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## Introduction

Secure property rights to land are generally put forward as a key determinant of economic growth and development. Acting as rules of the game and more, secure property rights are said to reduce informality and encourage investments and productive activities at large. In this line of reasoning, the meager economic development of many African economies, the surge of informal settlements, and the generally low productivity of African agriculture have been ascribed to insecure property rights to land. Yet, although previous research argues that property rights are of decisive importance for investments and productive activities, I show in this article that existing inquiries do not adequately focus on the role of the government in making the property rights truly secure. More specifically, the commitment argument developed and tested here contends that if property rights are to have a positive impact on individual investment incentives and development more broadly, attention should be turned to the issue of credible commitments in the form of *history of play* and *tying the grabbing hand*. Such an unbundling of secure property rights is one of the key theoretical contributions of this article.

Property rights to land, i.e. land tenure, are institutional arrangements that lower uncertainty and provide incentives for individuals to engage in investments and long-term productive activities. But the issue of how to make property rights secure has not been given sufficient attention in previous research. This study's focus on credible commitments and the role of the government in making citizen property rights to land truly secure therefore makes my argument move beyond the traditional focus in institutional theory. First, the perspective presented here departs from earlier institutional analyses by arguing that we need to look beyond the issue of institutional design and instead focus on the role of the government as the ultimate enforcer of institutional arrangements. Second, this focus presents a challenge previously overlooked in the property rights literature. Since there is no outside agency to enforce the agreement between the citizens and the government, the authority often found to violate the agreement is precisely the one supposed to enforce it (i.e. the government). Given this theoretical challenge, I attempt to advance institutional analysis by developing and testing an institutional theory of self-enforcement, i.e. a theory of how and why institutional arrangements can function in the absence of third-party enforcement. More specifically, by explicitly focusing on credible commitments I argue that previous research has overlooked the incentives facing the government, and thus the dynamic interaction between the rulers and the ruled. In contrast to previous research, which largely sees property rights as politically determined rules that are imposed coercively and top-down, I see secure property rights as a cooperative equilibrium outcome in an invest-protect game pursued by the government and its citizens. Methodologically, I also depart from the existing body of literature on the subject. First, I make credible commitments operational and set out to investigate the theoretical argument empirically. Second, I do this in a contemporary and comparative framework. As such, I endorse an approach different from previous ones that are predominantly either purely theoretical, focus on single-case case studies on the micro level, or focus exclusively on large-n (in some cases atheoretical) quantifications on the macro level. Yet, the African continent provides ample opportunities for comparative institutional investigations of land tenure arrangements, and the assessment of this empirical and theoretical gap makes this study unique in scope and ambition.

The analysis proceeds in three stages. First, I discuss how land tenure relates to investment, and give an account of the debate over type or form of land tenure. Second, I develop my main theoretical argument saying that it is in fact credible commitments that determine whether property rights are able to constitute an investment-enhancing incentive structure. Thirdly, I offer a test of my argument using game theoretic analysis and case studies analyzing the credible commitments of two contrasting African states, the development success case Botswana and the less successful Ethiopia.

## Land tenure and investments

That land tenure arrangements might explain cross-country variation in development trajectories has in fact been put forward for some time. The informal character of everyday life in many developing countries is for example said to hold back access to credit, long-term investment, and other productive activities conducive for economic development and human well-being (de Soto 1989; Ensminger 1996; de Soto 2000; Deininger 2003; UN-Habitat 2003). The conventional land tenure argument, however, tends to go astray in definitional debates over which *form* or *type* of land tenure – customary systems, state control, or private titles – best performs this function (Toulmin and Quan 2000; Woodehouse 2003; Chimhowu and Woodehouse 2006; Fitzpatrick 2006). Central governments were for long regarded to be the most appropriate custodians of all natural resources like land, water, forests, and fisheries. In many developing countries, and in Africa in particular, many governments nationalized land and related resources at the time of independence (Mabogunje 1990). In this process, existing property rights systems (often customary systems with resources held in common) were in many cases deemed irrational and outdated. Yet, the ambitions of the African states were generally greater than their land management capacities, and state control of land has subsequently been criticized for a number of shortcomings such as bureaucratic inertia, slow response to changes in demand, and clientelism. Eventually, researchers and scholars started to look for other solutions, which led to the introduction of private land tenure. In fact, when surveying existing research on the relationship between land tenure, investments, informality and access to services such as water supply, it is apparent that, in policy circles, the issuance of private deeds was for a long period of time regarded to be the only way to get the investment incentives right and reduce vulnerability and the risk of dispossession. Hence, formal and private land rights have frequently been put forward as a silver bullet that would bring direct results in the fight against poverty. More than stimulating economic growth and the associated poverty reduction, formal land rights have also been proposed to provide (1) investment incentives for housing improvements, in water infrastructure, and natural resources, (2) financial security as collateral to raise credit, and (3) a basis for shelter, access to services, and civic and political participation (de Soto 1989; de Soto 2000; Durand-Lasserve and Royston 2002; Payne 2002).

While there is in fact a far-going consensus suggesting that secure rights to land can do all these things and more, there is widespread disagreement on how secure property rights can be attained in practice. More specifically, despite a dominant policy preference for registration of private rights, there is a large and convincing body of literature arguing that common property systems also can provide appropriate investment incentives and thus stimulate improvements in water coverage levels. Hence, the collective nature of customary tenure does not necessarily create disincentives for undertaking investments (Dixit and Nalebuff 1993; Sjaastad and Bromley

1997; Benjaminsen and Lund 2003; Dixit and Skeath 2004; see also Greif 2006). In many cases there is in fact an economic rationale for the traditional systems – merging small scattered land holdings in order to achieve economics of scale can for example fail because the scattering could be an economic response to idiosyncratic risk in the first place (Platteau 2000; Fitzpatrick 2005). Thus, copying western-style property systems can not only fail to produce the intended effects, it may also be directly harmful. Moreover, titling advocates generally assume that imposing a system of private property rights is a nearly costless venture. Yet, imposing a system of property rights from the outside may come with substantial costs and has showed to be an inefficient and time-consuming exercise (Bromley 1998; Firmin-Sellers and Sellers 1999; Benjaminsen and Lund 2003; Fitzpatrick 2006). In addition, since several groups could enjoy different rights to the same land – i.e. some have the rights to occupation, others to grazing etc. – persons previously enjoying such secondary rights often find themselves excluded when communal land is privatized.<sup>1</sup> However, while advocates of customary land tenure quite rightfully criticize the previously prevailing emphasis on private property rights, they tend to overlook that in times of external pressure or internal disorder, community failures are potentially as pervasive as market or government failures.

Clear from this account, however, is that the property-rights debate is vivid and characterized by widely differing stand points. Yet, the argument developed in the next section contends that the role of the government is of central importance in all the different property rights systems, and what should be given greater attention is the security of the rights rather than their form or type.

### Credible commitments

Property-rights theory is a theory of incentives, and different types of property rights systems have traditionally been ascribed investment incentives of varying quality – which has spurred heated debates over the viability of the competing systems. However, the argument in focus here contends that the definitional debates in fact are misinformed and that the incentives to invest do not stem from any particular type or form of property rights per se. Instead they are the product of whether the government is credibly committed to secure the citizens property rights.<sup>2</sup> Institutions, and property rights in particular, are generally recognized as cognitive, coordinative, informational, and normative elements that generate a regularity of human behavior by enabling, guiding, and motivating individuals to undertake investments and productive activities (Greif 2006). Yet, I argue that the general story of property rights dynamics accounted for above fails to grasp *why* some countries have secure property rights that promote investments while others are far less successful. And, equally important, I also argue that previous studies lack a coherent account of *how* property rights are made secure and investments stimulated (see Firmin-Sellers

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<sup>1</sup> For example women, pastoralists, and migrants are likely to lose previously held secondary rights in the titling process when multiple claims to land and resources are collapsed into the freehold category (Sjaastad and Bromley 1997; Platteau 2000; Woodehouse 2003). As a consequence, women often have to rely on male relatives, finding themselves deprived of the few rights they previously enjoyed under the communal tenure system (Payne 1997; Bruce 2000; Hilhorst 2000).

<sup>2</sup> Firmin-Sellers has for example tried to draw attention to this area: “...just as we cannot discern the nature of customary tenure until we explore the linkages between community and state, we cannot determine the productive potential of any property rights system until we assess the political process by which those rights are defined and enforced: Abstract debates over the efficiency of customary land tenure and private property are irrelevant, because the desirability of either system depends upon the actors’ ability to enforce property rights at the national or the local level” (Firmin-Sellers 1996). Sened has also recognized the importance of the surrounding institutional framework for making property rights secure: “...I argue that the origin of private property and related individual rights is to be found in the political institutions that grant and enforce them” (Sened 1997).

1995; Hirshleifer 1995; Goldsmith 2004; Greif 2006; Hafer 2006; Congdon Fors and Olsson 2007). However, there is now a general consensus that institutions – and property rights institutions in particular – are indeed crucial determinants of the differing development trajectories among both countries and resource systems (Knack and Keefer 1995; Baland and Platteau 1996; Collier and Gunning 1999; Hall and Jones 1999; Acemoglu et al. 2001; Acemoglu et al. 2002; Meinzen-Dick et al. 2002; Deininger 2003; Rodrik et al. 2004; Libecap 2005). But if we do not know what makes citizens in some countries enjoy the benefits of secure property rights while citizens in other countries struggle under uncertain conditions, there is simply not much prospect of progress or successful reform. To fully understand property rights and the investment incentives that follow, I hence argue that we have to turn our attention to the fundamental political dilemma of credible commitments: a government strong enough to protect property rights is also strong enough to violate the rights. Therefore, to make citizens invest in long-term productive activities on the basis of those rights, the government must credibly commit not to use its confiscatory powers arbitrarily.<sup>3</sup> While property rights are usually assumed to determine incentive structures in society, the conjecture here is that it is in fact credible commitments that ultimately determine whether property rights are able to constitute an investment-enhancing incentive structure.

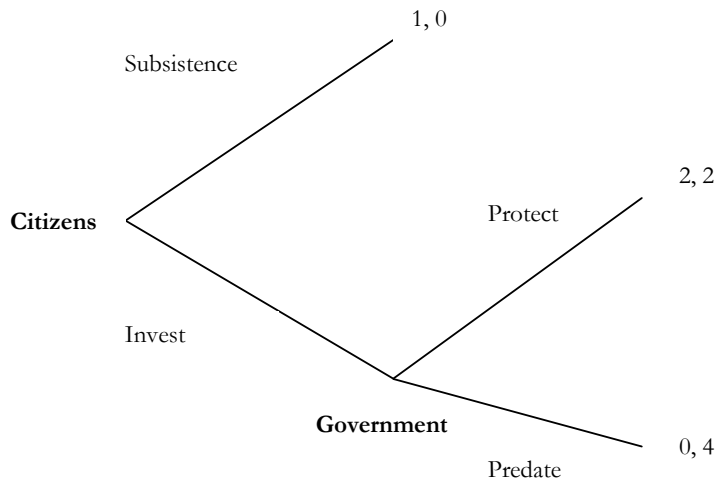
In short, commitments are important since close to every economic decision involves an inter-temporal dimension: put the seeds in the ground today and harvest tomorrow, invest now and reap the rewards in the future. The inter-temporal nature of many decisions, however, adds a delicate commitment problem to economic activity. In our setting, the basic but fundamental commitment problem is found in the relationship between citizens and the government. The government has a lot to gain in terms of tax revenues in time  $t_{+1}$  from citizens undertaking investments in time  $t_0$ . The citizens in turn depend on the government not to violate their property rights and confiscate *all* of their produce in time  $t_{+1}$ . However, if they cannot trust the government to honor their property rights and only take a fraction of their produce in time  $t_{+1}$ , it would not be rational to undertake the investments in time  $t_0$ . And they therefore refrain from such investments. The government's commitment in time  $t_0$  is under such circumstances simply not credible since in time  $t_{+1}$  there will really be no incentives to act on the promise. Rational anticipation of the government's strategic incentive to violate the agreement once citizens have made a first cooperative move thus holds back overall investment rates in society. Hence, the government needs to credibly commit to protection rather than predation. This commitment problem can be illustrated as an invest-protect game between the government and the citizens. The actors move sequentially and can choose from either a cooperative or a non-cooperative line of action. The payoffs and the structure of the game are given in the tree-diagram below.<sup>4</sup>

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<sup>3</sup> William Easterly articulates the importance of getting the incentives right as follows: "...the search for a magic formula to turn poverty into prosperity failed. Neither aid nor investments nor education nor population control nor adjustment lending nor debt forgiveness proved to be the panacea for growth. Growth failed to respond to any of these formulas because the formulas did not take heed of the basic principle of economics: people respond to incentives." The argument continues: "The incentives that are important are the same as already discussed. Good government that doesn't steal the fruits of workers' labors is the essence of it" (Easterly 2002).

<sup>4</sup> The analysis of the relationship between the ruler and its citizens is a straightforward application of a model developed in Greif's seminal work *Institutions and the Path to the Modern Economy* (Greif 2006). Yet, while Greif's account deals with the evolution of medieval trade, I here focus explicitly on how credible commitments of governments affect property rights security and the subsequent investment incentives facing regular citizens.

**Figure 1.** The invest-protect game



Importantly, some early scholars of property rights in some respect did take the state and its performance of promises seriously and concluded that a theory of property rights must also be complemented by a theory of the state (Furubotn and Pejovich 1974). The reasoning about credible commitments therefore connects to the existing theoretical debate over the state's cooperative or coercive nature. Liberal scholars generally depict the state-society relation as a social contract where the state provides public goods in exchange for revenue. Neoclassical and Marxist scholars on the other hand agree in their view of the state as predatory, in constant pursuit of enforcing property rights beneficial to its immediate interest. The basic understanding of political power thus comes in two variants: the first is a cooperative account depicting how individuals get together as equals and establish a central authority that can solve common problems, while the second sees the origins of political power as stemming from the ability of some actor with a comparative advantage in violence to establish a coercive force and extract resources as efficiently as possible from the constituents of a particular geographical area (Evans 1989; Rothstein 1996; Nye 1997; Bates 2001; see also Goldsmith 2004). Other scholars also find the dichotomy useful. North for example distinguishes between a predatory theory of the state and a contract theory of the state, but importantly also eventually tries to combine the two approaches (North and Thomas 1973; North 1981; North 1990). Following this approach, a growing consensus among economists and political scientists now suggests that the basic outline of North's story, that states are simultaneously predatory and cooperative, is correct (Levi 1988; Firmin-Sellers 1995; Firmin-Sellers 1996; Bueno de Mesquita et al. 2003; Goldsmith 2004; Acemoglu and Robinson 2006). From the ruler's point of view, there is in fact an obvious logic behind embarking on a cooperative strategy. Since under predatory rule, citizens lose not only what they possess today but also the incentive to produce for tomorrow, an exclusively predatory ruler will have less productive subjects and his tax revenue will in the nearby future therefore decrease. There are hence considerable gains from protection of property rights – both for the state and for the citizens. Complementing coercive capacities with cooperative assurances is a way for the strong to give their weaker counterparts a positive incentive to engage in productive

activities, and not only stimulates citizen investments but also boosts the ruler's long-term revenue collection (Marcouiller and Young 1995; Englebert 2000). A well-known example of where the prospect of future benefits makes the government choose a protection strategy is Olson's stationary bandit model (Olson 1993; McGuire and Olson 1996; Olson 2000).<sup>5</sup> Recent theoretical contributions consequently drop the assumption of the government as either benevolent or leviathan (Bueno de Mesquita et al. 2003; Bardhan 2005; Acemoglu and Robinson 2006; Greif 2006). Instead, it is acknowledged that property rights cannot be enforced by coercion alone, and focus has shifted to how coercion is mixed with cooperative assurances in the form of credible commitments.

### Comparing commitments

Given this recognition of the commitments underlying secure property rights and the resulting investment incentives, scholars in the field of political economy have increasingly started to pay attention to the mechanisms by which the governments can and do establish such commitments (Dixit and Nalebuff 1993; Barzel 2000; Barzel 2002; Frye 2004; Acemoglu and Robinson 2006). Put simply, credible commitment mechanisms fall into the two closely interconnected categories of reputational and institutional mechanisms (Bardhan 2005).<sup>6</sup>

The first way to credibly commit to secure property rights is for the government to establish a cooperative history of play in the continuous relationship with its citizens. In our context, the ruler can try to establish a track record of cooperation to affect citizen expectations of future behavior (North 1994). First and foremost, national land or tenure legislation provides the framework for assessing in what way citizen property rights are officially recognized. The adoption of national legislation that guarantees security of tenure and regulates the way in which evictions may be carried out can give citizens the security necessary for undertaking investments that improve living conditions in their community. Clearly, rules in practice need to be assessed as well, and in addition to formal legal protection, consultation and participatory approaches are generally put forward as key aspects of a government's commitment to truly secure citizens land rights (Firmin-Sellers 1995; Durand-Lasserve and Royston 2002).<sup>7</sup> The concrete proposition here is that it is the absence of arbitrary evictions and the adoption of anti-eviction laws that communicate the government's trustworthy reputation and act as a credible commitment mechanism that encourages citizens to invest. In addition, the tenure reform process should preferably be undertaken in consultation with the dwellers themselves. If no consultation process, anti-eviction laws, or upgrading projects are under way, or if arbitrary evictions prevail, then the

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<sup>5</sup> Olson's account starts with an anarchic society in ancient China where roving bandits sought to confiscate as much as possible of ordinary people's wealth before someone else did. Given the fierce competition among various bandits, as much as possible as fast as possible became the motto. Yet, living under constant fear of confiscation; citizens soon lost all incentives to invest. And, as time passed, there was nothing left for the bandits to confiscate. To make citizens start investing again, some bandits settled in one location, started to uphold law and order, and refrained from total confiscation of people's wealth; they simply promised to collect only a smaller percentage of the produce of the citizens in return for property rights protection. Such stationary bandits clearly had a longer time perspective than the roving bandits and were hence not only more successful at stimulating investments, but also managed to increase their own revenue bases

<sup>6</sup> However, where no outside enforcement is feasible, one way to commit to not cheating is to exchange hostages (Williamson 1983; Rubin 2005). In *Puzo's Godfather* for example, before a meeting between rival Mafia families they constrain their own freedom of action by the mechanism of bilateral hostages. But explicitly carrying out such a code of conduct is for various reasons not likely to work well in the relationship between the state and its subjects. Other studies emphasize the importance of trust and social capital for establishing credible commitments, but this article adheres to a political-economy view of institutions that sees trust and cooperative norms predominantly as effects of governmental institutions and their actions (see Keefer and Knack 2005; Rothstein 2005).

<sup>7</sup> Firmin-Sellers for example highlights why consultation is important: "...most importantly, rulers can use their positions to signal an intention to behave cooperatively, establishing a credible commitment to abstain from pursuing their immediate self-interest. To this end, the ruler may create formal channels for two-way communication, establishing the ruler's interest in listening to the subjects' preferences and suggestions" (Firmin-Sellers 1995).



authorities cannot be said to have established a trustworthy reputation that makes citizen property rights to the land they occupy more secure. In conclusion, the indicators used for assessing if a cooperative history of play prevails is thus the absence of arbitrary evictions and the existence of anti-eviction laws in combination with the existence of a consultation process.

The second potential way to credibly commit to secure property rights is simply to take the decision-making power out of the hands of the potential violator. By making breach of agreement virtually impossible, or at least very costly, the credibility of the agreement rises. In order to make his promises more credible, the ruler can in this way choose to institutionalize joint decision-making or put constraints on his own behavior in other ways (North and Weingast 1989; Root 1989; Firmin-Sellers 1996; Bardhan 2005). Formal institutions are excellent in this regard as they are durable and affect the future allocation of power: the promise in time  $t_0$  is simply made credible by putting constraints on the ruler's ability to act opportunistically in time  $t_{+1}$  (Acemoglu and Robinson 2006). In this perspective, the ruler can only commit credibly and gain more future revenue by "...binding himself irreversibly (such as giving over rights and coercive power to constituents or their representatives)" (North 1994). Since it ensures a transfer of decision-making powers and constitutes a coordination device for the citizens, devolution of land management responsibility is suggested to be of crucial importance for tying the grabbing hand. Given pervasive market or government failures, local community organizations are repeatedly put forward as a solution to various coordination failures. Indicators of whether governments have tied their own hands thus consist of the existence of transfer of land management powers to various kinds of elected or representative lower level bodies. The proposition here is thus that land administration and management should be transferred to lower level bodies in order to tie the grabbing hand; only when land is held locally, and only when the local levels are empowered to manage land, will the government be credibly committed and will the citizens be secure enough to invest in improvements and infrastructure that increase water coverage levels. In addition, a localized land management system is proposed to be more efficient than a centralized ditto, and as power is put in the hands using the land, costs and benefits are closer to the primary users and land is more likely to be used sustainably and efficiently. Devolved land management thus has the potential to significantly stimulate investments in improvements and infrastructure. In conclusion, it is suggested that decentralization is a means of tying the government's hands from engaging in different commitment-undermining acts of *ex post* intervention (Bardhan 2005). The specific credible commitment mechanism investigated here thus consists of devolved land management responsibilities through bodies such as Land Boards or elected local level institutions. Hence, the transfer of decision-making power to lower levels is taken as an indicator of a grabbing hand that is tied harder than what otherwise would have been the case.

### The model

As outlined in previous sections, a trustworthy reputation is, in theory, one of the mechanisms through which the ruler can establish a credible commitment to protection rather than predation. Let us see how this mechanism works formally. When modeling reputation, the core argument is that: "...the long arm of the future provides incentives to honor the loan agreement today so as to retain the opportunity for funds tomorrow" (North and Weingast 1989). Quite intuitively, the relationship between citizens and rulers typically consists of more than one-shot interactions.

While the ruler faces the temptation to predate rather than protect in every single game, in a continuous relationship he also faces the risk of not getting any payoff at all in future games. Given the repeated game setting, the ruler now rationally anticipates that citizens will withdraw into subsistence activities forever if he fails his protection promise. He therefore gets an incentive to honor his agreements. Recall that the citizen threat to choose the subsistence path is credible since this outcome represents a Nash equilibrium and thus is self-enforcing. The citizens in turn know that the ruler's incentive structure now is different than in a one-shot game and they can therefore be willing to test the ruler's commitment by embarking on an invest strategy. The strategy adopted by the citizens is now to equate with a trigger strategy: the citizens can trigger cooperative behavior by a credible threat of costly punishment, i.e. withdrawal into subsistence activities forever – implying no future tax revenues for the government. While it is true that facing a breach of agreement would render the citizens zero payoff, they also know that in an infinitely repeated game setting, the ruler takes their credible threat of employing a subsistence strategy seriously. And in light of this threat of a grim punishment, a cooperative line of action can now be self-enforcing. Simply put, when played repeatedly the invest-protect game has more than one equilibrium. In fact, since no player can gain from deviating from the cooperative strategy and then return to the cooperative strategy (recall that the threat of the citizens to withdraw into subsistence activities is credible), in this case it is easy to validate that in infinitely repeated games, the invest-protect outcome is a so-called subgame-perfect equilibrium. Thus, the suggestion is that if the government values the gains from future trade higher than immediate predation, a reputation mechanism can mitigate the commitment problem (Greif 2006). According to the classic Folk Theorem, repeated games can produce cooperative subgame equilibria if the future is not discounted too heavily. Repeated interactions and a cooperative history of play can produce a mutually beneficial outcome (and this can be a subgame-perfect equilibrium and can thus be self-enforcing). However, in order for this outcome to occur, the game has to be repeated infinitely or at least for an indefinite period of time. Yet, as soon as any of the actors fear that the game is coming to an end, the subgame-perfect equilibrium will be broken and an uncooperative equilibrium takes its place.

To see the limits of the reputation mechanism more formally, I translate Greif's story about medieval trade to the relationship between citizens and the government (Greif 2005; Greif 2006). In this setting we have  $x$  citizens; if they choose the invest strategy the gross value of production is  $f(x)$ . As we live in a world of scarcity, investments in turn come with a cost for the citizens,  $k > 0$ . The cost for the government to protect the citizen property rights is also positive,  $c > 0$ . Taken together, the net value of the invest-protect strategy is consequently  $f(x)(1 - c - k)$ . Quite naturally, this is presumed to be a lucrative arrangement so  $c + k < 1$ . In addition, the function  $f$  is assumed to be nonnegative and differentiable,  $f(0)=0$ . It also has a maximum  $x^* > 0$ , which is to equate with the efficient volume of investment. Moving on, for every investment the ruler gets tax revenue of  $\tau \geq c$ . Total revenue is thus  $\tau f(x)$  and net of the cost of protection we end up with  $f(x)(\tau - c)$ . The ruler can, however, choose not to protect a fraction  $\lambda$  of the citizens whereby he saves  $\lambda c f(x)$ , his payoff then is  $f(x)(\tau - c(1 - \lambda))$ . Citizens who are still protected earn profits net of costs and taxes of  $(1 - \tau - k)f(x) / x$ . Citizens who are preyed upon pay tax and incur costs but receive no revenue:  $-(\tau + k)f(x) / x$ . The game is repeated period after period and the player

payoffs are discounted with the discount factor  $\delta$ . Thus, the ruler's payoff when the investment level is  $x_t$  in time  $t$  is given by the formula:

$$\sum_{t=0}^{\infty} \delta^t f(x_t)(\tau - c(1 - \lambda_t)).$$

Logically, individual investors in a similar manner also earn the discounted sum of their periodic payoffs.

Consider now a first game where there is no power-sharing mechanism or coordination device for the citizens, i.e. the commitment's credibility depends only on a bilateral reputation mechanism; the citizens know only their own past history of play and how they individually have been treated, and they have no way of collectively constraining the ruler's actions. The Folk Theorem above predicted that when the citizens can pose a credible threat of withdrawing to subsistence activities, the ruler fears loss of future revenue and sticks with the protect strategy. However, this conclusion builds on the assumption that citizens are coordinated and have some form of mechanism to overcome the collective action dilemma involved in posing such a credible threat. In contrast, let us see what happens when no such coordination device exists. The ruler can now choose to predate on a fraction  $\lambda$  of the citizen property rights. The payoff thus becomes  $f(x^*)(\tau - c[1 - \lambda])$ . Still,  $1 - \lambda$  citizens choose the invest strategy and the ruler's payoff for protecting the rights of this remaining fraction is at least  $y(\tau - c)f(x(1 - \lambda))$  when  $y = \delta/(1 - \delta)$ . Taken together, if deciding to predate on a fraction  $\lambda$  of the citizens in the first period but then adhering to the suggested equilibrium, the payoff is at least:

$$f(x)(\tau - c(1 - \lambda)) + y(\tau - c)f(x(1 - \lambda)).$$

Following the logic from Greif's model, this expression coincides with the payoff when  $\lambda = 0$ . The derivate of the above expression with respect to  $\lambda$  when  $\lambda = 0$  and  $x = x^*$  shows that the ruler has an incentive to deviate from the cooperative line of action:

$$cf(x^*) - y(\tau - c)x^*f'(x^*) = cf(x^*) > 0,$$

because  $f'(x^*) = 0$ . In other words, if deviating from the protect strategy, the ruler loses nothing in terms of future rewards but saves the cost of protecting in the present period. The conclusion is thus that without a coordination mechanism among the citizens, there will be no equilibrium supporting a protect strategy ( $\lambda_t \equiv 0$ ) at the efficient level of investment  $x_t \equiv x^*$  (regardless of the levels of  $c$ ,  $\tau$ ,  $k$ , or  $\delta$ ).

This account makes clear that when a bilateral reputation mechanism is the only commitment device in place, the invest-protect strategy is not a self-enforcing equilibrium at the efficient investment level  $x^*$ . As the model spells out, at this investment level, when there is no coordination mechanism in place and the government consequently faces sanctions only from the citizens subject to predation, every marginal citizen/investor has zero net value for the government. In this setting, predation consequently does not result in any significant future losses but saves the ruler the cost of protecting the fraction that is being preyed upon. Since citizens are uncoordinated, the fear of losing future revenues is simply not high enough to make the government stick exclusively to the protect strategy. The citizen threat of withdrawing into subsistence activities is thus not credible given the absence of any devolved decision-making

structure, and the invest-protect strategy is consequently not self-enforcing at the efficient level of investment.

Taking the argument further, to support the level of efficient investment, some kind of collective action among citizens is clearly required. Yet, importantly, such collective action has to involve more than only a subset of the citizens. Consider for example a situation where a coordination mechanism actually exists, but with limited reach. The previous assumption that no citizen has information on how the ruler has treated others is perhaps far-fetched. However, even if a coordination mechanism implied that whenever a set  $C$  of citizens are preyed upon there is a set of citizens  $\hat{C} \supset C$  who learn about the event, it would not suffice to render an efficient investment level feasible. To see this, assume a constant  $K(1 \leq K < \infty)$  that makes proportionately few citizens learn about the breach of agreement: if the number of investors preyed upon is  $\mu(C)$ , then the number of citizens who actually get the information,  $\mu(\hat{C})$ , is no more than  $K\mu(C)$ . Still, the predation on a small number of citizens is now communicated to a much larger group than those subject to the trespass. However, the following expression proves that although predation leads to withdrawal by a group many times larger than the group that was preyed upon, it would not suffice to support an efficient investment level:

$$cf(x^*) - y(K(\tau - c)x^*f'(x^*)) = cf(x^*) \geq 0.$$

This is basically the same expression as above but the number of investors withdrawing to subsistence activities is now multiplied by  $K$ . However, there is still no Nash equilibrium at the efficient level of trade that supports the invest-protect strategy (regardless of the levels of  $c$ ,  $\tau$ ,  $k$ , or  $\delta$ ) where  $\lambda_t \equiv 0$  and  $x_t \equiv x^*$ .

Yet in the final game, there is a lower level coordination device in place and all citizens learn about predation. Their threat to withdraw to subsistence activities is now made credible since they can overcome the collective action dilemma. Assume the existence of some form of coordination mechanism implying that if a set of investors  $C$  is preyed upon, all investors discover the predation and withdraw to subsistence activities with a probability  $\theta(C) \geq \mu(C)$ . The game is basically identical to the first game above, but all investors now learn about the predation. Now, if  $\tau + k \leq 1$  and  $c \leq y(\tau - c)$ , then the ruler gains less from predating on an investor than what he on average would earn in tax revenue from this investor; the average future tax revenue from each investor is  $y(\tau - c)f(x^*)$  and the immediate income from predation is less than this and proportional to  $cf(x^*)$ . The logic behind this directly verifiable proof is simply that average profits rather than marginal profits now determine the ruler's revenue; the ruler now believes that if he breaches the agreement of protecting citizen property rights, he will earn no future revenue. With this anticipation he embarks on a protection strategy – the invest-protect outcome thus becomes a self-enforcing equilibrium (Greif 2006).

Summing up, given the Folk Theorem above, one might think that the invest-protect strategy could be sustained by a cooperative history of play. And so it can, but only under the assumption that citizens are coordinated and that they all learn about predation when it occurs. While it is true that a credible threat of withdrawing to subsistence activities can make the government fear a loss of future tax revenue, without any lower level decision-making structure each individual citizen is of almost no value to the ruler; as the above analysis demonstrates, without any collective action mechanism, the revenue collected from a marginal investor is

smaller than the revenue from predation or the cost of stalled future investments. Without a coordination device, investment can thus not expand to its efficient level. Yet when the ruler chooses to complement the reputation mechanism by some form of institutionalized cooperation among the citizens, then the citizen threat of withdrawal becomes credible, which in turn deters the ruler from violating the property rights of any citizen.

In conclusion, this formally demonstrates the possibility of solving the commitment problem with a reputation mechanism. What also comes through strongly is that such a reputation mechanism in many cases is not enough; at the efficient level of investment the marginal value of each individual falls to zero and the government therefore sets out to violate the property rights of some citizens. Hence, for the invest-protect outcome to be self-enforcing, there also needs to be some form of lower level decision-making structure among citizens. The conclusion here, consistent with Greif's account, thus emphasizes the importance of some form of *institutionalized commitment* rather than mere promises (Greif 2006). The commitment problem is in this analysis solved by the introduction of a coordination mechanism. This analysis has demonstrated the commitment problem and the two commitment mechanisms formally. Although the analysis is fairly non-technical and simplified, the conclusions generated seem to provide strong support to the theoretical proposition that commitments are of crucial importance for encouraging investments. The reputation mechanism is to some degree a workable solution, but in absence of an institutionalized commitment, the citizen investment choice is vulnerable to government predation. Yet, this is what theory and formal modeling predicts. Let us now turn to the empirical realities and see how the commitment argument plays out in the two contrasting cases of Botswana and Ethiopia.

## **Botswana**

### *History of Play*

First of all, assessing whether the government has established a cooperative tenure track-record involves analyzing the legislative framework in respect to land. In Botswana, tenure issues are clearly specified in law; the government adopted the State Land Act at independence in 1966 and the Tribal Land Act in 1968. A Presidential Land Commission was instigated in 1983 but recommended against any major changes. Minor amendments have, however, been made incrementally – for example in the Tribal Land (Amendment) Act from 1993 (Quan 2000). There was also a policy review in 2002, and a new National Land Policy is currently being drafted reflecting increased urbanization but also involving further development of customary land management (Alden Wily 2003). Land policy in Botswana dictates that every household is entitled to two pieces of land: one for sustenance and one for residence. The direct consequence of this policy is that women get secure access to land to a greater extent than in many other countries in the region (Yahya 2002).

In Botswana, the issue of urban land management was also addressed at an early stage. In order to deal with the growing problem of landlessness and squatting accompanying the high urbanization rate of the 1970s, the government developed the Certificates of Rights (COR) and the Fixed Period State Grant (FPSG) to enable citizens to access state land. The COR were developed as an interim stage of tenure that would be affordable for the poor but still provide

sufficient security as to encourage gradual investment and incremental upgrading. As a way for the government to encourage further investments, it also provides a subsidized loan for COR holders. Eventually, after the plot has been developed, the COR can be converted to a FPSG where land is leased from the state on a 99-year basis (Kalabumu 2000; Yahya 2002). The main purpose of urban land management in Botswana has thus been to implement an incremental upgrading scheme primarily focused on providing upgradeable tenure rights for low-income dwellers living in squatter camps outside major cities. Local authorities have in this way provided an alternative in between full title on the one hand and illegality on the other. The main principles have been a simple deed as evidence of ownership, ownership in perpetuity, or the existence of an upgrading option, and the possibility of transferring the rights through sale or inheritance (UN-Habitat 2002; Yahya 2002).

In peri-urban areas outside the municipalities, citizens can also acquire land through customary channels; either through a lease from the Land Boards or through a Certificate of Customary Land Grant. The existing property rights system thus includes a variety of forms under which land can be held, depending on individual circumstances. Conversion possibilities are also built into the system (Bruce 1998; Kalabumu 2000; Yahya 2002). In the 1980s there was a fundamental review of the national land policy which further clarified the land tenure picture. The Presidential Commission on Land Tenure sought to integrate land policy with social and economic development, and the functions of the Land Boards, the town/district council, and the Department of Land were further clarified. The Presidential Land Commission, however, recommended against any disruptive changes in the customary tenure system, and COR and FPSG remained the standard tenure regimes on state land in urban areas (Quan 2000; Yahya 2002).

Botswana's land management is generally considered consultative. Regular land policy reviews have exposed various flaws, but after investigation and discussion, shortcomings have generally been rectified. Commissions of inquiry or expert committees have been set up regularly, as well as public hearings and workshops, and laws have been debated in the parliament etc. A general conclusion is thus that the government machinery in Botswana builds on a long tradition of consultation and that it facilitates people's participation in the development process (Hope 2000; Adams et al. 2003).

When it comes to the existence of anti-eviction laws, Botswana's tenure legislation offers protection from deprivation of property without compensation alongside other guarantees of first-generation civic and political rights, including privacy of the home and other property. Expropriations are rare, and to be valid a number of conditions must exist. Expropriation must for example be "expedient or necessary" for certain specified public purposes and interests, and must be effected under legislation that provides for prompt payment of adequate compensation (Ng'ong'ola 2004). If expropriation takes place, the government must also compensate citizens for the improvements they have made in the property – various investment costs, planted crops etc. A legal framework offering protection against eviction is thus in place in Botswana, and it is generally considered to be fair and enforced impartially (Knox 1998; UN-Habitat 2002).

Taken together, the reputation established by the government of Botswana is generally considered to have been clearly and consistently trustworthy. In the overwhelming majority of cases of squatting, the government response is considered to have been cooperative. Instead of

denying the problem, the government has been proactive. Instead of leveling the ground with bulldozers, incremental upgrading programs have been designed and implemented (Yahya 2002). There is, however, one exception to this rule; the resource rights of the Basarwa (San-people or bushmen) were for a long time not legally recognized and the official land policy has resulted in a continued marginalization of these original inhabitants. The 1975 Tribal Grazing Policy and the 1991 National Policy for Agricultural Development promoted commercial farms that challenged the San people's livelihoods. For a long period, they were recognized as tenants at will on government land – for instance in the Kalahari Game Reserve. Yet, as some observers put it: “This failing apart, the land policy that has been pursued by Botswana, may be described as one of careful change, responding to particular needs with specific tenure innovations” (Adams et al. 2000). And more recently, the San-people's right to inhabit the land where their ancestors roamed has in fact been recognized by the legal system of Botswana. All in all, the government in Botswana has thus clearly established a cooperative history of play.

### *Tying the Grabbing Hand*

Botswana is a unitary state with a parliament as the sovereign power in full competence in all areas of jurisdiction. When it comes to devolved decision-making, the constitution does not provide local authorities with any inherent competence. Instead all local authorities exist by virtue of the Acts of Parliament (Hope 2000). The potential weaknesses of this system have been recognized by the government, and a National Development Plan 1991-1997 set out to strengthen the position of local authorities in promoting economic development and to delegate more responsibility for development planning and implementation to the local authorities, while simultaneously increasing the capacity for such activities (UN-Habitat 2002). The government has in fact put great effort into realizing those objectives, and significant powers, both regulatory and administrative,<sup>8</sup> are now transferred to local authorities. All in all, there are four different types of local government in Botswana: District and Urban councils, Land Boards, Tribal Administration, and the District Administration. Their activities are coordinated by the Ministry of Local Government, Lands and Housing. Yet, although local authorities have responsibility for managing and constructing social infrastructure at the local level, they are still dependent on the central government for the financing of their activities (UN-Habitat 2002).

When it comes to land management, approximately six percent of all land in Botswana is held with freehold titles, 23 percent is state land, and the remaining 71 percent is so-called tribal land (Adams et al. 2000). Tribal land is land owned by the communities through Land Boards which work in trust for the benefit and advantage of citizens of Botswana and for the purpose of promoting the economic and social development of all peoples of Botswana. Operating since 1970, there are in total twelve Land Boards, supported by 37 subordinate Land Boards (Alden Wily 2003; Mathuba 2003). How these ought to work is set out in law. In fact, the Tribal Land Act already in 1968 provided for the establishment of Land Boards as a way of improving land administration and introducing power-sharing mechanisms. The Land Boards fall under the Ministry of Local Government, Lands, and Housing and have all the former powers of the chiefs in relation to land; e.g., granting of use rights, cancellation of rights, imposing restrictions, authorizing transfers, determining land-use zones, and hearing appeals from the subordinate

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<sup>8</sup> That is, decentralization takes the form of both devolution and deconcentration.

Land Boards. Their principal responsibility is, as set out in law, to manage the land for the benefit of the citizens of Botswana (Mathuba 1999; Mathuba 2003). At their instigation, each Land Board was provided with a vehicle, office facilities, and an executive secretary employed formally by the ministry. The people who were to serve on the Land Boards were in turn offered training. To start with, senior chiefs were members of the boards but eventually the government provided them with other judicial roles (Bruce et al. 1998).

The main Land Boards have twelve members and the subordinate have ten. Five of the main Land Board members are elected by the people at the kgotla (a traditional forum), and another five are nominated by the Minister of Local Government, Lands, and Housing. The additional two members of the main Land Boards represent the Minister of Commerce and Industry and the Minister of Agriculture respectively. The Minister of Land is ultimately responsible for the operation of the Land Boards and is accountable to the parliament (Quan 2000). Following further amendments in 1993 it is now easier for citizens to appeal if they are discontent with a board decision, and in 1997 a new Land Tribunal was set up to fast-track such processes. The 1993 amendment also abolished the concept of tribesmanship, and the Land Boards are now explicitly intended to manage land for the benefit of the citizens of Botswana rather than for the tribesmen of the area. In a comparative perspective, tribal competition is in this way kept to a minimum and the ability of the Land Boards to pursue only a local developmental agenda is limited (Mathuba 1999; Quan 2000; Mathuba 2003). Customary land management was further clarified in the consultative National Land Policy Review 2002, which concluded that land administration and management was generally in good health at the time (Adams et al. 2003).

The dichotomy between state or private land has been downplayed in Botswana. Instead, there has been a continuous emphasis on locally accountable management and ownership of land (Kalabumu 2000; Quan 2000; Adams et al. 2003). Yet, some scholars question whether the Land Boards are sufficiently democratic and accountable; there are concerns that since the members of the Land Boards are not elected by secret ballot but by the traditional kgotla-forum where large cattle owners are argued to have more influence than others, the outcomes are biased to the disadvantage of regular citizens. Others stress that central government still interferes too much in local decision-making, and that Land Boards are subject to bureaucratic inertia. Some also argue that the Land Boards are easily high-jacked by local elites (Quan 2000; Marongwe 2004). However, much of the critique has no bearing as long as the position of Land Boards in the wider system of devolved local government is made clear by the government. For sure, the arguments put forward against direct and deliberative democracy in general can probably be directed towards the kgotla-forum as well,<sup>9</sup> although the fact remains that the pre-colonial history of the kgotlas has been shown to bring significant legitimacy, and they are widely perceived as an important forum for decision-making at the local level (Acemoglu et al. 2003). Similarly, Land Boards in general have been shown to be an efficient way to take account of local conditions and provide for the participation of local stakeholders, such as traditional authorities and civil society groups. Land Boards are thus intended to facilitate the implementation of government policies, but they are also meant to be an institution where local stakeholders can be included. Since the

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<sup>9</sup> This can for example be concerns about whether the deliberative process can be manipulated by strong and powerful interests.



creation of subordinate Land Boards, this principle of subsidiarity has been further highlighted (Quan 2000; Adams et al. 2003).

Another potential benefit of the Land Boards is that they remove customary land from the absolute control of local chiefs while still giving traditional leaders some representation and also retaining the principles of customary land law. As one observer put it: "...Botswana's emphasis on local Land Boards as a means of land administration and gradual approach to policy reform demonstrates the viability of land management based on customary tenure and the development of local institutions, rather than a more centralised approach focusing on perceived need to transform customary tenure" (Quan 2000). However, one of the most contentious issues, in Botswana and elsewhere, has however generally been how to put land allocation by traditional authorities under democratic control. In this respect, it is clear that Botswana provides a comparatively successful example of how this can be done. The Land Boards are generally perceived as legitimate both in tribal land management and peri-urban settlements. In fact, a general conclusion is that: "In no other country in the region has land been so judiciously administered as an essential component of good governance" (Adams et al. 2003). Customary rules continue to exist and provide legitimacy to land holding, and the security and easy access principles embodied in customary tenure systems have been safeguarded, but land administration is at the same time transferred to more democratic bodies (Hope 2000; Kalabumu 2000; Alden Wily 2003). In this way, "The land board system in Botswana is perhaps the most successful attempt by the state to recognize the decentralised authority of tribal communities over land, and to a significant extent customary tenure rules, while at the same time easing traditional land administration authorities out of control" (Bruce et al. 1998).

Yet the financial dependence on the central government is time and again put forward as an obstacle to full scale devolution. A too heavy reliance on the central government risks making local authorities less responsive to the needs of the citizens, and the Ministry of Local Government has therefore set out to reduce the dependence on government hand-outs by giving local authorities greater control of their budgets. There are also concerns that the people gaining power at the local levels belong to the same politico-bureaucratic elite that dominates the central government. Hence, in some respects, the decentralization process has had more traits of deconcentration than true devolution of power to autonomous local levels. However, in a comparative perspective Botswana is still held to be a country where the government is committed to gradually giving up more and more of its decision-making powers (Hope 2000; UN-Habitat 2002).<sup>10</sup> The role of chiefs has been gradually phased out and replaced by a decentralized land management system, but some of the principles of customary tenure systems have been retained. The Botswanan government has thus consistently employed an adaptation rather than replacement strategy when it comes to tenure reform, and the government has also eliminated distinctions between citizens from different tribes and subtribes (Knox 1998).

In conclusion, the Botswanan establishment of Land Boards was clearly a policy shift towards local accountability and the devolution of land management powers. As the above analysis shows, it is apparent that the central government has created a coordination and collective action device for its citizens by transferring certain rights and responsibilities to lower

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<sup>10</sup> In fact, already in 1974 Tordoff argued that: "The growth of strong district councils is being encouraged [by the central government] and it is intended that they will increasingly become the focal point ... responsible for promoting the general well-being and economic development" (Tordoff 1974).

level bodies (Quan 2000; Toulmin and Quan 2000). Thus, the government of Botswana has clearly tied its grabbing hand by giving up some of its decision-making powers over land management.

## ***Ethiopia***

### *History of Play*

The Ethiopian government's tenure track-record involves a nationalization of all land in 1974 when the Derg regime gained control after Emperor Haile Selassie's rule (Kebede 2002). The egalitarian-minded government that took office set out to abolish the prevailing feudal system. The state, however, retained ultimate ownership and control over all land, and instead of granting citizens private title to land, the state gave them usufruct rights. These rights were derived from membership in a peasant association, and individuals therefore could neither sell the land nor dispose of the land as they wished. In some respect, the nationalization and creation of peasant organizations effectively addressed the previous inequities in land holding patterns, and more people began gaining access and usufruct rights to land (Subramanian 1998; Rahmato 1999; Adenew and Abdi 2005). However, the villagization and forced relocations promoted by the Derg regime also caused conflicts with the inhabitants of the affected areas. In fact, the villagization program in Ethiopia is particularly noted for its high level of coercion and the high degree of family separation (Lorgen 1999). In addition, there was in general little room for citizen participation and consultation. For sure, the tenure legislation and policies in place in the 1970s and the 1980s improved equity, but continuous relocation and redistribution in favor of older members of the peasant associations reduced the security of land tenure and brought considerable uncertainties to land management (Joireman 2000; Kebede 2002; Nega et al. 2003). The policies of continuous rearrangement of land holdings in fact gave the individual farmers no idea how long they would be in possession of the land they occupied.

Moreover, since land holding derived from membership in a peasant organization, many people remained in rural areas despite a lack of livelihood opportunities and growing land scarcity, and Ethiopia today therefore has a higher proportion of people living in rural areas than most other African countries. The tenure situation in urban areas is also very uncertain: in an international comparison, Addis Ababa has one of the largest proportions of people living in informal settlements. Ethiopia is thus one of the least urbanized African nations but has one of the fastest urban growth rates in the world, and suffers from a severe housing shortage and lack of water infrastructure (Payne 1997; UN-Habitat 2007).

For sure, housing shortages were experienced already under the Italian occupation in 1936-1941, but the situation continued to grow worse after the occupation ended. Although the development of human settlements was included in the government's five-year plans during the 1960s, a comprehensive national housing and land policy was absent. The outspoken ambition during the 1960s was, however, to launch a large-scale, yet affordable, housing program and at the same time address the land holding systems in informal settlements. Yet, despite much being said on paper, the country saw slow progress when it came to improving human settlements (UN-Habitat 2007). The land issue was in fact one of the driving forces behind the February 1974 revolution that overthrew the emperor. Under the revolutionary slogan land-to-the-tiller, all

land was nationalized and rental accommodation was placed under the administration of neighborhood associations known as urban dwellers' associations or kebeles. Yet, despite a number of cooperative official declarations, the response to informal settlements was in effect none else than bulldozing them. In fact, after the nationalization of all land, the shelter conditions deteriorated fast and the damage inflicted by the new land policies was so great that the Derg regime itself eventually tried to introduce some corrective measures before its downfall. As the housing situation grew worse when the private rental market was abolished – and nationalized land in effect became nobody's property – virtually all areas experienced an uncontrolled growth of squatter units with extremely poor quality of the shelters (UN-Habitat 2007).

With the new EPRDF government coming to power in 1991, Ethiopia saw a number of new policies and programs. Nevertheless, a national housing policy was never developed beyond statements of intent in national economic development plans and the like. In practice, the new government's policy was consequently much like the Derg's, and housing conditions and the quality of infrastructure in most residential neighborhoods remained in disrepair. Tenants in state-owned housing still live under great insecurity since there are continued uncertainties over the future of their dwellings. Residents are for example unsure of whether the government is going to privatize the property, and of the legal status of their land holdings. For tenants in the private rental sector there is a lack of policies regulating the landlord-tenant relations, and without any duly signed meaningful lease or contractual agreements, either party can in fact terminate agreements at will without adequate notice. As a consequence, the threat of eviction is widespread. Although the poor are gradually being accepted as rightful inhabitants, this recognition has yet to find its way into policies, regulations, and procedures protecting the rights of informal dwellers (Adenew and Abdi 2005; UN-Habitat 2007).

When it comes to consultation, the post-1991 period has seen more participation from local authorities and NGOs in upgrading programs. However, there is still excessive centralism and the state still holds the most important land management powers (Alden Wily 2003; UN-Habitat 2007).

Taken together, the history of play in the 1970s and 1980s was thus clearly non-cooperative, and there has not been much change in the tenure track-record after that either (Kebede 2002; Nega et al. 2003). However, the latest Ethiopian Constitution is federal and gives more freedom to the regions.<sup>11</sup> On paper, it also favors devolved and participatory approaches, but in practice continues to severely restrict land sales and also facilitates the practice of redistributions to meet land needs (Alden Wily 2003). Still today, redistribution remains common, and land policies in many aspects remain largely unaltered, resulting in little security for smallholders. The 1992 Constitution promised a comprehensive new land law that has not yet materialized (Alden Wily 2000). While there is indeed a Land Administration Policy from 1993 that distinguishes between rural and urban lands, there is no legal framework that protects citizens from evictions or forced removals. The government can dissolve peasant organizations and exclude whoever they wish from using a particular piece of land, and there is no law or courts from which residents can find support or protection (Rahmato 1999). Since 1997, the regional states are given some freedom to make their own laws but this system is not yet fully implemented (Admassie 1998; Alden Wily 2003). Given the lack of clear tenure policies and the

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<sup>11</sup> This makes it likely that the different states will develop their land policies at different rates and in different forms.

widespread uncertainties created in land management, the reputation established by the Ethiopian government cannot be classified as trustworthy and cooperative. On the contrary, since the Ethiopian state in many cases has acted in absolute disregard of individual land holdings and fixed assets, the history of play is clearly non-cooperative.

### *Tying the Grabbing Hand*

It is clear that the creation of peasant associations in a way moved land management issues closer to the citizens. Yet, ultimate ownership was still vested in the state and the creation of peasant associations did in fact not substantially increase the decision-making powers of the citizens. In addition, the associations' allocation of usufruct rights was not founded on democratic principles and many residents consequently still had no say on issues concerning land management (Rahmato 1999; Nega et al. 2003).

After the fall of the Derg, concepts like indigenous tenure systems and participation have been used extensively, while the importance of securing tenure by actually sharing the decision-making powers have generally been overlooked (Admassie 1998; Adenew and Abdi 2005). The government still interferes with citizen rights to land and fixed assets, it still has overall decision-making powers over land management, and the current land policies do not support decentralized land administration (Alden Wily 2003). As a result, future usufruct rights to individual plots are insecure, and the future of common pool resources to which community members have unspecified collective rights is uncertain. In addition, there are uncertainties in respect to existing fixed assets on both privately-held plots and on common lands and there are also fears when it comes to future results of current actions; it is for example far from certain that individuals are to reap the future rewards from present investments (Admassie 1998; see also Kebede 2002; Deininger et al. 2003; Nega et al. 2003). The 1995 Federal Constitution vests all land in the state, and government statements propose a system of leaseholds from state-controlled land. However, the Federal Rural Land Law in Ethiopia (1997) gives the regions the power to administer land and there is potential for a participatory approach to land management (Alden Wily 2003; Adenew and Abdi 2005). The federal organization thus opens up for constructive experimentation, but is still regarded to give the state the ability to control the peasant associations and use land allocations as a way to enforce political conformity (Subramanian 1998).

Most land registration is carried out through a decentralized system built on traditional measurements and involving elected local land committees. However, the level of confidence and trust people have in these systems varies considerably. Before 1991, land redistribution was a major cause of insecurity, and it still poses a threat of eviction. In addition, government land expropriation for commercial developments or infrastructure is still a real threat to the security of urban dwellers (IIED 2006).

For sure, the Derg revolution had a rhetoric supporting bottom-up approaches and the empowerment of the poor. In practice, however, the system was over-centralized and the Derg never went beyond rhetoric or truly empowered the poor (Nega et al. 2003). The new government of 1991 introduced a federal system and pushed forward a decentralization program based on regional states: Afar; Amhara; Benishangul; Gumuz; Gambela; Harari; Oromia; Somali; the Southern Nations, Nationalities and Peoples Region (SNNPR); and the Tigray national

regional states, while Addis Ababa stayed under federal control. In effect, however, the concept of local democracy remains underdeveloped and the national government still controls many of the regional activities. The EPDRF government thus embarked on a decentralization program but various organizational and functional shortcomings inherited from the Derg and previous eras have continued to hold back the performance of local authorities (UN-Habitat 2007).

In addition to the federal level, the current system consists of nine national regional states and two city administrations (Addis Ababa and Dire Dawa). At the lower levels, there is the district level which comprises a total of 66 zones. Each zone is divided into woredas (sub-districts which are considered to be the key local unit of elected government) and the next partly overlapping level consists of municipalities. The last tier of government closest to the grass-roots consists of peasant associations and urban dweller associations, so-called kebeles. According to the 1995 Constitution, each regional state government has a quasi-sovereign status and has been given considerable power and authority including a separate regional constitution, an elected regional assembly, its own public administration, and its own courts. The constitution thus apportions power and authority among the central government, the nine regional state governments, and the two autonomous administrative regions, while the status of zonal administrations imposed on woredas or kebeles is not clearly defined. The overall relationships between the federal government, regional states, and the woreda and municipality administrations are thus unclear. In practice, regional states are regarded to have assumed a rather paternalistic role over lower levels of the administration. Despite the decentralized organization, the very concept of local government and its structure is not well conceived and developed in Ethiopia and the debate over the evolving political and legal framework of local governments in Ethiopia, "...has vividly revealed a predominant and strong tradition of centralization as well as a lack of an enabling environment for the development of effective local governments and therefore working democracy" (UN-Habitat 2002).

Taken together, tenure in Ethiopia is comparatively uncertain and precarious. The government for example has plans to "voluntarily" resettle a large number of people once again (Marongwe and Palmer 2004). Moreover, a recent survey shows that land holders expect their property rights to be arbitrarily violated. There are widespread expectations that land will be further redistributed: only 3.5 percent of the households believe that they can retain their current holding for over 20 years, while a significant majority (76 percent) of all households do not feel secure enough to think that their claim towards their existing holding could last over five years (Ethiopian Economic Association and Ethiopian Economic Policy Research Institute 2002).

In conclusion, there is a lack of power-sharing mechanisms and of legal constraints on government authority in Ethiopia. The government has not given up any of its decision-making powers over land management and has thus failed to tie the grabbing hand. On the contrary, both individual and collective rights are subject to the unrestricted powers of the state, resulting in tenure that is far from secure. Consequently, subsistence farmers or urban dwellers are induced to apply short-term survival strategies.

## Conclusions

The fact that land tenure has been put forward as a crucial factor for stimulating investments and economic development serves as an underlying motivation for the above investigation. But, what is more, this article addresses a fundamental theoretical challenge. More specifically, the simplest view of the state in the field of political economy – as an authority that produces public goods like protection of property rights in exchange for tax revenue – involves the following basic puzzle: a state with enough power to protect property rights also has enough power to violate them. And given this ‘dark side of the force’, the question is under what conditions individuals or groups will enjoy secure land tenure? The argument developed and tested here contends that credible commitments are crucial for such security. Accordingly, no land tenure system is stronger than the commitment that stands behind it.

When it comes to comparing the countries according to their *history of play*, the development success case Botswana stands out as a country where the government adopted anti-eviction laws, refrained from forced evictions, and engaged in a consultation process at an early stage. The tenure track-record in Botswana has thus clearly been cooperative. The tenure track-record of Ethiopia has been far less cooperative. Here, many people have been forced to resettle and demolition of settlements was for long the default policy response towards informality. When it comes to *tying the grabbing hand*, Botswana is undoubtedly the country where incremental devolution of land management powers can be traced the furthest back in time. Such devolution has in fact been an integral component of land policies since independence. The devolution of land management powers has come less far in Ethiopia where the previous system of land redistribution still today seems to cause widespread insecurity that discourages investments.

Given this theoretical argumentation and the empirical results presented above, the overall conclusion is that credible commitments by governments to protect citizen property rights do indeed affect the incentives to engage in investments and productive activities. If governments do not establish a cooperative history of play by adopting anti-eviction laws, abstaining from forced evictions or engaging in a consultative process, or if the grabbing hands of the government are not tied by devolved decision-making powers over land management, then property rights are not secure and do not stimulate investments and productive activities.

Another important conclusion is that property rights cannot be enforced by coercion alone. A predatory government makes citizens and economic agents avoid investing and instead withdraw into subsistence activities and the informal sector. If the leaders of those states are to survive in the long run, they must therefore blend coercion with cooperation. In the absence of third party enforcement, such a cooperative outcome needs to be self-enforcing. The strong must simply give their weaker counterparts a positive incentive to engage in productive activities, and for that reason they should embark on a cooperative history of play, and agree to tie their hands and create a coordination device for the citizens. For sure, it can be convenient to assume that the government has a monopoly over coercive power and enforces contracts and property rights. Yet, I demonstrate that it is the mutual relation between rulers and the ruled that is of primary interest. While this no doubt builds on the traditional Northian argument which contends that institutions are formal and informal rules together with their enforcement mechanisms, the result here also places endogenous motivation to follow rules at the center of analysis. However, previous studies, I argue, have by and large overlooked such endogenous incentives and instead

regarded institutions as exclusively politically determined rules that are imposed exogenously and top-down. In contrast, the position here is that institutions are more than rules and that a narrow institutions-as-rules focus ignores important institutional dynamics. In fact, without incentives to comply, rules and contracts are merely instructions. And instructions can be ignored. Incentives to abide by rules should thus not be taken as exogenous or as a product of third party coercion. Instead, a thorough analysis must consider the incentive structure facing each party involved in the interaction. Only then can we understand private order, i.e. situations where order prevails even though a third party enforcer is missing. In fact, since institutions are a product of human behavior as well as a determinant thereof, it is valuable to see them as private order arrangements also in cases when governments do exist. Consequently, successful institutional reform and the creation of secure property rights involve much more than simply changing tenure rules; it also requires creating a self-enforcing arrangement of interrelated institutional elements that motivate, enable, constrain, and guide individuals and leaders to follow certain strategies. The narrow, albeit common, view of institutions-as-rules should thus instead be replaced by a more encompassing institutions-as-incentives conceptualization that focuses on the incentives facing both parties in an interaction.

Moreover, the security of citizen land rights does not stem from any particular form or type of tenure. Regardless of whether property rights are vested in the state, in line with customary systems, or granted to individuals, the government plays a crucial role as a potential violator of the rights in place. And if not credibly committed not to misuse its confiscatory powers, citizens expect the government to turn predatory at any given point in time. I here illustrate that in order to make citizen tenure secure and encourage long-term investments in fixed assets like wells, housing, and water infrastructure, the government must clearly establish a cooperative history of play and tie the grabbing hand in its relation to the citizens. It is thus not possible to undertake a successful tenure reform if not simultaneously focusing on credible commitments and the interaction between the rulers and the ruled. Undoubtedly, African countries display huge differences when it comes to factors such as colonial history, ethnic, linguistic, geographic, and climatic diversity, and successful property rights systems can for these reasons not easily be exported wholesale to other countries. But despite such differences and potential difficulties, the general lesson from this study is that for investments and productive activities to take place, governments should abstain from forced evictions, and instead provide anti-eviction laws, engage in consultation, and devolve land management responsibilities to lower levels. Lack of secure property rights and the resulting lack of investment incentives is thus a condition that is produced politically – intentionally or otherwise – by the absence of a credible commitment from the government. As such, since the condition is a result of the actions of the government – it can not only be made but also unmade.

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