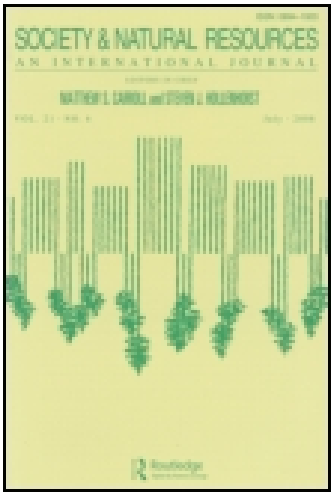

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Frontiers of Commodification: State Lands and Their Formalization

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Formal property rights are integral to contemporary global- and national-scale land transactions, and prerequisite to international institutions' recognition of any state, private, or nonprofit land holdings. We argue that state lands constitute today's frontiers for capitalist expansion. Using cases from Ethiopia, Cameroon, and Indonesia, we show how practices, institutions, and laws that expunge local rights and claims to land and replace them with state rights have been fundamental to the creation of "new" frontiers. We argue that historical formalizations of state land created the enabling conditions for today's large-scale, international, and national acquisitions of land, in ways that were unanticipated at the time of state acquisition.

Keywords formalization, historical political ecology, law and society, property relations, state land

Formalized property rights are integral to contemporary global and national land transactions, and prerequisite to international institutions' recognition of any state, private, or nonprofit land holdings. We argue that formalized state lands constitute today's frontiers for capitalist expansion. Practices, institutions, and laws that expunge local rights and claims to land and replace them with state rights are fundamental to the creation of frontiers on these state lands. The legal tenets that undergird state land management and access are historically contingent, often conflicted, and therefore always in motion. Tensions often manifest within the state between institutions or levels of state authority, and between the state and other actors. Using cases from Ethiopia, Cameroon, and Indonesia we ask how formalization of state lands has shaped contemporary state-capital relations.

Formalization serves the purpose of making land, its uses, its claimants, and its transactions controllable by state authorities (Scott 1998; Sikor and Lund 2009; Peluso and Lund 2011). Land formalization is the practice by which state land managers document, legalize, register, title, and assign property rights in land through

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bureaucratic means: "the recognition and inscription by the state of rights and conditions of access within specific boundaries" (Hall, Hirsch, and Li 2011, 28). Recent critical debates in the property literature have addressed formalization of private lands (De Soto 2003; de Schutter 2011; Hall, Hirsch, and Li 2011). However, the term can also refer to other kinds of formalizing processes on communal and state lands. No matter who holds the property rights, the process generates authority for the formalizing body, generally an administering institution within a state (Vandergeest and Peluso 1995; Lund 2013). Formalization is also a critical step in the production of a market society, wherein market relations dependent on clear property rights subsume nearly all social relations (Polyani 1944; Watts 2001; Blomley 2003). Thus, formalization also creates the conditions under which state lands or the resources on those lands may be commodified, an outcome that is sometimes unintentional at the time of their formalization (Alden-Wily 2012).

"State land" is difficult to define. When we refer to state lands in this article, we mean "lands or land types which governments claim as their own and/or as rightfully theirs to dispose of" (Alden-Wily 2012, 752). In some places these lands are called Crown Land, in others Public Domain, or Public Land; the specific definitions of all of these vary. The legal category of state land generally includes untitled and otherwise unalienated lands that may be claimed, occupied, and used but were never formally registered as private property. They have legally become state land by default, and as Alden-Wily (2012) and others have demonstrated, most large-scale land transactions in the last decade have occurred on these contested state lands. State lands include areas that have been formally established as customary or resource reserves (e.g., minerals, timber, water), protected areas, and sites of state-owned enterprises. Sometimes state lands are temporarily allocated for private use through leasing, rental, or short-term allocations or for communal access; these lands are still ultimately considered the domain of the state.

Since the rise of the modern world-system, states, capital, and land have always been linked; those relations have not been static, and capital can work through state lands in various ways (Wallerstein 1974; Moore 2010). As implied earlier, states are not homogeneous entities. Conflicting interests and actors have different ideologies concerning land management and state–capital relations. These different interests often lead to contradictory or overlapping land policies, laws, and institutions. For example, national forests that are located at international borders for security purposes might also be concessions leased out to corporations or exploited by state enterprises. Those forests are sites of territorial governance, symbols of the nation, and resource commodities, even if their legal arrangements engender graduated or fragmented sovereignties (Ong 2000; Lund 2011).

The collisions between capitalist expansion and protection logics, and between the interests of different state actors and social forces, also create tensions that play out in land policies (Polyani 1944; Perelman 2011). Competing state and civil society actors waffle between minimally regulating capitalist production and markets, or stepping in with policies to mediate capital's harsh effects on society and environment. Polyani (1944, 130) dubbed the moments of confrontation between capitalist and protective forces "double-movements." Capitalist actors and institutions push back against the protective regulations, institutions, laws, social movements, or ideologies.

These swings become evident through histories of state lands and their alternating, reformed, or repeated commodification. What these changes have meant is that many state lands set aside for collective, public, or state revenue services are now

becoming frontiers for capital in ways and under conditions that differ from their original intent. Thus, an explanation of how state lands have become new frontiers of global capitalism is necessarily historical and should be sensitive to changing relations of power, practice, and political economy (Hart 2002; Watts 2012).

Within the double-movement metaphor of a shifting terrain of social change, formalization of state land constitutes a fulcrum across which the social change pendulum swings, altering slightly the angle of passage each time. Each pass is affected by the cumulative experiences and practices of prior periods of state–capital relations. The patterns that emerge can be predicted in broad brushstrokes but are also contingent on the conditions of social and environmental history and accidents of human agency, though we do not regard subjects as self-sovereign. Today's frontiers of capitalism are not remote or "newly discovered" spaces. Instead, these frontiers are new commodity forms within the confines of already formalized state lands. Some of these lands were set aside in reaction to the most rapacious forms of capital, and some were a product of capital's working through the state to dispossess competing land claimants. State lands become frontiers when changes in broader political economy and logics of economic development reconstitute the relationships between capital, society, and state authorities.

In this article, we continue a conversation started by Alden-Wily (2012) about the origins of state lands' role in the current global land rush, extending her historical analysis beyond the classic case of Britain and key British colonies. We argue that historical formalizations of state land created the enabling conditions for today's large-scale, international, and national acquisitions of land (Alden-Wily 2012). In the context of Ethiopia, Cameroon, and Indonesia[1] we discuss some of the ways that state land formalization has facilitated new regimes of capital accumulation and state power. State lands, whether leased or sold, have now entered into the imaginary global land cadaster that facilitates their acquisition for commodity production.

Ethiopia: State Lands as "Empty Lands"

Ethiopia does not have the same legacy of extensive European colonialism as do most other African states, but colonial-era Western powers active in the region influenced Ethiopia's concept of state land nonetheless. Western institutions and actors today, from the World Bank to conservation organizations, influence national patterns of landholding and distribution, extending historical representations of certain regions as "empty" lands (Makki and Geisler 2011; Lavers 2012). As of 2013, hundreds of thousands of hectares of Ethiopian state land have been leased to foreign companies, governments, and Ethiopian state agencies to construct new hydropower dams and agricultural projects, including more than 850,000 acres of the Omo Valley (Oakland Institute 2011). The state has also made between 1.6 and 3.6 million acres of land available to investors through its federal land bank (Nalepa 2013, 4–5).

Earlier Ethiopian state regimes constructed vast tracts of land as "empty," using law, policy, and violence to create and commodify state lands (Lavers 2012). There are uneven geographies of state land production, however. Most lands produced as "empty" and taken by the state were areas of expansion of the Imperial Ethiopian state in the 19th century, acquired through conquest pastoralist and agro-pastoralist polities. Makki (2012) has described these as repeatedly produced as "peripheral" within the contemporary nation-state.

Early Productions of State Land

In the 18th and 19th centuries, Ethiopia (then the Abyssinian Empire) was surrounded by territories colonized by European powers. Ethiopian rulers adopted some Western concepts of territory as a means of maintaining and expanding the emperor's territorial authority (Keller 1981; Collins 2006). After defeating encroaching Italian forces in 1896, Emperor Menelik II of the Shewa Empire embarked on a military campaign of territorial expansion, more than doubling his kingdom's extent by the end of the 19th century (Makki and Geisler 2011). The emperor claimed small kingdoms, mainly in arid, lowland areas south of the empire (Abbay 2004; Collins 2006; Makki and Geisler 2011). These regions were occupied by pastoralists and agro-pastoralists with ethnic heritages that differed from the more agriculturally based populations in other parts of Ethiopia. These various groups' land uses, as well as their racialized identities, were strategic points of difference that were used in the production of their homelands as waste (Makki 2012). Key among these areas were southern lowlands like the Omo River Valley, a region of several thousand square kilometers in which the state claimed residents as new subjects (Collins 2006).

Ethiopian rulers divided the conquered southern lands into small administrative units with different degrees of success in administering peasant and pastoralist residents. In agricultural areas, local leaders were given one-third of each unit to exploit; northern soldiers, governors, and church officials were given the remaining two-thirds (Ellis 1976; Collins 2006). Peasant farmers living on these lands were allocated to individual landlords (*gult* holders), to whom they were forced to provide labor and pay tribute. Northern landlords also sold some of their new charges as slaves (Ellis 1976). The emperor exacted tribute from these regions and landlords were obligated to provide him with soldiers (Kebede 2002). In contrast, the imperial government considered the lowland areas like the Omo River Valley, populated by shifting cultivators (i.e., not peasants) or (agro)pastoralists, as zones of "disorder and plunder" because they were harder to control through a tributary system (Makki 2012, 85). These areas were also considered insignificant sources of revenue due to their difficult access. As a result, these areas were mainly "left to their own devices," required to pay minimal taxes and maintain small military outposts (Helland 2002, 52). Resource and land management remained locally controlled; as Helland (2002, 53) notes, "Soldier-settlers had their attention on arable farming and they did not attempt to establish themselves in the pastoral sector." The emperor remained the highest authority and purported owner of all land (Kebede 2002, 125).

Formalizing the Land of the Nation-State: From Empire to Socialist Regime

In 1936 Ethiopia was annexed by Italy. After 5 years of Italian occupation (1936–1941), Ethiopian and British forces defeated the Italian colonial troops and Haile Selassie returned to Ethiopia as emperor. In 1941, a new land law replaced rents with taxes and provincial lords with salaried state officials (Ellison 2012; Makki 2012). Fiefs were abolished and lords converted these lands into freeholds. Postwar development was concentrated in the central highlands, exacerbating further the economic and cultural differences between lowland and highland regions (Ellison 2012; Makki 2012). Northerners still represented the southern regions as sites where "uncivilized" pagans lived in the "wilderness" at the empire's periphery (Ellison 2012, 44).

Emperor Haile Selassie sought to modernize Ethiopia through capitalist development, allowing foreign-funded (European) agribusinesses to invest, generating wealth for himself and some economic growth for the nation (Keller 1981, 541). To facilitate the realization of these goals, the 1941 land law deemed that all land not recognized as permanently settled or in crop production was state land, formally dispossessing mobile pastoralists of their lands, though enforcement at the time was rare (Hagmann and Mulugeta 2008). The 1955 Ethiopian National Constitution declared that pastoralist commons and "all abandoned properties, whether real or personal, as well as all products of the sub-soil, all forests and all grazing lands, water courses, lakes and territorial waters are State Domain" (Article 130, subsection D, 1955 Ethiopian Constitution Article 131).

In accordance with other modernization and development initiatives pushed by their Western allies, the Ethiopian state also agreed to preserve some territory from the reach and effects of capitalist expansion in the 1960s (Keller 1981; Debelo 2011, 50). Government officials worked with a UNESCO team charged with, among other things, the conservation of natural resources. Justified by earlier representations of the region as "wilderness," Emperor Selassie's administration created a national wildlife conservation plan that recommended the Lower Omo Valley and other pastoralist regions for conservation (Stephenson and Mizuno 1978 cited in Turton 1986, 172; Debelo 2011). These contemporary conservation officials depicted pastoralist practices as "degrading" to further justify their inclusion of these lands in national parks (Turton 1986, 177). Omo National Park and Mago National Park were demarcated in this allegedly uninhabited area in 1966, and residents were not physically displaced from lands but their uses of natural resource uses on the land were curtailed (Nishizaki 2005; Turton 2011). Meanwhile, agricultural areas in the highlands were not targeted for formal conservation. Later, some of these conserved southern lands and their buffer zones would be repurposed as sites for irrigated sugar plantations fed by the new dams in the region (Avery 2012).

Famine hit Ethiopia in the 1970s, killing an estimated 100,000 people (Aykroyd 1974). Rural Ethiopians blamed the emperor and the aristocracy for these deaths and, in collaboration with students, overthrew the imperial government and ruling classes (McCann 1995). They embarked on a socialist-inspired "Land to the Tiller" campaign that called for the redistribution of elite and state crop land to peasant cultivators (McCann 1995). Ethiopia's new military socialist government (The Derg)[2] passed the Land Reform Act of 1975, making all land the collective property of the Ethiopian people, held in trust by the state (Ahmed et al. 2002). The land reform act abolished land sales, sharecropping, and renting; individuals were allowed only use rights to the nation's land (Ahmed et al. 2002; Flintan 2010). While in farming areas peasant associations were allocated properties to manage cooperatively, pastoralists were unable to realize the benefits of these new policies because their key livelihood practices had been curtailed or criminalized (Kamara, Swallow, and Kirk 2004; Hagmann and Mulugeta 2008; Makki 2012).

In 1978, consultants from Europe and Japan were brought in again to offer management advice for conservation areas. And, again, they did not explore historical land uses and claims, declaring the Lower Omo Valley an "unspoiled wilderness" (Dowie 2009, 224). They also recommended that remaining residents of Omo National Park and Mago National Park be evicted (Dowie 2009, 224). The Wildlife Conservation Department relocated some residents in nearby areas in 1985 (Turton 1986).

When drought and famine struck northern Ethiopia in the 1980s, the Derg Regime relocated agriculturalists from the highlands to these "untouched" and "fertile" lands in the south, blatantly ignoring the presence and history of pastoralist use (Pankhurst 1992; Lavers 2012, 798). More than half a million highland people were resettled to this area, once again superseding the rights of southern pastoralists (Ofcansky and LaVerle 1991).

The Derg also set up state farms in northern and southern areas to increase national food production (Ofcansky and LaVerle 1991; Kamara, Swallow, and Kirk 2004). Makki (2012, 88) explains that these measures mirrored large-scale capitalist agriculture, but were within a socialist political economy. In addition, in the south, the state facilitated a number of projects that did not involve cooperative farmer participation. For example, an Ethiopia–Korea collaboration set up a cotton project for "agricultural development" in the "empty" Lower Omo Basin, a well-connected Ethiopian highlander established a 10,000-hectare plantation in the Omo Floodplain, and a large state-run and prominent Evangelical church exploited state lands for nonindigenous crops and irrigation (Young 1998; Carr 2012, 182–84).

After the violent overthrow of the Derg in 1991,[3] the administration of the nation's territory was based on ethnically organized units (Kloos et al. 2010). A 1997 decentralization law devolved responsibility for land-related policymaking to these regional units (Deininger et al. 2008). While the state remained socialist, and land was still held under socialist principles laid out in the 1994 Constitution (i.e., "in common by the people"),[4] the new government moved toward a market-oriented economy (Crewett, Bogale, and Korf 2008; Makki 2012). This same document promised, "Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands" (Article 40, 1994 Ethiopian Constitution). As of 2010, no further laws or policies supported this guarantee of pastoralist land control (Kloos et al. 2010). Moreover, Ethiopian Regulation No. 29/2003 states that if land users do not use their land in every production season, their land rights can be terminated and the land expropriated by the state (Flintan 2010, 164–65).

Market-influenced forms of formal land titling began in several highland regions, supported by USAID, the World Bank, the government of Finland, and others (Holden, Deininger, and Ghebru 2009; U.S. Agency for International Development Agency [USAID] 2013). Land use titling here has been hailed by formalization proponents as equitable, efficient, peaceful, and cheap (Crewett, Bogale, and Korf 2008), but focusing the formalization process in the highlands has reproduced untitled southern lowland areas as *terra nullis*—a new frontier for capitalism[5] (Abbink 2011; Makki and Geisler 2011). The Ethiopian government is using these "empty" lands to encourage foreign capital to invest in leasing land for large-scale mechanized agriculture that requires considerable outlays of capital but does not provide many jobs (Makki and Geisler 2011; Lavers 2012). Further, although the state devolved land governance to the regions, the national Ministry of Agriculture (MOA) instituted central state control over land demarcated for investments involving more than 5000 hectares (KIT: Royal Tropical Institute 2012, 5). By 2010, millions of acres of land had been transferred to "land banks" made available to foreign investors by the MOA (KIT: Royal Tropical Institute 2012, 11; Lavers 2012, 802).

In sum, policy and practice have reproduced narratives of emptiness and frontiers in Ethiopia, labeling the southern lowland regions "peripheral zones," "wildernesses," "wastelands," "no-man's lands," and then, by legal default, "state land" (Lavers 2012; Makki and Geisler 2011; Alden-Wily 2012). Applying such labels to

the land continues to marginalize the descendants of people who used those lands for generations. Pastoralists and agro-pastoralists in this region have been told that their ways of life are not sustainable, and government officials have labeled them as ''backward in terms of civilization'' and in need of development (Oakland Institute 2011, 1). These kinds of labels are frequently used to justify taking land from mobile land users competing with governments all over the world (Peluso and Vandergeest 2001; Ludden 2003; Gidwani and Reddy 2011). Yet, as Makki (2012, 100) so poignantly states, it is an irony of history that the socialist state in Ethiopia is ''presiding over the reconstitution of older imperial socio-spatial and cultural hierarchies'' that create frontiers for capitalism on the state's lands.

Cameroon

Since the 19th century, the rich tropical lands of Océan, a district (*département*) in the South Province of Cameroon, have been a magnet for capitalist investment on formalized state lands. Most of our comments about Cameroonian state lands as frontiers for capital refer to this district. Here, successive colonial and national governments have created state lands explicitly to enable capitalist investment. Customary lands used by local people for agriculture, hunting, and gathering have been enclosed and taken away from customary users, for plantations, conservation areas, timber reserves, and the Chad–Cameroon Pipeline. What customary lands remain today are threatened by plans to establish new, privately held, plantations on state lands and a state-run natural gas power plant.

German Colonial Period

Cameroon was colonized by German forces starting in 1884, at the height of the world economy's first ''Liberal'' period. German colonization was meant to facilitate trade and other forms of capitalist expansion. The Germans sought markets for German goods and access to the region's resources for export. Colonial officials were trained in commercial and economic skills, rather than governance (e.g., Colonial Secretary 1908 as cited in Knoll and Hiery 2010, 113; Speech of Colonial Secretary Dernburg in the Richstag, March 17, 1908, Richstagverhandlungen, 4025).

As a means of preempting other European nations' activities in the vicinity, German forces staked territorial claims to Cameroon's valuable forests and established coastal trading posts. In 1884, the Germans signed a treaty with the Duala kings of Cameroon, who were powerful coastal rulers and traders already providing services to Europeans as middlemen (Njoya 1976). The kings signed the Duala Treaty to gain recognition of their own monopoly on trade, hoping to prevent Europeans trading directly with ''Bushmen'' (Austen 1983, 11; Malleson 2000, 49). The Germans claimed sovereignty based on that treaty and proceeded to expand through Cameroon in a familiar pattern of military violence and conquest (Rudin 1938; Austen 1983).

In 1896 the German Imperial State passed the Crown Lands Act. The act declared all land not in obvious use (including fallow land), ''vacant and ownerless'' (*Herrenlos*) and therefore part of the formal ''domain'' of the German Crown (Malleson 2000; Gerber and Veuthey 2011). The act also made the German colonial state, represented by the governor, the only entity legally permitted to sell or lease land (Malleson 2000; Gerber and Veuthey 2011). The German Crown claimed and expropriated lands from local people and allocated them for commercial development (Njoh 2000).

To formally record[6] and regulate such transactions, the Germans established land commissions in the territory's 26 administrative districts. These commissions demarcated "Crown Lands" and areas for "Native Reserves" (Njoh 1994; 2000). Native Reserves consolidated scattered settlements by forcibly resettling cultivators, making more contiguous land available for investment by German companies (State Secretary 1901 as cited in Knoll and Hiery 2010, 207; State Secretary Stubel to the Governor of Cameroon, December 28, 1901, BAB: RKolA 6993, 54–55). The movement of Cameroonians into the Native Reserves also facilitated taxation (Fisy 1992). Hunter-gatherers also lost access to the forests they used, but did not receive any land in compensation because they had never cleared any for agriculture (Rudin 1938, 402). The German colonial government also purchased Catholic, Baptist, and other mission lands that had been developed before the Germans formally claimed the territory; new colonists planted them in cocoa or rubber (Ekali 2005, 325).

Germans granted huge tracts of Crown Lands to private timber and plantation companies. Companies such as the Sud Kamerun Gesellschaft were charged with land management, trade regulation, and infrastructure provision within their concessions (Rudin 1938; Le Vine 1964; Esser 2001; Oyono 2005a). Concession holders were granted 20 years of options on prior rights to purchase adjacent land or inholdings from cultivators or residents (Esser 2001). Colonial troops protected these concessions. State laws forbade local people from hunting wildlife and collecting plants on "Company Land." After losing land, local people were forced to work on plantations because they needed cash to pay taxes, fines, and land rents, and to meet their daily needs (Rudin 1938; Fisy 1992; Egbe 1997; Ekali 2005). Some plantations used forced labor as well (Conrad 2012). The German state benefited from land transaction taxes, land sales, leases, and direct production on Crown Lands (Rudin 1938).

Through the 30 years of Cameroon's German colonization, some groups, such as the German Colonial Society,[7] pressured the government to protect the colony's people and resources from the most extreme effects of capitalism (Solf 1912, cited in Knoll and Hiery 2010, 301; Knoll and Hiery 2010, 301). Responding to these pressures, beginning in 1900, the state established forest and wildlife preserves, in which hunting, agriculture, and logging were forbidden (Solf 1912; Knoll and Hiery 2010, 301). However, the colonial state refused to protect any small-holder agricultural or gathering areas they deemed suitable for plantation agriculture (Solf 1912; Knoll and Hiery 2010, 302).

French Colonial Period

With the advent of World War I, the League of Nations divided German Cameroon between France and Britain. Both of these colonial powers, though interested in economic gain, were also engaged in state-making and civilizing missions within their colonies. The League of Nations charged France and Britain with respecting native customs and traditions and permitting land transactions only between native peoples[8] (Meek 1957 cited in Njoh 2012). All lands that were not individually titled or registered with colonial authorities were deemed state land (Njoh 2000). Referencing the Treaty of Versailles (1919), French authorities took over all German land in French Cameroon (Joseph 1975). Timber, rubber, and cocoa plantations were sited on lands previously cultivated by private and state German firms, despite local resistance to their reenclosure.[9]

In 1924, the French colonial government established pluralist land laws in Cameroon (Njoh 2000). The French divided Cameroonian subjects into two categories: *Les Assimilés* and *l'Indigénat*.[10] People in the *Assimilés* category were ruled

by the same legal system and land code as Europeans, that is, France's 1810 Napoleonic Code (Egbe 1997). Despite this land system's acknowledgment that *L'Indigénat* had customary claims to land, lands without clear titles were deemed vacant and ownerless (*terres vacantes et sans maitre*),[11] regardless of the fact that almost all land in Cameroon was subject to customary claims. Instead of issuing title to customary lands, the French formalized them as *Domaine* (state) land. Subsequently, such lands were held by the state or leased to private timber and plantation companies (Egbe 1997, 9).

In direct contradiction to the League of Nations mandate, *Les Indigènes*, whose land claims in customary territories were now regarded as blocking French forest concessions and other developments, were never considered for titles to their customary lands. Customary land users in Cameroon's southern forests, for example, were resettled in newly constructed roadside villages (Guyer 1978; Egbe 1997; Njoh 2000). On other lands, even those that had been deemed vacant and ownerless, both French colonists and *Les Assimilés* obtained land titles easily (Biesbrouck 1999).

In the 1930s, the global Depression and the subsequent swing toward increasing regulation of capitalism led the colonial state to introduce two new categories of state land: the *Domaine Forestier* (State Forest Estate) and the *Domaine Privé de l'Etat* (State Private Property) (Decree of 4 July 1935; Oyono 2009, 6). This same legislation softened the unpopular law concerning vacant lands by limiting this designation to lands unused or unoccupied for more than ten years (Njoh 1992, 24). State forests (*Forêts Domaniales*), managed by the colonial Forest and Waters Service (*Eaux et Forêts*), were managed for "rational" commodity production that would produce surpluses for state budgets (Biesbrouck 1999; Mandondo 2003). France also signed the [International] *Convention Relative to the Preservation of Fauna and Flora* (1933), which encouraged signatory nations to create forest reserves and parks to preserve the most important indigenous species. They designated some forests, or parts of them, as "reserves" to be protected from capitalist exploitation, at least temporarily (Gartlan 2004, 210).

As anticolonial and reunification sentiments grew after World War II, the French Territorial Assembly decided to further relax its strict controls over Cameroonian land. It reauthorized customary land rights and created legal means for formalizing customary law, discarding completely the subject category of *L'Indigènat* (Law 59–47, 17 June 1959; Hobbs 1998, 32). Many of the *Assimilés'* plantations were divided up and taken over by smallholders (Guyer 1981). Facing increasing unrest, the French colonial state declared that "vacant and ownerless land" no longer existed in 1959 (Egbe 1997, 9). These attempts at accommodating and recognizing customary land use—categories of people and land formally created by the French themselves–did not put an end to the strong nationalist movement in the country, however. As the French phased themselves out of direct governance in Cameroon, they retained (through a series of treaties) military and financial influence and maintained influence over French lands and possessions within the country (Atangana 1997).

Independent Cameroon

Following intensive guerrilla fighting in the south, French Cameroon achieved independence in 1960.[12] However, little change was effected in the structure of the state. Ahamadou Ahidjo, Cameroon's first president, had been elected (with French support) prime minister in 1958, before French authority ended. He maintained close connections with French officials, which enabled continuing French influence on Cameroonian

government (Atangana 1997). However, his land policies diverged in unexpected ways from those of the French in the late 1950s. Seeking to consolidate as much land under central state control as possible, Ahidjo urged the legislature to pass a law in 1963 (Law 63–2) that outlawed collective registration of customary land, and replaced the idea of "customary ownership" with "customary occupation" (Hobbs 1998, 32). The formal-legal status of those customary properties was changed to state land.

The 1974 Land Ordinance further increased the control of the national state over land. This ordinance actually reinstated the concept of "vacant and ownerless land." Any lands lacking obvious signs of ownership such as permanent cultivation or formal land titles were declared "National Lands" (Gerber and Veuthey 2011). The ordinance also created a kind of eminent domain—to "ensure rational use of land or in the [sic] imperative interest of defense or the economic policies of the nation" (Njoh 2000, 255). Thus, the Cameroonian state held private property (*Domaine Privé de l'Etat*), while supervising National Lands (*Domaine National*) for "rational use" (Karsenty 2010, 2).

The same land ordinance was meant to provide Cameroonian farmers with secure titles to lands occupied before 1974. Such formal private rights to land were expected to motivate them to invest and provide collateral for credit. Such laws, however, benefited the state, elites, and foreign investors far more. The complicated land titling process involved four steps, each requiring payment of fees (formally to the state and informally to government officials), access to administrators, and an understanding of the legal system. Such titling was virtually unattainable for most Cameroonian smallholders, but it allowed well-connected state officials and agro-industries to formally enclose and commodify state territory for their own purposes and benefits (Firmin-Sellers and Sellers 1999).

Between 1971 and 1981, land policies focused on the development and expansion of the agro-industrial sector on state lands (Gerber and Veuthey 2011). In an interesting twist on discourses of vacancy, state-run palm oil and rubber companies argued that plantations formerly held by German and French planters were "unoccupied" and eligible for seizure. State authorities immediately permitted them for industrial production (Oyono 2005b; World Rainforest Movement [WRM] 2010). At the same time, many smallholders and hunter-gatherers lacking formal titles were once again displaced by aggressive state policies to acquire land for itself (Tiani, Akwah, and Nguiébouri 2005). By 1989, only one-twentieth of Cameroon's 22 million hectares of forested land was designated as community forest, while one-fifth was declared state-controlled *Forêt Domaniale* and the remaining three-quarters was declared *Forêt de domaine national* (Ascher 1999, 233). As Ascher (1999, 233) notes, "The land designated as 'forest,' and therefore placed under the jurisdiction of the forestry department, was not necessarily forested to any meaningful degree." Many of these lands were actually follows or already logged-over lands.

As Cameroon grappled with economic crisis in the second half of the 1980s, the International Monetary Fund (IMF) and World Bank pressured the government into implementing structural adjustment, decentralization, and austerity programs. State-held plantations were privatized in the 1990s and early 2000s; some were leased to multinationals for 99 years (WRM 2010; Mousseau 2012). The state retained the right to manage forests, most of which generated rents and revenue, while suspending small-scale logging titles (Ascher 1999; Cerutti and Tacconi 2008; Karsenty 2009). Forests in southern Cameroon today are common targets of new enclosures and enterprises.

As many customary users were never granted formalized land rights, they have been unable to halt these transactions (Alden-Wily 2011). These groups have continued to be dispossessed by state actions to offset the exploitation of Cameroon's southern forests. For example, to offset the damage caused by the Chad–Cameroonian pipeline through southern Cameroon's rainforest and agricultural land, the Ministry of Forests and Wildlife worked with Tropenbos International, financed by the World Bank, to make the French colonial Campo Reserve into a 3000-square-kilometer national park in 1999 (Tiani, Akwah, and Nguiébouri 2005, 132; No. 372/D/MINEF/DAJ of 12/03/99 1999). Further, the Cameroonian government targeted more than 7% of the country's forested lands for REDD (Reducing Emissions from Deforestation and Degradation) projects by 2010 (Freudenthal, Nnah, and Kenrick 2011). Because most forested areas in Cameroon are state land, most of the payments for ecosystem services derived from these programs are predicted to accrue to the state rather than to local communities (Freudenthal, Nnah, and Kenrick 2011). Community forestry groups only manage about 5% of the national forest estate (Sunderlin et al. 2014).

In sum, colonial, national, and corporate/private enterprises have benefited immensely from the formalization of state lands in Cameroon. Even those lands set aside for state management have been commercially exploited by foreign and Cameroonian interests. As of 2012, foreign interests controlled the majority of Cameroon's forestry sector (WRI/GFW and MINFOF 2012). Oddly enough, recent changes in state-capital relationships and formalizations of state land resemble early French colonialism more than later reformed French initiatives for state land control.

Indonesia

On May 13, 2013, Indonesia's Constitutional Court ruled that many of the Indonesian Ministry of Forestry's claims to National Forest Land (*Kawasan Hutan*) were invalid. The ruling recognized customary communities (*Masyarakat Hukum Adat*) as legal subjects and found that customary territories (*Kawasan Masyarakat Hukum Adat*), never formalized under Indonesian law, should be excised from the State (National) Forest (*Kawasan Hutan*) and formally titled as customary (and communally held) territories (Arizona, Siti Rakhma, and Cahyadi 2013; Rachman 2014). In practice, since independence in Indonesia, customary territories, and the forests on them, have been ignored in land formalization projects, even though the 1945 Indonesian Constitution specifically mentions "customary land."

Whether in favor of or against the notion of customary communities' status as legal subjects and juridical communities with territorial rights, both sides in the debates over land control draw arguments from the colonial period under Dutch rule. The conceptualization and formalization of land under colonial rule, as well as major conflicts within and outside the halls of state power over these definitions, have continued to influence contemporary national and local views and practices. These debates are today focused on the significant portion of the nation's land considered permanent, or political, forest (Vandergeest and Peluso 2006a; 2006b). After the passing of the Basic Forest Act 5/1967 and subsequent enabling implementation policies, the National Forest contained nearly three-fourths of Indonesia's land, more than ever held as State Forest under colonialism. We use the land included in *Kawasan Hutan* to illustrate the long-term effects of colonial categories and projects of rule on today's state lands in Indonesia.

Colonial Land Policies and Practices in Java and Beyond

Allocating or designating land for private or state enterprises and capitalist development was a key mission of the Dutch colonial state, as was the maintenance of "order" through rule. Under territorial colonialism, the Netherlands East Indies (NEI) government created and formalized state lands, including, after the passing of the 1865 Forest Code, those that were to be gazetted or reserved as state forests. Java was the first site where forests were gazetted; its teak forests were the heart of colonial forest power in the NEI (Peluso 1992). Boomgaard explains:

> In the Constitutional Regulation (*Regeerings Reglement*) of 1836, the Government was still regarded as the owner of the soil. Arable lands were formally farmed out [sic] to the villages. The Constitutional Regulation (*Regeerings Reglement*) of 1854 no longer contained these formulations: rights to the soil were left unspecified. (Boomgaard 1989, 9)

Some 16 years after this regulation establishing the NEI, the Agrarian Act (*Agrarische Wet*) of 1870 was passed, intending to specify rights to land. The act included the *Domeinverklaring,* which formally declared the colonial state's claim to the territory of the NEI. It then proceeded to differentiate the domains of spatial power and authority within the colonial territory, differentiating what it called "Free" and "Unfree" lands. "Unfree" lands were recognized as such because they were visibly in use by "Native" (*Inlanders*) cultivators and householders.[13] All other land was determined "unused" and declared "Free Land," under the direct jurisdiction of the state. According to Boomgaard (1989, 9), "Government owned all land on which no other claims existed, and the indigenous cultivator was granted a hereditary individual right of usufruct, called indigenous right of possession." Native Customary Land was not considered "alienated" in the sense of private property but was separately categorized, allegedly to "protect" the Natives from the negative effects of land markets. Native Customary Land was assumed to be communally held by villages *(beschikkingsrecht*), was managed by village or other traditional leaders, and was governed through the domain of private law rather than public law (Hooker 1978; Burns 1995).

The 1854 Colonial Constitution also established political subject categories with different kinds of rights to land based on racialized categories developed, reified, and adjudicated by the colonial state (Hooker 1978; Burns 1995; Stoler 1995). It created two categories of legal subjects: "Natives" (*Inlanders*) and Europeans (*Europeische*). Chinese and other Asian "foreigners" were at first associated with the "Natives" group. However, the 1870 Agrarian Act "prohibited the sale or permanent transfer of land from 'Natives' to Europeans or other 'foreigners' like the Chinese." Because there were not yet colonial categories for people who were neither European nor Native, the act immediately confused both the formal subject categories and legalities of land rights, particularly where people of Chinese, Arab, or Indian ancestry had lived for generations (and married people from the "Natives" group before the Dutch took control of the archipelago; Coppel 1997, 567). Several decades later, the creation of a "Foreign Orientals" (F.O.) category created a third formal-legal difference among subjects of the NEI state, allowing F.O. to lease Native land, but not to own it.[14]

Rental of Native Land by Europeans or F.O. was allowed only after the village had met its own subsistence needs, while plantation agriculture and mining interests

were leased concessions on state land. However, plantation companies frequently maneuvered around these legal restrictions; many unauthorized land transfers of Native Land ensued. Colonial authorities turned a blind eye when plantation enterprises made extralegal deals with village leaders to produce commodity crops on village lands for minimal "rents," even where food production or land was insufficient to fulfill villagers' needs (Breman 1983; Elson 1984; Burns 1995).

Two main schools of thought differed in the conceptualization of rule over colonial subjects and land. The Utrecht School argued that only permanent rice (paddy) cultivations and residential lands were "unfree." They defined woodlands between villages, where villagers hunted and collected fuelwood, and land in fallow longer than 3 years as "unused" or "waste" and thus "free" for taking by the state. The Leiden School argued that most land in the NEI was claimed and governed by Native customary institutions. The debate was important because it would define the extent of village territory (*beshikkingsrecht*), and in so doing define the amount of residual state land available for investment. The Utrecht position, making fallow lands and woodlands into state land, prevailed in the law in Java. Out of the general category of state land, state forests were gazetted, beginning in 1865, with the passing of the Colonial Forest Law. The reservation of forests and the means of determining which forest areas were "free" and which "unfree" eventually dispossessed many people in Java and elsewhere of their land rights and territorial claims (Peluso 1992, chapter 3; Burns 1995, 236). Village boundaries were rarely formalized, though forest and plantation areas were. In other words, all lands containing state-determined forest species were naturalized as "forests," defined as "free," mapped, demarcated, and legislated as forests under the Colonial State Forest Service (*Boschwezen*), and removed from customary authority (Peluso 1992).

Forest laws revising the initial 1865 act (in 1875, 1895, and 1927) increasingly constrained villagers' access to the forest for cutting lumber, collecting firewood, hunting, and burning, including burning for agricultural land preparation, criminalizing these activities on state forest land (Peluso 1992). The laws assumed that peasants did not plant trees called forest species. Yet the *Boschwezen* relocated many peasant settlements and fields to create contiguous blocks of forest land (Breman 1980). By 1933, some 21% of Java had been mapped and legally designated state forest. In some districts where teak grew, 50% or more of the land was gazetted as forest and therefore off limits to peasant agriculture (Soepardi 1959; Peluso 1992).

State-sponsored or -managed commodity production took place immediately on those state forest lands containing teak. Old-growth teak forests were eventually all cut and converted to long-term (80-year cycles) plantation production. Some non-teak forests were managed commercially for inexpensive lumber, or resin production in standing plantations. Other forests were taken out of commodity production and designated "protection forests."

In other parts of the NEI, many state lands were leased to corporations for plantations but the *Boschwezen* reserved very little state forest land. Timber extraction was difficult in the vast, often swampy dipterocarp rainforests that dominated the islands called "Outer Islands" and the woods were much less profitable (Potter 1988). In contrast to what was essentially direct rule in much of Java, the area under forest outside Java, Madura, and Bali was largely ruled indirectly; the Dutch authorities ruled with and through "Native" administrations known as Self-governing Regions. Forests in these regions were recognized as part of customary territories, governed by customary institutions, including colonial government-created Native

Courts that had authority over most land matters. Although customary land was still considered the domain of the colonial state, its rule was left to local authorities (Potter 1988; Fasseur 1994; Burns 1995). Forest products and trade were taxed, rather than managed territorially.

In sum, state lands through the Dutch colonial period were exploited and managed by a mix of private and state enterprises, some protected areas, and some self-governing regions of indirect rule/customary land. Under forestry or plantations, many state lands produced goods for capitalist markets.[15] In most of the NEI, however, the vastness of the colonial domain and complex relations between colonial state and customary native authorities, as well as the increasing influence of the Leiden school, constrained the formalization of state land.

The Republic of Indonesia: State Lands and the National Forest

The new institutions for land management under the national state reinterpreted the terms of colonial debates over state, private, and customary land. In 1950, after 4 years of revolution, the Republic of Indonesia was established. The independent Indonesian state declared itself to be antifeudal and anticolonial and changed the categories of land and of legal subjects from Natives and Foreign Orientals to Indonesian citizens and foreign nationals. Intermediary governing institutions like those in the self-governing regions were replaced by the national state.

Both the Indonesian Constitution (1945) and the Basic Agrarian Law (BAL) of 1960 mentioned customary and Western systems of property in land, but established formalization procedures only for the latter (Department of Information 1989; Fay and Michon 2005). The BAL abolished the plural legal systems of the Dutch and recognized some customary territorial claims (*beschikkingsrecht*) (Burns 1995, 250). However, the law only

> recognized *beschikkingsrecht*, "to the extent that there is evidence of its survival" [but] the legislature encompassed it with so many qualifications and restrictions that, in effect, it appropriated [from the villages] the right of [land] allocation for the state. Parliament awarded the government that competence over land which, as the lawyers of Utrecht maintained, had always belonged to the state by right. (Burns 1995, 250)

The debate between the legacies of the Leiden school and those of the Utrecht school was not yet resolved, however. It took new forms in independent Indonesia. Effectively, the BAL extinguished the intermediary role of the colonial-era customary juridical institutions known as Native Courts. However, the notion of *adat* remained in other ways in foundational national documents and in the national and local imaginations. For many years during the New Order (1966–9198), *adat*'s connection to land governance was sidelined by the tenet that the "national interest" and the "state's interest" necessarily superseded any local authority inhering in extant *adat* institutions (Article 3 BAL 1960/5 1960). Scholars of Indonesian land politics have documented that this and other tenets of the BAL were used to acquire land (often illegally) for the state, though in different ways under different national regimes. For example, during the early 1960s, President Sukarno nationalized many private plantations operating on state lands and turned them over to military branches to supply funds for their budgetary needs (Robison 1989). After taking

power in 1966, President Suharto used the BAL to justify seizure of extensive tracts of land being used by peasants and land they considered customary territory for large-scale state and private development projects.

Following the establishment of the Republic of Indonesia, Indonesian foresters and legislators appropriated colonial forestry laws for Java and Madura (Soepardi 1959). Forest management was decentralized, under provincial government control. State forestry corporations managed Central and East Java teak forests, which provided the nation's most important forest commodities. Some state lands were protected forests; others were for commodity production (Peluso 1992). State forest lands were eventually centralized and became national state lands.

The Basic Forest Law No. 5/1967 (BFL) led to the creation of a national forest estate (*Kawasan Hutan*) under the jurisdiction of a national Department of Forestry. The Department of Forestry allocated vast tracts of land to timber concessionaires allied with Indonesian government interests (Manning 1971; Robison 1989). The creation of a national forest also criminalized the subsistence activities of the estimated 40 million people living in or near these lands, many of which had been formerly regarded as customary territory (Poffenberger 1990; Moniaga 1993). The tensions over the losses of customary rights and access to land during the Suharto years manifested in numerous protracted conflicts. In these disputes the government consistently took the sides of companies and concessionaires to whom it had allocated state forest land for exploitation (Siscawati 2014).

The amount of land allocated to timber concessions famously exceeded the amount of land within the whole national territory (Potter 1988). Branches of government that held concessions obtained significant proportions of their operating expenses from the forests their partner logging companies exploited (Robison 1989; Barr 1999). To attract private investors in joint ventures, the government passed a Foreign Investment Law that granted corporations tax holidays, free repatriation of profits to foreign firms, and other concessions that were later extended to domestic capitalists. Permits were often allocated cost free, with the Indonesian government enabling private companies to exploit the forest simply for the sake of economic development (Barber, Johnson, and Hatfield 1994). State–capital relationships and modes of accumulation from the state forest lands shifted numerous times in the following decades.

The department became a Ministry of Forestry (MoF) in 1981 and was frequently referred to as "The Golden Ministry" in reference to the formal and informal incomes available to its employees. The gold was tarnished in 1999, however, with the passing of the [revised] Forest Law (#41/1999). In reference to forestry programs intended to manage some state forests as "community forests," the law stated that customary communities (*masyarakat adat*) qualified as appropriate managers, inadvertently acknowledging both the existence of these communities and their interests (claims) to forest territory. This was important because both the Constitution and the BAL had stated that recognition of customary land claims depended on the continued existence of customary communities (Rachman 2014). National decentralization in 2000 also set in motion several legal initiatives that shifted the terms and contexts of the old debates over customary versus state land controls, resulting in four related constitutional amendments being passed between 1999 and 2002, including one that established a Constitutional Court (Arizona, Siti Rakhma, and Cahyadi 2013).

During the third millenium's first decade, other findings worked against the national state's control of national forest land. Independent research conducted in

2004 showed that only 11 percent of the national forest estate had been formally reserved since the legislation of the BFL in 1967 (Contreras-Hermosilla, Fay, and Effendi 2005; Fay, Sirait, and Koesworo 2005). These findings and new political opportunities galvanized customary communities, their advocates, and other supporters in the government and the university to push for legal reform. In 2012, a Constitutional Court decision reinforced the need for state forest lands to be rapidly and formally reserved (Arizona, Siti Rakhma, and Cahyadi 2013).

The Constitutional Court went further in 2013 by recognizing *masyarakat adat* (customary communities) as legal subjects with as-yet-unrealized rights in customary territories (*kawasan masyarakat hukum adat*). Even more of a blow to state forestry interests, the court recognized forests on customary lands as customary forests (*hutan masyarakat adat*) that should be included in the 1999 Forest Law's new category of "rights forest" rather than as state forests. This would make customary forests subject to private not public law (Arizona, Siti Rakhma, and Cahyadi 2013). In these ways, contemporary attempts to legally recognize and formalize customary land harkened back to colonial debates about private and public domains of law pertaining to land. If implementing procedures are established by the president, some 30–40 million hectares could be taken out of the state forest lands and recognized as customary lands (*hak masyarakat adat*). Somewhat ironically, colonial-era formalizations of land and subjects created the conditions of possibility both for the nation-state to create state lands and for keeping customary claims to land alive.

Conclusion

In this article, each of the three case studies demonstrated changing linkages between states and capital through formalized productions of state land. Formalization was a first step in creating new frontiers for capital on these lands. These new frontiers have rendered the concept of states holding land in trust for the nation "a quaint notion" (Alden-Wily 2012). Contemporary state actors allocate vast areas of state lands to private, often foreign, developers for capitalist production, with nary a concern for the interests, needs, and claims of most of their citizens. Similar frontier producing practices are happening in former communist and socialist economies where governments have moved them toward becoming market societies and giving up state territories to private or "public-private" developers in new property arrangements enabling capital accumulation on long-nationalized state land. As we have argued in this article, these large-scale land allocations have been part of, and enabled by, much longer historical trajectories of state land acquisition, control, commodification, and frontier making. Harkening back to Polyani's (1944) concept of the double movement, however, the Indonesian case shows that historical trajectories may also provide opportunities for competing customary users to reclaim these "frontiers" as their own.

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Notes

1. We selected Cameroon and Indonesia because of our previous research experience, and Ethiopia because it offered an interesting variation on colonial-era history.
2. Derg means "committee" or "council."
3. The EPRDF (Ethiopain People's Revolutionary Democratic Front) took hold after civil war.
4. Article 40.
5. USAID in partnership with the Ethiopian government plans a new project to improve tenure security in pastoral areas, but this project has not come to fruition (see USAID, "A Powerful Piece of Paper," http://www.usaid.gov/news-information/frontlines/child-survival-ethiopia-edition/powerful-piece-paper).
6. Recorded in a land register (*Grundbuch*).
7. An organization formed to promote and direct German colonization.
8. Because our focus is in *Le Département de L'Océan*, in the rest of this section we only consider the French portion of the Cameroons.
9. For more information on the resistance of local people to these reenclosures, see Joseph (1975).
10. Its members were called *Les Indigènes*.
11. This law was based on a French West Africa Court of Appeals decision that stated that all customary rights and interests lacking formal titles were null and void (Njoh 2000).
12. The French part of Cameroon achieved independence in 1960, while the southern British controlled part of Cameroon did not join the nation until 1961 and northern British Cameroon became part of Nigeria. Cameroon was a federation of two separate states under the control of a single president until 1972.
13. A small portion of land had been formally alienated as private property to European or Chinese interests prior to the establishment of the territorial colonial state.
14. According to Coppel (1997, 568): "In 1906 the parliament adopted an amendment to Article 109 of the 'constitution' which had the effect of classifying the 'Foreign Orientals' as a separate group rather than as 'equated' with the 'Natives.' The amendment to Article 109 was only brought into effect in 1920 and later was incorporated into Article 163 of the *Indische Staatsregeling* (Indies Constitution) which replaced the *Regeeringsreglement* in 1920." For an introduction to the controversies over racial categories, including "Foreign Orientals," see Coppel (1997) and Fasseur (1994).
15. Much teak was not sold on the free market, however; it was transferred through state mechanisms to state shipbuilding and other state-run enterprises (Cordes 1881).

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