

Afterword

Who Belongs Where, and What Belongs to Whom?

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There is no image, no painting, no visible trait, which can express the relation that constitutes property. It is not material, it is metaphysical; it is a mere conception of the mind.

—Bentham, *Theory of Legislation*, 1874

This Land Is Not For Sale is about land and conflicts in northern Uganda and the institutional transformations engendered in part by war, conflict, violence and displacement. It investigates how claims and transactions shape the governance of the resource upon which most people in northern Uganda depend for their livelihood: land. However, the book has a broader reach and a significant epistemological ambition. First, the contributions show that for every question we ask about land and property in Africa, we get one answer and two new questions in return. The collection demonstrates that when we ask a simple question such as *Who belongs where, and what belongs to whom?* a series of interconnected questions emerge about the social contracts of property. We, therefore, have to ask about identity and rights subjects and their meaningful forms of visibility, about the relevant institutions of public authority, about the nature of property, and about the representations of rights. To be a rights subject – to be visible to the law as a person with legal standing and rights – may seem self-evident to the privileged. However, historically, virtually all societies have treated large portions of their members as legal minors with less than full rights. Women, serfs, children, immigrants and the poor are just the beginning of a long line of human beings for whom the concern is far from redundant. And ‘attributes such as gender, race,

and caste, as well as class, creed, and conviction have different valences allowing for more or less punch in the property claim' (Lund 2020: 8).

Second, the book's focus on a period of post-conflict reconstruction demonstrates with clarity that it is not simply people's homes and schools that undergo reconstruction; all the elements of how people see and understand actors, institutions and norms are equally reassembled in known and new ways. The chapters therefore demonstrate that the key concepts must remain objects of our enquiry as much as the empirical reality we see through them. They are correspondingly at stake and constantly under construction. Let us briefly shine a light on some of the most significant ones: actors, institutions, rights and representations.

When people talk about 'us' and 'them', or those who are entitled and those who are not, it is more than a simple grouping of people here and there. People are classified according to attributes that give them a particular social identity and quality and therefore different abilities to possess, to own or to be entitled. These attributes render people visible to institutions and society in particular ways. Ethnicity, nationality, gender, kinship position, marital status, age and attachment to a specific area frequently crop up as qualifiers. In the post-war situation, the importance of social position was amplified. In relation to land, 'war victims' emerged mainly as 'nephews' – young men who had lost their father and paternal link to access land. While some seem perennial, others appear more fluid, and as the chapters show, their relative importance varies over time. In fact, the significance of the different attributes changes, and it is the reproduction and change of the *contingent significance*, rather than change in some essence of the attributes, which is at stake. People often refer to these identity attributes – gender, age and belonging and so on – as if their significance was permanent and transcendental. Ironically, people often determine the significance of identity in the act of invoking it and thereby make up what they believe to be already there. However, it is when states invest such difference with political meaning, when difference is institutionalized with privilege and exclusion as a result, that the ground is prepared for envenomed and enduring conflict (see Mamdani 2020).

The stakes are unbelievably high for people who depend on recognition of their identity to validate their claims. This particular post-conflict moment makes the social construction of status and rights, of rights subjects and institutions, particularly intense. The chapters make clear that everybody acts in the face of uncertainty. Claims are made to the best of people's ability to read the situation, the dangers and opportunities, as well as their ability to knit together a plausible and persuasive narrative about their interests (Rose 1994). Not in a completely random or opportunistic fashion, but people rework the institutional debris from before the war with one of the important hard-earned norms that has survived the conflict: peaceful and harmonious living, something that the painful atrocities have made an explicit virtue. People reinterpret, reinvent and recycle

the available repertoires; something old, something new, something borrowed, something blue . . . This leads to questions of recognition.

Institutions or groups of actors are simultaneously actors and arenas and manifestations of power relations. All three aspects are important for an understanding of the political processes involving institutions. First, as an actor, a politico-legal institution defines and enforces collectively binding decisions and rules – or, rather, *attempts* to define and enforce them because this capacity is rarely fully accomplished and is often challenged. Second, an institution is also an arena where competing social actors struggle to influence the way rulings are made. Third, as arenas, institutions are also manifestations of power relations (Lund 2008: 9).

Statutory institutions – that is, institutions that make up part of the official constitutional governance structure in society – are designed to administer statutory law, but the cast of institutions is usually much bigger, and Uganda is no exception. Government and rebel groups have taken turns in controlling different areas. Institutions of more intimate land governance such as families', clans' and elders' fora also crowd the picture, as do religious institutions and NGOs of different stripes. Statutory institutions are supposed to be 'blind' to gender and ethnicity, whereas these attributes are highly visible – sometimes even defining – to chiefs, elders, families or other local institutions engaged in the more intimate governance of access to land. In practice, however, the vision of institutions is more muddied and incidental. Accordingly, the range of potential authorities and their internal relations and hierarchies are brought into play in land conflicts, making some actors visible and invisible as rights subjects in recombinant ways. Rights subjects and institutions are all reworked: who is entitled, and by what institutions are rights protected and enforced? And, not to forget, rights subjects are not only individuals; families, clans and other congregations of people may have legal standing according to law, lore or political opportunity.

The dialectics of recognition between rights and authority can play out between many different institutions. Post-conflict settings like northern Uganda demonstrate that. The rupture of war makes different combinations possible simultaneously. While government empowers certain institutions to exercise authority, ordinary people's claims sometimes breathe life into entirely different entities of authority (Ubink 2008). However, it is not the mere availability of institutions which concerns the contributors to this book but the trust people are willing to place in them. The wake of war has affected all institutions in society, and people's trust in the different institutions is tentative, at best. Trust is built by increment and depends on the observance of decisions and rulings. It tends to take time. The construction of functional institutions and social contracts requires stamina, but they can be destroyed in a brutal moment of war. What institution will have the legitimate authority to decide what specific rights are bestowed on whom, and to which institutions are different claimants visible and

eventually beholden? Northern Uganda's recent history does not encourage resolute predictions about what kind of authority will prevail when and how. The research in this book demonstrates that it depends.

The ongoing construction is not just institutional but equally concerns the rights themselves, or the nature of property, if you like. If we ask to whom does the land belong, the chapters in this book quickly show us that it is difficult to answer before we also examine *how* land belongs to people. And even this question immediately splits into several queries. In legal scholarship, there is a classical division between *ownership* of a resource and *rights* to it (Singer 2000; Underkuffler 2003). Ownership, or freehold, is often regarded as having all the powers over a particular resource. The power to use it, the power to exclude from it, and the power to transfer it at will without any interference from relatives, neighbours or government are firmly in the hands of the owner. There is, at the base of 'ownership', a rather absolutist assumption of the sovereign *concentration* of powers and a presumption about their *clear simplicity*.

An alternative view to ownership is often presented as a bundle of rights. The totality of rights constitutes a proverbial bundle where each stick represents a particular distinguishable right, so to speak. In different societies, these elements are conceived differently according to cultural norms, institutional history and production systems. For example, some may have a right to farm the land, but others hold a right to graze it or glean from it. Are the grazing rights as strong as the farming rights, for example, or is the momentary right of gleaning as real as the more enduring right of farming? Does the *certainty* of a right correspond to its *extent*, so to speak? Such perceptions of how (much) something belongs to somebody are not merely academic. They are at odds in real life, and the tension manifests in many daily situations. There is therefore a tug of war between one understanding of land ownership that presumes to concentrate most sticks of the bundle in the tight grip of the owner and another understanding that separates out different rights among different rights subjects.

A tug of war is transgression by another name. Some people may, for example, have a right to farm the land but are not free to transact it outside of their kin group. If, all the same, such land rights were to be sold or mortgaged, it is likely to precipitate a conflict of interpretation of the significance of the act, over how many 'sticks' were actually sold or mortgaged, and what elements of the property are now in new hands; all of them or a single twig.

It is tempting to conflate the palpable earthy space with the idea of an entitlement. Hence, people often refer to land transactions as *buying and selling* land. However, this is deceptive and inaccurate. Land is not property. Even if we often refer to land as the 'thing' that is inherited, bought, owned, mortgaged, bequeathed, sold or lost, it is not the land itself that is being transacted but a set of rights to it (Hohfeld 1913). These rights are abstract – mere conceptions of the mind, as Bentham would have it in the epigraph above. What is transacted is,

therefore, the *imperfect* bundle of rights, warts and all. A seller sells the imperfect rights she/he has, and the new landholder or house owner will hold the land and house under similar conditions of legal imperfection and possible uncertainty (Lund 2020: 129). In moments of generalized rupture, uncertainty increases and opportunities multiply. This is most likely why some people take the trouble to put *Not For Sale* signs on buildings and land; there is a risk that someone may buy property from someone who is not fully entitled to sell it. The buyer may buy more than the seller can legally or legitimately sell, so to speak. Even time-honoured rights are, therefore, at risk if held by politically weaker groups, and it is clearly still an open question as to what notion of property will predominate in northern Uganda and how distribution of rights will evolve. The push for 'clear' and 'concentrated' rights always has its champions. Whether 'distribution of rights' and 'security for secondary rights-holders' have any effective leg to stand on remains to be seen. The point is that any generalized understanding of what *actually* changes hands is being hammered out in the process, in real time.

'Freehold' and 'bundles of rights' are both eloquent metaphors, but they sound simpler than they actually are. Freehold, unfettered and unencumbered by social obligations, is a fiction and practically an oxymoron. For freehold (or 'any-hold') to work in a social contract, it must be recognized by an authority or society, and the political and contingent nature of any such authority is easy to overlook if we are blinkered by the 'free' in freehold. Similarly, the bundle metaphor can also lead astray our understanding of property. The notion of a bundle may give the impression that we are dealing with multiple fairly equal rights. That is likely to be the exception. More often, some of the 'sticks' in the bundle will be mere slivers, others slender staves, and others yet will be massive beams. They are neither equal in reach, duration or recognition, nor are they always stable or neatly separable.

Rights are immaterial; they are social, political and legal conventions. Consequently, they depend on representations to be seen. Deeds, permits, contracts, surveys, maps and other documents are used to record events, transactions and rights. Documents constitute important reference points for state recognition of a variety of claims. However, away from paperwork, physical markers in the landscape – hedges, fences, trees, ancestral graves and so on – also serve to document historical use and future rights. In situations of post-war displacement and capricious state presence, however, paper documents but a fraction of rights, and physical markers may be destroyed or overwritten by new symbols of claims. Physical proof and representations of rights are scant. This leaves people with oral testimonies of the past to vindicate future claims. In a process of reconstruction, it is no easy task to separate genuine memory from guileless wish. Any institution saddled with the task of adjudication must balance a just view of the past with what will be just in future, but with no recourse to discernible representations of what went before, the job is all the more prospective. Northern Uganda is living

through an open moment where the institutional landscape is more in the making than it has been at most other times. The book's attention to land's intimate governance captures the human ingenuity in brokering peace and shows how actors, institutions, rights and representations are produced in the process.

War, violence and displacement evidence that no condition is permanent (Berry 1993). *This Land Is Not For Sale* brings it forth with acute limpidity. Furthermore, just as clear is the fact that the concepts people use to understand property and its transaction are objects of struggle. Actors' identity, institutions' authority, the nature of property and rights and, finally, the representations of all of it are not master concepts removed from the imbroglio of conflict; they each form contested terrains of terminology. The present book demonstrates how analysts of land conflicts must engage a double-barrelled vision to capture what is going on and how people make sense of it.

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