

BOSTON UNIVERSITY

LAND MORTGAGE WORKING GROUP RESEARCH REPORT ▪ 03/2017



Mortgage Across Cultures: Land, Finance, and Epistemology

EDITORS: DAIVI RODIMA-TAYLOR AND PARKER SHIPTON



Center for Finance, Law & Policy



African Studies Center



Introduction: Mortgage Across Cultures

Daivi Rodima-Taylor, African Studies Center, Boston University

Page 1

Mortgaging Farmland: Violence in Slow Motion?

Parker Shipton, Department of Anthropology and African Studies Center, Boston University

Page 11

A Very Brief Legal and Social History of Mortgage

David J. Seipp, Boston University School of Law

Page 19

Land Mortgage and Agricultural Growth: Lessons from Colonial India

Anand V. Swamy, Williams College

Page 26

Reinventing Land Mortgage in Postsocialist Europe: The Romanian Case

Stefan Dorondel, Francisc I. Rainer Institute of Anthropology, Bucharest

Mărioara Rusu, Institute for Agricultural Economics, Bucharest

Page 31

**“A House for the Children” Inheritance, Collateral and Family Property:
Examples from Asante**

Sara Berry, Johns Hopkins University

Page 41

Tales of Land Claims, Mortgage, Risk, and Taxation

Kristine Juul, Geography, Institute of People and Technology, University of Roskilde

Page 47

This Land is NOT for Sale: Land, Loans and Investments in Post Conflict Northern Uganda

Mette Lind Kusk and Lotte Meinert, Aarhus University

Page 53

“To Have Something for my Children”: Patrimonio and Mortgage Finance in Mexico

Georgia Hartman, University of California (Irvine)

Page 61



Daivi Rodima-Taylor

is Lecturer and Research Associate at the Frederick S. Pardee School of Global Studies, Boston University. Her research focuses on fiduciary culture and financial inclusion, diaspora and migration, informal economies, land and natural resource tenure, innovation and entrepreneurship. Daivi has taught sustainable development and anthropology, and contributed to international development work in financial inclusion, participatory planning, and community governance. She has conducted longitudinal ethnographic research in Africa and published in academic and policy-oriented journals. Her doctorate is from Brandeis University.

INTRODUCTION: MORTGAGE ACROSS CULTURES

Daivi Rodima-Taylor
Boston University, African Studies Center

Recent economic and political changes have fueled uncertainties in land access all over the world. Rights-based models to land titling or restitution have often failed to consider the multiple entitlements to land access that typify those settings. Land property has become increasingly central to forging new social identities and modes of belonging, as well as inspiring new kinds of competition and conflict. The goal of the Boston University Working Group on Land Mortgage, organized by Parker Shipton and Daivi Rodima-Taylor, is to study the novel potentials and challenges that surround land mortgage, and to achieve a human-centered view of expanding rural financialization. The Working Group investigates land mortgage, its regulation and impact in a comparative perspective, exploring how the subject of mortgaging arose in agrarian settings and how it has developed in different economies, regimes, and cultures. This publication is based on materials and discussions that were first presented at a Boston University Symposium [“Mortgage across Cultures: Land, Finance, and Epistemology”](#) in April 2015.ⁱ The Symposium included contributions by an international group of scholars, offering interdisciplinary insights into land tenure and rural borrowing issues. The papers set out to explore the social and cultural meanings of pledging and mortgaging, and the relationships of mortgage to existing property and inheritance institutions, local credit initiatives and patterns of indebtedness, and ongoing land tenure reforms such as land titling or restitution. Special attention was on mortgage in the settings of conflict-related mobility and recent post-socialist and post-authoritarian transitions.

Land tenure arrangements have become an important device for states and other powerful actors seeking to facilitate broad-based social and economic restructuring. These processes have taken diverse forms. The large-scale

ⁱ The initiative was funded by a grant from BU Center for Finance, Law & Policy. We thank also the BU African Studies Center and Dept. of Anthropology for logistical support.





land nationalization and resettlement initiatives of the socialist era sought to collectivize rural production (in Tanzania, Ethiopia, Indonesia, China, and the previous Soviet Union, to mention a few), with variable and often limited success. Land tenure reforms became central once again in the more recent period of post-socialist transitions all over the world. Land mortgage has emerged as a novel tool for restructuring agrarian relations in many post-authoritarian societies. In the current era of growing regional and transnational mobility, land titling and mortgaging are also increasingly used to re-establish order and security in the situations of post-conflict resettlement and to manage the conditions of heightened population mobility. This new emphasis on mortgage as a social restructuring device calls for more research into the processes entailed in the ongoing rural financialization in emerging economies.

The phrase 'land tenure reform' refers to changes in the rules by which land is occupied, used, or transferred. Land titling initiatives have historically occurred in situations of immigration and resettlement with a goal to secure access to land for certain populations or enhance the security of tenure in the conditions of mobility. Individual land titles have also been viewed as a tool to enhance the efficiency of rural production. The mortgage - "a deadlined pledge linking land or other property to credit" (Shipton and Rodima-Taylor 2015) - is central to these processes.

Formal land registration and titling reforms are based on the 'freehold-mortgage' nexus - the assumption that individually owned and freely transferable landholding easily translates into agricultural credit, and that the creditor has a full and inalienable right to the forfeited land (Shipton 2009). Land pledging in Africa has existed since pre-colonial times, however, and had some important differences from the present-day mortgage. The arrangement has been highly variable historically and geographically. Called a multitude of names - 'pawning,' 'pledging,' 'secured agreement,' or 'promising' - it has served as an important source of credit (Delville et al. 2002), but also functioned as a form of land sales when these have been illegitimate (Coquery-Vidrovitch 1982; Ibid.), and as a mechanism to integrate outsiders in local communities (Zongo 2000). Pledging is essentially a process where a borrower grants another person the right to use his or her farmland until repayment of the borrowed sum. It is often highly personal and based on complementary interests between parties who have unequal access to productive resources (Delville et al. 2002: 63). The duration and exact form of the arrangement have varied widely, depending on factors such as customary land rights and patterns of settlement, social recognition of open-ended loans, interpersonal relations and local patterns of reciprocity, different combinations of use rights of landed resources, and the urgency of credit needs (Ibid.). An individual or household could participate in several of these arrangements simultaneously, as both land grantor and land borrower. Delville et al. point out that the meaning and functioning of these arrangements should be conceptualized within their historical, socio-economic, and institutional contexts.



Land pledging has therefore features in common with other customary contracts in Africa. These included flexibility and lack of finality, as the contracts could be renegotiated or revoked; consent of other parties such as family and kin; and emphasis on obligation rather than rights and a lack of legal deterrents in case of breach (Ghai 1969). Customary contracts were often interpersonal and based on mutual goodwill and delayed reciprocity (Mahoney 1977). As the landholding in non-western societies was frequently subject to multiple and overlapping user rights, property law was concerned with obligations between people in respect to things, rather than rights of persons over things (Gluckman 1965). Jural rights emanated from multiplex social ties between people, including kinship, but also territoriality and co-residence, history and frequency of mutual support, and other (Moore 1978). Customary contracts and property rules were redefined and renegotiated through their actualization in practice. Interpersonal obligations of credit and debt in Africa continue to be part of a complex web of reciprocal exchanges among people related by kin, territory, and other increasingly diverse types of affinity. Many present-day institutions and norms of mutuality in African communities creatively combine age-old patterns of sharing and reciprocity with new economic resources and social values, resulting in hybrid and complex organizational forms (Rodima-Taylor 2014). That calls for more research into actually existing claims, disputes and user networks that surround land-based credit arrangements in the present day.

Similar patterns and features can also be observed elsewhere in the world. Several papers in this collection highlight the primacy of interpersonal transactions and flexibility of credit arrangements in the history of mortgage in Europe and Asia. In his paper about the historical relevance of mortgage as a legal device in Anglo-American law, David Seipp focuses on the development of the institution in medieval and early modern England. Seipp points out that the historical role of mortgage in the Western world has been rather different from its present-day primary purpose of obtaining real estate or purchasing land. The notion of mortgage in England arose as a “practice of pledging land as security for repayment of a loan”. The temporality of the transaction was a significant feature: in the 13th century England, mortgage was seen as a “lease of land to someone for a certain amount of time”. Borrowers mortgaged their land as a last credit resort, the transactions were interpersonal and highly negotiable. At the example of common types of mortgages that provided cases in England’s Court of Chancery in late 16th - early 17th centuries, Seipp points out the gamble-like features of the early modern mortgage and the strong social pressures against forfeiture by the lender. He argues that the nature and purpose of mortgage have profoundly changed with the rise of the modern Anglo-American society with its housing markets and expectations of individual self-sufficiency – it has become a highly formalized and regularized financial tool with a primary goal of acquiring property.

The historical study of Anand Swamy of land titling and agricultural borrowing in colonial India in this collection similarly highlights the importance of viewing land credit arrangements as part of ongoing





social and economic relationships within their historical and cultural context. It questions the widespread assumption that land titling facilitates better access to credit among the rural poor and can unleash their entrepreneurial potential. Aiming for development and increased economic output, the 19th century British colonizers in this South Asian country focused on a “clarification of private rights to agricultural land”, and introduced harsh penalties and forfeiture of collateral landholdings for failure to repay. Land titling and expanding rural credit exacerbated social unrest, leading to riots between Indian peasants and the money lending class in the mid- and late 1800s. Several legislative reforms were subsequently introduced to revoke the harsh penalties and land forfeiture. Contrary to the expectations, decreased access to credit and less formalized property rights did not lead to reductions in agricultural productivity. The right to mortgage land left the peasants vulnerable and contributed to social unrest. Swamy suggests that titling reforms that aim to make land more transferable can disrupt long-standing social relationships with unpredictable outcomes.

While in historical England mortgage had made possible securing monetary debt by the means of using land, in the early days of America’s settlement the “colonial practices of dispossession” may have facilitated easier alienation of land for cash. K-Sue Park (2016) suggests that the emergence of the legal instrument of foreclosure in the colonial history of the United States, although a relatively recent phenomenon, had a profound significance in altering the relationships between money and land in the indigenous communities. Land acquired the status of a liquid resource, being easily exchangeable with money and acting as collateral for loans, only when mortgage foreclosure was authorized by law. That allowed widespread credit transactions and the use of land as real estate in developing capital markets: “Colonists began to use land like money and, ... call money ‘Coined Land’” (1008). This significance of the instrument of mortgage foreclosure as profoundly altering the social and legal status of land has been discussed only marginally so far (Ibid.), calling attention to the need of a careful examination of the emerging contexts of lawful land alienation in contemporary situations of resettlement and post-authoritarian property reforms.

Many present-day land mortgage and titling reforms have gained attention as devices to manage broad-based social and economic transitions in post-socialist and post-conflict contexts. However, the outcomes of many recent post-socialist decollectivization and land privatization reforms have remained uneven and ambiguous. While in some cases fostering entrepreneurial initiative and small scale farming, they have also led to legal and administrative ambiguities and a proliferation of alternative institutional arrangements. In Russia, privately held family farms have enjoyed limited success and many former collective farms continue operating as privatized joint-stock operations, characterized by complex and overlapping rental contracts and managerial reliance on the former elites (Miller and Heady 2003; Lerman, Csaki and Feder 2004). The new smallholder farms face structural constraints that include unreliable



markets, limited government subsidies and poor access to agricultural credit. At the same time, there is some evidence that novel market opportunities in post-socialist China may have improved smallholder production and encouraged local entrepreneurship (Zhang and Donaldson 2010; Brandstädter 2003).

The paper by Stefan Dorondel and Marioara Rusu provides us with perspectives on land mortgage in post-socialist Romania. During the socialist era when productive land was concentrated into state and collective farms, local agricultural communities saw an almost complete elimination of real property rights. The post-socialist land reform of the 1990s aimed to introduce profound changes and modernize the country by re-establishing private property. Private property rights and land markets were expected to bring along social and economic restructuring of these post-socialist agrarian communities, and land mortgage was conceptualized as a primary vehicle in these processes. The massive land restitution campaign was motivated by aspirations for justice but also for economic efficiency.

The paper reveals that the reinvention of land mortgage after almost five decades of socialist regime failed to work as expected. Reasons were manifold, including weak cadastral records, high fragmentation of landholdings, social inhibitions against land sales, and non-existent land markets. Land sales were legalized in 1998 but failed to take off on any meaningful scale. Inadequate agricultural investment opportunities and the historical mistrust between farmers and Romanian banks led to limited agricultural credit. Until the present day, land mortgage has not contributed much towards the planned agrarian changes in post-socialist Romania. The authors suggest that more ethnographic research is needed of the banking system and its interactions with the farmers, as well as existing rural investment opportunities, to illuminate this important dynamic of rural financialization in Romania that has still remained in the shadows.

Comparative evidence indicates that in many post-socialist areas, the rights-based models that seek land restitution to the former owners have failed to consider the multiple overarching entitlements and nodes of social control that characterize the lived experience of the agrarian communities (Humphrey 1983; Sikor 2006). In the centrally planned economy, land property was governed by administrative institutions and decrees rather than juridical ones, and it comprised an intricate mix of individual and collective obligations and entitlements that were not directly handled through the legal system (Hann 2003; Verdery 2003). When promoting exclusive land rights, new arrangements have frequently overlooked the intermediate layers of entitlement and social control between the landholder and the state, thereby neglecting actual property claims and mechanisms of their legitimation. Post-socialist landholding, mixing older and newer kinds of entitlements and collectivities, has been vulnerable to easy manipulation by different actors, and the recent introduction of land mortgage may have exacerbated land disputes in many transitional areas.

Land claims have become central in struggles over belonging and identity in many parts of the world. Recent





neoliberal reforms have brought new attention to issues of autochthony and tradition, highlighting the role of local forms of organization and authority in contestations over resource access and belonging (Geschiere 2009). Competing authorities strive to gain legitimacy through familiar idioms and vocabularies, contributing to the rise of diverse sets of rights and duties on different levels and scales (Lund 2008; Benjaminsen and Lund 2003). Local imaginaries of autochthony, tradition and modernity affect property claims, with multiple narratives of the past and heritage simultaneously at play (Fontaine 2009; Lund 2013; Cormack 2016). Property relations on the grass-roots level are frequently replicated in broader political dynamics and land-related conflicts (Boone 2013). Competition over access to land has intensified particularly in rural Africa where population growth, commercialization of agriculture, as well as environmental degradation and subsequent lifestyle changes have left many people dependent on small-scale farming (Berry 2002, 2013). As access to land in Africa has traditionally occurred through membership in a kin group, the ongoing search for indigenous forms of political authority and property holding entails particular attention to the role of kinship and clanship in shaping land claims.

Sara Berry's paper in this collection draws important connections between mortgage, inheritance, and the changing role and composition of the family in Ghana. It disputes the notion that commercialization and legislation aimed at formalizing property rights have undermined shared responsibility in Africa and led to a "greater individualization of wealth and affect". Drawing on her longitudinal research of Asante family property in Ghana, Berry shows how the institution of family property has endured against recent economic and legal changes, continuing to shape inheritance settlements and credit transactions. She argues that among Asante, land and landed assets have been central to intergenerational transfer of wealth. Although some degree of formalization of inheritance transactions has occurred recently, the legal changes may have also reinforced the "corporate character" of the Asante family, widening the circle of "kin-based" inheritors to include affines. Informal negotiations of inheritance and credit transactions continue to abound, and formal courts resort to both customary and statutory laws. Boundaries between informal pledges, land sales, and formal mortgages are increasingly blurred, creating new challenges for mortgaging inherited property. The author suggests that more research is needed in the ways how real property becomes family property, and in the impact of recent legal and institutional changes to mortgage and inheritance in Ghana.

Kristine Juul's paper continues the theme of looking at several simultaneously occurring forms of financialization and property tenure changes in African communities. The paper links the institutions of mortgage and real property taxation as two important forms of capital creation that also have implications to property rights. The paper asks whether clearly defined property rights could lead to economic growth and development, by enabling both mortgaging and taxation in the communities of Senegal. It points out that recent mortgage and credit reforms have not yet led to enhanced financial stability for the local people, who tapped into the multiplying formal and informal credit instruments to balance their reciprocal obligations and finance emergency needs. The value of rural property remained unstable throughout



these transactions, putting borrowers and lenders in peril. While taxation of private property by the state may offer more collective benefits of enhanced infrastructure and services, taxation systems remain underdeveloped and underutilized in many areas in Africa - frequently for political reasons. At the same time, the paper also argues that paying property taxes can take a form of a "symbolic act of connecting to the state" and validating land claims in conditions of high mobility and fluid land rights. In both cases - land mortgage and taxation - the payment of what is owed, either to the state or financial company, can be used to manipulate property rights, as well as validate and reconstruct belonging and identity.

Material in this collection also questions the assumption that land titling reforms are a panacea for building social harmony and economic security in areas emerging from violent conflict. Instead of helping to reduce chaos and conflicts in resettling communities, the opposite can be the case. The study by Mette Kusk and Lotte Meinert discusses conflicted land sales in northern Uganda after the prolonged armed conflict between the Lord's Resistance Army and government forces. Land property in the newly resettled areas is affected by disputes and arguments centering on land sales. The Land Act of Uganda of 1998 gave recognition to both customary tenure as well as individualized freehold. Most of the land is held under customary tenure, with people accessing land through kinship relations. There has been an increasing tendency of people using their land titles as a security to access bank loans. Most of the loans are not used for productive purposes, and repayment often fails. That has led to a paradoxical situation where the northern Ugandan countryside is littered by signs declaring "This land is not for sale" - advertising the fact that something cannot be sold. The authors argue that their evidence challenges the assumption that formal registration and titling always help prevent land conflicts, as these do not change the complex web of social relationships centering around land. Ancestral land is often seen as collectively held and managed, and the relatives of absentee land holders of northern Uganda expect to be consulted about land sales. The authors indicate that more research is needed into how people take and use loans with land as collateral, and how that affects the younger generation. In the contexts of recent resettlement and tenure reforms, people also need adequate access to legal advice to cope with changed circumstances.

The conflicted and contradictory coexistence of the new economic institution of mortgage with the cultural and affective values of family and heritage is also the subject of Georgia Hartman's paper. Hartman examines the rapid urban expansion that the introduction of the housing mortgage has facilitated in Mexico in the last 20 years, and the unexpected set of challenges that it has brought along. The recent replacement of informal, incremental house building with purchasing a home by the use of formal mortgage has allowed more people immediate home residency, but also caused infrastructural problems, increasing socio-economic segregation, and high degrees of instability, vacancy and house abandonment in Mexico's cities. At the center of these issues, according to Hartman, is the interplay of two contradictory 'cultural logics of economy' - home as an embodiment of family values and traditional heritage





(*patrimonio*), and the economic rationale of housing mortgage with its delayed home ownership rules. The 'moral imperative' of *patrimonio* that initially fuelled the financialization of the Mexican housing market is also reinforcing the feelings of instability and insecurity in new home owners, who feel that the arrangement leaves out the affective values of kin and family. Hartman suggests that policymakers should recognize the affective and cultural dimensions of housing mortgage as a credit system, to avoid instability and unrest.

Based on workshop discussions and the material in the short versions of the papers that follow this section, the following concluding points can be noted:

- Land titling and mortgaging have increasingly been used in transitional situations and contexts of high mobility, often with a purpose to facilitate social order, tenure security, and economic development. According to available evidence, the success of such reforms in bringing along large-scale social restructuring in post-socialist as well as post-conflict transitions has been limited so far. More systematic and comparative research is needed into emerging evidence from different parts of the world that discusses the role of land mortgage in those transitional contexts. There is a substantial new body of literature about agrarian transitions from the former socialist bloc that has not been adequately examined yet.
- Land tenure reform such as introduction of land mortgages is not a politically neutral process. More attention is needed to authorities on different levels and scales who mediate the application of new tenure rules, and to broader patterns of inclusion and exclusion that the reforms facilitate. There is some evidence that recent land titling and mortgaging have led to increased conflicts over land sales, ownership, and use. In other instances, these new institutions of financialization may have served as a tool for validating belonging in a community, used by people to enhance inclusion in the areas of resettlement and mobility. More information is needed about the interplay of mortgage with the plurality of local entitlements and jural rules (including customary and statutory, informal and formal land tenure systems), and the dynamics of local negotiation and adjudication of land matters.
- In many cases in Africa and elsewhere in the developing world, new formal mortgages co-exist with various forms of informal land pledging with different dynamics and expectations. Financial instruments and practices such as mortgage and foreclosure facilitate particular types of social relationships. Land credit should be viewed within a complex web of existing reciprocal credit relationships, and as embedded in social and cultural norms. There is also a need to study how mortgage intersects with other credit opportunities and networks, and informal and formal financial institutions – including real property inheritance, property taxation, informal group credit, new mobile technology based savings and credit options, etc.

- More research is needed on how people manage and use their mortgage credit, and how it affects the family dynamics, including impact on the younger generation, women, and the elderly.
- The increasing formalization of rural financialization in many transitional contexts calls for more ethnographic and historical investigation of the relationships between borrowers (farmers, new homeowners, etc.) and lenders (banks and other financial institutions offering housing credit).
- More interdisciplinary insights are needed to illuminate the ongoing processes of land financialization. This collection involved productive collaboration between anthropologists, historians, economists, social geographers, and legal scholars.

References:

Benjaminsen, T. and C. Lund. 2003. *Securing Land Rights in Africa*. London: Frank Cass.

Berry, S. 2002. Debating the Land Question in Africa. *Comparative Studies in Society and History*, 44(4): 638-68.

Berry, S. 2013. Question of Ownership: Proprietorship and Control in a Changing Rural Terrain - A Case Study from Ghana. *Africa* 83(1): 36-56.

Boone, C. 2013. Land Regimes and the Structure of Politics: Patterns of Land-Related Conflict. *Africa* 83(1): 188.

Brandstädter, S. 2003. The Moral Economy of Kinship and Property in Southern China. In *The Postsocialist Agrarian Question*, ed. C. Hann et al. Münster: LIT Verlag.

Cormack, Z. 2016. The promotion of pastoralist heritage and alternative 'visions' for the future of Northern Kenya. *Journal of Eastern African Studies*, 10(3): 548-567.

Fontaine, J. 2009. 'We want to belong to our roots and we want to be modern people': New Farmers, Old Claims around Lake Mutirikwi, Southern Zimbabwe. *African Studies Quarterly*, 10(4): 1-35.

Geschiere, P. 2009. *The Perils of Belonging: Autochtony, Citizenship, and Exclusion in Africa and Europe*. Chicago: University of Chicago Press.

Ghai, J. P. 1969. Customary Contracts and Transactions in Kenya. In *Ideas and Procedures in African Customary Law*, ed. M Gluckman, 333-46. London.

Gluckman, M. 1965. *The Ideas in Barotse Jurisprudence*. New Haven: Yale University Press.

Hann, C. et al. 2003. *The Postsocialist Agrarian Question*. Munster: LIT Verlag.

Humphrey, C. 1983. *Karl Marx Collective: Economy, Society and Religion in a Siberian Collective Farm*. Cambridge: Cambridge University Press.

Delville, P. L. et al. 2002. *Negotiating Access to Land in West Africa: A Synthesis of Findings from Research on Derived Rights to Land*. International Institute for Environment and Development, London.

Lerman, Z., Csaki, C. and G. Feder. 2004. *Agriculture in Transition: Land Policies and Evolving Farm Structures in Post-Soviet Countries*. Lanham, MD: Lexington Books.

K-Sue Park. 2016. Money, Mortgages, and the Conquest of America. *Law & Social Inquiry* 41(4): 1006-1035.

Lund, C. 2008. *Local Politics and the Dynamics of Property in Africa*. New York: Cambridge University Press.

Lund, C. 2013. The Past and Space: On Arguments in African Land Control. *Africa* 83(1): 14-35.

Mahoney, N. 1977. Contract and Neighborly Exchange among the Birwa of Botswana. *J.A.L.* 21(1): 40-65.

Miller, L. and P. Heady. 2003. Cooperation, Power and Community: Economy and Ideology in the Russian Countryside. In *The Postsocialist Agrarian Question*, ed. C. Hann et al. Münster: LIT Verlag.

Moore, S. 1978. Archaic Law and Modern Times on the Zambesi. In *Cross-Examinations: Essays in the Memory of Max Gluckman*, ed. M. Gluckman and P. Gulliver. Leiden: Brill.

Rodima-Taylor, D. 2014. Passageways of Cooperation: Mutuality in Post-Socialist Tanzania. *Africa* 84(4): 553-75.

Shipton, P. 2009. *Mortgaging the Ancestors: Ideologies of Attachment in Africa*. Yale University Press.

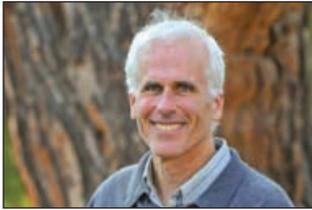
Shipton, P. and D. Rodima-Taylor. 2015. Land Tenure. *International Encyclopedia of the Social and Behavioral Sciences*, 2nd edition.

Sikor, T. 2006. Politics of Rural Land Registration in Post-Socialist Societies: Contested Titling in Villages of Northwest Vietnam. *Land Use Policy* 23: 617-28.

Verdery, K. 2003. *The Vanishing Hectare: Property and Value in Postsocialist Transylvania*. Ithaca: Cornell University Press.

Zhang, Q. and J. Donaldson. 2010. From Peasants to Farmers: Peasant Differentiation, Labor Regimes, and Land-Rights Institutions in China's Agrarian Transition. *Politics & Society* 38(4): 458-89.





Parker Shipton

is Professor of Anthropology and Research Fellow in African Studies, Boston University. He was educated at Cornell, Oxford, and Cambridge (Ph.D.) and taught at Harvard. His research interests include economic, legal, and symbolic anthropology and the history of social studies. Topics of his research have included agriculture, food, and hunger; credit and debt; land rights, attachment and belonging; kinship and fictive kinship; ritual and sequencing; human rights; and the human classification and treatment of other animals. Shipton has conducted study and research in equatorial East Africa, Senegambia, Andean Colombia, northern Italy and western France, central Mexico, and the North Pacific Coast of North America.

MORTGAGING FARMLAND: VIOLENCE IN SLOW MOTION?

Parker Shipton

Boston University, Department of Anthropology and African Studies Center

“Possibly the weirdest of all undertakings” of humankind, wrote Karl Polanyi, has been to try to make a market out of land.¹ The mortgage is an integral part of that. Humans may not be the only species to practice borrowing and lending; nor may we be the only one whose members can conceive of territory as exclusive property. But even if not, we are quite likely the only one that practices anything like the mortgage. In the broader context of living beings, then, that practice, with its powerful but dangerous combination of loan, deadlining, and legal seizure, can be considered a kind of unnatural act. Here we take the perspectives of several disciplines on that unnatural act and the institutions, sometimes rather peculiar too, that have grown up around it.

The origins of pledging and mortgaging are obscure. Some archaeologists and others have suggested that some forms of land titling and subsequent mortgaging may have occurred in Greece or farther east in Mesopotamia over two millennia ago – but there is no reason to assume the mortgage, as recurring form of thought and practice, began in any identifiable time or place. Nor do the forms found in the Mediterranean and Eurasia in some of the “classical” literature correspond precisely to modern-day definitions, or to the forms of mortgaging most common around the world today.²

In many parts of the world, the idea of the land mortgage has never been accepted as normal or natural, let alone ethical. In some traditions, and for long periods, the pawning or mortgaging of land has been considered more objectionable than the pawning of humans, or debt bondage, or only taken over gradually from it.³ In some places land mortgaging has come and gone, sometimes enacted in tentative trials, sometimes banned in abrupt revolutions.

Mortgaging never sits easily for long in human collective conscience or whatever may pass for it. This much we can tell by the fact that so many of the world’s



most popular religions, including Judaism, Christianity, and Islam, have seen millennia of debate over issues like lending at “interest” – to some, in versions of Islam for instance, a euphemism for a sin second only to murder.⁴ The moral scruples and uncertainties we can tell, too, by the shifting of authority over its regulation -- as in Britain, for instance, where it has slid back and forth between church and state institutions, and between royal and chancery courts. In America, we have novels and movies about threatened farm families, and tragic news of farming people, gone into debt and suddenly rendered landless and homeless.⁵

In the longer, wider view, the truth becomes clear enough. Humans have trouble coming to terms in any lasting way with the human invention of mortgaging.

Mortgaging has spread around through trade and empire, and through economic, legal, and other textbooks from industrialized countries and societies. It continues to be pushed by the largest aid agencies, with speeches, projects, and programs touting notions of modernity and progress. The theories and justifications implicit in these initiatives are reminiscent of 19th century social evolutionism and mid-20th century modernization theories – even while hotly debated within aid agencies where not everyone believes in all this. Titling and mortgaging are held out together as a carrot to farmers by planners eager to create new markets and enhance production. For most of those farming or living on that land, it will not soon materialize, since lenders will turn out to demand other forms of guarantee than land in addition, for instance salaries or co-signatures, for what they consider their own security. For those who do manage to mortgage their land, the process has pitfalls hard to foresee, over the shorter term or longer. Just as farming is not an easy occupation, mortgaging is not easy idea.

People everywhere struggle to find idioms to frame it, and metaphors to help understand it.⁶ We shift between existential metaphors like lifelines and deadlines, somatic ones like credit as lifeblood, pneumatic ones like inflation rates and balloon mortgages, aquatic ones like upstream and downstream effects in food economy or bank bailouts. Nor are these all the ways we try to bring it down to size, make it more comprehensible – far from it. The sheer variety of the associated metaphors is one more clue to the difficulty we humans have understanding and controlling this invention, this uniquely human contrivance.

But which terms and metaphors we choose matters. The language can be loaded. At the most basic, a term like “property” can make exclusive possession sound, well, proper. Lenders euphemize profits as “interest,” or passivize “borrowers” as “loanees.” Whereas money lenders may speak of loan foreclosure as “realizing assets” or “repossession,” mortgagors may speak of it terms of “seizure,” “invasion” or even “raiding.” One who sympathizes with borrowers can call lenders predators like hyenas, or parasites like guinea worms. One who cares about the potential loss of home is likely to choose a botanical metaphor





and to speak of rootedness and uprooting. This is a field not just for economists and accountants, but also for poets and playwrights. Most of its players are somewhere in between, wondering whether right and authority are found in signatures on contracts, in witness words, or in numbers.

Or in none of them. The signatures, often enough in rural Africa, take the form of thumbprints, leaving it open to doubt whether the verbiage of the contracts was ever fully communicated in the first place. The words need translations, and the translations of English and Indo-European terms like loan, income, interest, freehold title, contract, or foreclosure (or their near translations in other Indo-European tongues) turn out, culturally, to be ironically parochial. Most only half translate into regional or local tongues – or even not at all. (You find this out fast when you have one person translate a word, and another to translate it back. Back translation: a powerful tool of cross-cultural investigation.) The witnesses can move away or die, or their memories alter with alcohol or age. Or with “chai,” the Swahili euphemism of tea used for bribery or other incentives sometimes in English called sweeteners (for Anglophones do it too). Land can also be quite a personal thing, or a familial thing, given time. Then, where the land is inherited, there are issues of burial and graves to be considered. This can mean issues of spiritual presence too, as perceived by mortgagors or their kin or neighbors. But even without these, there may be specific uses of land, for instance for medicinal plants, thatching, or seasonal grazing, unknown or of little concern to lenders at a distance. Or agricultural uses knowable only by tasting the soil.

Even the numbers are never really culture free, value-neutral, or objective. Most in lending institutions are trained to think of “interest” in terms of a rate, calculated per unit of time; but many others, including among farming people in Africa think of interest more as ratio of interest to principal, with time bracketed out. Many in lending institutions imagine interest as a constant line or parabolic curve, while many people in rural farming areas assume interest increments for crop loans ought to be suspended between harvest seasons (when few may have income⁷ outside remittances or subsidiary shop earnings) and thus occur only stepwise, when the crops provide something to repay with.

But farming seldom follows these schemas for long. Droughts, floods, crop plagues, and epizootic diseases occur on their own time. Where heavy rains wash out roads, markets disappear as well. Prices that might, in limited local markets, equilibrate as inverse supply and demand need not continue to so when trade and transport span longer distances; and this can come as a surprise to farming people who’ve invested their land and labor in a crop and gone into debt for it to a bank or a parastatal lender. All of this constant adjusting and recalculating that farming requires makes repayment schedules of mortgage lenders look more and more abstract and artificial.





Then time poses its own problems. Some assume a deal is a deal for good; others assume the terms of an agreement ought to be renegotiable as circumstances of borrowers and lenders change, as though by an unwritten statute of limitations (if not just common-sense morality). In a mortgage lasting twenty or thirty years - a whole generation - a lot can change in circumstances. Not least where families on bounded lands can shrink or grow very large. In most of rural Africa, for instance.⁸

Not to be forgotten are the psychological concerns to do with perspective and habituation. Human minds are not like calculating machines, or not just. For most of us, where belonging is concerned, our emotions about gains and losses are asymmetrical, in the sense that gaining extra ground can be less of an event than losing a place or a home.⁹ Also asymmetrical, in comparison with each other, are the emotions of lenders and those of borrowers, when it comes to home loss.¹⁰ This hardly needs pointing out. Or so one would think.

Putting some of these principles together, we can say that three or four key themes are likely to recur in stories of mortgage.

One is *entrustment*, with a counter-entrustment: most often cash (sometimes with seeds, fertilizer, and other things) in one direction, a title to land entrusted in the opposite direction as a conditional pledge. Implicit, in the requirement of the counter-entrustment (or collateral), is a kind of mistrust (or distrust) too. One is trusted, that is, to use the loan as somehow expected, but not necessarily to pay it back without added inducement.

A second is *enticement*, where the lure of loans with immediate payoffs tempts farming people to accept titling and fencing schemes in the first place. Or to accept cropping programs planned from far away. And to borrow when they shouldn't, or more than they should.

A third, then, is *entrapment*, whether willful or just circumstantial, when things go wrong and both livelihood and home come into jeopardy.

Mortgaging farmland is a gamble. At best, it can bring development, new enterprises or investments (say, school fees and uniform for Junior), and postponed or avoided hardship (for instance, pills for Grandmother). At worst, it brings a demoralizing, energy-draining burden, a disincentive to work, achieve, and invest. This is so since once having gone into debt, one is working not just for one's own self, kith, or kin, but for a lender who may not be held so dear.¹¹ It can mean debt, dispossession, and displacement: a kind of *violence in slow motion*.

Mortgaging is a process with some cybernetic looping, causing feedback loops that operate in iterative



fashion. Here's how. A promise of loans can make landholders want to have their land titled. Titling land can raise its cash value. (Tenure seems more secure to a buyer.) Raising its cash value can make the land more tempting to mortgage. (With more valuable land, a borrower can get a bigger loan.) The mortgaging tends to gamble the land away. The newly more active land market tempts more lenders to come offering loans. And so a circle is completed.

And now, let us loop back too, to look more closely at our own terms. "Property" can have a kind of "improperty" about it, once its story is known. "Titling" need not suggest a moral or ethical entitlement; indeed, it might *deny* someone's claim or entitlement as a dependent or a future claimant. "Secure tenure," as an individual title deed, can make a landholding more *insecure*, tempting its owner to gamble it away in a mortgage. Loan "security" for a lender can be *insecurity*, of a most personal kind, for a borrower who mortgages a family farm and home.

Entrustment, enticement, entrapment. Violence in slow motion, even over generations. The meaning of such words has gained a new dimension in recent years, and in events current at the time of this writing. Workers and families who have shifted in the movement from agricultural or mixed livelihoods into industrial and mining occupations have learned by bitter experience that these are not as reliable as many once seemed. (Mechanization and global trade have together seen to that.) The promise once offered by steady year-round salaries and continuing employment has proved illusory, evanescent, for many, and the hardships then involved have proved deep – as voters in closed-factory towns and shut-down mining communities made clear in 2016 American political elections. This past century's history, with the hindsight of a few generations, has all made something clear. Family farming, while seldom easy, looks to be not so bad a basis for livelihood.¹² And the history has made anything that threatens it – as banks *and borrowers* do with mortgaging – seem especially *dangerous in retrospect*. Borrower, beware. For farming people, especially in rain-fed regions like most of Africa, banks and parastatal financial institutions have turned out safer for saving than for borrowing – at least where land is concerned. And the rest of us now can know, if we didn't already, that the repercussions of foreclosure reach well beyond the farm.

Acknowledgment: For thoughtful comments on this preliminary draft of a longer work in progress, I thank Drs. Daivi Rodima-Taylor and Michael Whyte, who have made more suggestions than I have so far been able to act upon. Thanks also to Denise Adkerson, Rosie Carter, and Devon Moehlenkamp.

¹ Polanyi 1957, p. 178.

² On forms of land mortgaging or its likeness in ancient Greece, see Moses Finley (1952). On variants in ancient Mesopotamia, see Michael Hudson and Baruch Levine (1996, 1999). See also Max Weber's sweeping comparative





summary on the customs and political economy of farming in what he deemed the ancient world (1998). In each case, though, problems of language and area-specific convention, if not also of period context, render translation as “mortgaging” at least somewhat problematic.

³ On the long and widespread practice of human pawning in Africa, for instance, see Lovejoy and Falola 2003. Often it has been elders pawning juniors, and males pawning females, for instance in marriage promises or pledges to wealthier, more senior males in hard times. While this can sometimes seem to outsiders callous or cruel, it is not always so clear whether it is more so than the pledging or mortgaging of land, whose occupants (of whatever age, gender, or state of dependency) may together stand to lose it for generations to come.

⁴ Some of these historical and ethical issues are discussed more fully in Shipton 2009, especially in a comparative survey of literature in Ch. 2. For some sweeping debates about the moral propriety of interest, usury, and the mortgage in some Christian traditions, see Nelson (1969) especially on medieval and Renaissance ones and Selby (2009) on more modern ones. On contemporary Islamic schools and debates on mortgaging, see Maurer (2006).

⁵ For cinematic treatments of mortgage foreclosure threats and their emotional and other effects, see for instance *Country* (1984), *The River* (1984), and *Places in the Heart* (1984). More recent treatments, as in a feature films like *The Big Short*, on the 2008 mortgage market meltdown in the United States, underscore the recurring point about home loss, as differently felt from near and far, or as experienced in person versus on paper or cyber-screen.

⁶ The role of metaphor in ordinary human communication – not just poetry and other self-conscious arts – is a central theme in influential the work of George Lakoff and of Mark Johnson (see for instance Lakoff and Johnson 1980, Lakoff 1990). No one to my knowledge, however, has yet systematically studied the use of metaphors in communications about the mortgage and mortgaging -- or done so across languages and cultures.

⁷ The remarks here, and more generally in this paper, apply more often to rain-fed than to irrigated farming, whose conditions may be more constant. Even in irrigated perimeters, though, problems like flooding and longer-term soil salinization – to say nothing of market price fluctuations caused from afar -- can render mortgaging more hazardous. And large-scale irrigation entails its own issues of centralized political control, sometimes becoming oppressive along gender lines as well. This is to say nothing of snail-borne and mosquito-borne diseases, which also can accompany irrigation flooding. But these lead away from our topic of mortgaging.

⁸ Book-length histories and ethnographies of mortgagor experience in Africa remain uncommon. One example, though, is a historical treatment (Murray 2002), on a rural South African neighborhood. Another is a historical ethnography (Shipton 2009) on land titling and mortgaging among Luo speakers and others in western Kenya. These are situated in the context of colonial and aid agency policies, whose authors and implementers are also studied for their own perspectives. These sometimes prove radically different from, and often incommensurable with, those of their intended beneficiaries, as they often call them. Issues like the presence of ancestral graves on the land in question can be crucial points of contention.

⁹ Dudley’s study of farming people in Minnesota (2002) vividly examines the often devastating emotional and social effects of foreclosure and farm loss, even where ancestral graves and associated spirits are not involved, as they are





often deemed to be in rural Africa. Given her disturbing topic, her choice of “Heartland” in her subtitle may not be accidental. Social workers and psychotherapists, of course, also have something to say on this topic.

¹⁰ The asymmetry of human emotions about gain and loss, as a corrective to older theories of utility, has been an important theme in economic psychology (and experimental economics), famously brought to the fore since the late 1970s by research by Daniel Kahneman and Amos Tversky (see for instance Kahneman 2011). Experimental psychologists and economists continue to explore this and related topics of trust in lab experiments, and in game situations introduced in field settings (Ostrom and Walker 2003, Cook et al. 2009). But much research remains to be done on the emotions, risk and reward predictions, temptations, and avoidances of mortgagors in particular (and of mortgagees), not just as individuals but also as families, communities, and cultures. For some ideas on how widely cultural ideas about mathematics (and presumptions and preferences therein) can vary, see Ascher 1991.

¹¹ For clarifying to me this important point I thank the late Momodou Sanyang, a Gambian farmer of long experience. Of course, debts to mortgage lenders are not the only ones that farming people must be concerned with, or necessarily the most meaningful or personally pressing. Elsewhere (Shipton 2007, 2009, 2010), for East Africans in western Kenya and others, I have sought to describe the role of loans and debts -- with and without land involved -- among wider entrustments and obligations, some lasting over generations.

¹² Robert Netting (1993) provides a wide comparative survey of family farming in several continents, offering reasons for both its longevity and its distribution as a mode of human livelihood. Its lessons are to be taken seriously in an era of new land titling and mortgaging; of new waves of land requisition or land-grabbing, taking forms personal, political, and institutional; and of discontent among persons in town and country who have been left short of places to live and to farm.

References:

Ascher, Susan. 1991. *Ethnomathematics: A Multicultural View of Mathematical Ideas*. Pacific Grove, California: Brooks/Cole.

Cook, Karen S., Margaret Levi, and Russell Hardin, eds. 2009. *Whom Can We Trust?* New York: Russell Sage Foundation.

Dudley, Kathryn Marie. 2002. *Debt and Dispossession: Farm Loss in America's Heartland*.

Finley, Moses. 1952. *Studies in Land and Credit in Ancient Athens, 500-200 B.C.: The Horos Inscriptions*. New Brunswick, N.J.: Rutgers University Press.

Hudson, Michael, and Baruch Levine, eds. 1996. *Privatization in the Ancient Near East and Classical World*. Peabody Museum Bulletin 5. Cambridge, Mass.: Peabody Museum of Archaeology and Anthropology, Harvard University.





Hudson, Michael, and Baruch Levine, eds. 1999. *Urbanization and Land Ownership in the Ancient Near East*. Peabody Museum Bulletin 7. Cambridge, Mass.: Peabody Museum of Archaeology and Anthropology, Harvard University.

Kahneman, Daniel. 2011. *Thinking, Fast and Slow*. New York: Farrar, Straus and Giroux.

Lakoff, George. 1990. *Women, Fire, and Dangerous Things: What Categories Reveal about the Mind*. Chicago: University of Chicago Press.

Lakoff, George, and Mark Johnson. 1980. *Metaphors We Live By*. Chicago: University of Chicago Press.

Lovejoy, Paul, and Toyin Falola, eds. 2003. *Pawnship, Slavery, and Colonialism in Africa*.

Maurer, Bill. 2006. *Pious Property: Islamic Mortgages in the United States*. New York: Russell Sage Foundation.

Murray, Colin. 1992. *Black Mountain: Land, Class and Power in the Eastern Orange Free State*. Edinburgh: University of Edinburgh Press.

Nelson, Benjamin. 1969. *The Idea of Usury: From Tribal Brotherhood to Universal Otherhood*. Chicago: University of Chicago Press.

Netting, Robert McC. 1993. *Smallholders, Householders: Farm Families and the Ecology of Intensive, Sustainable Agriculture*. Stanford, California: Stanford University Press.

Ostrom, Elinor, and James Walker, eds. 2003. *Trust and Reciprocity: Interdisciplinary Lessons from Experimental Research*. New York: Russell Sage Foundation.

Polanyi, Karl. 1957 (orig. 1944). *The Great Transformation: The Political and Economic Origins of Our Time*. Boston: Beacon, 1957 (orig. 1944).

Selby, Peter. 2009. *Grace and Mortgage: The Language of Faith and the Debt of the World*. London: Darton, Longman & Todd.

Shipton, Parker. 2007. *The Nature of Entrustment: Intimacy, Exchange, and the Sacred in Africa*. New Haven: Yale University Press.

Shipton, Parker. 2009. *Mortgaging the Ancestors: Ideologies of Attachment in Africa*. New Haven: Yale University Press.

Shipton, Parker. 2010. *Credit Between Cultures: Farmers, Financiers, and Misunderstanding in Africa*. New Haven: Yale University Press.

Weber, Max. 1998. *The Agrarian Sociology of Ancient Civilizations*. London and New York: Verso. Orig. pub. 1896, 1909 (parts), 1924 (complete).





David J. Seipp

is Professor of Law and Law Alumni Scholar at Boston University, where he teaches courses on trusts and estates and legal history, and has taught property law. He works on medieval and early modern English legal history and has studied at Oxford, Cambridge, and Harvard. He has taken out mortgages twice in his life on home purchases and has paid off both mortgage loans early.

A VERY BRIEF LEGAL AND SOCIAL HISTORY OF MORTGAGE

David J. Seipp

Boston University, School of Law

Probably in every time and place where an individual current possessor of land has had the ability to sell that land -- free of the claims of family members, social superiors, or others -- the current possessor has had the power to borrow money by putting up the land itself as a pledge or security for repayment of the loan. In past centuries, such arrangements were extreme last resorts when all other resources and recourses had been exhausted, and even then were usually transacted with lenders already known personally to the borrowers. What became much more common since the first half of the nineteenth century are the expectation that nearly every land-holding individual will use such an arrangement, the impersonality of the transaction, and its regular and ordinary use for the initial purchase of housing.

Jewish law, Roman law, and other early legal systems recognized arrangements that can be compared to the mortgage. This brief account will skip to the first such arrangement to be given the name "mortgage" in England.

Mortgage is the term used in English law and in legal systems derived from English law for the practice of pledging land as security for repayment of a loan. The word was in use from at least the late twelfth century. It derives from *mort*-meaning dead and *-gage*, meaning pledge. A mortgage or dead pledge was distinguished from a *vifgage* or living pledge. In a living pledge, the produce of the land went to the lender in gradual repayment of the loan. In a mortgage, the produce of the land did not reduce the principal of the loan, the borrower usually stayed in possession, and the borrower was personally responsible for paying off the loan from whatever sources he or she could use.

The mechanics of using land as security for repayment of a loan of money could take various forms. Three forms used at various times in England are worth mentioning.

First, in thirteenth-century England, a mortgage could take the form of a lease.





The borrower would grant to the lender possession of the borrower's land for a term of years, often seven years. The lender would take the profits of the land for the period of years. If the borrower did not repay the loan, the lender's possession would become full, permanent ownership of the land. The lease therefore contained a condition that if the loan had not been repaid during the term of years, ownership of the land would transfer permanently to the lender.

In this early lease form of mortgage, profits from the land that went to the lender provided an equivalent of interest on the loan, although taking interest (called "usury") was officially forbidden. Jewish moneylenders were permitted to receive interest from Christian borrowers. It was said that Jews in England were forbidden to own agricultural land, but the ban did not prevent the pledging of land as security for loans from Jews. When Christian borrowers did not repay their loans, such land could and did forfeit to Jewish moneylenders. It has been suggested that leases were categorized as an interest of lower status than "freehold," that is, life-long or inheritable ownership, because of their connection with moneylenders' security interests in land. Jews were expelled from England in 1290 and did not return until the mid-seventeenth century.

A second form of mortgage became common in fourteenth-century England, remained the standard form of mortgages there until comprehensive 1925 property legislation, and remains the form still used in other countries deriving their law from England. In conjunction with a loan of money, the borrower would grant to the lender the immediate, full, permanent ownership of land meant to secure the loan. This was a grant of land, as the lawyers said, "subject to a condition subsequent." If the borrower repaid the loan by the day specified, then ownership of the land would automatically return to the borrower. If the borrower did not repay the loan in full by the day specified, full ownership of the land remained with the lender. Typically, the borrower would remain in possession of the land, despite the fact that the lender had legal title to the land during the period of repayment of the loan.

This was harsh. Under English common law, if the borrower's repayment of the loan was one day later than the date specified at the outset, or was one penny short of the full amount of the loan, the lender had full right to keep the land or sell it. It made no difference that the value of the land was often far greater than the amount of the loan. English judges said that the common law would not protect fools who made bad bargains or were too optimistic about their ability to repay their loans. The fact that the conditional grant was and remained so long the most common form of mortgage shows how strong the positions of lenders and how weak the positions of borrowers have usually been.

A third form of mortgage was sometimes used in England in the sixteenth century and afterwards. The borrower would transfer the legal title of land to trustees, who would hold it subject to the terms of a trust.





The trust document would provide that, if the borrower did not repay the loan in full, the trustees would sell the land, would allow the lender to take repayment of the loan from the proceeds of the sale of the land, and the borrower would get any remainder of the sale price. If the borrower repaid the loan in full, the trustees would transfer ownership of the land back to the borrower.

When the amount of the loan was considerably less than the value of the land securing the loan, as was common, this trust form of mortgage barred the lender from receiving a windfall when the borrower failed to repay the debt in full. Probably for this reason, lenders preferred the second, simpler form of mortgage, the grant of land from borrower to lender with a condition subsequent returning the land to the borrower only after full and timely repayment, without the need for trustees.

In all three of these forms of mortgages, the borrower gives or grants an interest in land. This diverges from the modern colloquial understanding that a borrower “gets” or “takes out” a mortgage. It would be more correct to say that the borrower gets a loan and in return gives the lender a mortgage. For that reason, the borrower is called the “mortgagor” and the lender is called the “mortgagee.”

Because the terms of most mortgages were so harsh, England’s courts of Chancery, administering principles of equity, intervened to provide regular relief to borrowers who had failed to repay their loans. Although a court of common law would hold borrowers to the terms of their conditional grants of land (the second form of mortgage above), a court of equity would force the lender to receive repayment from the borrower after the date the borrower promised. Thereby, the borrower could redeem the land from the lender. This became called “the equity of redemption.” At first this equitable relief was allowed only in exceptionally deserving circumstances. In the seventeenth century, it became available to every borrower who gave a mortgage.

With the equity of redemption, the mortgage was reconceived. The words of the mortgage document still typically granted the lender immediate ownership of the borrower’s land, subject to a condition that transferred the land back to the borrower if the borrower repaid in full and on time. But in a court of equity, the borrower retained an “equitable” ownership of the land, an “equity.” The lender’s interest in the land was reduced from legal ownership to a mere security interest. So while the mortgage document on its face appeared to provide for the same possibility that the full value of the land would forfeit to the lender, the equity of redemption greatly reduced this possibility of forfeiture.

It has been suggested that courts of equity gave effect to the interests of an aristocratic land-holding class, who were far more often borrowers than lenders in mortgage arrangements. Whatever the origins of the equity of redemption, it did not extend borrowers’ opportunities to repay their loans indefinitely.





After a borrower had received a reasonable amount of additional time to repay the loan and still had not repaid in full, the lender could ask the court of equity to “foreclose” the borrower’s equity of redemption. Foreclosure would allow the lender to take possession and sell or lease the land. We speak colloquially today of foreclosure of a mortgage, but, properly speaking, what gets foreclosed is the borrower’s equity of redemption.

Dr. David Waddilove of St. Catharine’s College Cambridge has sampled Chancery cases in England involving mortgages from 1580 to 1620. He has generously provided me a draft summary of some of his observations about the typical or common types of mortgages that gave rise to cases in England’s Court of Chancery between those years.

The purpose of most mortgages has changed from early modern England to the present. Today, mortgages are commonly used for the initial purchase of real estate. The same real estate that the borrower wishes to purchase provides security to the lender for repayment of the loaned purchase price. This was not the case in early modern England. Borrowers mortgaged land that they had previously owned outright.

Records in Chancery suggest that borrowers were usually in extreme circumstances when they risked the property they owned by mortgaging it. Mortgages were often a last resort, when all other sources of credit had been exhausted. A statute set a maximum allowable interest rate of ten percent, and the interest rate revealed in most mortgages that Dr. Waddilove surveyed was ten percent, the maximum allowable. He concluded that mortgages were not generally an opportunity to obtain a lower interest rate.

Late medieval and early modern England depended on ordinary, everyday, ubiquitous extensions of credit between neighbors, friends, and relatives. There were too few coins in circulation for ordinary trade and commerce to carry on entirely on a cash basis. Instead, neighbors lent when they had surplus and borrowed when they needed funds, usually by extension of personal credit, nearly always without putting up land as security.

Typically the value of land mortgaged was higher, sometimes twice as high as the amount borrowed, or even higher. Failure to repay the loan in full thus resulted in forfeiture to the lender of land usually worth much more than the unpaid amount of the loan. In terms of the law of contract, this was a penalty, disfavored by courts of equity in other contexts.

In some cases, Chancery judges seemed to be concerned to give the children or heirs of a borrower an opportunity to redeem land that had been held in the borrower’s family for many generations, a concern that may not have applied to land recently purchased by a borrower.



There were no banks, no lending institutions, and little in the way of a market for mortgage lending. Instead, borrowers and lenders were nearly always known to each other before the transaction. Assessments of credit-worthiness usually depended on individual personal acquaintance. It was very difficult for one in need of funds to find a lender he or she did not already know. For instance, the lawyer for a family might loan his clients money. A lawyer was well placed to know when his clients were desperate for a loan and willing to risk forfeiture of their land. There were certainly lenders who hoped that their borrowers would fail to repay the loans and would forfeit their land to the lenders.

Finally, Dr. Waddilove noted that mortgage documents set forth payment periods that were short, often one year or three years, but that borrowers and lenders could and often did agree mutually to roll over, renew, or continue their mortgage terms for additional periods of time, on payment of interest. It was unusual for a borrower to repay a loan in full as the original mortgage document required. Lenders would accept late repayment from borrowers, again with payment of interest, without requiring borrowers to go through the trouble and expense of applying to a Court of Chancery.

Dr. Waddilove's observations were directed at developing an historical account of why the equity of redemption developed when and how it did. I have adapted his conclusions for a very different purpose. Mine has been to show that the English law of mortgages developed for a type of transaction very different, in many aspects, from those to which that law has been applied in later centuries in England and in the many countries to which English law has spread.

In essence, a mortgage was a bet. The borrower wagered that he or she could repay the loan eventually and get back title to the land mortgaged. The lender bet that the borrower could not repay, and that the land would eventually be forfeited to the lender without possibility for the borrower to redeem it. This was a high-risk gamble in early modern England, not an ordinary means of acquiring land, not a transaction entered into by most young adults as they embark on independent lives.

A sense of moral disapproval seems to have attached to lenders who pressed their claims to take the land of borrowers mortgaged to them. In popular culture, lenders were often depicted as outsiders, social inferiors, or villains. Dante put usurers in the seventh circle of Hell. In Shakespeare's *The Merchant of Venice*, we are meant to root for the borrowers (Bassanio and his friend Antonio) against the lender (Shylock), as we disapprove of Dickens's Ebenezer Scrooge before the ghosts visit him, and of Mr. Potter in the movie *It's a Wonderful Life*. Profiting from the misfortune of another in such a direct and personal way appears to offend a strong and widely-shared moral sensibility.

Two more recent developments seem relevant to the later history of the mortgage and deserve mention here.





For centuries, the usual and expected pattern was for land, the principal form of wealth, to descend within families, inherited by children at their parents' death or given by parents to children on marriage. In the twentieth century, however, the pattern of intergenerational wealth transfer in many countries has changed. Parents now pay for higher education and professional qualifications for their children, or to set their children up in business for themselves. Sometimes it will be the parents who mortgage their land to make these investments in their children's lives.

Another recent development has been the intervention of government policies, particularly through the offer of income tax deductions, aimed at encouraging ownership of housing. The deductibility of home mortgage interest has helped spur a proliferation of lending institutions, of mortgage brokers, and of valuation appraisers. Now it is the experience of most young Americans from middle-class families to enter into mortgages to purchase their first homes independent of their parents' household. This is a dramatic change from the historical periods in which mortgages originated and in which the framework of legal and equitable doctrines underpinning mortgages in Anglo-American law developed.

It is not the job of historians, particularly medieval historians, to make policy recommendations, but I can point out a few lines for further inquiry. The word "mortgage" is almost a thousand years old, and the legal device it describes is much older. But some features of mortgages today in developed Western societies are very new. Four contrasts between the long history of mortgage and its present features come to mind:

- (1) Mortgages were rare; they were extreme last resorts gambling to save family assets. Now they are typically the first major transaction that almost every young adult expects to undertake.
- (2) Mortgages were designed for income-producing land. Now they are typical for a borrower's own housing.
- (3) Mortgage borrowers nearly always knew their lenders personally. Now large, impersonal financial institutions have taken over mortgage lending.
- (4) Mortgage lenders who pursued their legal rights were portrayed in literature and popular culture as villains. Now, a broad industry of lenders, brokers, insurance providers, and valuation experts have grown up to normalize the mortgage transaction; they make it seem ordinary and inevitable to subject almost every property-owner's personal finances to the uncertainties of global financial markets.

Most of these changes happened largely because governments strongly encouraged the shift from infrequent, last-resort mortgages of income-producing assets to universal, ordinary mortgages of housing.



Interest rates have become lower, but the foreclosure mechanism developed in the seventeenth century still operates in roughly the same way when borrowers cannot repay. Now government legislators and regulators, as well as judges, are scrambling to find ways to protect homeowner borrowers from abusive foreclosure practices, or to make the impersonal financial institutions that perpetrate such abuses pay enormous monetary fines.

Principal Source:

Waddilove, D.P. *Why the Equity of Redemption?* In *Land and Credit: Mortgages and Annuities in the Medieval and Early Modern European Countryside*, ed. C.D. Briggs. London: Palgrave Macmillan, forthcoming 2017.

Additional Sources:

Barton, L. J. 1967. The Common Law Mortgage. *Law Quarterly Review* 83: 229-239.

Blackstone, William. 1766. *Commentaries on the Laws of England* 2:157-158.

Clark, Elaine. 1981. Debt Litigation in a Late Medieval English Vill. In *Pathways to Medieval Peasants*, ed. J.A. Raftis. Toronto: Pontifical Institute of Mediaeval Studies, pp. 247-279.

Hall, G.D.G.. ed.1965. *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*. Oxford: Oxford University Press, ch. 10, §§ 6, 8, pp. 121, 124 (written 1187 to 1189).

Hazeltine, H.D.. 1904. The Gage of Land in Medieval England. *Harvard Law Review* 17: 549-557; 18: 36-49.

Langbein, J.L. 1988. The Twentieth-Century Revolution in Family Wealth Transmission. *Michigan Law Review* 86: 722-751.

Littleton, Thomas. 1903. *Tenures*, ed. Eugene Wambaugh. Washington, John Byrne & Co., §§ 332-334, pp. 156-158 (written c. 1450).

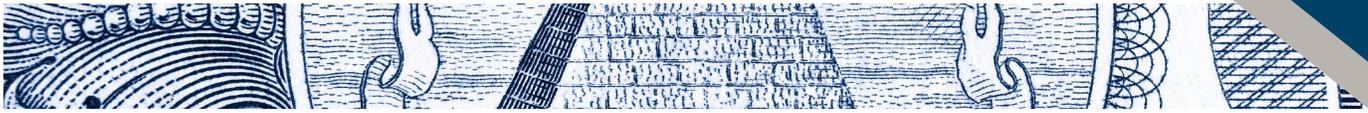
Moreton, Charles. 1990. A 'Best Betrustyd Frende': A Late Medieval Lawyer and His Clients. *Journal of Legal History* 11: 183-190.

Richardson, H.G. 1960. *The English Jewry under Angevin Kings*. London: Methuen & Co., pp. 67-108.

Sugarman, David & Ronnie Warrington. 1995. Land Law, Citizenship, and the Invention of Englishness: The Strange World of the Equity of Redemption. In *Early Modern Conceptions of Property*, ed. John Brewer & Susan Staves. Abingdon, Oxon.: Routledge, pp. 111-143.

Waddilove, D.P. 2014. Emmanuel College v. Evans (1626) and the History of Mortgages. *Cambridge Law Journal* 73: 142-168.





LAND MORTGAGE AND AGRICULTURAL GROWTH: LESSONS FROM COLONIAL INDIA¹

Anand V. Swamy
Williams College

Anand V. Swamy

is Professor of Economics at Williams College. He is specialized in the economics of institutions in developing countries, Indian economic history, land, labor and credit markets in developing countries, and South Asia. Swamy's publications include Law and the Economy in Colonial India, with Tirthankar Roy, University of Chicago Press, 2016, and A New Economic History of Colonial India, edited by Latika Chaudhary, Bishnupriya Gupta, Tirthankar Roy, and Anand Swamy, Routledge, 2015.

In 1989 and 2000 the Peruvian economist Hernando De Soto published a pair of highly influential books (De Soto 1989, 2000). De Soto presented a simple argument. Poor people, he argued, were entrepreneurial. But they lacked access to capital. This was because they did not have collateral to provide when they went to banks or other lending institutions. The problem was not that they lacked assets as such; they just didn't have titles to them. If these assets were properly titled, they could be used as collateral. The poor would now have access to credit and their entrepreneurial energy would be unleashed.

The broad thrust of De Soto's argument was accepted by prominent international institutions like the World Bank. In the context of agriculture the obvious asset that could be used as collateral was land. Not only was it high-value, it was also immovable and hence readily available for seizure should the borrower default. So the World Bank and other international institutions and governments supported programs for "titling" of agricultural land in different parts of the world, with a view to promoting economic growth. Unsurprisingly, the evidence regarding the impact of titling is highly variable, and context specific. We need more research on this question, ranging from case studies to statistical analysis.²

The economic history of colonial India provides many examples that are relevant to this discussion. The British conquest of different regions in India usually involved clarification of private rights to agricultural land. Also, it appears the British Indian legal system was often much harsher on debtors than were

¹ This note draws on Chapter 4 of Roy and Swamy (forthcoming, 2016). Roy should not be blamed for it, though.

² See Ali et al. (2014) for a recent randomized field experiment on the impact of titling conducted in Tanzania. They also provide brief commentary on the diversity of findings regarding the impact of titling around the world.





precolonial judicial bodies. As a consequence, after colonization, land became more “collateralizable”. Moreover, in the event of default land was sometimes even seized though it had not been explicitly pledged. The 19th century was a period of agricultural growth in colonial India. Cultivated area, population, commercial agriculture, and credit all expanded. It appears the expansion of credit, which was facilitated by titling and accompanying changes in the legal system, contributed to this growth.

But from early on, this story came with worrying twist. Conflict between peasants and moneylenders seemed to be increasing. Peasants complained that their relationships with moneylenders had been harmonious in the past, but had deteriorated under British rule. The primary cause for this seemed to be land transfer from peasants to moneylenders, as a consequence of default on debt (Kumar 1965).

After the “Mutiny”, a large-scale rebellion in Northern and Central India in 1857, the British Raj became highly sensitive to social unrest, fearing that it would threaten their rule. There were important “tribal” and peasant revolts such as the Santhal Rebellion of 1855, and the Deccan Riots of 1875, in which peasants attacked moneylenders.³ By the late 19th century the Raj was ready to change course and take steps to prevent the transfer of land from peasants to moneylenders. These actions were taken in a spirit directly contradicting De Soto’s suggestion: the idea was to make land less “collateralizable.” So this history is relevant to his proposal, providing evidence on the impact of a move in the opposite direction. On the whole, the evidence suggests that efforts to make land less transferable did not hurt agricultural growth, though the precise form in which legislation was designed was important.

The Raj introduced three types of legislation to protect peasants. The first kind involved modifying the legal process to protect the peasant. Lenders would be required to maintain better documentation, interest-rate ceilings were established, *ex parte* judgments (that is, absent the defendant), were discouraged, and judges were given enormous discretion to reduce the amount the defendant had to pay. The earliest and most famous example of this type of legislation was the Deccan Agriculturists’ Relief Act of 1879 which was enacted in four districts in 1879, and was extended to the rest of the Bombay presidency in 1901 and 1906.

The second kind of legislation simply banned land transfer, even as collateral for a loan from the government. This measure was introduced into a largely tribal district called the Santhal Parganas in the 1880s, via a combination of legislation and court judgment.

The third kind, best exemplified by the Punjab Land alienation Act of 1900, was more socially divisive in

³ Moneylenders, especially “immigrants” were the main target in the Deccan Riots. The Santhal Rebellion was more broadly targeted against the colonial state, landlords, and lenders.





that it banned land transfer from one set of castes, deemed agricultural, to another which was not. The former were considered peasants and the latter included non-cultivating moneylenders, among others. To some extent, all three types of legislation were evaded in one way or another. For instance, in the Bombay Presidency, loans were disguised as sales. The borrower would “sell” the land for (say) Rs.100 to the moneylender and would “buy” it back later at (say) Rs.150; in effect a loan which provided 50% interest had been disguised as a sale transaction. The law had to be amended to allow courts to scrutinize sales as well. In the Punjab, efforts to evade the law took an interesting form: a person would misrepresent his caste in order to access land (Cassan 2015). Yet another subterfuge involved a so-called benami transaction, in which a person from a nonagricultural caste would use an intermediary from an agricultural caste to acquire land (Islam 1995).⁴ None of this should surprise the historian or economist: if two parties want to engage in a transaction which is illegal, they will often find a way around it.

The more interesting questions pertain to the impact of these legislations on economic growth. There is much research to be done, but from everything we know so far, restrictions on land transfer did not seem to have hurt economic growth. In the case of the Deccan this question has been carefully examined by Chaudhuri and Swamy (forthcoming, 2016), using statistical methods. They exploit the fact that the Deccan Agriculturists’ Relief act was introduced in different parts of the Bombay Presidency at different times. The region where the Act was introduced later acts as a “control group” for the region where it was introduced earlier (the “difference-in-difference” method).

They find that the Deccan Agriculturists’ Relief act reduced the volume of credit; lenders were no longer so powerful in the courts and were hence less willing to lend. But this does not seem to have hurt agricultural output. They suggest that this was because lenders reduced credit for marriages, funerals and other types of “consumption” but were still willing to lend for productive activity. They cite the views of many British officials who embraced this argument. This is a policy-relevant finding in that it suggests that while the purpose of titling is to create collateral to protect the lender, the behavior of lenders may need scrutiny as well. They will perform “due diligence” only if they have “skin in the game”, that is, something to lose (Manove, Padilla, and Pagano, 2001).

In the case of the Santhal Parganas, we are not aware of any statistical work. But British officials were convinced that legislation preventing land transfer had protected tribals and had not harmed growth. As we have mentioned above, legislation was introduced in the 1880s in the Santhal Parganas. But across border from the Santhal Parganas district, there were Santhals living in Bengal. The 1880s’ legislation did not apply to them. This was just an administrative accident, not a policy choice. This provides us a “natural

⁴ In a *benami* transaction the title-holder is not the main beneficiary of the asset.



experiment” in that we can compare the relative fortunes of the same tribal community one of which was allowed to transfer land and the other not.

This is precisely what M.C. McAlpin, a British official, did in a report that he submitted in 1909 (McAlpin 1981). McAlpin argued that even though credit had shrunk in the Santhal Parganas, this had not done any harm, because it was largely being used for unnecessary consumption. Meanwhile, the tribals had been protected from land loss. However, the Santhals in Bengal had continued to lose land at a rapid rate. McAlpin argued for restrictions on land transfer to be extended to the Santhal areas of Bengal. His recommendation was accepted.

There has not been any systematic research on the impact of the Punjab Land Alienation Act on agricultural growth in the Punjab. Some historians have argued, however, that the exclusion of nonagricultural castes from the credit market strengthened the position of the agricultural castes that were rich enough to lend money (Bhattacharya 1985). So it is conceivable that, by reducing the extent of competition in the credit market, the Punjab Land Alienation Act did hurt the small peasants. In this instance, the attempt to protect the borrower in the credit market may have done some damage. But we should note that this resulted from the political motives of the Raj. The Raj was trying to maintain its rule. For this it needed the support of the influential sections of peasant society. If they gained at the expense of the weaker sections, this did not particularly concern the Raj. The problem was with the manner in which land transfers had been restricted, with one group of lenders privileged over another.

It is also worth noting though, that whatever the policy with respect to the credit market and land transfer, Punjab was and continues to be one of British India’s most prosperous regions.⁵ This was because, especially in western Punjab, the state invested heavily in irrigation. The State’s willingness to spend on public investment was critical to the growth process.⁶

What does this suggest for present-day policy? The existing evidence on colonial India is mostly qualitative, but it suggests that the right to mortgage land did not do much for agricultural growth. Instead, it may have left peasants vulnerable to predatory lenders or to their own bad choices. In the relatively rare instances where robust agricultural growth did occur in 20th century British India, it resulted from the State investing to increase agricultural productivity. This finding may be relevant for many poor present-day agricultural regions where land is not easily transferable. Instead of trying to title land and make it

⁵ Punjab is now divided between India and Pakistan.

⁶ The colonial context may have affected the pattern of investment in irrigation and the allocation of irrigated land in harmful ways. See Ali (1988).





transferable, thereby potentially altering long-standing social relationships, with unpredictable effects, governments and international aid institutions might be better off focusing their efforts on increasing farmers' productivity. Still, as we have noted, the evidence from around the world is variable. Our example from colonial India, while relevant, should not be mechanically extrapolated.

References:

Ali, I. 1988. *The Punjab under Imperialism, 1885-1947*. Princeton, NJ: Princeton University Press.

Ali, D. A., M. Collin, K. Deininger, S. Dercon, J. Sandefur, and A. Zeitlin. 2014. The Price of Empowerment: Experimental Evidence on Land Titling in Tanzania. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2446312, accessed August 17, 2016.

Bhattacharya, Neeladri. 1985. Lenders and Debtors: Punjab Countryside, 1880-1940. *Studies in History* 1, 2, n.s.

Cassan, Guilhem. 2015. Identity-Based Policies and Identity Manipulation: Evidence from Colonial Punjab. *American Economic Journal: Economic Policy* 7(4): 103-31.

Chaudhary, L. and A. Swamy. Forthcoming, 2016. Protecting the Borrower: An Experiment in Colonial India. *Explorations in Economic History*.

De Soto, Hernando. 1989. *The Other Path: The Invisible Revolution in the Third World*. London: I.B. Tauris.

De Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books

Islam, M.M. 1995. The Punjab Land Alienation Act and the Professional Moneylenders. *Modern Asian Studies* 29: 271-91.

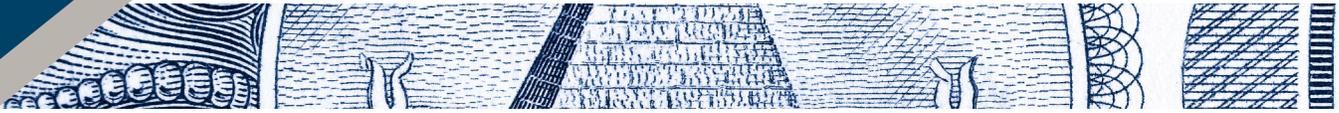
Kumar, Ravindar. 1965. The Deccan Riots of 1875. *Journal of Asian Studies* 24: 613-633.

Manove, M., Padilla, A. J. and Pagano, M. 2001. Collateral vs. Project Screening: A Model of Lazy Banks. *Rand Journal of Economics* 3, 2(4): 726-744.

McAlpin, M.C. 1981. *Report on the Condition of the Sonthals in the Districts of Birbhum, Bankura, Midnapore and North Balasore*. Calcutta: Firma K.L. Mukhopadhyay (first published in 1909).

Roy, T. and Swamy, A. Forthcoming, 2016. *Law and the Economy in Colonial India*. Chicago: University of Chicago Press.





REINVENTING LAND MORTGAGE IN POSTSOCIALIST EUROPE: THE ROMANIAN CASE

Stefan Dorondel

Francisc I. Rainer Institute of Anthropology, Bucharest

Stefan Dorondel

is a Senior Researcher at the Francisc I. Rainer Institute of Anthropology and is affiliated with the Institute of Southeast European Studies of the Romanian Academy. He is the author of *Disrupted Landscapes, State, Peasants and the Politics of Land in Postsocialist Romania* (Berghahn Books 2016) and the co-author (with Thomas Sikor, Johannes Stahl and Phuc To Xuan) of *When Things Become Property: Land Reform, Authority and Value in Postsocialist Europe and Asia* (forthcoming Berghahn Books, 2017).

Mărioara Rusu

Institute for Agricultural Economics, Bucharest

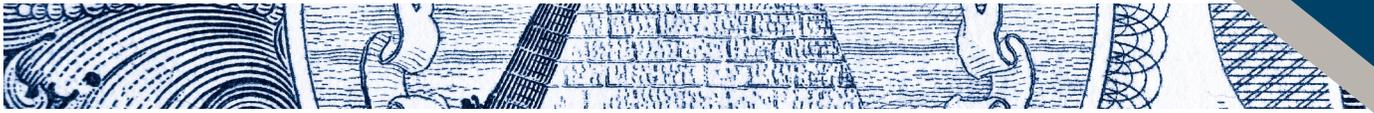
Romania experienced three radical land reforms along the twentieth century. The first one took place after the First World War (1921), aiming at changing the structure of the land ownership in the favour of peasants on the expense of large landowners. In 1945 the newly appointed socialist government started a new land reform aiming to give land to poor rural inhabitants. In the early 1950s the socialist regime nationalized and collectivized private farmland and forests and establishing collective and state farms. The quasi-elimination of property rights in agriculture during socialist times changed the agrarian structure of the country and its agrarian landscape. The socialist regime aimed to build an egalitarian social structure in which class discrimination could be erased. At the same time, the agricultural land was consolidated into large plots belonging to either the state or to collective farms. Later on, the means of production were mechanized in accordance with Nicolae Ceausescu's dream of catching up with the industrialized Western countries.¹

The postsocialist land reform started in 1990 yet again aimed to change agrarian relations, in order to 'modernize' the country's economy and society. Land restitution was triggered partially by the desire to bring about historical justice and partially in order to achieve economic efficiency in the agricultural sector (Swinnen 1997).

Postsocialist central state planners regarded land reform as a way to dismantle

¹ Nicolae Ceausescu was the last socialist president of Romania. He was overthrown in December 1989, summarily judged by an ad-hoc tribunal and executed together with his wife. For more on collectivization see Mungiu-Pippidi (2010); Kilgaman and Verdery (2011); Dorondel (2016).





Mărioara Rusu

is a senior researcher at the Institute of Agricultural Economics – Romanian Academy. She has more than 25 years of research experience in rural economy. Her main scientific interests are rural development and land reform.

the collective organization of agriculture, improve the land tenure system and increase the economic efficiency of a country once dubbed the 'granary of Europe' (Dorondel 2016). As elsewhere in the world, land reform in Romania was an attempt of postsocialist governments to impose new meanings of property on local people, attaching new values to land and utilizing a new economic language in accordance with neoliberal tenets (Hann 2007; Moore 1998). It was part of the central state's plan to completely reorganize the socialist society, including people, economies and landscapes, and to transform it into something radically different. However, postsocialist economic reforms were often neoliberal policies enacted by the national government but promoted and supported by international financial institutions (Schwengler 2008). National policies regarding market relations implementation, land restitution and privatization and state withdrawal from any economic activity were thinly disguised impositions by the World Bank and IMF missions. Issuing land titles, establishing private property rights and creating a functional land market were the main aims of this land reform. Land consolidation and the creation of large agricultural farms that produce industrially was the secondary aim of the land reform.

This paper seeks to address an issue which was barely touched in postsocialist land reform literature: the reinvention of land mortgage as a means of transforming agrarian relations in former socialist countries. After five decades of socialist organization of the society and of the economy, mortgage becomes again a means to financialize agriculture. Actors involved in this process need thus to reconfigure the means, the meanings and the outcomes of land mortgage in a new society. We focus on the Romanian case but we contend that other former socialist countries experience the same problems. We base this paper on three types of source. One is the postsocialist legislation concerning land mortgage. The second source is the scholarly literature, which is scarce and, at any rate, largely issued with the aim of advising policy makers. Finally, we have an ethnographic approach as we carried out several interviews with bank managers and farmers who took bank loans - or who were denied bank loans - in order to expand their agricultural business. We contend that the scarcity of land mortgage in postsocialist Romania is not due to a moral economy or a cognate explanation. We hypothesize that rather banks were reluctant until very recently to offer such loans. For different reasons, including incertitude of property rights, a weak land market, and a relatively low price for agricultural land, they held back.





A SHORT HISTORY OF LAND MORTGAGE IN ROMANIA



*Fragmented land use Southern Romania
August 2015. Photo: Dorondel*

In Romania, land mortgage was introduced in 1864 – the date of the first Romanian land reform in modern times. The Civil Code voted in 1864 attempted to modernize and to transform the feudal agrarian relations into capitalist ones. At the end of the nineteenth century and the beginning of the twentieth the Romanian agrarian property was polarised: a few rich families owned most of the agricultural land, whereas the majority of rural population had small plots or no land at all. The productivity of agriculture was extremely low, with few agricultural machines and with agricultural techniques closer to the Middle Ages than the modern agricultural exploitation. Loans, credits and mortgage were seen as the main way to bring capital into a feudal agriculture in order to technologize it and modernize it. In the interwar period not only private farms but also agricultural cooperatives took loans and thus mortgaged their lands (Bulgaru 2003). Mortgage was still not very popular among peasants.

Between 1948 and 1962 Romanian agriculture was almost completely collectivized. The agricultural structure changed during socialism into large and very large agricultural exploitations, some of them having thousands of hectares. The agriculture was mechanised as the collective farms used machinery, fertilisers and pesticides on large scale. Between 1948 and 1989 there was no land mortgage in Romania since the state subsidized agriculture.

LAND REFORM AND LAND POLICY IN POSTSOCIALIST ROMANIA

After 1989, when the socialist regime left, a massive land reform was launched in order to bring private property and capitalist relations within agriculture. Land seized by the socialist government was returned to former owners. The post-socialist land reform was a long and complicated process which aimed at changing completely the property regime in Romania. In 1989 the country had 14,759 million hectares of agricultural land out of which 60 percent was collectivized, 28 percent state property and only 12 percent private property. In late 2015 the picture is completely changed: 94 percent is now private property and only 6 percent has remained in public ownership (Lup 2014; INS 2016).

Land reform has produced, among other effects, an atomized agricultural structure – Romania has 3,6 million farms, which represent 32.2 per cent of the total number of farms of the EU. The steep polarisation of Romanian agriculture contributes to the low productivity in agriculture. On the one hand, larger farms, over 100 hectares, occupy 48.8 percent of the total agricultural land but represent only 0.3 per cent of



the total number of farms in Romania. On the other extremity are small farms – those with less than 2 ha – which represent 73.3 per cent of the total farms and work 13 per cent of the total arable land. These are subsistence and semi-subsistence farms, in which over 90 per cent of the product is consumed within the household (Steriu and Otiman 2013). The farmers have no technological knowledge, experience or financial resources for modern agricultural inputs. Most of them use seeds from the previous year, with no pesticides or chemical fertilisers – the dream of ecology and sustainability promoters, but the nightmare of the agricultural economists who instead see low productivity (Dorondel 2016). These farms thus depend highly on meteorological conditions, and their production varies from one year to another.

The postsocialist state policy regarding agriculture was contradictory, the state having a scant budget dedicated to the agricultural sector. The institutional and legislative framework was also often changed and the financial resources were poorly managed. Often, the funds spent by the Romanian governments were targeted rather to correct the effects than the causes of the problems the Romanian agriculture was facing (FAO 2004). The legislation process was also contradictory and in many cases land owners took into possession the land they suppose to receive back from the state with a great delay. Countless changes in the land reform laws created the impression that property rights concerning the agricultural land are not secure. State policy concerning agricultural land was not straightforward and, as a result, land reform is still an ongoing process.

AGRICULTURAL CREDIT, OR THE HISTORY OF A MISTRUSTED RELATIONSHIP

All these political and economic developments created mistrust among the banking sector for Romanian agriculture, severely discouraging investment in it. This mistrust was reciprocal as farmers were also not interested for more than 15 years to take credits in order to expand their business. Most of those interested in building an agribusiness found alternative ways to borrow money, for instance from family members. First and foremost, peasants used their own financial resources, as after socialism most of them had either a pension or a salary from off-farm work (Dorondel 2013; 2016). Land mortgaging as a possibility of financing agricultural businesses was reintroduced by the land restitution law in 1991. This possibility was just theoretical because until quite recently, banks were reluctant to lend for agriculture.

A weak, almost inexistent, cadastral land system issuing land titles, and a fragmentation of holdings (sometimes a way for farmers to avoid risks themselves), were major reasons for bankers to hold off from investing in agriculture. These also contributed to a poor value of the agricultural land and a weak land market. Land reform meant 11 million hectares of land to be given back to former owners and five million requests to be fulfilled (Rusu 2002). This was a great challenge for Romanian authorities. Issuing land titles lagged well behind the restitution process, for multiple reasons: the difficulty of identifying



*Agricultural fragmentation in a hilly village
June 2009. Photo: Dorondel*

in the field the plots that were requested, family disputes regarding property rights over a certain plot, the interests of the local bureaucracy in distributing the poor land to their opponents but keeping the good land for themselves and for their supporters, and administrative difficulties in registering and issuing legal titles (Verdery 2002; Mungiu-Pippidi 2010; Fox 2011; Dorondel 2016).

Land cadastre has given headaches to the Romanian governments for the last twenty-five years. No state institution or ministry has any idea how much agricultural land is under cadastre in Romania. Some of the experts from the Ministry of Agriculture we asked about it contend that only 10 to 15 per cent of the agricultural lands are on cadastre. The land market was quite torpid until recently. Few people were interested in buying land and even fewer interested in selling. Land has, still, a powerful family meaning, and selling it could mean family embarrassment (Verdery 2005). Other villagers consider land as a sort of social security for an uncertain future and something to bequeath, less to their children than to their grandchildren. Selling land became operational only from 1998. The official data from 1998 to 2005 show that less than one per cent of the total agricultural land of Romania was transferred. The situation has steadily changed since 2005, especially after Romania joined the EU in 2007. To the geopolitical reasons more national reasons could be added, such as the boom in building and the acquisition of larger tracts of land by foreign farms – what usually is called ‘land grabbing’. The prices for the land started to increase, which attracted the attention of the banks. Some authors consider EU subventions to be mainly responsible for the increasing prices of agricultural land in countries which joined the EU after 2004 (Swinnen and Vranken 2010).

Finally, land fragmentation was not appealing to the potential agricultural creditors. Land fragmentation was blamed in the early 1990s as the most important cause of the agricultural crisis in Romania, affecting productivity and agricultural efficiency, ostensibly impeding the formation of a land market and an efficient land management, and negatively influencing the sustainable management of the natural resources (Riddell and Rembold, 2000). The agricultural census from 2002 shows that there were 14.5 million plots of land, out of which individual households owned 14.3 million. A slow process of land consolidation started after 2007, when Romania joined the EU.

The EU subsidies started to play a major role in Romanian agriculture, and the sum at the country’s disposal was for 2007-2013 approximately eight billion euro. For the next period (2014-2020) the sum to be poured into the agriculture will be around 20 billion euro. These sums also require a financial effort from Romania as well, and the banks have noticed the opportunity of doing business. Thus, in the last years the role of the banks has become more central in agriculture.

Considering the above, it is easy to understand why banks did not see agriculture as an attractive sector for investments. However, we do not want to overemphasize the value of the official land title or a clear land tenure, long perceived as the mechanisms for transforming an inefficient agriculture into a capitalist, economically efficient one (e.g. de Soto 2000).² T. Sikor et al. (forthcoming 2017) have showed that land titling and clear land tenure do not make economic miracles, nor do they transform agriculture into an economic productive machine.



*Dismantled agricultural pumping station
Southern Romania. June 2014. Photo: Dorondel*

RECENT DEVELOPMENTS IN AGRICULTURAL CREDIT

Until 2010, no bank in Romania accepted agricultural lands as mortgage collateral, asking instead for machines, houses and other buildings as valuable assets easy to sell. Also, these loans were given to agricultural firms, not individual farmers. In 2014 the land market was liberalized for potential foreign buyers, as negotiated with the EU. In 2013 the Romanian government passed a law that attempts to support financial access to land for Romanian farmers. The farmer needs to have 10 percent of the total value of the land he or she wants to buy. For the remaining 90 percent the state offers in turn 50 percent guarantees, the other half representing the value of the mortgaged land. Only 12 banks, and not the largest ones, are interested so far in offering agricultural loans out of 31 banks working in Romania. This is only the beginning of a process that still has many inconveniences. For instance, the evaluation of the potential mortgaged land is made by evaluators but without having a clear framework for evaluation: they do not know the soil quality – as the last soil analysis at country level was carried in the 1960s. The irrigation system, where there is still one in place, it is not counted as an asset, which means that irrigated or not, the value of the land is virtually the same. In fact, as one of the bank officials we interviewed pointed out, where there is an irrigation system (which still belongs to the state), the cost of water and electricity is so high that it makes the agricultural produce in turn so pricey as to be almost unsellable.

SUGGESTIONS FOR POLICY MAKERS AND FURTHER RESEARCH

This short overview on the land reform and the reinvention of the land mortgage in Romania has rather a normative approach. This paper may be interesting for policy makers as it explores some of the problems of an ongoing land reform – a subject which is still a vital issue for the global South (Wolford 2007). We explore basically the reinvention of an economic practice – land mortgage – after 50 years of interruption caused by the socialist regime and the social issues attached to this practice. What we think Romania should do – like any other country in the same situation – is to take advantage of the new legislative framework of the EU through which small and medium farms are encouraged to invest more in sustainable

² See Sikor et al. (forthcoming) or Bromley (2005), among others, for some harsh critiques of de Soto and his followers.





agricultural exploitation. The Romanian authorities should focus on creating an economic environment able to transpose the European provisions into the national framework and deal with the blockages created on the credit market. The government ought to differentiate and adapt the changes to the needs required by the farmers. But mainly the government should extend the range of guarantees the farmers can use in order to get a banking loan. To do this, the government should be encouraged to finish the agrarian reform and implement efficient instruments to support farmers to manage the agricultural risks.

This paper has also implication for research in agrarian issues in other postsocialist countries. If land mortgage has been explored deeper in sites outside Europe (e.g. Shipton 2009), postsocialist countries and rural southeast Europe particularly are missing from the picture. This paper attempts to fill this gap by bringing ethnographic and socio-economic data from postsocialist rural areas. Another direction of study could be towards the investigation of those cases (or countries) where the land mortgage is not a priority for bankers and the reasons for this situation. So far, the anthropological literature on mortgaging has rather focused on the other side of the coin - the farmers and their alternative choices to land mortgage. Further research could focus on the banking system and its policies towards the land mortgage and agricultural credit. Such research carried with ethnographic methods may illuminate economic relations now still in the shadows.

Acknowledgments

This work was supported by a grant of the Ministry of National Education, CNCS - UEFISCDI, no. PN II-ID-PCE-2012-4-0587 (2013-2016). We thank Daivi Rodima-Taylor and Parker Shipton for useful comments and suggestions on a previous version of the paper. All potential inaccuracies, misinterpretations or other flaws of this paper may lay on our shoulders.

References:

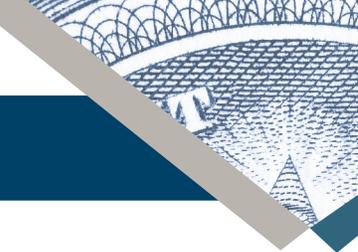
Anghel, Gabriel Remus. 2013. *Romanians in Western Europe. Migration, Status Dilemmas, and Transnational Connections*. Lanham, Boulder, New York: Lexington Books.

Bromley, Daniel. 2005. *The Empty Promises of Formal Titles: Creating Potemkin Villages in the Tropics*. Madison: University of Wisconsin, Department of Agricultural and Applied Economics.

Bulgaru, Valeriu. 2003. *Reforma agrară din 1921 - fundamente economice* [The Economic Basis of the Agrarian Reform from 1921]. Timișoara: Editura de Vest.

Cernea, Michael. 1976. Co-operative Farming and Family Change in Romania. In B. L. Faber (ed.), *The Social Structure of Eastern Europe. Transition and Process in Czechoslovakia, Hungary, Poland, Romania, and Yugoslavia*. New York, Washington, London: Praeger Publishers, pp. 259-72.





de Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books.

Dorondel, Stefan 2005. Land, Property, and Access in a Village from Postsocialist Romania. In S. Dorondel, and S. Serban (eds), *Between East and West. Studies in Anthropology and Social History*. Bucuresti: Editura Institutului Cultural Roman, pp. 268-07.

Dorondel, Stefan. 2013. Neoliberal Transformations of the Romanian Agrarian Landscape. In *Fields and Forests. Ethnographic Perspectives on Environmental Globalization*, a special issue of the RCC Perspectives, 5, pp. 13-22.

Dorondel, Stefan 2016. *Disrupted Landscapes. State, Peasants and the Politics of Land in Postsocialist Romania*. Oxford and New York: Berghahn Books.

Food and Agriculture Organization (FAO) 2004. *Agriculture and Rural Development in Romania*. FAO Project, TCP/ROM 0167 - unpublished.

Fox, K. 2011. *Peasants into European Farmers? EU Integration in the Carpathian Mountains of Romania*. Zürich and Berlin: LIT Verlag.

Hann, Chris. 1993. From Production to Property: Decollectivization and the Family-Land Relationship in Contemporary Hungary. *Man* (N.S) 28: 299-320.

Hann, Chris. 2006. *'Not the Horse We Wanted'. Postsocialism, Neoliberalism, and Eurasia*. Münster: LIT Verlag.

Hann, Chris 2007. A New Double Movement? Anthropological Perspectives on Property in the Age of Neoliberalism. *Socio-Economic Review* 5: 287-318.

Institutul Național de Statistică (INS) [National Institute of Statistics] 2016. Tempo Online Database (<http://statistici.insse.ro/shop/?lang=en>)

Kligman, Gail, Katherine Verdery. 2011. *Peasants under Siege: The Collectivization of Romanian Agriculture, 1949-1962*. Princeton: Princeton University Press.

Lampland, Martha. 2002. The Advantages of Being Collectivized. Co-operative Farm Managers in the Postsocialist Economy, in C. M. Hann (ed.), *Postsocialism. Ideals, ideologies and practices in Eurasia*. London, New York: Routledge, pp. 31-56.

Lup, A., 2014. *Agricultura socialistă a României. Mit și realitate* [The Socialist Agriculture of Romania. Between Myth and Reality]. Constanța: Editura Ex Ponto.

Micu, Cornel. 2010. *From Peasants to Farmers? Agrarian Reforms and Modernisation in Twentieth Century Romania. A Case Study: Bordei Verde Commune in Braila County*. Frankfurt am Main: Peter Lang.





Moore, Falk, Sally. 1998. Changing African Land Tenure: Reflections on the Incapacities of the State. *The European Journal of Development Research* 10(2): 33-49.

Mungiu-Pippidi, Alina. 2010. *A Tale of Two Villages. Coerced Modernization in East European Countryside*. Budapest and New York: CEU Press.

Popescu, M. (forthcoming). *Agriculture Contribution to Economic Growth. A Prospective Study*. București: Editura Academiei Române.

Riddell, J. and Rembold F., 2000. Social and Economic Impact of Land Fragmentation in Rural Society in Selected E U Accession Countries. *Proceedings of the UDMS 2000*. Delft University of Technology, The Netherlands, 11-15 September, pp. 13-20.

Rusu, Mara 2002. Land Laws and Related Legal Institutions to Support Development of Land Markets and Farm Restructuring in Romania, in V. Florian et al. (eds.) *Restructuring and Transition of Agrifood Sector and Rural Areas in Romania*. București: Expert, pp. 411-430.

Rusu, Marioara and Virgil Pamfil. 2005. *Agricultural Land Reform and Land Consolidation in Romania*. http://www.fao.org/fileadmin/user_upload/Europe/documents/Events_2005/Land2005/Romania.pdf Retrieved June 28, 2016.

Schwegler, A. T. 2008. Take it From the Top (Down)? Rethinking Neoliberalism and Political Hierarchy in Mexico. *American Ethnologist* 35(4): 682-700.

Shipton, Parker. 2009. *Mortgaging the Ancestors: Ideologies of Attachment in Africa*. New Haven and London: Yale University Press.

Sikor, Thomas, Stefan Dorondel, Johannes Stahl and Phuc Xuan To (forthcoming). *When Things Become Property: Land Reform, Authority and Value in Postsocialist Europe and Asia*. New York and Oxford: Berghahn Books.

Stahl, Johannes 2010. *Rent from the Land. The Political Ecology of Postsocialist Rural Transformation*. London, New York, Delhi: Anthem Press.

Stewart, Michael 1998. The Trauma of De-collectivization in Two Romanian Villages. In S. Bridger and F. Pine (eds), *Surviving Post-socialism. Local Strategies and Regional Responses in Eastern Europe and the Former Soviet Union*. London and New York: Routledge, pp. 66-79.

Swinnen J. F. M. (ed.)1997. *Political Economy of Agrarian Reform in Central and Eastern Europe*. Aldershot, Brookfield USA, Singapore, Sydney: Ashgate.



Swinnen, J. et al. 2013. *Possible Effects on EU Land Markets of New CAP Direct Payments*. A study for European Parliament. Brussels.

Swinnen, J. and Vranken, L. 2010. *Review of the Transitional Restrictions Maintained by Bulgaria and Romania with Regard to the Aquisition of Agricultural Real Estate*. Report for the European Commission, CEPS. Brussels.

Verdery, Katherine. 1996. The Elasticity of Land: Problems of Property Restitution in Transylvania. In K. Verdery, *What Was Socialism and What Comes Next*. Princeton: Princeton University Press, pp. 133-167.

Verdery, Katherine. 1998. Property and Power in Transylvania's Decollectivization, In C. M. Hann (ed.), *Property Relations. Renewing the Anthropological Tradition*. Cambridge: Cambridge University Press, pp. 160-180.

Verdery, Katherine. 1999. Fuzzy Property: Rights, Power, and Identity in Transylvania's Decollectivization. In M. Burawoy and K. Verdery (eds), *Uncertain Transition. Ethnographies of Change in the Postsocialist World*. Lanham, Boulder, New York, Oxford: Rowman & Littlefield Publishers Inc., pp. 53-81.

Verdery, K. 2002. Seeing Like a Mayor. Or How Officials Obstructed Romanian Land Restitution. *Ethnography* 3(1): 5-33.

Verdery, Katherine. 2003. *The Vanishing Hectare. Property and Value in Postsocialist Transylvania*. Ithaca and London: Cornell University Press.

Verdery, Katherine. 2005. "Possessive Identities" in Post-socialist Transylvania. In S. Dorondel, S. Serban (eds), *Between East and West. Studies in Anthropology and Social History*. București: Editura Institutului Cultural Român, pp. 341-366.

Wolford, Wendy 2007. Land Reform in the time of Neoliberalism: A Many Splendored Thing. *Antipode* 39(3): 550-570.



Working the land with a horse and an iron plough June 2004 in a Hilly Village Southern Romania. Photo: Thomas Sikor



Defunct irrigation structure June 2004 in a Hilly Village. Photo: Thomas Sikor



Sara Berry

is Academy Professor and Professor Emeritus in History at Johns Hopkins University. Trained initially in economics and history, professor Berry has specialized in using micro-historical research to promote interdisciplinary analysis of social and economic transformations, and to bring comparative and historical perspectives to bear on understanding contemporary African political economies. Berry holds a BA in history from Radcliffe College and a PhD in economics from the University of Michigan.

**“A HOUSE FOR THE CHILDREN”¹
INHERITANCE, COLLATERAL AND FAMILY PROPERTY:
EXAMPLES FROM ASANTE**

Sara Berry
Johns Hopkins University

Because mortgages and inheritance both involve inter-temporal transfers of wealth, a history of relations between them offers a window into the social history of credit, ownership and property. In sub-Saharan Africa, it is often argued, colonial and postcolonial rule, western education and the commercialization of everyday life eroded older communal mores and lifestyles, leading to greater individualization of wealth and affect, and changing shared responsibility into exclusive possession. As agriculture became increasingly commercialized and more people congregated in towns and cities, land—once considered a gift from the gods available to all—became a commodity, divisible into parcels that could be loaned, leased or sold for money or marketable goods and services. Access to land and control over its disposition shifted away from spiritual authority and social belonging to command over the means to pay for it. According to this analysis, commodification of land worked in turn to weaken social reciprocity and harden divisions between those with real or financial property and those without.

The present paper focuses on one institution—family property—which figures significantly in both inheritance and credit practices in many parts of Africa. Property relations and configurations of authority and belonging in family life vary, of course, from one place and time to another, within Africa as well as between Africa and other parts of the world. In general, however, the institution of the family is regarded—by outside observers and inhabitants of the continent—as central not only to domestic life, but also to the organization and governance of African societies. While many continue to view family relations

¹The following paper is an interim report on work in progress. I will write a longer paper when I have finished working through materials I collected in Asante between 1993 and 2009.





as central to African social life, in recent years, both academic and popular discourse has shifted from portraying African families as cohesive corporate groups, to putting greater emphasis on their dynamism and flexibility.²

If many now characterize African families as changeable and dynamic, they disagree about the import of flexibility and adaptability for society in general. While some emphasize family resilience and cohesion, citing evidence that families often pool resources to support individual members or provide safety nets that enable many to navigate the economic and political turbulence of the contemporary world, others argue that African societies' very capacity for flexibility and adaptation has enabled global capital to exploit African wealth and draw away skilled workers, impoverishing many, weakening family support, and deepening social divisions along lines of class, ethnicity, and region. (See, e.g., Amanor 2001) Others argue to the contrary that the division of self-acquired property among individual descendants has equalized access to land in cocoa farming areas of the southwest. (Quisumbing et al. 2004) Set within the framework of these debates, this paper will present evidence on changing inheritance practices in the Asante Region of Ghana, asking what they might mean for the management of mortgages and for the changing character and salience of family life.

The following discussion is neither comprehensive nor conclusive. Using fragmentary evidence drawn from previous research which focused on processes of claiming land in Asante rather than on either mortgaging or inheritance per se³ I argue that while economic, legal and social changes have worked to promote individual ownership and titling of claims to land and landed assets, family property is by no means a thing of the past. Partly to avoid high costs, many people continue to negotiate inheritance settlements and credit transactions informally, mediating between individual and family claims to the assets of the deceased, rather than writing wills to pre-empt discussion and debate. When disputed claims do make their way to court, judges regularly invoke "customary" as well as statutory laws in their rulings, weighing oral testimonies as well as documentary evidence in determining the facts of a case.

² In scholarly literature, the structural functionalist view reached an apex of sorts in A. R. Radcliffe-Brown's introduction to Radcliffe-Brown & C. Daryll Forde 1950, pp. 1-85. Early exponents of a more dynamic understanding of African families and societies include Colson 1959, Comaroff 1980, Kopytoff 1987, and Ranger 1993.

³ Most of the evidence presented in this essay relates to the period after independence. In 1993 and 1994, I carried out eight months of archival and field research in Kumasi and selected urban, periurban and rural localities in the Ashanti Region, with a follow-up visit of several weeks in 1996. In 2001-02, I carried out further research in one of the peri-urban towns, and added a second rural town whose history of "development" was said to offer a striking contrast to that of the rural town where I worked in 1993-4. I have been back for several short visits since 2002, mostly for archival research in Kumasi and Accra.



Since my evidence was collected in a study of land claims, it deals primarily with real property—land and landed assets, such as buildings and trees—rather than moveable goods, financial assets, and other kinds of goods that a person may leave behind. While the latter deserve careful study in their own right, in Asante where investments in tree crops and housing held a dominant position in economic growth and commercialization for much of the 20th century, land and landed assets have also figured prominently in both the accumulation and the transmission of wealth within and between generations. Inheritance disputes often turn on competing claims to real property, and landed assets have also served as a common and often contentious form of collateral in credit transactions. Focusing this discussion on real property allows me to examine both changing inheritance practices, and connections between inheritance and mortgaging.

One frequently noted change in inheritance practices has been the increasing use of gifts and written wills to transfer property to individuals of the owner's own choosing. In the past, when wills were unknown to many and used infrequently even by people who had heard of them, when a person died, his or her kin would take meet to dispose of whatever property s/he had left behind, either retaining it to be used for the benefit of the family as a whole, or dividing it among family members.⁴ Family in this case meant kin: spouses and affines were excluded. In Asante and other Akan-speaking regions of Ghana, where descent is reckoned matrilineally, men's children were also excluded from inheriting property from their fathers. Although this practice was made illegal in the 1980s, stories of dispossessed wives and children continued to circulate in the early 2000s.

Among kin, inheritance is a family affair. When a person dies, the family meets to select one of their members—usually a sibling or uterine nephew or niece of the deceased—to serve as the successor or heir. The successor does not take sole possession of the deceased person's property, however, but serves as custodian or trustee, assuming the decedent's role in the family and managing whatever assets s/he left behind for the benefit of the family as a whole. The position of successor is thus one of responsibility, rather than a windfall for the individual heir. While families often choose the decedent's next oldest sibling or uterine nephew or niece as heir, birth order matters less than character as a basis for family choice. The heir should be someone who will take his/her responsibilities seriously and act in the family's best interests.⁵

⁴ In the late 1980s, a judge of the Court of Appeals in Accra reaffirmed this practice, declaring flatly that “under customary law, no person has the right to appoint his successor.” *Edah vs Hussey*, Ghana Law Review, 1989/90.

⁵ As one woman explained to me, the family would choose a successor even if the deceased had not left any property behind, to assume the dead person's place in the family and take over his/her responsibilities to its members.





At times, an heir's responsibilities may become onerous. In addition to balancing the needs and demands of many family members and seeing that farms and houses left by the deceased are well managed and maintained, the heir assumes responsibility for whatever debts remain outstanding at the time of a person's death. Unredeemed mortgages thus become the responsibility of the successor, who has to pay them off if the deceased was the debtor, or be prepared to return property that the decedent held as collateral if the debtor comes forward to redeem it. In some cases, people decline the honor of serving as successor to avoid the burden of paying off the deceased's debts, and dunning other family members to contribute if the estate is not sufficient. In other cases, people write wills or give away property during their lifetime in order to protect their spouses and children from dispossession, or avoid provoking disputes among their relatives. As one of my informants explained, he had written a will leaving his house and shop to his wife so that "if I die, no one will bother her."

Some studies of family life in the colonial era have argued that changes in settlement patterns, livelihood strategies and divisions of labor associated with the spread of cocoa production and agricultural marketing, combined with Christianity and colonial rule, led Asante families to attach greater importance to fathers providing for their own children, rather than uncles working for the benefit of their uterine nephews and nieces. (Allman & Tashjian 2000; Okali 1983; and others) This trend continued after independence, reinforced by the increasing use of wills and gifts inter vivos to pass property to sons and daughters, rather than leaving all to the matrilineal kin to dispose of after the original owner's lifetime. (Amanor 2001; Boni 2005; Quisumbing et al. 2000; and others) Legislation passed in 1985 by the then military regime headed by Flight Lieutenant Jerry Rawlings reinforced this trend. Responding to decades of complaint that matrilineal inheritance allowed a man's kin to take all of his property when he died, leaving his wife (or wives) and children with nothing, PNDC Law 111 stipulated that, in cases of intestacy, the surviving wife and children should inherit the conjugal house and a major share of the deceased man's estate.

This law has been upheld by the courts and its influence has spread, shaping inheritance practices among people who do not choose, or cannot afford, to take disputed cases to court. Many men with whom I spoke in the 1990s and early 2000s expressed concern about providing for their wives and children in the future. This did not mean that they simply rejected, or avoided, the claims of their kin. Many who could afford it built two houses—one "for the family," and another "for the children"—or invested in multiple structures, allocating some rooms to both children and family members, renting out others, and using part of the rental income to maintain the house or assist children and family members in need.

Looking ahead:

In a future expanded version of this paper, I will argue that, while older rules of matrilineal inheritance have been modified in recent decades, both in law and in social practice, they have not simply been replaced by



gifts or bequests to individuals. Spouse(s) and children inherit as tenants-in-common, not as individuals, and subsequent legislation defined eligible “children” as all of a man’s biological offspring, whether or not he was married to their mother(s). A widow might find herself obliged to share her conjugal home with the children of her rival. As at least one legal scholar has argued, while PNDC Law 111 was aimed at rectifying the injustices of “traditional” kin-based inheritance, it did so by expanding the legal definition of family to include affines as well as kin, reinforcing rather than attenuating the corporate character of the family (Korboe 1992).

Moreover, since family property may not be legally sold, mortgaged, or divided unless the entire family agrees, the cumulative effects of existing family property are likely to persist long into the future. To develop this point, my paper will discuss various routes by which real property becomes family property, using court cases and relevant oral narratives to illustrate the questions that often arise in inheritance disputes over the status of particular assets in a deceased person’s estate.⁶, ⁷ Many of my informants said they had not bothered to write a will, assuming that it would be ignored or could promote family discord rather than precluding it. Those who could afford it sometimes built two houses—one “for the family,” the second “for the children”—and others said they planned to do so “when I have the money.” Invariably they explained that they did this to avoid future “trouble” for their children (Berry 2001).

The paper will conclude with a discussion of issues that arise in relation to mortgaging inherited property, paying particular attention to the differences between bank mortgages and the still common practice of pledging. High interest rates and the risks of foreclosure have limited use of the former, and family property may work as a further deterrent. Pledges, on the other hand, have no time limit. The creditor holds the farm or house, using whatever income it generates until the debtor redeems it, but neither pledger nor pledgee can sell it, unless the buyer assumes the debt. Effectively, then, pledged property cannot be foreclosed. Courts: since pledges are redeemable forever, they are also heritable. As long as debtor or his/her heirs can prove that their predecessor pledged the property rather than sold it, s/he may redeem it. How often this happens in practice remains to be seen....

⁶ Testifying to the endurance of family property, many of my interlocutors relished tales of hitherto unknown relatives who turned up at a funeral, claiming kinship to the deceased. Such stories multiplied in areas where land values were on the rise.

⁷ The complexities of ownership and belonging that may arise in the context of negotiations over funeral arrangements and inheritance are vividly illustrated in Gilbert 1988.





References:

Allman, Jean & Victoria Tashjian. 2000. *'I will not eat stone': a women's history of colonial Asante*. Portsmouth, NH: Heinemann.

Amanor, Kojo S. 2001. *Land, Labour and Family in Southern Ghana*. Uppsala: Nordic Africa Institute.

Berry, Sara. 2001. *Chiefs Know Their Boundaries: Essays on Property, Power and the Past in Asante, 1896-1996*. Cape Town, Portsmouth, NH & Oxford: David Phillip, Heinemann & James Currey.

Boni, Stefano. 2005. *Clearing the Ghanaian Forest: Theories and Practices of Acquisition, Transfer and Utilization of Farming Titles in the Sefwi-Akan Area*. Legon: Institute of African Studies.

Colson, Elizabeth. 1959. *Marriage and Family among the Plateau Tonga*. Manchester: Manchester University Press.

Comaroff, John, ed. 1980. *The Meaning of Marriage Payments*. London & New York: Academic Press.

Gilbert, Michelle. 1988. The sudden death of a millionaire: conversion and consensus in a Ghanaian kingdom. *Africa* 58(3): 291-314.

Kopytoff, Igor. 1987. *The African Frontier: The Reproduction of Traditional African Societies*. Bloomington: Indiana University Press.

Korboe, David. 1992. Family houses in Ghanaian cities: to be or not to be? *Urban Studies* 29(7): 1159-72

Quisumbing, Agnes, et al. 2004. *Land and Schooling: Transferring Wealth across Generations*. Baltimore: Johns Hopkins University Press.

Radcliffe-Brown, A.R. & Daryll Forde, eds. 1950. *African Kinship and Marriage*. London, New York & Toronto: Oxford University Press.

Ranger, Terence O. & Olufemi Vaughan, eds. 1993. *Legitimacy and the State in Twentieth-century Africa: Essays in Honor of A.M.H. Kirk-Greene*. Basingstoke, Hampshire: Macmillan.





TALES OF LAND CLAIMS, MORTGAGE, RISK, AND TAXATION¹

Kristine Juul

University of Roskilde, Institute of People and Technology

Kristine Juul

is Associate Professor in Development Geography at University of Roskilde, Denmark. She has worked on drought related migration and tenure issues in pastoral societies in Northern Senegal and on decentralization, taxation and micro-politics in the same area. Her research includes studies on conservation and national parks in Asia and Latin-America and transnational living among Serbian immigrants in Denmark. Her current work focuses on homeless West-African migrants in Copenhagen.

In this piece I wish to explore two different ways of accessing capital in the rural countryside: mortgaging and taxation. Obviously the goals and intentions of the two forms of capital formation differ widely, as one targets individuals aiming at raising capital for personal development objectives or to cover for losses or unforeseen expenditures, while the other is concerned with revenue collection to the state or to local governments. Nonetheless, both are linked profoundly to issues such as land claims, property rights, titling and economic growth.

Clear definition and defense of property rights is considered among economists, the most widely known of which is perhaps Hernando De Soto from the World Bank, to be a prerequisite for increasing the well-being of the poor worldwide as it will enable them to access new business and educational opportunities through capital formation. By creating what De Soto calls 'meta' property, "the paper trail of title and mortgage can free the surplus value of assets and provide the necessary capital for economic growth and development. Without this legal framework, people can do business only with those whom they know or their family" (De Soto 2008:1234).

Clear property rights may, however, also enable the development of the fiscal system towards socially more just taxation systems, something which might enhance economic development just as much as the access to credit and mortgage. Where mortgaging acts on the individual level, taxation focuses on the collective provision of infrastructure and services and is thereby sensed to strengthen the relationship between state and society. Obviously, the most interesting form of taxation in this context is taxation of property. But as will be shown below, taxation may also influence tenure security in ways that may turn out to affect capital formation, although maybe in ones slightly different

¹ Thanks to Daivi Rodima-Taylor and Parker Shipton for insightful comments and valuable suggestions.





from those involving mortgage. Below two small "tales" from northern Senegal will be presented to identify the issues at stake. These will be followed by a short discussion on the potentials of taxation in relation to credit and capital formation.

As part of the preparation for the workshop, I called my friend and former research assistant to hear if mortgaging had become issue in the northern cattle trading town in which he lives. I had the impression that mortgage had never been an issue in rural Senegal, where land in principle is allocated free of charge by the local governments or village chiefs. My friend could inform me otherwise. Not only had his own house been mortgaged, but he himself had been very close to being ousted from his house. It also turned out that for quite some time various development projects in the area funded by the African Development Bank had been encouraging herders to take out mortgages, using their animals and other goods as collateral. My friend therefore had knowledge of several persons who had come into dire problems through these credit schemes. According to him, the interest in mortgage had started in 2004, when credit institutions such as Crédit Populaire and Crédit Mutuelle had opened branches in the town and thereby provided people short of funds with an alternative to soliciting family and friends.

In his own case M, being out of work for long periods of time, had started a small business as a car insurance agent. Using all his savings, he was able to buy a number of insurance bonds that he would later resell to customers in town. After a while, he was short of money, because his customers expected him to grant them credit until they could sell an animal or in other ways get hold of the cash needed. He therefore took out a loan of 500,000 CFA (\$800) with a credit institution, using his house (valued to 1 million CFA including all fixtures) as collateral and his niece, who worked in the mayor's office, as a warrant. With the loan, he was able to repay the insurance company and service his debts, but he soon got into similar trouble again. Because he had repaid the previous amount in due time, the lenders were now willing to issue him a new loan of now 1 million CFA, the entire estimated value of his house. Unfortunately, M fell ill for a longer period. No longer able to service his debt, he was liable to lose the results of his efforts, blood, sweat and tears, not to mention putting his niece in great trouble, had it not been for his extended and international social network.

This extension of private lending based on mortgaging of private property is surprising, as few in Senegal are recognized as owners of the land. Particularly in rural areas, land ultimately belongs to the state, and it is difficult to claim extended ownership rights. Even in larger towns, plots are not privately owned but allocated through the municipality. In reality, what would have been lost, in case of inadequate servicing of a mortgage debt, was not only the house, but also the plot on which it was located. M's case revealed that the value of his property was highly unstable and that even though he was not the owner of the land, he



was still liable to lose it. From having access to land due to membership and belonging, M was transformed into simple tenant, liable to lose rights of occupancy if economic obligations not be met. Furthermore, attempts at solving the perpetual shortage of cash characterizing many rural households through formal mortgaging of his house did not contribute to capital formation. His access to a bank loan rather contributed to making his debtors slow down on their reimbursements.

The other tale takes place outside of town, in the pastoral areas, where mobility is high and land rights more diffuse. Here formal titling of land does not seem to be an option for the near future.² In these areas, land security in terms of user rights may be strengthened in a different manner, by widening the relationship between taxation and land claims.

People may have varied reasons for either paying or dodging taxes. Not least in relation to taxation, it is often assumed that people engage with the state because they cannot avoid it. For some people, however, getting access to the state may be complicated and in such situations payment of taxes may be a symbolic act of connecting to the state, a means of gaining legitimacy and of validating claims over land and other rights of occupancy vis à vis the state and local authorities. This is illustrated by the following examples.

On the one hand is a conflict where newcomer populations tried to get to pay taxes to the rural council dominated by the settled agro-pastoralist populations, but were constrained in doing so by local politicians. On the other hand is the case of a foreign, private investor who was trying to set up a large scale agricultural scheme in the area, but who had difficulties gaining legitimacy in a generally non-taxpaying environment.³

The basis of the first example was a discontent expressed by the agro-pastoral first-comer population over the fiscal free-riding of “foreign herders” who allegedly did not pay taxes in the village, but only pretended to do so in their villages of origin. According to the argument of the locals, not paying taxes meant that the newcomers were not really established in their new areas of settlement, but were only waiting for an opportunity to move back to their villages of origin. In such a situation, it was stressed, they could not make claims on land and other crucial resources on a longer term basis. This interpretation was interesting, as it acknowledged that taxation had acquired some sort of symbolic meaning, resembling that of a tribute, paid typically as a sign of political allegiance to a local leader. If it was paid, it would therefore imply recognizing the tax-payers as residents with rights and duties vis à vis the local community. In reality, tax compliance

² Whether mortgaging of property in terms of loans in animals has proliferated in the area remains a question for future investigation.

³ For an extended version of this conflict, see Juul 2006.





was expected, in the short or longer run, to guarantee some kind of protection of use rights, and it was precisely because of these attributes that certain autochthonous herders found it necessary to avoid its proliferation.

Another group who curiously also had problems with tax payment were the private companies and entrepreneurs operating in the area. Indeed, rural councils are in something of a dilemma when it comes to mobilizing resources and to attracting productive enterprises into their constituencies. Many services such the allocation of land, rights to dig a well, etc. are (almost) free of charge and not subject to any form of payment or taxation before investments bear fruit and become taxable. Investors have obvious advantages, as they are getting the land almost free of charge (a reason for which lands are often abandoned when the investments turn out to be unrealistic - see for example John 2015). A related, often unnoticed problem is that this also leaves investors with a problem of not being recognized - and hence of difficulty in gaining legitimacy in a non-taxpaying environment. This was the situation of a Saudi Arabian company with ambition of becoming the world's largest gum arabic producer, who was allocated a large plot of land in the pastoral zone, where the gum producing acacia senegal trees can be cultivated. Although they had held meetings with the councilors and invited them on trips to Mekka, the allocation was not accepted by the local population, who simply continued to graze their animals within the confines of the land in question. The case shows that when rights of land are given free of charge it dilutes the level of formal recognition implied by the action, leaving an opening to the local population to question its legitimacy.

This brings us back to the question of property taxation. According to Fjeldstad, few fiscally significant taxes are more appropriate than property taxes. Property is visible and immobile, an indicator of one form of wealth, which makes property taxes difficult to avoid. It therefore represents a non-distortional and highly efficient fiscal tax (Fjeldstad 2012:10). Nonetheless, property tax revenues are small, if not inexistent, in many African countries. According to Franzsen 2007, it accounts for less than 0.5 percent of GDP in many African countries (Fjeldstad 2015:152). This is due, among other factors, to the limited development of land markets, and to the fact that property registers and valuation rolls in most African countries are outdated or not in place. Furthermore, administrative capacity and equipment are often limited and legal exemptions extensive.

It could therefore be interesting to look more into whether and how improvements of land registers and development of land markets are liable to positively affect the development of property taxation. In the case of Senegal, the property tax legislation currently in place is quite comprehensive (Monkam 2011:48). Local governments are entitled to levy property taxes and other direct local taxes as part of their own revenue sources. Three taxes on property are levied (taxes on improved, unimproved, and insufficiently improved property). In reality, coverage is very low, and coverage has not yet been extended to rural areas, as pointed



out by Monkam (Ibid.:54) as well as by Fjeldstad (2015:152). Reasons for the limited development of these institutions may, however, be more political than administrative. While titling and the idea of mortgage as a means to 'free' surplus value of assets have become popular in many countries, taxation of property has powerful political enemies. This obviously boils down to the fact that it strikes people with considerable property wealth directly, and that these usually also have considerable political power. Hence, the low use of property and land taxation "reflect[s] the success of resistance of the rich and powerful to measures which harm their interests" (Ibid.).

Recently, however, new winds seem to be blowing toward taxation. Interesting work by de Gramont (2015) shows how Lagos, over a period of less than fifteen years, has gone from being a symbol of urban disorder to a widely cited example of effective African governance. The Lagos state government has succeeded in multiplying its tax revenues and using these resources to restore basic infrastructure and expand public services and law enforcement. What is surprising is that de Gramont's research also seems to indicate that reform commitment in Lagos was driven by electoral pressures, as well as by elite ambitions to construct an orderly and prosperous megacity. Indeed, the Lagos case shows that improved property tax collection can be achieved if high level political commitment is backing the project. In the tax sector, for instance, the Lagos government successfully promoted the idea of a social contract between taxpaying citizens and a state providing infrastructure and services.

In contrast to the previous focus on capital formation through mortgaging of private property (with all the risk it implies for small and heterogeneous households, as well as for individual household members who unwittingly may be dispossessed), economic growth and development may also be provided by improving public services and infrastructure, and by thus opening new avenues for rural entrepreneurs and investors. Strengthening states' revenue mobilization may well help enable them to provide security, meet basic needs, and ensure development. In contrast to the mortgage and loan, efforts are (at least theoretically) directed towards developing public goods, and they are carried out by public authority through state and local government. A likely side effect is therefore also improved governance at both local and national levels. Thomas Piketty also speaks warmly of the key role played by progressive taxation in reducing inequality, as it did in the 20th century. He stresses: "Taxation is not a technical matter, it is preeminently a political and philosophical issue, perhaps the most important of all political issues. Without taxes, society has no common destiny and collective action is impossible" (Piketty 2014:493). Taxation, which has long been considered a dull and tedious topic, seems to be back in fashion in the social sciences. The trend can be seen not least by the present interest in scandals exposed by the Panama Papers, where superrich football players, presidents, and bankers were revealed to have hidden large sums of money away in tax havens on the Virgin Islands instead of declaring them to the tax authorities. Taxation has become a sexy subject, leading even to the dethronement of the prime minister of Iceland. Less colorful





and popular perhaps, but equally important for the understanding of the role of taxation in developing societies, are the contributions from what Michael Keen has called “the New Fiscal Sociology,” which brings together sociology, economics, history and political science to explore taxation as a lens into the changing social contract linking state and society (Keen 2012). In doing this, it represents a significant reversal of earlier views among economists that taxation undermines growth and exacerbates informality.

To sum up, it is possible to conclude that credit and mortgaging programs, when applied in rural African environments, often gloss over differences of income, occupation and property structure when it comes to assessing borrowers’ abilities to free the surplus values of their assets, and to providing capital for economic growth and development. For households with limited assets and unstable incomes, taking loans remains a highly risky business. More collective attempts at providing growth and development through provision of infrastructure and services financed through taxation (of private property) offer a pathway also to decrease inequality. Payment of taxes has, however, also been used to manipulate property rights and validate belonging.

References:

de Gramont, D. 2015. *Governing Lagos: Unlocking the Politics of Reform*. Washington, DC: Carnegie Endowment for International Peace.

Fjeldstad, O. 2015. When the Terrain does not Fit the Map: Local Government Taxation in Africa. In *Perspectives on Politics, Production and Public Administration in Africa. Essays in the Honour of Ole Therkildsen*. DIIS, Copenhagen.

Joireman, S. 2008. The Mystery of Capital Formation in Sub-Saharan Africa: Women, Property Rights and Customary Law. *World Development* 36(7): 1233-1246.

John, W. 2015. *Climate Change Discourse and the Intensification of Land and Water Conflicts in Tanzania*. Unpublished PhD. thesis, University of Dar es Salaam.

Juul, K. 2006. Decentralization, Land Taxation and Citizenship in Senegal. *Development and Change* 37(4).

Keen, M. 2012. Taxation and Development—Again. In *IMF Working Paper WP/12/220*, International Monetary Fund.

Moore, M. 2015. Tax and Governance Dividen. In *Perspectives on Politics, Production and Public Administration in Africa. Essays in the Honour of Ole Therkildsen*. DIIS, Copenhagen.

Monkam, N. 2011. Property Taxation in Africa; Legislation in Practice. *Journal of Property Tax Assessment and Administration* 8(3): 41.

Piketty, T. 2014. *Capital in the Twenty-First Century*. Cambridge, Massachusetts: Harvard University Press.





THIS LAND IS NOT FOR SALE: LAND, LOANS AND INVESTMENTS IN POST CONFLICT NORTHERN UGANDA

Mette Lind Kusk

School of Culture and Society, Dept. of Anthropology, Aarhus University

Lotte Meinert

School of Culture and Society, Dept. of Anthropology, Aarhus University

In this paper we explore a number of recent cases from northern Uganda regarding land, loans, and investments. We start with a short introduction to land tenure systems in post-war northern Uganda and give a brief insight into ongoing land conflicts. We look into some of the literature and a recent study of land tenure security and loans in Uganda. One of our cases from the Acholi region points to issues of contested property relations and disputed land sales, which we go on to examine in the practice of putting up signs in urban northern Uganda saying “this land is not for sale.” Finally we move to the Karamoja region of northern Uganda, where people have no or very little experience with credit and selling of land. Yet the fear of creating situations where people do not belong anywhere, and become indebted, is pronounced.

EXISTING PROPERTY AND INHERITANCE PATTERNS IN NORTHERN UGANDA

The Land Act of Uganda from 1998 intended to enhance tenure security by recognizing different tenure forms and thereby rights to land. At the same time the reform aimed to bring land to the market for sale. For a number of reasons, the implementation of the reform has been hesitant and slow.

Four types of land tenure are recognized in the Land Act from 1998.

1. **Customary tenure**, under which people have rights to land, but do not have formal titles; it is vested in clan collectives and accessed through patrilineal inheritance and entrustment, rather than via market and money.
2. **Freehold tenure**, which is individualized, titled and registered land, accessed through the market, but also inherited as property.
3. **Leasehold tenure**, which provides for access to public land on a time bound contract.
4. **Mailo land**, which refers to land owned by the Buganda king and feudal landlords, rented by poorer tenants (Ravnborg et al. 2013).



In northern Uganda, the vast majority of land (95 percent) is held under customary tenure, and only few have land titles of freehold land or hold leased land. This means that most people access land through kinship relations: sons inherit land from their fathers, and daughters access land through their husbands. Traditionally, you could claim the amount of land you were able to use: a principle that reflected a past when land shortage was not a problem and an approach to land-distribution based on labor – digging with a handheld hoe and herding cattle.

The conflicts in Northern Uganda, in particular with the Lord's Resistance Army causing brutal war in the Acholi region from 1986-2006 and cattle raiding by armed groups in Karamoja, have meant that access to land has been limited and conflict locked for decades. With peace in Acholi, people have moved back to their original homes; and with disarmament in Karamoja, mobility as well as agricultural production has increased, and some groups have moved into new territories.

After the 20 year long war in Acholi land, people made the joke that “peace has broken out” due to the very high number of land conflicts in the region (Meinert 2013), where questions over who has rights to what land are prevalent. The social links connecting people to their land are missing for many, due to deaths (Whyte et al. 2012), and physical boundary markers - reflecting people's past belonging to a particular place - have been destroyed or overgrown. In Awach sub-county 30 percent of families reported to be in a land conflict (Demographic Surveillance System). Land conflicts are of many different kinds and scales, including what people term “wrangles” between family members, neighbors, clans; conflicts over district, county and sub-county borders; conflicts between authorities (UPDF, Police, Sub-county offices) or other institutions (schools, churches, health centers) and local inhabitants, and conflicts between large scale investors and local inhabitants.

In the Karamoja region conflicts over territory are of different kinds and include: in-migration of cattle herders to agricultural areas (including Turkana from Kenya and Didinga from South Sudan); and conflicts between wildlife, wildlife authorities and local people over territories referred to as game reserves, animal corridors, and indigenous land respectively.

The recognition of different tenure forms in the 1998 Land Act aimed both to recognize various tenure forms and to pave the way for a market in land. Some of the conflicts we have followed revolve around individuals who have managed to mortgage or sell off land which belongs to the category of “customary land,” i.e. land held collectively.

CREDIT, CUSTOMS AND PATTERNS OF INDEBTEDNESS

Access to formalized credit, such as basic bank loans, in Uganda varies greatly across regions. It seems





quite limited in the Acholi region (Ravnborg et al. 2013), and it is certainly very limited in the Karamoja region. There are important regional and urban/rural differences in access to formalized credit, and socio-economic and gender characteristics clearly matter too. Loans appear to be more common among urban men from South-West Uganda, who are educated and non-poor (Ibid.).

In their survey study in three districts in Uganda, including Amuru in Northern Uganda, Ravensborg et al. show how access to loans in Uganda is not primarily linked to titled land, as assumed by some scholars (Ibid.); loans are commonly taken with security in other forms of property or relations. Only in one third of the loans taken with formal credit institutions was land used as collateral, and only one fifth of these cases involved titled land (Ibid.: 98). The degree to which the credit institutions demand land tenure documentation is described as “flexible” (Ibid.). According to the authors, the reason so few use the land as security for loans is not because the credit institutions are unwilling to accept land as collateral. Rather, it is people’s hesitation to jeopardize their land, which is regarded as belonging to the family, the clan, and the community at large (Ibid.)... in addition to , we would add, the past and future generations.

A similar hesitation was observed during fieldwork in the peri-urban areas of Gulu town, where a local politician facilitated saving-groups, bolicup, to provide people with an alternative way of accessing credit without running the risk of losing their land if unable to pay back in due time. In these groups, people save up collectively, members can take up small loans from the collective savings, and they repay with interest, which members share once the savings are ‘opened’, typically after six or 12 months. The members were all aware of people who had lost land due to loans taken up in micro finance institutions, and they all emphasized their unwillingness to jeopardize their land by entering such loan agreements as well as the need to access credit once in a while.

Ravnsborg and colleagues note:

“Despite concerted efforts during the past decades to increase the supply of agricultural credit e.g. by providing subsidized capital funds to credit institutions, demand has not increased in practice as anticipated. Overall, only around a quarter of respondents had taken out a loan and the vast majority of those who had taken loans during the past five years had done so to finance non-productive investments, such as education for children, meeting health expenditures, repairing their houses, etc. (ibid.: 93).”

This indicates that the majority of loans taken are what we might term “poverty loans,” meaning loans used to cover immediate and urgent needs, rather than being part of a desired, long-term investment plan in production.

In the following we consider empirical cases from our ongoing studies in the Acholi and Karamoja region in Northern Uganda to highlight some of the current issues related to land and loans.





LAND LOANS AND RAMIFICATIONS FOR FAMILIES AND NEIGHBORS: A CASE FROM AWACH SUB-COUNTY

After the LRA war in northern Uganda, people from one of the sub-counties we work in report that an increasing number of people have taken loans in banks with security in land and other forms of property. Yet many report that they find it difficult to pay back the mortgage because their businesses are unstable. James,¹ a local businessman, explained how people “take loans due to poverty and they want development, but business is up and down. So when the bank does not receive the money in time they come and take the land.” Sometimes family members are unaware that another family member has taken a loan in the land and get an unpleasant surprise when they are evicted, which is what we see in the case described below.

James, who comes from a small rural trading center, borrowed money from Centenary Bank in Gulu town. He had paid almost half of it back, but unforeseen extra expenses – his first wife burned down part of his home when he wanted to divorce her – made him unable to raise the rest of the money in time. He had taken the loan with security in a house he had constructed and the 3 acres of land around it. His two neighbors, who had accounts in Centenary Bank were standing as security. Now the bank had closed their accounts. One of them was a teacher and when the bank closed his account he did not receive his salary. James requested the bank to prolong the deadline for his loan, but they declined. Consequently he decided to sell a plot of the land to raise money to pay back the loan. He called a meeting to inform his brothers, his parents, and his paternal uncles about the decision. At the meeting, one of the uncles got extremely frustrated with the sale, and he tried to grab some money from James (the land was sold for 1.4 million UGX, so he had almost 1 million UGX in addition to what he owed the bank). The uncle was reprimanded at the meeting and told to accept the sale. The next evening, however, the uncle had been drinking, and he went to the home of James’ parents. Only the mother was home, and the uncle attacked her with an axe. Luckily, one of her other sons came home and managed to stop the uncle before any serious harm was done. Both got minor injuries, though, and the mother was very scared.

James interprets the incident as caused by the land sale and thus, indirectly, by the loan. The land, which was sold was ancestral land, was held under customary tenure; but even though his parents had been consulted before the sale and approved it, the uncle had not been asked. As ancestral land in general is viewed as an asset that cannot be exchanged for money but only shared among clan members according to how much they can use, to bypass a paternal uncle and turn a collective asset into an individual one goes against the custom and the “rules”. (A peculiar aspect of the case is therefore that James’ sale seemed to be accepted by most family members and only opposed by one uncle. We don’t know the reason for this, but should also point out that we have only heard the story from James himself.)

¹We use pseudonyms to ensure anonymity.





James describes the uncle as being in need of land; he has many children, 11 of them sons, and it is difficult for him to provide for them from the little land he has. The children are not in school, and they depend on the ancestral land for subsistence farming. In the future, when the uncle's land is divided among them, each will get too little land to live from. While explaining the case, James seems very understanding of the uncle's situation, even though he of course disapproves of the attack on his mother. James never intended to sell part of their ancestral land. It happened because income is rarely steady or predictable, and unforeseen expenses turn up all the time, making it difficult to keep within loan deadlines.

The mother, her husband and the uncle went to the police, presented the issue, and were advised to solve the matter from home because they were so closely related. There, they managed to reconcile, the uncle apologized and indeed seemed very sorry about what happened, and they had a small reconciliation ritual. Even though the mother felt extremely scared in the beginning, living right next to the uncle and farming in the same area, they now stay together as one family, as they did before the incident.

The loan case shows some of the local social and economic ramifications of individual mortgaging of land in contexts where land is mainly a collective asset. What was initially an agreement between a man, his bank and two neighbors became - when the deadline was not met - a conflict between 3 other actors who were not directly involved in the initial agreement but related to the land - the uncle, the mother, and the brother. Their relationship to each other is put at risk as a consequence of the mortgage. In addition, the uncle's difficulties in providing for his children due to lack of land seem to be of a more permanent kind now that the possibility of using some of the land designated to James has been closed.

CONTESTED PROPERTY RELATIONS: "THIS LAND IS NOT FOR SALE" SIGNS AND CASES

The conflict presented above revolves around a disputed land sale caused by the demand to pay back a loan. Such disputed land sales seem to be on the rise in the area, which a relatively new phenomenon in urban and peri-urban spaces in northern Uganda also indicates. Moving around Gulu town you will find signs saying: "This land is not for sale." We are aware of the wider global phenomenon of not for sale signs (see e.g. Google Images for not for sale signs). Yet we are interested in what these signs may tell us about the land market and property relations in this particular place. At first glance it seems odd to advertise something not for sale. But by exploring the stories behind the signs, we get an entry-point into some of the core dilemmas connected to land tenure in Northern Uganda: Is and should land be an individual or collective asset; should it be vested in kinship relations and acquired through inheritance, or commodified and acquired through purchase?

The three cases of 'not for sale' signs we explore here have several commonalities: All cases concern land where the owners do not live on the land, and land to which several actors who are intimately





connected claim rights. In two of the cases, a father has died and left behind land, which his sons and wives have to share. Polygynous structures of men having children with more than one wife complicate such processes. Often an individual has the legal administration rights ('the paper') to the land, but several actors view themselves as equally entitled to claim part of it and to be included in decisions if part of the land is to be sold off. In one case, the son who had been given the legal administration rights began to sell plots of land without consulting his brothers and without sharing the money from the sales. In another case a stepmother rented out a plot without sharing the income with her stepsons. In both cases, this sparks disagreements and relational property rights are contested. A young guy whose paternal uncle sold off land explained why he opposed the sales: *"To have plots in Gulu town is good, and it is good to keep them, because Gulu will soon gain city status, so they may become more valuable. You can secure an income by keeping the plots and renting them out. If you sell it off, you will soon be left with nothing."*

To sell land is to make its value relatively final, and a lot of people oppose land sales because they need land for the future, as the above quote reflects. Especially if the money is not shared, land sales are frowned upon. But in a context where land markets are informal and the judicial system does not function well, how do you make sure your land is not sold behind your back? Normally one's presence on the land would counter this, but when it concerns land where you don't stay it is less straightforward.

Formal registration and land titling are often presented as a solution or a necessity to prevent land conflicts; yet, as these cases show, that assumption can be challenged. To have a plot registered and titled does not change the complex property relations connected to an individual plot. Rather it might empower an individual to sell off land by convincing a buyer of his or her ownership without the consent of the collectivity, causing more conflict. Local leaders, LC1s, are often viewed as authorities who have to approve land sales. This is not always unproblematic. Some report having to pay high fees to the local leaders before these will approve a sale, sometimes as much as 20 percent of the total cost of the land in question. Besides being a made-up fee, such "rules" also entice double sales, as it is good business for local leaders to approve land sales. At other times, sales are simply being made without involving any local leaders. Even though such sales may not be legally binding, they may work in practice in a context where taking such matters to the formal courts is an expensive, slow and unpredictable endeavor.

To put up 'not for sale signs' on the plots proved to be an efficient strategy in all three cases to counter an individual's power to sell collectively owned land without the consent of the collective – the signs are a way of creating a physical presence despite absence of persons and voicing claims without physically being there. The aim is to scare away potential buyers, making them question the acclaimed owner's rightful ownership. In all cases, the signs seem to have worked; at least no more plots have been sold or rented out without collective consent.



The signs may testify to a specific moral economy where property relations are being contested and where social cohesion around land is up for discussion: Does land belong to people or do people belong to land?

INVESTMENTS IN LAND: WIND MILLS IN KARAMOJA

In a different land situation in the Karamoja region, the social and micro-political processes in connection with newcomers', private investors', and missionaries' requests for land to build on or 'develop' also bring these questions into focus. In Kaabong district a private company requested to buy plots of land to build windmills. In one of these cases we followed, this request created a historically novel situation, as no one recalled land's being sold in the parish before, and no formal or informal institutions were prepared for land sales or investments. Yet the private company needed owners whom they could pay and sign a contract with. A process of establishing "original owners" of land in an entrustment system, which has been largely in flux with many different users of land over time, created social turmoil. A variety of formal and informal actors got involved, and positions and authorities were created in this process. People in this area have very few experiences with investments in land, but they hear stories from other parts of Uganda about "land grabbing" and evictions of "squatters"; people have lost their land or forests due to "investments". When energy-, oil-, and mining companies, as well as large-scale agriculture industries, buy land, many people get uncertain and worried. This is so partly because of the unfamiliar concept of "owning" land and what it means in practice and in a longer time perspective. Those who got established as the "original owners" of the wind mill plot in Timu Parish were wondering (after the sale) if they should have insisted on renting out the land to the investors. The idea that their ancestral land is now sold "forever" creates a kind of radical uncertainty, and people raise questions such as: Where will our children live if people start selling more land?

Other community members are in favor of letting 'outsiders' buy the land and make investments, which they hope will benefit the local community. "They borrow our land and we will also benefit from it", is what the developmentalists in the community argue. They imply that the land still belongs to the community, when they say that the company only borrows the land. Yet in legal terms the company owns the land permanently.

Some of the themes that interest us in this case are obviously the introduction of ideas about ownership, investments, developmentalism and cadastral logics in an area where land and belonging have been largely in flux.

IMPLICATIONS AND MORE QUESTIONS TO EXPLORE

Our studies of land conflicts in Northern Uganda have not focused on mortgaging and loans as such and it would still be too preliminary to give policy recommendations based on these. However we do see certain areas that would benefit from more research and empirical studies.





More knowledge is needed in Uganda on how loan agreements are made in practice from the perspectives of the loan takers. What are the conditions of the loans and how do people understand these? How do options of taking loans differ in different areas; and what actors and options do people turn to, and why? How do people perceive and experience loans with collateral in land?

It would be important to know more about time perspectives in relation to loans and investments: How do opportunities and risks, dreams and fears play into interest in taking or not taking loans, making investments and mortgaging land? To mortgage land brings a long-term future goal of generating an income from the land into the present. What happens to longer time horizons in relation to kin and younger generations?

What measures can be taken to protect and safeguard those more at risk of not being able to pay back loans and keeping assets?

Loans for what? It is interesting that most loans are obtained for non-productive investments, and it reflects a situation where people do not want to mortgage their land but they are forced to do so to pay for their children's school fees and for health crises.

How do practices of investing in land, without taking loans, but having others invest or using savings, influence ideas about mortgaging land?

In areas where land sales, investments and loan taking are novel, what measures could be put in place to ensure that lay people are able to get affordable legal assistance and advice?

References:

Meinert, L. 2015. Tricky Trust: Distrust as a Point of Departure and Trust as a Social Achievement in Uganda. In *Anthropology & Philosophy: Dialogues on Trust and Hope*. Liisberg, S., Oluffa Pedersen, E. & Dalsgaard AL. London: Berghahn 118-133.

Ravnborg, H.M.; Bashaasha, B.; Kidoido, M.; Pedersen, R.H.; Spichiger, R.; Turinawe, A. 2013. Land and Property Rights and Economic Behaviour in Uganda: Results from a Questionnaire Survey Conducted in Amuru, Masaka and Pallisa. *Journal for Peace and Security Studies (JPSS)* 1.

Whyte S., Babiha S., Mukyala R. and Meinert L. 2013. Remaining Internally Displaced: Missing Links to Human Security in Northern Uganda. *Journal of Refugee Studies* 26: 283-301.





Georgia Hartman

is a Ph.D. candidate in Anthropology at UC Irvine. Her research is focused on an examination of market-oriented land and housing reforms as forces that are changing notions of the value of land, home, and property in Mexico's fastest growing city: Cancún. She analyzes new moral claims about property organized through the market rather than the state and examines their implications for urban space and the people who dwell within it.

**“TO HAVE SOMETHING FOR MY CHILDREN”:
PATRIMONIO AND MORTGAGE FINANCE IN MEXICO**

Georgia Hartman
University of California (Irvine)

In 1992, the Mexican government reformed its social housing agency for private sector workers, Infonavit,¹ into a mortgage finance institution. In the twenty years since, widely available financing has transformed the predominant method of household acquisition for low income Mexicans from informal, incremental construction to the purchase of completed homes through a mortgage. On a large scale, mortgage finance has altered the shape of urban expansion. Haphazard irregular growth has been replaced by the rapid construction of vast housing tracts on inexpensive land along the urban periphery. Widely available housing finance has closed the housing gap for formal sector workers, but it has also created a new set of problems: with distant housing tracts straining municipal infrastructures, increased socioeconomic segregation², and a vacancy crisis in which thousands of homes now lay abandoned³.

At the heart of this new urban growth are two incommensurable cultural logics of economy: Infonavit's model of economy premised on the market on the one hand, and economic practices embedded in traditional notions of the home as patrimonial possession on the other. Through 12 months of ethnographic research in Cancún and Mexico City, Mexico, I find that homeownership through mortgage debt unsettles traditional notions of homeownership as a source of security and stability, and instead fosters its opposite. The resulting disillusionment of homeowners has given rise to a host of new urban problems

¹ *Instituto del Fondo Nacional de la Vivienda para los Trabajadores* (Institute for the National Housing Fund for Workers).

² For further discussion on the correlation between Infonavit-era tract housing and increased socio-economic segregation see Monkkonen 2011.

³ In 2015 the OECD (2015) reported Mexico's vacancy rate at 14.2 percent. It noted that approximately 4.9 million homes were uninhabited, or one seventh of the country's housing stock.





with which policymakers must now grapple, including unsafe and physically deteriorating communities, and a home abandonment crisis.

THE HOME AS PATRIMONIO:

Patrimonio is alternately translated into English as heritage or patrimony, though it carries a moral weight that is not adequately communicated by either. While technically it refers to all of one's material wealth, as the most valuable item most people own – and because of its centrality in the livelihood of a family, it is synonymous with the home. To possess *patrimonio* indicates that the male head of household is fulfilling his masculine duty of providing for the family's material needs (Ferry 2005; Varley 2015). It can be understood as what anthropologist Annette Weiner (1992) refers to as a kind of “inalienable possession” – wherein the object, in this case the home, is a repository of histories and genealogies that provide the context for meaning and belonging for future generations. It is in the pursuit of *patrimonio* that economic practice and financial fates become linked to familial and urban geographies.

In the last decade, the moral imperative to seek *patrimonio* has fueled the explosive growth of the Mexican housing market. When speaking to low-income Mexicans about why they used their Infonavit credit to purchase their homes, the weight of the moral value attached to homeownership becomes clear. Surprised to be asked such a question, informants' responses are both consistent and unequivocal: “to have *patrimonio*, to have something for my children”⁴. Housing reform has not changed the moral value associated with *patrimonio*. Indeed a house remains a much sought after possession. However, by altering the financial method of home acquisition, housing reform has transformed the economic and affective value associated with homeownership.

HOMEOWNERSHIP AND HOUSING POLICY IN MEXICO (1940s-1992)

Until recently, the predominant method of household acquisition in Mexico was through incremental construction, typically in conditions of legal informality. This trend started in the mid-twentieth century in the context of rapid economic growth spurred by state-sponsored industrialization. Economic change fueled a large scale demographic transformation as rural migrants flocked to the country's urban poles (Cornelius 1975). Lacking a viable housing market or housing policy equipped to meet demand, migrants constructed homes along the urban periphery from available materials (Ward 1998). It was in the midst of this housing crisis that the government of President Luis Echeverría established Infonavit, the Institute for the National Housing Fund for Workers.

⁴In Spanish: para tener un patrimonio, para tener algo para mis hijos.



In Mexico, housing is a right guaranteed by the Constitution of 1917. According to Article 123, employers are obligated to provide housing for their employees. In establishing Infonavit, Echeverría allowed employers to satisfy this obligation through a mandatory payroll contribution. Under this arrangement, a five percent contribution from the paycheck of every private sector worker (matched by their employer), funded and continues to fund Infonavit. In its original manifestation, Infonavit took an active role in the housing market, managing each stage of the housing process: planning housing settlements, monitoring their management and maintenance, and providing financing to homebuyers. In its early years Infonavit enjoyed some success, constructing more than 250,000 units between 1971 and 1983 (Ward 1990). But while housing was initially allocated randomly, by 1977 Infonavit fell into the control of the powerful CTM⁵ union and became a tool for political patronage (Puebla 2002). Under this institutional model, Infonavit became synonymous with corrupt clientelist practices and utterly failed to meet housing demand (Zanetta 2004). Thus, incremental construction of informally occupied land endured as the principal form of urban growth for the remainder of the twentieth century.

THE FINANCIALIZATION OF HOUSING POLICY (1992-PRESENT)

In 1992, as part of a broader set of reforms aimed at opening the Mexican economy to free market forces, President and Harvard-trained economist, Carlos Salinas de Gortari, ceased Infonavit’s building operations and narrowed its role to that of a mortgage finance institution. The reform matched closely with the popular theory that the market was the most efficient mechanism for meeting housing needs and that the proper role of government in the market is one of “enabling markets to work” (World Bank 1993). The reform’s architects believed that what they viewed as overregulation of housing inhibited the creation of a viable housing market. They hoped that scaling back the Institute’s role in housing provision and simultaneously expanding its role in the provision of housing finance would expand the market for home



*A new Infonavit-era housing development in Cancún. Homes in so-called social interest housing projects such as this one are built with shared walls in order to increase density and lower cost.
Photo: G. Hartman*

⁵ The Confederación de Trabajadores de México (The Confederation of Mexican Workers), was until the 1980s one of the most powerful labor unions in Mexico and an essential pillar of the People’s Institutional Revolutionary Party (PRI) and the corporatist state structure.





ownership to people otherwise ineligible for credit. They believed that widely available financing would create a consumer base that would foster the growth of a theretofore nonexistent private housing construction industry. In practice, the reform effectively transformed the constitutional right to housing into the right to a home loan.

In 2000 Mexico elected its first President from the opposition⁶, Vicente Fox of the center right PAN party⁷. Fox made the provision of mortgages a central feature of his platform, vowing to provide 750,000 mortgages per year (Comisión Nacional de la Vivienda 2005). Once in power, he purged Infonavit of PRI party loyalists and replaced them with financial industry professionals. Under the leadership of the former director of Bancomer, Victor Borrás, Infonavit systematized its lending processes and operated under increased transparency. Comparing the old Infonavit to the new Infonavit, one long-time Infonavit assessor proudly exclaimed that one of the biggest differences between then and now is that, “today everyone who qualifies gets a mortgage”⁸. In 2001 Infonavit allocated roughly 230,000 loans. By 2006 it had nearly doubled that number, allocating more than 420,000 loans (Monkkonen 2009). Today it is the largest mortgage lender in Latin America, by far (Herbert, Belsky, & DuBroff 2012).

Infonavit’s mission is social and therefore distinct from that of a private lender seeking financial ends. Its stated aim is to provide housing for those who would not otherwise be able to afford it. Nonetheless, the marketized method of housing provision adopted to meet these social ends implies a vision of the home as a commodity and its credittees as rational economic actors. In a model of economy grounded in the market, rational behavior involves the calculation of cost-benefit decisions based on economic gain or loss. Infonavit’s model of mortgage finance assumes individual actors will use their credit to purchase a home for their family in a manner that is economically advantageous. But, by defining certain goods and behaviors as economic, the model explicitly excludes other forms of affective value associated with the home (Çalışkan & Callon 2009). As a result, Infonavit’s practice of loan allocation discounts the myriad affective and moral values associated with the pursuit of patrimonio in Mexico. This conflict of cultural economic values – of a rational, market-based value on the one hand and of an affective, moral value on the other – has had tremendous consequence for people’s economic lives and the cities they reside in.

⁶ In 2000, the 71 year rule of the PRI, Partido Institucional Revolucionario (Institutional Revolutionary Party) came to an end. The PRI party’s rule was famously referred to by Nobel Laureate and Peruvian Poet Mario Llosa Vargas as “la dictadura perfecta” or “the perfect dictatorship” for its ability to retain power under the guise of democratic choice.

⁷ The center right PAN party, Partido Acción Nacional (National Action Party) was the first opposition party to accede to the Presidency in Mexico.

⁸ One’s “puntos Infonavit” are calculated based on three factors: age, housing savings account, and continuity of employment. Because housing is a right, everyone who qualifies is granted a loan regardless of their credit history.



THE FINANCIALIZATION OF HOMEOWNERSHIP

Built in the early 2000s, Villas de la Laguna is one of Cancún's older Infonavit era residential developments, and after 10 years it has started to show its age. The small, carefully manicured parks that once dotted the neighborhood have become dumping grounds for random waste and are frequently locations for illicit activity. It is in a community center in this settlement where I met Omar, a hotel landscaper and the owner of a small, 2-bedroom home. In the 10 years since he purchased his home he has made regular loan payments. But, when I asked if he feels that his home is his *patrimonio*, he hesitated. "Infonavit," he said, owns his home. "Do you know that in all the time I've been making payments, I've only paid interest?!"

Omar, as with many homeowners I spoke with, were alarmed to learn that they would not be paying toward their principal until well into the life of their loan. This manner of structuring mortgage debt – whereby the interest is paid up front, followed later by the principal – is a way of protecting the lender from future losses and is accepted financial practice in much of the world. But for low-income Mexicans unaccustomed to debt, this repayment structure upsets their understanding of their relationship to their home. Omar bought his home to have the kind of economic security implied in the idea of *patrimonio*. It is the security that comes from knowing that even if one loses their job, they will have a secure place to live. This understanding of *patrimonio* fits with an incremental method of homeownership wherein every part of the household structure – albeit perhaps a temporary one – is owned outright and is possessive of abundant sweat equity. With a mortgage, Omar is burdened with debt payments that are directly deducted from his paycheck, and because of the way his repayment is structured, he questions whether or not his home truly belongs to him.

In Mexico homeownership is understood to provide a rootedness and stability from which one may realize their dreams (Varley 2015). Indeed, in defining *patrimonio*, one informant explained that it is, "the sense of being rooted to something." But in the context of an uncertain labor market like that of the highly variable tourist economy of Cancún, ownership through debt instead fosters instability. Because low-income Mexicans are unaccustomed to long-term credit arrangements such as a 30-year mortgage, the idea that they owe more money than they've paid upsets the traditional understanding of the home as *patrimonial* possession. That the first 10 years of payments will only cover interest leads many to feel that far from investing in the ownership of their home, they are investing in the lining of Infonavit's⁹ coffers. The resulting disillusionment has upended the feeling of rootedness traditionally associated with *patrimonio* and instead fostered a sense of uncertainty and disconnection.

⁹ What is important here is not whether Infonavit is or is not a corrupt institution. What is significant is the ease with which Mexican people believe that it, along with very nearly all other state institutions is corrupt.





CONCLUSION AND POLICY RECOMMENDATIONS

The incommensurable cultural logics of economy at work in the contemporary Mexican housing market have resulted in disillusionment among creditees and homeowners. The tools of traditional economic models used by Infonavit simply do not account for the cultural values associated with the home in Mexico. This study suggests that the affective and cultural dimensions of homeownership must be considered because they have very real material and salutary implications for the built environment and the communities that reside within it.

As developing countries around the world look increasingly to finance as a means of addressing housing needs (Chiquier & Lea 2009), it is crucial that policymakers take into account the affective and geographic dimensions of housing policy as credit system. First, policymakers must recognize that policies regulating property are embedded with their own cultural biases. Though technocratic economic models appear to be objective, scholars have shown that these scientific practices are themselves cultural (Verdery 2003; Verdery & Humphrey 2004; Shipton 2009). Second, while leveraging credit as a mechanism for development offers politically and fiscally attractive policy solutions, when credit programs conflict with traditional cultural logics of economy, a new set of social and urban challenges is likely to result. Programs such as microfinance (Elyachar 2005; Roy 2010), and land mortgaging (Shipton 2009) have, for example, been shown to alienate people from the very livelihoods they were designed to improve. In the case of housing finance, the physical scale of a home and the infrastructures required to support it dramatically increase the magnitude of both the benefits and detriments of credit programs.

I suggest that in order to address the cultural effects of housing finance, policymakers grappling with the current home abandonment crisis should expand educational outreach as to the mechanics and frequent economic strain of a mortgage. In 2007 Infonavit began a financial literacy program, and today the completion of a 2-hour online module, *Saber para decidir* (Know in order to Decide) is a required component of all Infonavit loan applications. However, this module does not go far enough. Low-income creditees have limited computer literacy, which compounds the already considerable challenge of effectively communicating complex financial information. A campaign to educate the broader public about both the function and risks of a mortgage, combined with in-person financial education with prospective creditees should be a central component of Infonavit's credit programs moving forward. The ability of housing finance to provide housing on a large scale is clear, but more work needs to be done to ensure that potential creditees truly understand the implications of a 30-year mortgage obligation. This is important not just for the financial solvency and affective wellbeing of creditees, but also for the solvency and effectiveness of Infonavit and municipal governments across the country.

This paper has argued that altering the financial relationship of people to their homes has also changed the



nature of that relationship and the way people feel about their homes. However, more work is needed to understand the impact of housing finance on other kinds of relationships associated with the home. Scholars have long shown that property is central to the way we define ourselves and our relationships with others (Hann 1998; Rose 1994). As the physical, temporal, and affective location of the family the home is central to the formation of kin relations (Grajeda 2015) and to the reproduction of gender norms (Varley 2010). Patrimonio is associated with masculinity and is thus typically possessed by the male head of household. Legally this translates to the possession of property title by the male (Varley 2010). Lacking legal title to the home in which they live leaves women vulnerable to physical, emotional, and economic violence (Deere & León de Leal 2009). With Infonavit loans, both men and women are eligible for mortgage credit and may even combine their incomes to sign for a loan. It remains to be seen what effect more equitable loan agreements are having on familial and gender dynamics within the home. For example, does a clear financial investment in the home provide women with greater personal security and increased power in other financial and familial decisions? Or, are women who use their Infonavit credit more vulnerable to nonpayment and foreclosure because they are also more likely to be employed through temporary labor contracts? It is clear that changing the financial method of household acquisition alters people's relationship to their homes to both positive and negative effect. However more work is needed to understand the effect of financialized homeownership on gender and kinship relations, and their ultimate impact on the broader urban environment.

References:

Cadena, Claudia Puebla. 2000. *Del intervencionismo estatal a las estrategias facilitadoras: los cambios en la política de vivienda en México, (1972-1994)*. Mexico City, D.F.: El Colegio de México, Centro de Estudios Demográficos y de Desarrollo Urbano.

Çalışkan, Koray and Michel Callon. 2009. Economization, Part 1: Shifting Attention from the Economy towards Processes of Economization. *Economy and Society* 38(3): 369-98.

Cornelius, Wayne A. 1975. *Politics and the Migrant Poor in Mexico City*. Stanford: Stanford University Press.

Chiquier, Loïc, and Michael J. Lea. 2009. *Housing Finance Policy in Emerging Markets*. Washington, D.C.: World Bank Publications.

Elyachar, Julia. 2005. *Markets of Dispossession: NGOs, Economic Development, and the State in Cairo*. Durham: Duke University Press.

Deere, Carmen Diana and Magdalena León de Leal. 2009. *Empowering Women: Land and Property Rights in Latin America*. Pittsburgh: University of Pittsburgh Press.





Grajeda, Erika Denisse. 2015. On Housing, Inheritance and Succession Among Pioneer Squatters and Self Builders: A Mexican Case Study. In *Housing and Belonging in Latin America*, eds. Klaufus, Christien and Ouweneel, Arji. New York: Berghahn Books.

Hann, C. M. 1998. *Property Relations: Renewing the Anthropological Tradition*. Cambridge: Cambridge University Press.

Herbert, Chris E., Eric S. Belsky, and Nicholas DuBroff. "The State of Mexico's Housing - Recent Progress and Continued Challenges." Working Paper 12-8, Joint Center for Housing Studies, Harvard University http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w12-8_mexico.pdf (accessed July 7, 2016).

Klaufus, Christien, and Arij Ouweneel. 2015. *Housing and Belonging in Latin America*. New York: Berghahn Books.

Monkkonen, Paavo. 2012. Housing Finance Reform and Increasing Socioeconomic Segregation in Mexico. *International Journal of Urban and Regional Research* 36(4).

---. "The Role of Housing Finance in Mexico's Vacancy Crisis." Working Paper, UCLA Ziman Center, 2014. <http://www.anderson.ucla.edu/Documents/areas/ctr/ziman/2014-22WP.pdf> (accessed July 8, 2016).

OECD Urban Policy Reviews: Mexico 2015. OECD Publishing, January 6, 2015.

Rose, Carol M. 1994. *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership*. Boulder: Westview Press.

Roy, Ananya. 2010. *Poverty Capital: Microfinance and the Making of Development*. New York: Routledge.

Sánchez, Landy, and Clara Salazar. 2011. Lo Que Dicen Las Viviendas Deshabitadas Sobre El Censo de Población 2010. *Coyuntura Demográfica* 1: 66-72.

Shipton, Parker. 2009. *Mortgaging the Ancestors: Ideologies of Attachment in Africa*. New Haven: Yale University Press.

Varley, Ann. 2010. Modest Expectations: Gender and Property Rights in Urban Mexico. *Law & Society Review* 44(1): 67-100.

Varley, Ann, Christien, Christien Klaufus, and Arij Ouweneel. 2015. Home and Belonging: Reflections from Urban Mexico. In *Housing and Belonging in Latin America*. New York: Berghahn Books.

Verdery, Katherine. 2003. *The Vanishing Hectare: Property and Value in Postsocialist Transylvania*. Ithaca: Cornell University Press.





Verdery, Katherine, and Caroline Humphrey. 2004. *Property in Question: Value Transformation in the Global Economy*. London: Bloomsbury Academic.

Vivienda, Secretaria de Desarrollo Social Comision Nacional de Fomento a la. *Vivienda: evidencia del cambio*. Comisi3n Nacional de Fomento a la Vivienda, 2005.

Ward, Peter M. 1990. Mexico. In *International Handbook of Housing Policies and Practices*, ed. Willem Van Vliet. Westport: Greenwood Press. ---. 1998. Mexico City. J. Wiley.

Weiner, Annette B. 1992. *Inalienable Possessions: The Paradox of Keeping-While Giving*. Berkeley: University of California Press.

World Bank. "Housing : Enabling Markets to Work." The World Bank: Washington, DC, April 30, 1993.

World Bank. "Housing for All by 2030." Accessed July 13, 2016. <http://www.worldbank.org/en/news/infographic/2016/05/13/housing-for-all-by-2030>

Zanetta, Cecilia. 2004. *The Influence of the World Bank on National Housing and Urban Policies: The Case of Mexico and Argentina during the 1990s*. New York: Ashgate.

Back cover photo: Tarime highlands, Tanzania. By Daivi Rodima-Taylor





The Boston University African Studies Center is federally funded under Title VI as a National Resource Center to promote language and area studies in Africa. Founded in 1953, the African Studies Center has provided a strong foundation in African studies to generations of university professors, economists, health workers, government officials, development personnel, diplomats, and numerous others. The African Studies Center offers a rigorous academic program to students pursuing degrees in a variety of fields.

The African Studies Center at Boston University

Frederick S. Pardee School of Global Studies

232 Bay State Road

Boston, MA 02215

Fax: 617-353-4975 Email: africa@bu.edu

Facebook: African Studies Center, Boston University

Twitter: @BUAfricanStudies

ISBN 978-0-692-86199-8