

In PROPERTY IN ECONOMIC CONTEXT

Robert HUNT, Antonio GILMAN eds.

University Press of America  
Lanham - New York - Oxford

1998

Fonds Documentaire IRD

Cote: 6x 23171 Ex: unique

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## Chapter Seventeen

BOOK

### *The Emergence of Private Property in Land and the Dynamics of Agricultural Production: A Case Study from the Ivory Coast*

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Economists usually explain the emergence of private property rights, especially since the publication of Demsetz's well-known paper (1967), as the result of a trade-off between the benefits and costs of exclusion of others from the use of the resource. It is assumed that an increase in the value of a resource will lead to exclusive individual rights; as put forward by North (1990), changes in relative prices or relative scarcities lead to the creation of private property rights when it becomes worthwhile to incur the costs of devising such rights. Regarding land, this means that as this resource becomes scarcer in relation to population pressure or due to an increase in the demand for crops, a system of private property rights will tend to develop from an initial situation of open access or common property. This statement demands closer

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empirical examination. This Ivorian case study will explore the way in which property rights have evolved as an institutional arrangement.<sup>1</sup>

First, I will outline the ideal type of traditional land tenure system and its evolution in southern Ivory Coast since the beginning of this century, and relate this trajectory to the development of a peasant plantation economy.<sup>2</sup> It will be shown that the Property Rights School (PRS) prediction has not (yet?) been completely fulfilled. I will then analyze the emergence and dynamics of land property rights in a pioneer area of the Lower Coast. This case will offer the rare opportunity to witness the emergence of property rights from an institutional vacuum.

Beforehand, it is useful to discuss the meanings given in this paper to the basic concepts of property, ownership and private property rights, on the one hand, and of common property, on the other hand.

In the French tradition, the concept of "property right" is restricted to the combination of the right to use an asset (*usus*), the right to earn income from an asset (*fructus*), and the right to alienate it (*abusus*). (The well-known 544 *Code civil* article states that "La propriété est le droit de jouir et de disposer des choses de la manière la plus absolue, pourvu qu'on n'en fasse pas un usage prohibé par la loi ou les règlements.") As defined by the PRS scholars, the concept has the much broader meaning of "a socially enforced right to select uses of an economic good" (Alchian 1987: 1031). This broad concept encompasses more specific rights, especially the possibility to alienate the asset. The bundle of *usus*, *fructus*, and *abusus* rights is then defined as "ownership right" by some authors (e.g., Furubotn & Pejovich 1972: 1140; Ryan 1987: 1029; Pejovich 1990: 27; Pearce 1992: 351) or as "private property right" by others (e.g., Alchian & Demsetz 1973; de Alessi 1983: 59; Alchian 1987: 1031), in the latter case sometimes with the condition that the right is held by individuals.

A huge diversity in the use of the concepts remains. Some authors use the word ownership (e.g., "common ownership") even if they describe a situation excluding the right to alienate (e.g., Eggertsson 1990; de Alessi 1983). Barzel (1989: 2) uses "property rights" as including the possibility of alienation, i.e., in a French acceptance. Libecap (1989: 1) states that "private ownership of these assets may involve a variety of rights, including the right to exclude nonowners from access, the right to appropriate the stream of rents from use of and from investments in the resource, and the right to sell or otherwise transfer the resource to others," suggesting that private ownership may not include the right of disposal, etc.

To avoid any misunderstanding, in this paper I will use the concept of "property rights" in its broad meaning, of "ownership right" as the right including the possibility of alienating the asset, and "private property right" when the holder of the ownership right is the individual.

Another risk of misunderstanding comes from the meaning given to the concept of common property. Some PRS scholars (see for example Demsetz [1967] and Alchian & Demsetz [1973]) implicitly liken common property and open access. Eggertsson (1990: 36) makes no distinction between common property and open access, but differentiates them explicitly from communal property, whereby a community controls access to a resource by excluding outsiders and regulating its use by insiders. Bromley (1989: 203-206) distinguishes open access (i.e., no property at all) from common property, where the endowed group has a right to exclude nonmembers and where members of the group have both rights and duties with respect to use of the resource.

In order not to add to the prevailing confusion, but to facilitate the understanding of the analysis, in this paper I have made the following choices. "Communal property" will designate a situation where a community has the right to exclude nonmembers, to regulate the access to the land communally held for its members, and to impose on them norms and (possibly collective) practices in its use. "Common property" will designate a situation where a community has the right to exclude nonmembers, to regulate the access to land for its members, but without imposing on them norms and (possibly collective) practices in the use of the resource. "Open access" means no property at all, as suggested by Bromley.<sup>3</sup>

### *From Usufruct to Private Property Rights in Land: An Ideal Type for the Southern Ivory Coast*

This section discusses the traditional land tenure system and its evolution in the context of the southern Ivory Coast.

### *The Traditional Land System in the Southern Ivory Coast: Common Property, Communal Property?*

The fundamental features of traditional land tenure systems (i.e., before the development of the peasant plantation economy) have been

described by various authors.<sup>4</sup> At the risk of oversimplifying,<sup>5</sup> I will sketch them roughly, a detailed presentation being beyond the scope of this paper.

Traditionally, land was considered as a support of religious values. It was collectively appropriated—or, to phrase it more correctly, controlled—on a village or lineage basis. The fundamental principle was that every member of the group had the right to cultivate plots of land to insure his household's subsistence. The control maintained over the land by the community—usually through the *chef de terre*, the descendant of the first land-clearer—took on a religious meaning; sometimes the "chef de terre" agreement was not even asked for. "In fact, a contradiction appears between a norm, which grants land control to a local authority, and a practice, which allows individuals total freedom to do what they want," writes Gastellu (1982: 21) in his study of the Moronou Agni.

Merely a formality for the members of the community, this control remained effective regarding outsiders: "Everything is possible for the villagers, on condition that the piece of forest they are clearing has not been already appropriated; they have no permission to ask, no gift to offer; they are submitted to no restriction regarding the acreage they want to cultivate. Conversely, outsiders, Agni or foreigners, have to request the authorization of the *chef de terre* and offer him a symbolic gift; the place where they have to settle is clearly indicated" (ibid.).

The community control over land was in fact fully exercised over uncleared forests: the use right granted to a member of the community and formalized by the clearing of the forest gave him a pre-emptive right on the same plot after a lapse of fallow. So, the general cultivation right included more specific families' rights to cultivate a specific plot, a situation also described by E. Boserup. (1970). It was possible to pass this right to one's heirs, but it was not possible, not even contemplated, to sell the land. As Posner (1980) defines it, it was a purely possessory right, a usufruct, which allowed the possessor to exclude people from the land only as long as he was actually working it (or if, as can be seen in this case, he had worked it at some time in the past.<sup>6</sup>

How to qualify these land rights? Was this common property or was this communal property as defined above? This land tenure system may be labelled common property: there was the possibility of preventing outsiders' access to land, but there were no resource management rules enacted by the community. However, the posing of this question in these terms, even if it does correspond to the current practice in economics,

does not seem really satisfactory. Here we encounter the classificatory problem that frequently results from the use of concepts in historical and social contexts for which they might not be suited. To speak of property in land, whatever specific right one has in mind (private, common, state right, etc.), means to understand land as a thing, a good, which can be appropriated. But in an emic perspective and according to the prevailing social representations (which determined what was a good and defined its appropriation and the institutional arrangements for its management, land was definitely not a good.<sup>7</sup> It seems preferable to speak of management in terms of a use right, rather than to speak of appropriation (Karsanty 1992), since the problem of land control was not of a major economic concern.<sup>8</sup>

Referring to a similar situation, Demsetz (1967) states that property rights in land (i.e., private property rights) would require policing costs for several years during the fallow period, during which no sizable output would be obtained. But is this the major point? Basically, in a context characterized by a very low density of population, by land abundance, by slash and burn cultivation systems, by nonexistent or very limited markets for land products, and by zero or near-zero land opportunity cost, the land was not scarce, had no exchange value, and was not an economic good which might be appropriated. The fact that there was a regulated access to land for outsiders should not be interpreted economically but socially, settlement and cultivating being synonymous with integrating the community.

Some PRS economists offer a "consciousness argument" in order to explain the absence of private property rights in land in such a context. Barzel (1989: 65), for example, states that "What is found in the public domain . . . is what people have chosen not to claim;" but such a logic means that one already conceptualizes this thing as the potential object of a claim. It seems to me that the absence of private property rights in land in precolonial era comes neither from the difficulties nor from the costs of enforcing them, but from the fact that these rights had no significance in such a context. In other words, the point is not that people *could not* or *did not want to* enforce private property rights, but that they *did not even think* about establishing these rights.

PRS scholars also state that, in such a context, every person has the right to exploit the land and tends to overwork it because some of the costs of this practice are borne by others (i.e., the absence of private property results in great externalities). This analysis has been criticized

on the grounds that this absence must not be confused with open access and the lack of rules (e.g., Randall 1978; Bromley 1989; Aguilera 1991). The Ivorian case of the pre-plantation economy phase does not verify the behavior prediction of overexploitation. However, this may be due less to the existence of strict rules of management for the community resource, than to the fact that under the cultivation system used, overworking the land would have been immediately translated in a drop in food-crop yields. Besides, the sustainable nature of the long tree-fallow system is widely accepted.

### *The Emergence of Private Property Rights in Land: A Muddled Process*

In the forested area of the Ivory Coast, even the partial integration of the communities to the market economy, through the development of the peasant plantation economy, modified considerably the issue of property rights in land. Two interrelated factors of change in land property rights must be considered: the introduction of tree crops in the cultivation systems, and increased land scarcity related to a rise in land demand coming not only from native cultivators but also from immigrants.

The development of the peasant plantation economy came from the insertion of tree crops into the traditional food-cropping systems. Coffee and cocoa, unlike food crops, occupy land over a thirty to forty years time span.<sup>9</sup> The spread of tree crops introduced a significant potential force for the privatization of land rights, for two reasons. First, because traditionally crops are considered to be the personal property of the individual who planted them: tree crops legitimize permanent land control for a long time.<sup>10</sup> Second, trees are considered one's property and can be sold, which gives rise to confusion between a plantation sale and a land sale. The shift from rights in crops to rights in land has been widely documented; tree appropriation, which generally precedes land appropriation, can be understood as a by-product of plantation creation as long as there is no "land rush" (see below).

In terms of modern economic vocabulary, the introduction of tree crops—a kind of technological change—makes easier the exclusion of potential co-users of the land resource. The full effect of this exclusion technique (originally not viewed as such) arises with the perception of land scarcity. The extensive character of peasant plantation agriculture is usually explained by the combination of a strategy that optimizes labor

(the scarcest resource) rather than land productivity with a land reserve strategy, in that the cultivator anticipates the foreseeable shortage of available land. This strategy gives way to a land rush, during which it is more important to mark the landscape by planting trees that secure and perpetuate the rights obtained (i.e., exclude others) than to manage the cleared area optimally. In this logic, the plantations can be considered, at least in part, as a by-product of a land appropriation strategy.<sup>11</sup>

With the development of the plantation economy, land became a source of market values, and demand for it increased sharply. This demand came from autochthonous cultivators and also from nonnative people attracted by the earnings provided by the plantations.

Regarding the former, an essential point to note is a trend toward the individualization of land control. With the fragmentation of traditional family structures into nuclear cells, and the possibility of diverting land from the lineage patrimony through planting (each native planter can claim a right over land obtained through lineage), the lineage control right over land tends to "blow up" in a multiplicity of individual or family appropriation rights.

The second component of the increase in land demand is the arrival of immigrants. The plantation economy expanded in areas of low population, and this expansion has to be explained, in part, by the sometimes massive arrival of immigrants coming from regions ecologically unsuited for coffee and cocoa cultivation (the center and northern savannah of Ivory Coast, and also Upper Volta and Mali). The conditions of land access for these immigrants have varied from one region to another, regarding the relationships established between native and outsider ethnic groups. Three main cases can be distinguished:

- (1) The allocation of a use right, sometimes after a period of wage labor. During the pioneer phase of the plantation economy, land was not only the source of a tradable production, but it often became a means of access to labor, the scarce resource for native cultivators. Frequently, the immigrant's aim was to become a planter; working some time for a native planter was often the condition which would later allow him access to a plot conceded by his former employer. The very fact that the native planter had the right to land access, temporarily allowed him to take advantage of immigrant labor force through the creation of interlinked

(labor/land) markets. (See Chauveau & Richard [1983] for an excellent analysis of this process.) The attribution of land rights to outsiders initiated, in numerous cases, a loss of control by autochthonous groups over uncleared forest. Commonly, the first immigrants respected tradition and asked permission to settle from the native authorities; once established, the immigrants, acting as land authorities in the area they controlled, would give permissions on their own initiative to other newcomers. Ultimately, the weakening of the capacity of some communities to enforce rules regarding the use of their land resources might create situations of de facto open access on resources which previously would have been considered common property (Karsenty 1992). Often this was due to a tremendous demographic disequilibrium after a massive immigrant arrival, such as that which occurred in the southwest Ivory Coast (see Schwartz 1979).

- (2) The purchase of black forest from native people, and particularly traditional land authorities. This has been mainly observed in the west-central part of the country, in the Bete and Gban areas. In this case, uncleared land was directly transformed into a "good" (Dozon 1977).
- (3) The purchase of a plantation, sold in general by immigrant planters going back home, with the shift toward a land transaction significance as described above.

Faced with this trend toward the individualization, privatization, and monetization of land rights, the legal apparatus remained unenforced. The state's attempts to redefine the structure of property rights in land were unsuccessful, expropriation measures aside. A 1935 decree gave to the state the control of all land unexploited for more than ten years. The law of 20 March 1963 laid down the principle that the state was the owner of all nonregistered land, with the exception of exploited land; its purpose was also to abolish customary tenures and to prohibit the collection of any land fee. But this law has never been promulgated, and land law remains governed by the 1935 decree, supplemented in 1971 by an additional decree stating that any land occupation requires a land title and that the sale of unregistered land is banned. This legislation is largely unenforced and the formal legal process is only exceptionally followed; the user is often the legislator, in Haeringer's (1982: 87) terms.

(See Blanc [1981] and Ley [1982] on Ivorian land legislation, and Coquery-Vidrovitch [1982] and Le Roy [1991] for a general assessment.) This situation is de facto legitimized by the "land to the tiller" presidential slogan, and recognized in the current administrative practices.

Land rights continue to rest on voluntary local agreements or power relations (especially embedded in interethnic relationships). This does not mean that the State's nonintervention has no effect: the "land to the tiller" slogan did facilitate challenges to traditional land rights, even within the communities. The slogan has strengthened the race for land of planters willing to consolidate their land rights and to mark their ownership by clearing the forest and planting quickly.

To sum up, the situation described above shows how institutional arrangements regarding land rights have changed in response to new conditions such as land scarcity linked to the increased demand for land, and changes in the cropping systems with the introduction of tree crops. The emergence of new property rights in land can be understood as a response to changes in relative prices—increasing land scarcity, increased market value of the product—and to technological change—long cropping cycles—but not to a shortening of fallow duration, as in Boserup's analysis. This conclusion seems closely akin with PRS analyses. However, things might be a bit more complicated, and it would be too simplistic to go no further than the black-and-white categories of use rights and private property rights. I will just mention some elements which suggest that the generalization of private property rights in land has not (yet?) been fully carried out in southern Ivory Coast:

- (1) The monetization of land rights appeared between native and nonnative people, or between nonnative cultivators, but it is reported only sporadically between native people. This observation in the Ivorian case seems to refute the assertion by Binswanger et al. (1993) that, in communal systems, sales to outsiders are traditionally forbidden or restricted; the writers add that the last vestiges of general cultivation rights are lost and private property rights are complete only when the right to sell includes sales to members outside the community. In this case, it might be just the contrary: the nonmonetization of land rights between native cultivators might reflect the rejection (at least temporarily) of a market coordination of intracommunity land relationships.

- (2) A monetized land transaction between native and nonnative planters does not take on pure market transaction features: the buyer sometimes remains under an obligation to the seller (e.g., by helping the seller financially in case of necessity). This situation may be characterized as an "imperfect commoditization" of land.
- (3) There often remain ambiguities surrounding land property rights because of different interpretations of the nature of the first access to land obtained through a "use right": was it the right to plant or was it an ownership right in land? The long cropping cycle of coffee and cocoa adds to the potential confusion and sometimes explains the reluctance to cut down an old, unproductive plantation, on account of a possible conflict with lineage members (in the case of a native planter) or with native people (in the case of a foreign planter) (Chaléard 1991). (See Berry [1988] for an analysis of the multiplication and overlapping of rights and right-holders in individual farms in the peasant plantation economy.)
- (4) What seems to be the individualization of land rights may hide the persistence of a family right (often a nuclear family or lineage-fragment right rather than a lineage right) which might be "activated" in cases of inheritance or to secure land access to family members coming back to the village (Pescay 1994). In other words, some individual rights which seem to be well established can be questioned or renegotiated (Chauveau 1994), especially within the families.

In short, it is often difficult to delineate an indisputable boundary between use rights and ownership rights, and to define precisely the social unit owning this right—the individual, the nuclear family, the extended family, or the lineage.<sup>12</sup>

The rapid change of land rights, marked by the removal of the collective control over land, and an increasing autonomy of the land issue in farmers' practices, is unquestionable. The nature of interdependence among individuals has changed: earlier, the interdependence of people in regard to land access was mediated by means of the group decision process, and there was no land issue as such; now, interdependency lies more on interindividual or nuclear family relationships. However, the complete emergence of private property

rights remains problematic, especially if one takes into account the numerous variations at national, regional and local scales, i.e., the great polymorphism of the Ivorian land tenure situation (see Pescay 1994). The originality of the land rights issue in this context is precisely that these rights are and have been for years in a process of transition, meaning that things are changing, without any deterministic prediction regarding the result of the change. The methodological difficulty of checking PRS predictions—as well as their opponents' refutations—stems from the length of this transitional process.<sup>13</sup>

This "transitional stage" makes it possible (or necessary) for economic actors to legitimize their land rights playing on various registers, with all their associated transaction costs. This may involve appeal to traditional custom (often rebuilt and manipulated by modern economic actors to support their interests, as Coquery-Vidovitch [1982] and Dozon [1982] have pointed out), appeal to particular modern principles (such as "land to the tiller" logic) or appeal to the legal apparatus. The way is open for opportunistic individual land strategies. The "land rights game" is open, its rules are multiple and its issue remains largely indeterminate (see Chauveau 1994).

### *Open Access to Private Property: Land Rights Emergence and Changes in a Pioneer Area*

This brief account of the evolution of land rights in the southern Ivory Coast suggests the need for local empirical studies in the context of the post-pioneer phase of the plantation economy. The field research results to be presented now focus on a pioneer region of the Lower Coast. Accordingly, the purpose will not be to analyze the evolution of land rights starting from traditional conditions, but—and this is quite an exceptional opportunity—to describe and analyze the emergence of land rights from a real institutional vacuum.

The region studied is located in the Lower Coast, between Samo and Adiake, in the Adiake subprefecture. The population of this agro-ecologically homogeneous region is mainly nonnative. The fieldwork has been realized in five villages: Djimini-Koffikro, Kongodjan, Assé-Maffia, Amangare, and Aboutou.<sup>14</sup>

### *The Pioneer Phase (1915-1955): From Res Nullius to Private Property*

The study of the pioneer phase<sup>15</sup> of the plantation economy in this region provides the opportunity to document the shift from property rights over crops to land property rights, from *res nullius* to private property,<sup>16</sup> from an open access, free-for-all resource, to a socially recognized system of land property.

#### *From No-Man's-Land to "Regulated Open Access"*

The five villages studied are located at the furthestmost bounds of the Agni Kingdom of Sanwi, in the Eotile vassal territory, and not far from the Aboure country. The Eotiles, fishermen people, have been, together with the Agouas, the first historical inhabitants of the Sanwi Kingdom. At the dawn of the 17th century, their settlements lined the banks of the Aby and Tendo lagoons, while the interior of the country was neglected (Rougerie 1957). The Sanwi Kingdom was built between 1740 and 1823 by the Agni people who came from the North, members of the great Akan Group. The Agnis absorbed the Agouas, and extended their sovereignty over the Eotile, Essouma, and Nzima peoples, politically controlling regions that they did not populate. The western region of the kingdom remained unoccupied, as before. "The kingdom is surrounded everywhere by deserted borders, cutting it off from its neighbors. . . . These are not slightly exploited spaces, not even hunting-gathering areas; the country is completely abandoned to the forest" (Rougerie 1957: 140).

According to Dupire (1960), the southwestern border of the Agni kingdom, which isolated it from the Aboure country, began to be occupied by immigrants coming from various regions of the Ivory Coast, Upper Volta and Mali, during the Agni exodus to Gold Coast, from 1913 to 1917. This infiltration of immigrants began along the Bonoua-Aboisso colonial track, and their numbers reached a real regional significance as early as 1935. After World War II, it turned into a migrational rush, converting the region for some time into a "Far West," to use Rougerie's expression.

How did property rights over land appear and evolve within this context? The Djimini-Koffikro village monograph will provide us a good illustration of this process. The data regarding Djimini-Koffikro, collected over a three year period in the village using of a variety of field research tools,<sup>17</sup> are much more precise than those regarding the four

other villages where a simple one-shot formal questionnaire survey was administered; however, the comparison with Djimini-Koffikro will be of interest. The analysis will remain qualitative (see Colin [1990] for the quantitative data).

The first occupant of this region, at that time unexploited, was an Aboure who settled there around 1915. From 1920 and due largely to the completion of the Bonoua-Adiake colonial track, several immigrant groups arrived (mainly Baoules and Agnis, but also Gagous, Yacoubas, Nzimas). Some were fleeing the colonial forced labor in their native countries; others, on the other hand, were brought to the region for these very same constrained enrollments. Some worked in the lumbering industry, others in roadwork. The abundance of "black forest" and game incited them to settle there to create plantations. The first Voltaic settler (a Senoufo) arrived in 1933. He founded an encampment (Kongodjan, "remote plot") a few kilometers from Djimini-Koffikro which was later settled by the Dioulas—in the southern Ivory Coast, people from Mali and the northern Ivory Coast are all called "Dioula"—and the Voltaic Senoufos. Kongodjan is nowadays an independent village. At the beginning of the 1970s, a second wave of migration began, with the arrival of the Voltaiques and the Mallians who were drawn by the development of pineapple cultivation. These different migrational floods created a genuine melting pot: at present of every two inhabitants, one is a foreigner, and sixteen Ivorian ethnic groups are represented in the village.<sup>18</sup>

As a first step, the Aboure planter, who was the first to arrive, set up the first newcomers in different areas. They, in turn, began to allocate "use rights" to the latecomers, each one in his respective sector. The entire western part of what is now the village territory had been distributed by two Agni planters, the southeastern part by three Baoules, the northeastern part by a Nzima planter, and the northern part directly by the first Aboure immigrant and subsequently by his heirs. A break in the homogeneity of these ethnic blocs resulted from a late exploitation of some areas, which had been neglected for a long time as the result of not being suitable for the cultivation of coffee and cocoa.

Once he arrived, the newcomer generally found hospitality with a planter of his own ethnic group. The place where he could clear was designated by this planter or more commonly by one of the earlier settlers who were now acknowledged as "administrators" of the land access control. Then, the clearing of the forest was sufficient to insure one's uncontested individual right over the land. Therefore, even if the entire



area was previously uncontrolled, and even if the first immigrants did not have the possibility of excluding others (see below), one cannot qualify land access as completely open, since this social land access regulation had been established to avoid conflicts. I characterize this situation as "regulated open access."

Was land access conditioned on previous labor for a planter?<sup>19</sup> This practice has not been mentioned, at least regarding the first decades of the pioneer phase. All the old planters said that at that time, "the land belonged to nobody." In the specific context of a pioneers' village—without any traditional, customary control over land—it apparently would have been inconceivable to prohibit land access to a newcomer or to condition it on previous work.

In such a melting pot it was inconceivable to establish and enforce exclusive rights over land so as to cut off a reserve for one's own benefit and/or create a "social land scarcity" in order to constrain others to sell their labor (so as to get access to land later). It wouldn't have occurred to the newcomers because land was not perceived as a scarce resource, and the arrival of new pioneers was welcomed in order to break the loneliness of a small pioneer settlement camp in a great forested area. The aim was more to attract newcomers than to condition their settlement. During his stay with his "guardian," the newcomer contributed through agricultural labor to his host's plots, and enjoyed a near family-member status.<sup>20</sup> However, this practice was considered as reciprocity for being lodged and fed, not as a condition for land access. Later, at the end of the pioneer phase, when land scarcity emerged, some planters who had succeeded in the constitution of land reserves through appropriate forest clearing techniques<sup>21</sup> did, as a result of that labor, constrain access to land by others.

As long as the forest was abundant, the delimitation of each planter's plot to be cleared was not a major concern. The newcomer was set up in the forest, at such a distance from other planters that he could not jeopardize an expected expansion of his neighbors' plantations. The limit was defined only when two clearing fronts came close, in order to avoid conflicts ("the use creating the boundary stone" [Lesourd 1982]). In the land and social context of Djimini-Koffikro, it was ruled out that some planters constitute land reserves by simply sectioning up the forest, nor could they limit the plot size of the newcomers. As seen above, clearing techniques aimed at isolating a reserve had been used, especially by the Aboure planters, but they remained exceptional.

This situation changed when the last of the pioneer phase immigrants arrived. The limits were then clearly indicated by the planter who was settling the newcomer, as the pressure of land scarcity led to more attention being given to the conditions of the new settlements. With the end of the era of abundance, it became necessary, and socially admissible, to manage newcomers' land access more parsimoniously.

The last cases of land access through this type of "use rights" in Djimini-Koffikro go back to the beginning of the 1950s. Around 1955, all the limits of the land patrimonies were clearly defined and even if there was still some forest to clear, the pioneer phase had ended.

The other villages studied share with Djimini-Koffikro the characteristic of being outsiders' villages. In no case was land traditionally controlled at the beginning of the century, not even around what is now Aboutou, which was located close to the Aby lagoon, and was under the control of the Eotiles in the North and the Essoumas in the South. No traditional right being exercised, access to land has been direct for the first immigrants in Assé-Maffia and Aboutou. In Kongodjan, the first immigrant was set up by a planter from Djimini-Koffikro. In Amangare, the village founder obtained permission to settle in Kakoukro village, in exchange for the symbolic gift of a bottle of gin. As in Djimini-Koffikro, the founder of the village indicated to the first newcomers where they could start to clear the forest. The same ethnic polarization occurred; the first to arrive of each ethnic group became the administrator of land access in his sector where the latecomers of the same ethnic group later gathered.

### *Creating Legitimate Exclusion*

We saw that in Djimini-Koffikro "the use created the boundary stone." The same process happened in the other villages, with the interesting exception of Amangare. This village (in fact, a succession of encampments along a track) was created more recently than the others (1950), at a time when land scarcity could be anticipated. All the planters are Aboure. The plantations had been developed as family blocs, generally by brothers working together, and then shared on a core family base. In almost all cases, the limits between each family bloc had not been defined by the junction of the clearing fronts, as in the other villages, but marked right out in the forest after an agreement was reached between each family and in the presence of a representative of the Aboure king.



Such a sharing of the forest required anticipation of land scarcity to motivate it, and a collective acknowledgment of the limits as defined, to enforce it. Among the Aboure, this condition was fulfilled by appealing to a legitimate arbitration authority, the king's representative. In fashionable economic terms, we could say that this arbitration lowered the transaction costs related to the establishment of land rights. This practice has been successful only because the arrival of non-Aboure planters was blocked by the control that the Aboure maintained over the track, the northern and southern encampments along the track having been created at the same time. In this case, ethnicity can be understood as a means to create, in a new context, a legitimacy to enforce exclusive rights on uncleared forest.

### *The Distribution of Land Property at the End of the Pioneer Phase: A Product of the "First in Time, First in Right" Logic?*

Schmid (1987: 20) stresses economists' lack of interest regarding the manner of appropriation of new resources, even if this issue contributes largely to explain differences in the distribution of wealth. In the case under study, it has been possible to reconstruct land distribution in Djimini-Koffiko at the end of the pioneer phase and to bring to the foreground the major factors of differentiation in land property. This land property distribution came from the combination of three factors: (a) the arrival time of the planter, (b) his capacity to mobilize family labor, and (c) the productive potential of the soil as perceived by the planters.

The arrival time in the village did play a role in land possession, but not as expected from a "first in time, first in right" logic. As we observed, that a person was one of the first immigrants in the village did not permit his claim on uncleared land. But by starting the clearing of the forest and the planting of coffee and cocoa early on, this planter had a potentially better possibility than a latecomer to accumulate land rights for more extensive acreage; the use made the right, in the context studied. It was observed that, at the end of the pioneer phase, eight of the twelve patrimonies larger than twenty hectares were controlled by planters who had arrived with the first migration wave. However, this condition was not sufficient. In order to take advantage of this early arrival, the settler had to have a good access to the labor of junior or subordinate kinsmen, for all work had to be done by family labor force until the trees were mature enough to enter a share-cropping arrangement. The effectiveness of these criteria have been verified in other areas where soil is considered equally favorable for coffee and cocoa trees. The lack of interest in

small savannah zones allowed some latecomers to control a fair amount of acreage; the constitution of three of these land patrimonies, which were larger than twenty hectares at the end of the pioneer phase, can be explained in this way. These landlords had never been leading coffee or cocoa planters, but control of such acreage turned out to be particularly profitable when the introduction of new crops such as the oil palm tree or pineapple enhanced the value of these soils.

### *The Time of Pioneers' Relief (1955-): The Rise of Land Markets*

With the end of the pioneer phase, regulated free access to land no longer operated. Land was completely appropriated; land rights were acknowledged; the limits of the patrimonies were well defined. From an open-access situation with an institutional vacuum, a new institutional arrangement had emerged: private property in land. The focus of this analysis shifts from the constitution of property rights to their transmission through inheritance, *inter vivos* donations or purchase, as well as to the conditions of access to the land resource for those who have no land ownership right. Some major points in this development will be touched on here: the breaking of traditional inheritance rules; a shift, in some cases, from individual private property to family ownership; the development of a land market; and the emergence of land tenancy and of a group of landless cultivators.

### *Inheritance and Inter Vivos Donations*

The guidance principles of the customary devolution rules in southern Ivorian ethnic groups are well known (see for example SEDES 1967): the devolution is limited to one (agnatic or uterine) line; the properties are not divided up when their owner dies, a unique heir being designated; each generation is "exhausted" before transmission to another generation (the succession of generation principle), each elder having the priority in each branch (the primogeniture principle); men inherit from men, women inherit from women (the "homosexuality" rule); *inter vivos* donations are admitted but restricted to one's own personal property, i.e., noncustomary inheritance.

Two facts predominate in land property rights transmission in Djimini-Koffiko: the lack of respect for the customary inheritance rules and the importance of *inter vivos* donations.

The infringement of the customary inheritance rules is primarily concerned with the succession of generations and the devolution in uterine line in the case of matrilineal ethnic groups. This mutation regarding the traditional model has been facilitated—sometimes even after violent palavers—by the geographic distance between the planter and his legitimate heirs; patrilocality induces a strong reinforcement of the father-son group. It has also been facilitated by the fact that at the time of a pioneer's death, the transmission concerned a property created by his own labor, and not a customary inheritance.

The results of the research done in the other villages relativize and at the same time reinforce this analysis. The customary rules of inheritance have been far more respected than in Djimini-Koffikro. This fact has to be linked with the relative weight of the Aboure, Essouma and Eotile ethnic groups in the population of these villages: the proximity of the native village facilitated the social control for traditional rule enforcement during the inheritance process.<sup>22</sup> The transgression of customary inheritance rules remains the norm for people coming from other regions.

Can heirs be regarded as holding private property rights in land? In various cases, the heirs have to be considered as administrators of a family land patrimony. They have the usufruct; they manage it as they want and for their own profit; but they could not sell a plot on their own authority; and they may have to redistribute part of the land patrimony to family members (especially young brothers). This reveals an evolution from the unquestionable pioneer's land ownership right towards a family jointly-held land property (as in Ghana: P. Hill, quoted by Sautter [1968]).

*Inter vivos* donations of plantations or fallow lands have been frequent in Djimini-Koffikro as in the other villages, especially Amangare and Assé-Maffia. In general they have been beneficial for the planters' children. Frequently these donations correspond to an anticipated diversion of a future customary inheritance such as in the case of the Aboures, where social pressure due to the proximity of Bonoua facilitates the traditional matrilineage inheritance. This way, the planter's son(s) can create plantations during his (their) father's lifetime. The heir—a uterine brother, cousin, or nephew—will later receive the land which has remained under the planter's responsibility until his death.

The beneficiary of the donation cannot be considered as having full private property rights over land as long as the donor is alive; the sale of the land would not be permissible. Nevertheless, after the donor's death his property right seems undeniable; no heir's contestation has been reported during the surveys.

### *The Emergence of a Land Market*

Land transactions have been frequent in Djimini-Koffikro: one third of the village territory has been sold at least once. Some of the oldest transactions concerned productive plantations. Originally then, land transaction was a by-product of a transaction on productive vegetable capital; "in the past, one bought the plantation, not really the land," comment the oldest planters. But in the beginning of the 1960's, it was the land itself which found a market value, through the sale of fallow land plots or of old unproductive plantations. (The same logic has been observed in the other villages studied, with a shift from the sale of plantations to the sale of land.)

Land was sold by planters leaving the village to go back home or by planters' heirs unwilling to settle in Djimini-Koffikro. Sometimes also planters living in the village would sell a part of their land patrimony for urgent money needs. With the exception of the Aboures, all ethnic groups have participated in land transactions. This ethnic exception (Amangare shows the same Aboure specificity in regard to the constitution of the land market) can be explained by the proximity of the Aboures' fief of Bonoua. An Aboure planter would never find himself in the dilemma of selling his plantation in Djimini-Koffikro in order to return to his native community (Bonoua), because of the close proximity of the two villages. In addition, his family would disapprove of his selling the land when there was such a scarcity of it in Bonoua; Aboures are traditionally referred to as 'Ehounva' (men without land) by their neighbors (Rougerie 1957).

This process of transformation of a use value of land to a market value came from the impossibility of gaining access to land through a simple regulated free access, once the pioneer phase was over. It should be stressed that in this case, the land scarcity which led to the emergence of ownership rights was a result of its full exploitation ("land saturation"); whereas in other regions, such as the Bete country, the monetarization of land access preceded land saturation, because of the customary control over the resource.

The fact that Djimini-Koffikro was an immigrant village facilitated the constitution of a land market on two accounts: the pioneers could manage their land patrimonies as they wanted because these had not been acquired through a customary inheritance, and the return of some planters to their native village prompted offers in the land market.

In conclusion, the land in Djimini-Koffikro is no longer an abundant free resource: it is now scarce and has a cost. The pioneers' individual

private property rights over land are unquestionable (with among the Aboures). The individual rights of the buyers of a plot also are clearly established and socially recognized. The situation becomes less clear with respect to *inter vivos* donations, in that the full property right is postponed until the donor's death. The individual right of the heirs is sometimes restricted because, while *usus* and *fructus* are possible, *abusus* may require a family decision.

In short, the institution of private property in land has emerged, but it does not systematically govern all land rights in the usual atomistic way. Nowadays, a planter can exploit some land under an heir usufruct right, and other plots under an ownership right if land was obtained through the regulated access of the pioneer phase, or bought, or received as an *inter vivos* donation (as long as the donor is dead). The economic incidence of this duality remains limited; the type of land property right is not differentiated with regard to the management of land as a production factor. However, a new duality has emerged that differentiates those who have land ownership rights and those who do not.

### *The Emergence of Land Tenancy*

An important new fact, since the end of the pioneer phase, is the arrival of a group of landless cultivators.<sup>23</sup> These landless farmers—and some land-constrained landowners—can obtain temporary access to land under several contractual arrangements which have emerged since the end of the pioneer phase. The usual one consists of renting a plot for a cropping cycle duration. Sharecropping in cassava cultivation is also common; the share does not include short term cycle food crops which may precede the cassava cultivation and which remain under the tenant's control. Several forms of labor-rent have also appeared, such as giving access to land in exchange for bush clearing, the landowner retaining half of the plot cleared and leaving the other half to the tenant for the duration of a food crop cycle; the landowner may also only authorize corn production on the entire plot. Another arrangement consists of letting the tenant cultivate one short-term cycle food crop (corn or sweet potato) in association with the owner's young oil palm tree plantation, securing in this way the upkeep of the plantation. Finally, short term loans for food crop production occur generally between kinsmen. Land rent (rent *sensu stricto*, share rent, and labor-rent) is now generated over 20% of the village territory.

Renting out land was initiated in Djimini-Koffikro in the mid-1960s, when a private company introduced pineapple cultivation under a contract farming system. The opportunity to grow pineapple led to a demand for land. Pineapple production offered two advantages in this respect. First, it was a nonperennial crop which could be grown by landless cultivators, and second, it provided the possibility of paying a rent, because of its high income per hectare. On the other hand, the supply in the land lease market came from the ageing of coffee and cocoa plantations. Since that time, since no landlord has developed a strategy of leasing land permanently, the supply of land for lease has come from the Brownian movement of landowners entering in and withdrawing from the lease market, in a process closely related to the dynamics of plantation reconversion towards new perennial crops (oil palm tree, coconut tree, hevea).

It seems that, originally, the emergence of land rent in the village was induced more by the economic nature of pineapple production ("there was money in it, so we had to take advantage of it," recalled the landowners) than by land scarcity in itself. Indeed, at first the plots intended for food crops were just lent. The monetarization of land tenure arrangements for food crops started later, when the demand increased even more with the arrival of more landless immigrants.

The emergence of land tenancy has thus been induced by a combination of factors: the impossibility of getting access to land property through regulated free access; the existence of land availability related to the progressive decline and abandonment of coffee and cocoa plantations and their reconversion; an increasing demand by landless cultivators for land to grow pineapple; the high value of pineapple production.

### *Conclusion*

A major point of the PRS paradigm of property rights change has been verified: property rights are modified in response to the development of new opportunities or constraints which provide incentives for individuals to seek new institutional arrangements. Indeed, as land became scarcer, as land value appeared and increased in relation to population pressure and due to an increase in the land demand, a system of ownership rights was developed. An evolution in land rights toward the individualization,

privatization and monetarization of land control is generally the case in the southern Ivory Coast. Also, the study of a former pioneer area has provided the opportunity to document the shift from an open access, free-for-all resource, to a socially recognized system of land property, which can be qualified as private property right without any doubt. This study also illustrated how, from a legal vacuum, people avoided the potential chaos of an open access to land, by establishing a socially acknowledged land access system.<sup>24</sup>

However, the PRS "consciousness argument" regarding the explanation of the absence of private property rights in land during the precolonial era ("there were no such rights because people *decided* not to develop them") has been questioned. It is not that people could not or did not want to enforce private property rights, but that they did not *even think* about establishing these rights because such rights had no meaning at that time and in those circumstances.

In both explanations, the result and the cause are the same (no private property rights in land due to no land scarcity), but I see a difference between deciding not to do something on the one hand, and not thinking of the possibility of doing it, on the other hand. The logic of economic behavior which underlies each of these statements is quite different.

Furthermore, the generalization of private property rights in land has yet to be fully carried out in southern Ivory Coast. In other words, the land rights mutation, in response to new circumstances, is not straightforward, especially regarding native communities and the relationships between native and nonnative planters. I have mentioned the nonmonetarization of land rights between native cultivators; the difficulty of delineating an indisputable boundary between use rights and private property rights, and between individual, family, or lineage rights; or, in some cases, a shift—which is not in the logic of the PRS paradigm—from individual property to family property (in the case of a pioneer land inheritance). That the institution of private property in land has emerged does not mean that it governs systematically all land rights in an atomistic way, as viewed by PRS economists. Of course, one could call up transaction costs to explain the complexity of what PRS economists would defined as a transitional stage. I am not very comfortable with this perspective for two reasons. First, because it means that the result of the transition—the establishment of private property rights—is taken for granted, and that the only unknown is the length of the transition process. Second, because it seems more promising to try to explain (using both

economic and noneconomic factors) the observed results of the process of rights changes in the real, "messy" world—an explanation that remains to be fully developed—than to look to transaction costs to explain why these observed results are different from a result defined normatively *ex ante*, i.e., well-defined exclusive individual property rights.

### Acknowledgments

I would like to thank Robert Hunt, Guy Pontié and Allan Schmid for their comments on a first draft of this paper. I remain responsible for its imperfections.

## Notes

1. Here I cite Allan Schmid (1987: 6) in his definition of institutions as "sets of ordered relationships among people that define their rights, their exposure to the rights of others, their privileges, and their responsibilities."
2. The expression "plantation economy" often refers to a production system developed in tropical countries by foreign producers, characterized by large-scale production of tree crops for export, capital-intensive technology, and a capitalist mode of production. Although this type of system is found in the Ivory Coast, it is largely dominated, in both geographical and economic importance, by another production system, also based on export tree crops but operated by African farmers. By "peasant plantation economy" I refer to this latter agricultural and economic system.
3. For a better clarification of the concept of "common (or communal) property," it would be useful (although outside the scope of this paper) to consider the combination of at least three criteria: the conditions of *access* to the resource, the conditions of the resource *management*, and the *durability* of the common/communal right. This can be stated in a few key-questions. (1) Is the resource under open access, regulated access for the outsiders of the community, or regulated access for outsiders as well as for the members of the community (more broadly the social group)? (2) Is this access exclusive? (e.g., the possibility for animal grazing on a communal pasture for any member of the group vs an agricultural plot allowed to an household). (3) Does the group only control the access to the resource, or does it impose also resource management rules? (e.g., crop choice, such as the prohibition of perennial crops; group organization for the use of the resource; group control of its products). (4) Does the group control vanish definitively once the resource is exploited? (e.g., noncancelable exclusive use-right opening the way to an ownership right, leading to the resource's exit from the community's patrimony). Does it vanish temporarily? (e.g., individual, exclusive, but temporary use right). Or does it remain unaltered? (e.g., communal forests).
4. Regarding the Ivorian forest area, one can mention the studies of Affou Yapi (1979) on the Attie ethnic group; Bouet-Surroca (1977), Boutillier (1960), Gasiellu (1978, 1980, 1982), Kindo (1975), Rougerie (1957) on the Agni; Chaléard (1979) on the Abe; Chauveau and Richard (1977, 1983) on the Gban; Dozon (1975, 1977) on the Bete; Dupire (1960) on the Abe and Agni; Köbben (1956) on the Agni and Bete; Léna (1979) on the Bakwe; Raulin (1957) on the Dida, Gouro, Gban and Bete; and Schwartz (1971, 1979) on the Guere and Bakwe.
5. Or of succumbing to what Dozon (1982) calls the "precolonial referent," an idealized model of precolonial land tenure systems. This point is also made by Bruce (1988) who underlines the multiple sources of change in

- technology, changes in population densities, emergence of states, conquest, migrations).
6. Under the traditional cropping system, after clearing and burning the virgin forest (what is called locally a black forest) and a few years of food-crop cultivation, the plot was abandoned to the forest's natural regrowth (shifting cultivation) or to a long tree-fallow in order to restore soil fertility and help to prevent weed problems (cyclical cultivation).
  7. See Biebuyck's (1963) and Bohannan's (1963) critiques of the oversimplifications resulting from the application of Western legal concepts to the analysis of African indigenous land-tenure systems.
  8. We might also cite Bell's distinction (in this volume) between rights in persons (i.e., rights attached to the person on the basis of some intrinsic characteristics, here the right of access to land due to a group membership) and property rights; in this case he would use the concept of commons and not of common property.
  9. The introduction of the tree crops proceeds from a substitution of these crops for the forest's natural regrowth or for the long fallow which previously followed the food crop cycle.
  10. Very significantly, clearing the forest can be delegated to wage laborers, but planting coffee or cocoa trees is always done by the planter and his family to insure his rights to the future production and over the land (Gastellu 1980). On the relationships between trees crops and land property rights, see also Berry (1988) and Bruce (1988).
  11. "When one can obtain ownership rights in a resource only by capture or use, there is a tendency to take too much too soon," writes Posner (1980: 35), too much and too soon in regard to an economic standard of productive efficiency, but not in regard to the logic of planters' aims.
  12. The Ivorian Land Plan aims at clarifying the rights related to each plot and identifying their beneficiaries. This plan is implemented nowadays by the Government, partially on the request of international backers, with the explicit argument that well-defined property rights play a crucial incentive role in economic productive efficiency (Yapi Diahou 1991), a basic PRS postulate which leaves to one side the equity issue related to the question "whose right is going to prevail?" (see Schmid 1987). It will be interesting to see how the Plan handles this puzzling task.
  13. A complication in the rigorous analysis of this transition comes from the scarcity of studies focused on land rights in the context of the renewal of coffee and cocoa plantations (contexts in which land rights could be more easily challenged).
  14. The field-research on which this analysis is based was not just concerned with the land tenure system evolution; its purpose was to study the dynamics of a smallholder plantation economy. Two fundamentally related topics were addressed by the research: (a) the sources and features of technical and institutional changes, and their incidence on the plantation economy

- and (b) the production strategies adopted by farmers, according to their different opportunities, resource availabilities, and objectives (see Colin 1990).
15. The expression "pioneer phase" will refer to the period during which permanent access to land is possible through a kind of first occupancy right. This definition depends on the dominant form of access to land and not on the technical act of clearing the forest, which had not completely disappeared at the end of the pioneer phase.
  16. This challenges Boserup's statement that "a direct passage from a situation where land is at the disposal of everybody to private property . . . never happens" (1970: 136 [translated from the French edition]).
  17. In Djimini-Koffikro, besides direct observation allowed by the researcher's lengthy stay in the village, the collection of information regarding land tenure and its evolution was based on (1) an initial agricultural and demographic census; (2) the measurement and mapping of all the plots of the village territory; (3) the reconstitution of the history of property rights for each plot mapped (establishment of the pioneer's right, and then all movements which have possibly affected the plot: inheritance, donation, sale); and (4) recording the present land tenure arrangement for each plot—owner's cultivation, land rent, sharecropping, labor-rent arrangement, loan, or nonagricultural use—at the time of the study.
  18. The ethnic composition of the four other villages studied differ markedly one from the other (and this has some impact on land rights, as we will see): Kongodjan is a Dioula village; Assé-Maffia is populated by the Aboures, Atties and Nzimas; Amangare is monoethnic (Aboures); and the population of Aboutou is made up of the Essoumas, Eotiles and Nzimas. These last three villages have, therefore, a "native migrant" population (on a regional scale), whereas Djimini-Koffikro and above all Kongodjan are mainly populated by migrants coming from other regions.
  19. I.e., one of the first newcomers, who provided the latecomer with the possibility of settling the land, as noted in other regions of Ivory Coast.
  20. The same practice has been described by Raulin (1957) regarding the west-central part of the country, and by Léna (1979) for the southwest.
  21. These techniques, already described in other regions (see for example Chaléard [1979], Gastellu [1980], or Lesourd [1982]), consisted of multiplying the forest clearing epicenters in order to isolate a central area which had provisionally been preserved intact.
  22. Sorcery and poisoning within families must be included under social control procedures.
  23. Nowadays this represents about 44% of the 180 production units of the community. The population of the village rose from 220 inhabitants at the end of the pioneer phase (1956 census) to 1000 in 1983.
  24. This case brings to mind the California gold rush (Eggertson 1990: 290).

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