rallying points marked by shrines. Villages move about in this country, and villagers are subject to the rain shrines of their area so long as the shrines are efficacious. Whenever they are not, new shrines are created. Members of villages have rights to farm near the momentary site of the village, and once they have worked on a field retain farming rights in it so long as they want them. The man-man unit is thus based on temporary residence in a shifting village. The man-thing unit is created by work, and is maintained only at the will of the man.

As the final example to be rehearsed here, we have the Kikuyu⁵ who have a notion of terrestrial boundaries. Kikuyu 'maps' are complicated because there are two principles at work which do not coincide--it is, in fact, most convenient to view the situation as two maps. One of these maps is composed of the githaka or estates of individuals and eventually of shallow lineages, while the other is composed of rugongo or 'ridges', which are political units. Kikuyu country is crossed by fast flowing streams that have cut canyons out of the hill-sides, so the word 'ridge' is to be taken more or less literally. Ridges were 'governed' by a committee called 'the council of nine', chosen by the various councils of nine of its subordinate, territorially bounded units called 'fire-units' or mwaki. These fire-unit councils were appointed by the councils of nine of the village-group or itura. Matters concerning law and warfare were handled by the smallest possible council of nine. The British, on their arrival, put a chieftainship system on top of this indigenous committee system.

From our point of view, the most important fact concerned here is that while the ridge with its subdivisions was a spatially compact and demarcated territorial unit, it had nothing to do with exploitation of the environment. Such exploitation was a feature of the estate system. The Kikuyu divide themselves into nine non-localized,

⁵Kenyatta, 1938; Leakey, 1952; Middleton, 1953.

patrilineal clans. These clans are composed of a series of sub-clans called mbari, each a group of agnates with a common ancestor. The sub-clan is a localized group: each has one or more 'estates'. Estates have recognized boundaries--trees, ridges, stones, streams, etc., being the markers. Inalienable right to land in the estate is a condition of membership in the associated sub-clan. Members of the sub-clan, or its head (called muramati), could also make temporary grants of land rights to people who were not members. These people were called ahoi, usually translated 'clients'. The members of the sub-clan and their clients lived on and had specific rights in the estate.

A single estate might be laid out in such a way that it crossed several ridges. Land disputes were apparently settled by the councils of nine, not by the sub-clan heads. The estates, according to Kikuyu tradition, were originally bought from a hunting tribe known as Wanderobo. Today, the estate or any piece of it can be sold so long as other members of the sub-clan are given first refusal to buy.

In this situation, we have a complex map in which the land units which are 'owned' do not correspond to political units, and in which the boundaries are marked by terrestrial signs and characteristics. The man-thing unit approaches what we ourselves term ownership, and the man-man unit is in terms of unilineal descent groups controlled, ultimately, by the political system and its 'law'.

To end this review of some of the variety of 'land-tenure systems' in Africa, it is instructive to examine the type of changes taking place in these tribes in response to Western influence. First of all, the Western 'map' is replacing all the indigenous 'maps'. Kikuyu have the least change to make: they already think in terms of bounded parcels of land. Their boundaries, indigenously marked by terrestrial signs, can be surveyed and put into the Western system. With population growth and retention of the right of all to land, subdivision was becoming a problem before Mau Mau changed all of Kikuyu culture. Among both Tonga and Tiv, the concept of 'farm' must be replaced by the concept 'parcel of land' before a Western system can be adopted. In both places, such a feat would require not only new methods of agriculture but that social organization be anchored to the earth so that titles can be recorded.

The man-thing unit is also changing. Kikuyu were demanding, many years before Mau-Mau, that they be given legally secure title deeds to their land. Among Tonga new agricultural methods and crops have lengthened the period which a man retains his claim on a farm; with cash cropping the value of land is becoming apparent and concepts of 'property' are emerging. Tiv have great difficulty in this matter, for they believe that to attach people to a piece of land is tantamount to disavowing his rights in social groups. Hence any notion of landed property is resisted. Not incorrectly, Tiv view 'property' in land as the ultimate disavowal of their social values.

Finally, the nature of the man-man unit is also changing. Basically, this change is the one that Sir Henry Maine described long ago as progression from status to contract. Perhaps the greatest single

change here results from the fact that many social groups which in the past merely had a spatial dimension are now being turned into territorial groups, because they are assumed by European-dominated legal systems to be 'juridical persons'.⁶ All social groups have a spatial dimension, but only a few are characteristically territorial groups.

In short, man-man relationships in space, with concomitant rights to exploit the environments are being replaced by legally enforceable man-thing units of the property type, the man becoming a legal entity and the thing a surveyed parcel of land. Rights of people are being made congruent with rights in specific pieces of land so as to accord with surveys and legal procedure. Property and contract are becoming the basis of social life in places that were once governed by considerations of status.

There are several points here that must concern social scientists: first, the distinction between territorial groups and the spatial dimension of society must be investigated. Secondly, the range of conceptualization of both sorts of spatial grouping as well as of economic exploitation must be sketched in; restatement of Western land practises in terms of a comparative frame of reference is a part of this process. Thirdly, we must be concerned with the manner in which change in the spatial aspects of society has repercussions on the rest of society and in culture.

There are still other factors which must interest men of affairs: only if they are aware of the imagery and values in terms of which people see their map of their country, the means by which people are attached to the earth (what we have called the man-thing unit), and the spatial aspects of the society, will it be possible for them to institute land reform and agricultural modernization with maximum effectiveness and minimum distress. It is not enough to see 'land-tenure' in terms of our own system. We must see it also in terms of the people who are approaching new economic and social horizons. And that very process makes it possible for us, as social scientists, to create what has in the past been completely lacking - a theory of land-tenure.

⁶An informative example is the 'Communal Land Rights (Vesting in Trustees) Law, 1958' of Nigeria's Western Region.

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