

Communities & the State: Rethinking the Relationship for a More Progressive Agrarian Century

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How is it that so many people in the agrarian world still don't own the land they live and depend upon?

The answer is that they *do* own their lands - but not in ways which national laws recognize. They acquire rights as members of communities, in accordance with norms the community itself defines and upholds. Rules may be traditional ('customs') or new, adopted to meet new challenges and aspirations. The immediately localised and integrated socio-spatial nature of community makes this possible, producing practical, pertinent, and accessible land 'governance', not so available to remote institutions of state. Individuals, but mainly families, and the community in general, own rights to different parcels within the domain, depending upon their nature and use. The extent of common lands varies widely, from covering the entire domain to residual shared lands used for public services, and in which case community norms apply most actively to how family lands are used and transferred. All lands subject to community based jurisdiction and rights allocation may be loosely referred to as 'community lands'.

These are the messages I want to convey: 'community land' is not just a construct for the past but for the future. Despite the odds it survives and evolves with the times as a vibrant framework for landholding for rural majorities in most agrarian states. With legal support it offers a barely tapped future upon which land-based society can be more fairly and durably built. More than human rights and remedy of past injustices are at stake. Securing community lands to secure the livelihood of millions is also only part of the equation. For recognition that communities own their expansive lands including millions of hectares of forests and rangelands offers enormous potentials for cheap and sustainable resource conservation and climate mitigation measures at scale. Moving millions out of conditions of tenure security will also contribute to the peace and stability that eludes so many agrarian states. Their operating systems provide ready-made platforms upon which more devolved, inclusive and accountable formal governance can be built, the absence of which is also a familiar thorn in the side of struggling states. Some governments have begun to look to community lands and community based land governance in this way and to reconstruct their tenure regimes accordingly. Most have not. Why should this matter? One good reason is this: despite 300 years of industrialisation 156 of 196 modern states are agrarian; that is, their economies remain land based. Their assets cover two thirds of the world's land area and cater to 87% of its population. Directly dependent rural dwellers number three billion or 42% of the world's population. Most (at least two billion and possibly three) acquire land through community membership as above and depend upon this for protection of their land and resource interests.

So why has this not been absorbed into state systems, especially given such entrenched emphasis upon secure property rights as the backbone of the modern state? The answer lies in the narrow legal vision as to how 'property' comes about, the forms it may lawfully take, and the means through which it is protected. To be short and blunt, the norms of wealth accumulation by dispossession by which old feudalism and capitalism got their grip die hard. For agrarian states following classical paths to wealth creation, it remains convenient

to keep millions of hectares of valuable lands close to hand as disposable assets to companies and well-heeled elites despite the fact these lands are traditionally and presently the active domains of their citizens.

To sustain this with legal force requires maintaining the fiction that these lands are unowned (*'terra nullius'*), long after feudal and colonial polities have disappeared. This means that sometimes more than 75% of a country's area is deemed to be "without owners" and by default falls to the state. The rationalizations have remained remarkably stagnant since modern courts first began to construct these in the 1600s; that landed property only exists on the state's say so, upon issue of its chosen form of recognition, that only individual and corporate persons are eligible for registration as owners (not families and communities), and that as rural rights are created by man's labour (to which the rich are thankfully exempt), the habit of communities to presume ownership to not only their small farms and settlements but also to their common lands, is unwarranted.

More frustrating for latter-day policy makers is that many communities fail to concur with the idea that property can only exist if it is a fungible commodity, and by this failure they impede a free market in land, the clarion call of market-led liberalism. Such communities insist that their collective ownership of the soil is not for sale, as these are estates held in perpetuity to which members of each generation duly secure rights, the terms of which each generation tends to adjust to meet need. Moreover, this is not only the position of hunter-gatherer, pastoral or other communities who define themselves as indigenous peoples but also the position of many presumed more modern settled farming communities, who see this arrangement as a foundation for shared culture, practical social security, and an ultimate bulwark against bad decisions and involuntary losses.

Such recalcitrance was not supposed to still exist in the 21st century. As colonial and then international advisers insisted through much of the 20th century, the communalism of customary or indigenous regimes is an impediment to the individualism that drives the concentration of landholding conventionally needed to create wealth and growth. Millions of aid dollars were invested on titling programmes from the 1960s, especially in Africa. The aim was replace customary rights with state-granted individual entitlements, that the state would thereafter administer and regulate the sale of – especially to those with means to develop the lands commercially. Homesteads were the target. Off-farm commons went more firmly the way that local waters, foreshores and wetlands had gone before them; confirmed as state property. Blossoming conservationism helped, in its assumption that governments were the only safe pair of hands in whom forests and other (as lucrative) resources could be vested and managed.

Things do not always turn out as intended. Extinction of community based land rights and the regimes that support them has been noticeably unsuccessful in many regions. Only 10% of the African continent is subject to private statutory entitlement today. Similar low figures appear in Asia, Latin America and Oceania although less uniformly. Nor have governments everywhere proved to be ideal protectors of natural resources or the most transparent or equitable distributors of their values.

The horizon of industrialisation and societies based entirely upon wage packages has also begun to recede. Presumption that this is the only and inevitable path to modernization has begun to erode. Governments of today are less sure of the need for or as willing as their predecessors to engineer the dispossession at scale

upon which mass migration and factory labour was historically built. Nor is the expected disconnect between rural and urban populations evolving in classical ways. More nuanced co-dependency is evident in which urban dwellers retain socio-cultural links and surety of eventual land access in home villages, reconstruct the social community in city neighbourhoods and help out relatives at home. Livelihood sources become more diverse and intertwined. Rural community itself seems to consolidate and thrive, remaking itself in diverse ways, and with good deal more calculated force than less politicised times necessitated. Perhaps this should have been anticipated, as arguably the most successful social formation in human history other than the 'state', if given the chance.

Maturation of local lands into identifiable community lands, and shared resources within them as collective properties have been noticeable transitions. The reasons are not hard to identify. First, in the transformation they confront, it is mainly their natural capital – their land and resources – that are at stake. Most of these assets are naturally collective in the forests, rangelands, and seasonally useful barren and floodable lands, that do not survive or serve so well when carved up into little private parcels. Their prominence in the community land sector is less surprising when one considers that despite housing over half the world's population, urban areas take only 3% of global land space. Or that only 13% of the world is cultivated farmlands, and where an individualised or mainly family-based approach holds more resonance.

The same developments that threaten local tenure also bring awareness. There is also declining acceptance that the state is, after all, the rightful or even logical owner of unfarmed lands, or wastelands, as some governments still define them. Nor are poorer majorities, seeing the size of their farms decline with population growth to the point of extinction as willing as in the past to ignore encroachments into their last asset, shared commons, or to tolerate the deals their own traditional leaders may be enticed to make in their regard or which the state imposed upon them. Demand for more inclusive decision-making also mounts, bringing traditional norms around this into more democratic territory.

Critical awareness of the weak legal status of their land rights is also rising. Globalisation aids this as each new surge reaches more deeply into their domains. The digital era helps. This allows even remote communities to become aware that their sense of threat is not unique, and upon which solidarity expands. The promotion of good governance that routinely accompanies the global push for market-led development also plays a role. On the one hand, stronger separation of executive, judicial and legislative powers, more devolutionary governance, and new menus of human rights in the flush of new constitution making since 1990, provides new routes for communities to appeal to. On the other hand, this new phase of modernization brought with it structural adjustment demands that specified bailouts as dependent upon making lands and resources more freely available to global capital to grow stumbling economies. This has produced an on-going wave of agrarian tenure reform that has been forced to focus on the status of community lands.

This has not been comfortable for many governments, less willing (or able) as in the past to ride roughshod over the interests of their rural citizenry. The results have been partial or contradictory. Yet the overall trend is quietly revolutionary in eroding or even abandoning tenure premises upon which old and new states established themselves. This is manifest in implicit recognition that the country's

lands are not – and never have been – “empty of owners”. How far to regularise this has become a main if somewhat problematic agenda that is difficult to avoid.

The more progressive of new land laws do not make formal registration prerequisite to their protection, turning the tables by placing the burden of proof that lands are unowned upon the land seeker. Some statutes go further, acknowledging for the first time in the history of the state that registrable customary rights legitimately extend beyond the family farm to include common lands. This promptly empowers the construct of community lands and of necessity, community based land and resource governance to manage these.

The implicit shift from *terra nullius* to *terra communis* – community lands – should not go un-noted. Moreover, this is not only in the form of discrete native titles issued to indigenous peoples on the basis of individual claims, and which on the whole, have sturdily avoided disturbing traditional meanings of property, locating these entitlements as tolerated exceptions to the rule. More dramatic reforms in this sense derive from countries such as in Africa where the status of customary rights in principle and in their diverse tenure forms is radicalised. The new land laws of Tanzania, Mozambique, Lesotho, Uganda and latterly Burkina Faso and South Sudan, are illustrative in Africa. By the stroke of presidential assent, rural majorities were turned overnight from status as permissive occupants on public or state lands into lawful landowners due constitutional protection for their property, identified or not. The vast holdings of the state, and its status as majority landowner and landlord were by the same action struck down.

Attempts in virtually all cases on all continents to backtrack on these reforms have not been slow in coming as the harsh reality of surrendering vast lands in favour of little more than regulatory oversight comes to bear. However, as each begins to find, such steps are difficult to recant in these more popular empowered and mobilised times.

At times leading, but more often running to catch up, international agencies have changed their tune. The World Bank now advises governments to avail collective entitlement alongside opportunities for farmers to secure individual titles – advice that frankly anticipates that common properties as well as family farms will thereby enter the marketplace, to be snapped up by investors. This too may be more difficult to apply at scale than imagined.

More practically important is corollary sea change in attitudes to smallholder farming, the reality that they provide most of the world’s food on one quarter of all cultivated lands, giving pause (at last) for thought. While FDI continues to be urged, industrialisation and job creation encouraged, governments and agencies begin to work that little bit hard to find routes through which this can be farmer or community based, or at the very least linked into commercial enterprise and in ways that do not require or necessarily anticipate involuntary dispossession as its end route. Almost with noticing, it is accepted that agrarianism is here to stay; not merely an unhappy phase to be endured while factory-based industrialisation and corporate rurality take root, but a basis for growth in its own right. This represents perhaps the most adventurous reform; an entirely new phase of the agrarian state could be in the making. Whichever which way, community-owned and governed lands at quite some scale are likely to be a main structural part.