

# LAND POLITICS:

## HOW CUSTOMARY INSTITUTIONS SHAPE STATE BUILDING IN ZAMBIA AND SENEGAL

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Lauren Honig  
Boston College

### Chapter 1

## INTRODUCTION: LAND TITLING AS STATE BUILDING

In recent years, the question of who controls land in African countries has grown increasingly contentious. Violent protests, accusations of land grabbing, and heated debates over land rights occur across the continent. Soaring demand for land, from both global and domestic markets, fuels these conflicts. Foreign investors purchase vast tracts of land for commercial agriculture; growing cities encroach on peri-urban areas; and members of the urban middle class seek rural plots of land as investments for the future. Simultaneously, millions of subsistence farmers and pastoralists depend on secure access to fertile land, which is threatened by land degradation, climate change, and population growth. This high demand has provoked the expansion of state property rights – land titles – on vast areas of land previously governed by customary authorities and local communities.

Land titling is deeply political. In Zambia and Senegal, the focal countries in this book, titling permanently transfers land from customary to state control. Each new title shifts the distribution of power over land rights toward the state. Land titling is therefore a process of expanding state power over land, not merely part of an inevitable evolution toward formality or a product of economic development. Titling codifies and maps land rights that were previously outside direct state control. In doing so, it makes land and its users legible to the state.<sup>1</sup> This extends the state's territorial reach within boundaries inherited from colonial rule and increases

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<sup>1</sup> Scott 1998.

its interactions with citizens. Further, land titling makes it easier for the state to distribute and tax land, building the state's revenue base and capacity to extract.<sup>2</sup> Given these linkages between land and political authority, states have long employed land rights as an essential technology of state building.<sup>3</sup> Strong states use top-down campaigns, such as forced collectivization schemes or compulsory mass land titling, to weaken alternative systems of property rights and land authority. However, land registration is now the most common form of land reform in African countries.<sup>4</sup> From Benin to Mozambique to Madagascar, governments have established frameworks for "piecemeal" land titling, in which individual agents—citizens, bureaucrats, and investors—register customary land as new state titles.<sup>5</sup> This allows state control over property rights to grow, plot by plot, during an era of high demand for African land.

There is reason to expect that land markets and the state's interests will dictate where land titling occurs. Investors and regular citizens alike should seek titles on more valuable and desirable land, where the economic benefits of formal property rights are the highest. State property rights should therefore develop first in areas with higher population density, fertile land, and infrastructure access.<sup>6</sup> Further, states are powerful; they have the resources to encourage or compel titling on any land within their territorial boundaries. In Zambia, all land is vested in the president. In Senegal, land without titles is "owned" by the nation. These states have thus laid the legal groundwork for politicians who are motivated to facilitate lucrative land markets or to fulfill strategic political agendas to determine where titling occurs. In addition, it is costlier for the state to project authority over geographic distances; therefore, state control of land should expand first in areas closest to seats of bureaucratic power and transportation networks.<sup>7</sup> The standard wisdom thus anticipates that demand from state actors and individuals embedded in land markets determines patterns of land titling. It suggests that land remains in the customary domain because it is low in value or state actors are disinterested in titling it.

However, two examples illustrate the limitations of top-down and structural approaches to land titling. The first is from Zambia, where customary authorities or "chiefs" are legally recognized as the custodians of customary land. In practice, any new titles require written consent from an official chief. When the government needed land to expand a program of resettlement schemes in 2012, it therefore turned to the chiefs. Bureaucrats traveled throughout the country to the rural homes of customary authorities to beg for tracts of customary land to title, bearing gifts to show respect. They brought them groceries, goats, or chickens; some

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<sup>2</sup> For example, Zambia's Minister of Finance introduced the country's 2014 budget to parliament with a speech extolling the importance of land titling to increase government revenue and "bring sanity in land administration." See: The 2014 Budget address by Hon. Alexander B. Chikwanda, Minister of Finance, Delivered to the National Assembly on Friday 11th October 2013.

<sup>3</sup> Migdal 1988; Fisiy 1992; Scott 1998; Boone 2007; Lund 2008.

<sup>4</sup> Sikor and Müller 2009, 1308.

<sup>5</sup> Countries with piecemeal titling or registration policies include: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of Congo, Ghana, Equatorial Guinea, Eritrea, Gabon, Guinea-Bissau, Guinea, Kenya, Liberia, Lesotho, Madagascar, Malawi, Mali, Mozambique, Mauritania, Namibia, Niger, Nigeria, Republic of Congo, Senegal, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Tanzania, The Gambia, Togo, Uganda, Zambia, Zimbabwe.

<sup>6</sup> Boserup 1965; North 1990; Platteau 1996; Alston et al. 1999; Miceli et al. 2001.

<sup>7</sup> Herbst 2000.

greeted the chief with cash tucked into the palm of their hands.<sup>8</sup> The bureaucrats' goal was to convince the chiefs to cede a parcel of land, in order to start the process of permanently converting it to state land title.

Chiefs reacted very differently to the government's demands for land. Some consented upon first request. One offered the program a very large area of land while telling the bureaucrats to spread the word to investors so that they would seek land in his chiefdom.<sup>9</sup> Some chiefs dictated the location and the size of the land for the government's resettlement project. A few indefinitely delayed the negotiations. Others explicitly refused to transfer any land out of the customary domain, even after repeated visits from the state's representatives. From the perspective of bureaucrats seeking land in Zambia, "chiefs have the upper hand in which area they will give up for government development."<sup>10</sup> Through their responses to these land negotiations, customary authorities determined which land, if any, was transferred to the state's formal control.

A second example, from Senegal, highlights the agency of regular citizens in the expansion of state authority over land. Even within the same communities, some citizens dismiss the opportunity to adopt a state land title while others welcome it. Senegalese farmers with small plots of customary land have the option of titling their land. Without titles, they rely on customary rights. They retain access to land through their connections to the community and to Senegal's unofficial chiefs, customary authorities who do not have state-recognized land authority. These citizens' customary property rights may include complex systems of secondary rights, such as seasonal usage arrangements, that serve as a form of risk-sharing within the community.<sup>11</sup> Following the government's efforts to make formalization more accessible, some customary landowners eagerly pursue land titling in order to gain ownership rights in the eyes of the state. They apply to rural councils to have the boundaries of their land documented and their land rights written into the state's land registries. Other citizens decline the opportunity to convert their customary property rights to titles, reporting that it is unnecessary or that they feel secure on the land of their grandparents.<sup>12</sup> As these examples illustrate, customary authorities and citizens have vastly different reactions to land titling in their communities, which impacts how and to what extent state control of land grows.

Understanding this contemporary state-building process requires paying greater attention to the responses of these two sets of actors: chiefs and citizens. Why do some chiefs encourage land titling in their domains and others thwart it? Why do some citizens with customary land rights in a community seek a state title while others do not? More generally, how do customary land regimes survive, despite powerful economic interests and state efforts to title land?

Zambia and Senegal provide the foundation for answering these questions. The two countries feature different colonial histories, geographies, and official roles for customary authorities. Nevertheless, they are both part of a broader global pattern in which governments

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<sup>8</sup> Interviews with bureaucrat (BUR-641), Lusaka, Zambia, September 20, 2013; with bureaucrat (BUR-656), northern Zambia, January 8, 2014; with bureaucrat (BUR-609), northern Zambia, February 20, 2014.

<sup>9</sup> Interview with bureaucrat (BUR-620), northern Zambia, January 8, 2014.

<sup>10</sup> Interview with bureaucrat (BUR-648), Lusaka, Zambia, August 29, 2013.

<sup>11</sup> For examples, see Toulmin and Quan 2000a; Meinen-Dick and Mwangi 2009.

<sup>12</sup> Author's Senegal smallholder survey, 2014.

have courted land markets and facilitated land titling, allowing formal state property rights to progressively replace customary land tenure. Examining a similar process in these diverse countries provides greater insight into the determinants of the local decisions that constrain and facilitate the growth of state control over land.

This book will show that customary land is not idly waiting to be titled; rather, it is actively maintained by the actors that gain power from its informality. Moreover, it reveals that the customary institutions in which these chiefs and citizens are embedded shape how they respond to land titling. I argue that both the strength of the institution and the individual's status within it impact these local decisions. As a result, communities with stronger customary institutions—those with hierarchical legacies in these two countries—are better able to retain control of land. In addition, by structuring social and political relations within communities, customary institutions also condition whether citizens engage with the state by seeking titles for their own plots of land. Consequently, these institutions impact when and where customary land tenure endures, contributing to the resilience of customary authority and shaping patterns of state building within the territory. Before elaborating upon this institutional argument, the following section situates this debate over land rights within an era of increasing land scarcity and competition for land.

## 1.1 LAND POLITICS

The struggle for authority over land has high stakes for the state, customary authorities, and citizens. The question of who controls land is deeply political, in part, because land holds multiple forms of value. It is the most important factor of production for agricultural economies: millions of citizens in African countries depend on secure access to land for their livelihoods. Yet the significance of land extends beyond its material value. Land often holds social importance, as a connection to one's ancestors and community.<sup>13</sup> This makes it harder and more contentious to reallocate it among potential land users. Such non-commodity values mean that, unlike bags of maize, land cannot be easily bought and sold for a fixed price. Further, the long history of elites exploiting land as a political resource shapes its contemporary role in politics.<sup>14</sup> Current debates over land rights reflect political grievances about past policies and practices related to land. While the key issues are specific to each country, land is ubiquitous as a political fault line.

As a result, land has played a role in nearly all conflicts in the region. Contested land claims contributed to Côte d'Ivoire's recent civil war and Kenya's 2008 electoral violence.<sup>15</sup> In the Democratic Republic of Congo's protracted conflict, militias have fought to control prime land.<sup>16</sup> The Rwandan genocide was exacerbated by extreme land scarcity and inequality of access.<sup>17</sup> Rural citizens throughout the continent have been impacted by small-scale land conflicts, which are often associated with divisions based on ethnicity, migration status, and

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<sup>13</sup> Fisiy 1992.

<sup>14</sup> E.g. Kanyinga 1998; Chauveau 2000; Klopp 2000; Babo 2013; Medard and Golaz 2013.

<sup>15</sup> Boone 2014; Klaus and Mitchell 2015.

<sup>16</sup> Autesserre 2010.

<sup>17</sup> Prunier 1995; André and Platteau 1998; Bigagaza, Abong, and Mukarubuga 2002.

agricultural livelihood (e.g., farmers or pastoralists). In urban areas too, land disputes have become commonplace. There, the combination of high demand for land and unsettled systems of property rights translates into conflict over multiple allocations of the same land parcels and protest over abruptly razed informal settlements.<sup>18</sup> Control of land is a source of power and wealth, making land rights a central issue in contentious politics.

This book examines issues of political authority over land in an era when the stakes of land control and access are rapidly increasing. Pressure on land in Africa is growing, exacerbating existing political cleavages. African cities are the sites of technological innovations and gleaming skyscrapers, yet the majority of the population in sub-Saharan Africa practice agriculture.<sup>19</sup> Given the predicted doubling of the continent's populations in the next thirty-five years,<sup>20</sup> the number of people dependent on land for their livelihoods will continue to rise. Climate change and land degradation decrease the stock of arable land, pushing households to move or extend their areas of crop production. Well-intentioned conservation efforts sequester major areas of land for carbon trading and animal protection.<sup>21</sup> As the cost of land in cities rises with urbanization, African middle classes are increasingly looking to regional capitals and rural areas to buy land. These compounding sources of stress on land challenge the stability of the current systems of land authority. This intense pressure is magnified by demand for land from global investors.

Investors from a range of both Global North and Global South countries participated in feverish efforts to accumulate African agricultural land in the first decades of the 21<sup>st</sup> century. Global interest in African land was prompted, in part, by concerns about national food security, volatile food prices, and interest in new arenas for investment following the 2008 financial crisis. In 2009 alone, there were an estimated 39.7 million hectares (ha) of investment deals in African land; this contrasts with an average of 1.8 million ha per year from 1961-2007.<sup>22</sup> Large commercial land deals and state farms are not new, but they have increased rapidly across the continent and the developing countries, more generally.<sup>23</sup> They have the potential to fundamentally transform land values in African countries, as land became increasingly scarce and potential investors abundant.<sup>24</sup>

International and multinational land deals have impacted most countries in Africa, provoking deeply political debates over how land should be used and governed. In Madagascar, President Marc Ravalomanana's attempt to lease 3.2 million ha of land to the South Korean company Daewoo triggered protests and contributed to the fall of his regime in 2009.<sup>25</sup> Liberia's Nobel Peace Prize winning President, Ellen Johnson Sirleaf, was denounced for having allocated a third of the country's land to international investors between 2006 and 2011, much of it for

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<sup>18</sup> See, for example, du Plessis 2005; Ocheje 2007.

<sup>19</sup> Approximately 65% of the labor force in Sub-Saharan Africa was engaged in agriculture in 2014. World Bank, "Human capital for agriculture in Africa." *Science, Technology, and Skills for Africa's Development* (Washington, DC: World Bank Group, 2014).

<sup>20</sup> UNICEF, *Generation 2030/AFRICA* (UNICEF, August 2014).

<sup>21</sup> E.g. Gibson 1999; Unruh 2008.

<sup>22</sup> Deininger and Byerlee 2011, 9.

<sup>23</sup> Alden Wily 2012.

<sup>24</sup> Collier and Venables 2012, 3.

<sup>25</sup> Thaler 2013.

biofuel production.<sup>26</sup> Sudan, Ethiopia, Madagascar, Mozambique, Tanzania, and Sierra Leone had the greatest number of land deals between 2000 and 2012.<sup>27</sup> The large land deals in Zambia and Senegal described in Chapters 5 and 6 are typical of a phenomenon that is widespread across Africa.

The vast majority of multinational land deals occur on customary land, which is treated as an inexpensive resource by investors and state actors alike.<sup>28</sup> States have promoted and defended land deals as a means of diversifying the national economy and attracting foreign direct investment. Further, these global land markets have roused domestic land markets, as elites and middle classes claimed their own shares in response to the rapid decrease in the supply of customary land. Both private citizens and commercial investors alike have sought to formalize their rights to new areas of customary land through titling. As a result, markets for customary land have transformed existing systems of land tenure and state-customary relations.

Governments made this possible by establishing legal frameworks to facilitate titling, designed to allow markets to determine the speed and location of changes in land rights regimes. These policies empower both public and private actors with influence over where state property rights develop, through “voluntary, purposeful, and sporadic registration,” also known as piecemeal or incremental land titling.<sup>29</sup> Initiatives to advance land titling accelerated in the 1990s, inspired by highly influential narratives of informal property rights as impediments to economic development.<sup>30</sup> Further, international financial institutions and donors have championed titling as a necessary tenure reform.<sup>31</sup> For example, a 2013 World Bank report estimated that only 10% of the land in Sub-Saharan Africa had been registered in individual land rights and recommended an increase to 50% of land within 10 years.<sup>32</sup> Governments and international institutions have promoted land titling as a foundation for land markets, tenure security, and economic growth, even as scholars challenged the claim that customary land tenure in Africa is insecure<sup>33</sup> and researchers debated whether titling led to improvements in productivity or investment.<sup>34</sup> By courting global markets and encouraging land titling, governments have accelerated the expansion of state authority over land.

The local politics of land titling thus merit further scholarly analysis for three key reasons. First, the incremental adoption of land titles is a tremendously important pathway for the growth of state control of land in the contemporary era. Since independence, in 1960 (Senegal)

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<sup>26</sup> Silas Kpanan’ayoung Siakor and Rachel S. Knight, “A Nobel Laureate’s Problem at Home,” *New York Times*, Jan. 20, 2012.

<sup>27</sup> In order of territorial size of land deals by international investors as described in Moyo, Jha, and Yeros 2019, 12-13.

<sup>28</sup> Moyo, Jha, and Yeros 2019, 14. The authors estimate that 80% of land deals constituted new alienations of customary land.

<sup>29</sup> Place, Roth, and Hazell 1994, 25. This differs from top-down divisions of land between customary and state rights, such as policies of “compulsory and systematic registration” in which everyone in a given area obtains a land title, adjudication schemes, and the colonial dual land tenure divisions described in Chapter 4 (Place, Roth, and Hazell 1994, 25).

<sup>30</sup> Most notably, de Soto 2000.

<sup>31</sup> Manji 2006. See also, Obeng-Odoom 2020.

<sup>32</sup> Byamugisha 2013.

<sup>33</sup> Sjaastad and Bromley 1997; Musembi 2007; Goldstein and Urduy 2008; Banda 2011.

<sup>34</sup> Lund 2001; Higgins et al. 2018.

and 1964 (Zambia), the land under the state's direct authority has grown from 5-6% to over 40% of the territory, according to the governments' own records.<sup>35</sup> Thousands of negotiations for small and large plots of land have replaced customary tenure with state titles. Beyond Zambia and Senegal, this model of incremental and demand-driven land registration has become "the new orthodoxy" of land titling<sup>36</sup> and has been implemented in nearly every country in Sub-Saharan Africa.<sup>37</sup> Second, examining the incremental process of land titling reveals the local politics that sustain customary property rights regimes. It shows why customary land tenure endures, despite policies that have been described as "as a systematic effort to dislodge or displace indigenous tenure in order to replace it with registered or state-administered land."<sup>38</sup> Third, investigating this very localized process of land titling reveals why changes in property rights regimes cannot be divorced from struggles over political authority and the control over a vital resource. Land titling provides a window into how political authority is constructed and negotiated in modern states, particularly those grappling with colonial legacies.

## 1.2 THE ARGUMENT

The central premise of this book is that we cannot understand how state power over land grows without examining the institutions that it replaces. We know that transformations in property rights regimes have always been political; they are a product of distributional bargaining that can shift political relations in communities and create winners and losers.<sup>39</sup> Yet, we have few theoretical frameworks to help us understand the role of local institutions. I offer new insights into the political and social determinants of land titling with a theory of collective costs and customary constraints. I argue, first, that customary institutions can impact the expansion of state power over land by shaping the decisions of their members—chiefs and citizens. Even if there are compelling benefits to titling for these actors, customary institutions can create incentives for members to prioritize the collective costs of losing control over land. Second, customary institutions vary in their capacity to shape members' decisions. However, strong institutions have features that help members slow the erosion of customary land tenure, even on in-demand land. As a result, sub-national variation in the strength of customary institutions helps explain broader patterns of state building. It is not merely undesirable or peripheral areas that remain in the customary domain.

This theory highlights the influence of a set of customary institutions that govern social, political, and economic interactions. These institutions generate communities that share norms, beliefs, expectations, and practices. The term "customary" indicates that they gain legitimacy from custom or tradition: members of the institution understand its processes and rules to be rooted in historical precedents. The main customary institutions examined in this book trace their origins to political communities that formed prior to the creation of the colonial state. However,

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<sup>35</sup> Customary land tenure governed an estimated 95% of land at independence in Senegal (see M. C. Diop 2013, 242). In Zambia, 94% of the territory was customary land at independence (see Northern Rhodesia, "Ministry of Land Annual Reports" 1935-1946, Shelf 16/Box 93A, Government Series, National Archives of Zambia).

<sup>36</sup> Coldham 2000, 71.

<sup>37</sup> See footnote 5.

<sup>38</sup> Diaw 2005, 49.

<sup>39</sup> Bates 1989; Libecap 1989; Platteau 2000b, 96-107.

“customary” does not mean static or unchanging. As Hubert Ouedraogo has explained, “customary” signifies principles that are perceived to be endogenous and local by the community, even as members have creatively adapted these rules over time.<sup>40</sup>

The leaders of these customary institutions are customary authorities, also known as chiefs.<sup>41</sup> Chiefs are an important set of political actors in many African countries.<sup>42</sup> They are officially and unofficially involved in a variety of governance functions, including land management and conflict adjudication.<sup>43</sup> In addition, they serve as intermediaries between citizens and the state.<sup>44</sup> Studies of customary institutions have often treated the chief as synonymous with the institution because of the important role of chiefs in enforcing and interpreting these sets of social and political rules. However, chiefs and customary institutions are not one and the same. Chiefs are individual elites embedded within institutions. These institutions continue to exist in the absence of any one chief.<sup>45</sup> By separating institutions as “the rules of the game in society” from the actors that implement them,<sup>46</sup> we gain new insight into how institutions can shape or constrain the behavior of chiefs. To underscore this point, I refer to both customary authorities and regular citizens as members of the institution.

All of these members can gain a variety of concentrated benefits from participating in land titling. Scholars have highlighted the rewards that chiefs receive for facilitating land titling, ranging from political favor with state representatives to significant material gifts.<sup>47</sup> Studies show that citizens report seeking titles in anticipation of increases in tenure security, access to credit, and to facilitate inheritance, among other potential personal benefits.<sup>48</sup> Existing research that examines local responses to titling has focused on these individual inducements, which are undoubtedly important. In the absence of any anticipated benefits, we would not expect chiefs or citizens to facilitate land titling.

However, titling decisions are political because they have implications for the community as a whole. Even if members would gain persuasive individual benefits from titling, they may resist it because of collective costs to the institutions in which they are embedded. Land is a key power base for the customary institutions featured in this book. These institutions govern

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<sup>40</sup> Ouedraogo 2011.

<sup>41</sup> This terminology was introduced by the colonial state. Some scholars prefer the terms traditional authority and traditional leader or to preface these terms with neo- to emphasize how “tradition” has been re-interpreted and created. I opted to use the terms “customary authority” and “chief” to represent leaders within customary institutions because they are common parlance in Senegal and Zambia, respectively.

<sup>42</sup> See Chapter 2 for comparative data.

<sup>43</sup> Boege 2006; Chiweza 2007; Logan 2013; Baldwin 2016, Ch 2; Aiyedun and Ordor 2016.

<sup>44</sup> Bofo-Arthur 2001; Fanthorpe 2006; Fokwang 2009; Muriaas 2009; Bado 2015; Koter 2016; Dionne 2018, Ch 6.

<sup>45</sup> If the institution did not exist in the absence of any one customary authority, the book’s framework would regard it as an extremely weak institution and anticipate an unconstrained chief.

<sup>46</sup> This is consistent with classic political economy approaches to institutions. See North 1990.

<sup>47</sup> Fisiy 1995; Bofo-Arthur 2001; Nolte 2013; Chitonge 2019.

<sup>48</sup> See Ghebru, Koru, and Taffesse 2016; Schmidt and Zakayo 2018; Harris and Honig 2022; Gochberg 2021 for examples from Ethiopia, Tanzania, Uganda, Zambia, and Malawi of why individuals reported that they wanted land titles.



complex systems of informal property rights<sup>49</sup> on untitled land and derive influence from their control over such customary land. Customary institutions determine who can farm or set up a shop, on which land they can do so, whether these rights can be inherited, and how long an individual can retain landownership without actively using it. They also establish processes for adjudicating conflicts over land among community members through, for example, seeking an audience with a hereditary chief or a local council. Further, an institution's governance of property rights reinforces its political authority in other domains. Members have incentives to comply with directives from other institutional processes to help secure their land rights. Consequently, controlling this valuable economic resource can also be a source of group power in relation to the state, which must engage with leaders of customary institutions for both access to land and influence over local populations. Land is therefore a material basis for the institution's power in citizens' lives and within the modern state. Furthermore, the institution's power is the power of its members, including its chiefs. Preserving the institution's control over land is thus an example of a "collective goal" or "institutional interest."<sup>50</sup> These terms (used synonymously here) refer to objectives that are shared by actors within the institution, as a function of their membership. They are, however, not shared equally among members.<sup>51</sup>

Customary institutions matter for land titling outcomes because they impact how members perceive and are held accountable to a collective goal of retaining control over land. When maintaining customary land tenure has group benefits, decisions facilitating titling are a defection from a collective goal. A collective action framework is therefore a useful foundation for understanding how customary institutions impact a very complex set of decisions. Collective action models examine why individuals opt to contribute to publicly beneficial outcomes, given private gains from defecting. A rich literature has identified informal community institutions as a solution to this tension between collective and individual benefits, because institutions determine individuals' expectations of others, their incentives, and their ability to be punished.<sup>52</sup> Explaining how customary institutions impact land titling thus builds upon a core insight gleaned from collective action approaches: Customary institutions can influence individual behaviors by shaping whether actors are more responsive to concentrated benefits or collective costs. From here, we can begin to consider different ways in which customary institutions influence the decisions of their members in favor of retaining customary control over land.

Customary institutions may impact land titling outcomes by creating incentives for chiefs and citizens to reinforce the institution's power over land. As described earlier, chiefs can thwart or facilitate titling in their zones; they may organize resistance to new land titles on customary land or choose to partake in a process of changing land tenure. Citizens' actions are also

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<sup>49</sup> Drawing on Helmke and Levitsky (2004, 731) informal institutions are understood here as rules that are "created, communicated, and enforced outside of public channels;" they include the norms and social codes that guide the behavior of public officials, such as bureaucrats and Supreme Court justices. Thus, regardless of whether a chief has official recognition as a land authority, rules that govern different land usage and ownership arrangements that were not created by the state are informal property rights. Consistent with this approach, in this book "formalization" of property rights is not the process of documenting land rights alone, but of transforming them into statutory property rights.

<sup>50</sup> This is conceptually parallel to my discussion of "state interests." The state is not a unified actor, but a set of institutions. Representatives of the state's institutions, or state actors, advance state interests.

<sup>51</sup> As Chapter 3 and 7 detail, those with greater power within the institution should be more invested in advancing institutional goals. The collective benefits from membership in an institution are unevenly distributed.

<sup>52</sup> Ostrom 1990; Tsai 2007; Akinola 2008; Xu and Yao 2015; Magaloni, Díaz-Cayeros, and Ruiz Euler 2019.

consequential, including their decisions to engage with the state's systems of property rights by seeking titles. However, customary institutions can moderate the agency of chiefs and citizens by inducing these actors to prioritize a collective interest in retaining customary control over land.

One way that customary institutions slow the erosion of customary land tenure in their zones is by establishing processes to hold leaders accountable to institutional goals. Some, but not all, customary institutions generate internal forms of accountability.<sup>53</sup> Customary institutions can create an extra check on chiefs' decisions and deter them from opting for individual benefits at the expense of the institution's long-term power base. Later chapters illustrate two institutional accountability mechanisms in Senegal and Zambia: vertical systems of punishment and coordinated horizontal constraints. Vertical accountability is the result of internal processes that allow elites to sanction other elites at different levels of hierarchy. However, even in the absence of clear vertical lines of authority between chiefs, institutions can create horizontal accountability among elites through institutional elements that create forums for establishing shared expectations and opportunities for social sanction. Horizontal accountability mechanisms can generate checks and balances among customary authorities within a customary institution, analogously to processes of horizontal accountability in a government's political institutions.<sup>54</sup> They create constraints on the "nearly unlimited discretion of rulers,"<sup>55</sup> allowing institutions to shape chiefs' behaviors. Consequently, by generating constraints on individual chiefs, customary institutions can influence land tenure outcomes.

Another way that customary institutions impact land titling is by shaping citizens' preferences for converting their own land to statutory titles. Customary institutions structure social relations, distributing status within the institution and therefore different levels of privilege within the community. Citizens who have more privilege in their local customary institution gain social and political benefits from its continued power. In this book, I argue that citizens will be more likely to prioritize the collective goal of retaining customary power over land when they gain greater benefits from it. Such advantages may include expectations of more secure customary property rights or better outcomes in community courts. These benefits are tied to the continuing power of the customary institution. In contrast, individuals who face exclusion or low status within the institution have greater incentives to seek the protections offered by state property rights. Consequently, the political costs and benefits to titling within a given customary institution vary depending on the customary privilege of each citizen. Although titling one's own land is often understood as an economic decision, it is also a political choice to exit from the customary institution's control over land rights.

Customary institutions, however, are not equally capable of shaping members' behaviors and preventing defections that threaten their power bases. Even within the same country, there is enormous diversity in organizational capacity among customary institutions. Enforcement and stability, defining characteristics of institutional strength among formal institutions, also apply here.<sup>56</sup> Stronger customary institutions have organizational elements that increase compliance

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<sup>53</sup> See, for examples, Bates 1987, 41-42; Dia 1996, 39-41; Ayittey 2010; Baldwin and Holzinger 2019; Nathan 2019. Note that Acemoglu, Reed, and J. Robinson 2014 also consider variation in the "constraints" on chiefs' power, which they conceptualize as political competition among multiple ruling families.

<sup>54</sup> O'Donnell 1998; Signé and Korha 2016.

<sup>55</sup> Diamond 2008, 300.

<sup>56</sup> Levitsky and Murillo 2009.

with the institution's rules and norms. Clear lines of authority and dense social networks facilitate this. Further, while customary institutions are adaptable by nature, stronger institutions have a stable influence in members' lives and benefit from longer time horizons. Weak customary institutions, by contrast, are sets of rules that can more easily be ignored. The heterogeneity among customary institutions impacts whether members are, in fact, constrained.

In Senegal and Zambia, the historical origins of customary institutions impact their contemporary strength. This is the final piece in my argument. In particular, I focus on the differences among hierarchical and nonhierarchical legacies. Customary institutions with hierarchical legacies trace their roots to powerful precolonial states with hierarchical authority structures that withstood the colonial conquest. These institutions had a distinctly high organizational capacity at the end of the nineteenth century. This contrasts with the customary institutions with nonhierarchical legacies in these two countries, which either had hierarchical structures that were razed during colonial territorial conquest or, more commonly, never endogenously developed hierarchy. As later chapters will explain in greater detail, the diverse origins of these institutions set them on different trajectories, producing variation in the contemporary strength of customary institutions within each country. Historical institutional structures thus contribute to patterns of state building through their impact on the contemporary strength of customary institutions.

The theory and empirical evidence presented in the rest of this book expand upon the argument that customary institutions shape the state's expansion of power over land by influencing how chiefs and citizens respond to titling. The next three sections of this introductory chapter introduce the explanatory variable, outcome of interest, and broader implications of this study. First, I situate my theory within the scholarship on customary institutions and precolonial legacies. Next, I introduce why my outcome of interest, land titling, is a form of fragmented state building. I then explain what my approach, which highlights the differences among the institutions in which chiefs and citizens are embedded, teaches us about state-society relations in the post-colonial state. The final sections of this chapter provide the empirical approach and roadmap to the book.

### 1.3 EXPLANATIONS GROUNDED IN CUSTOMARY INSTITUTIONS AND HISTORICAL LEGACIES

Understanding politics in contemporary African states requires us to seriously consider the political systems that preceded the colonial intervention. This insight guides the explanatory framework of this book. As I describe in Chapter 4, precolonial, colonial, and independent state institutions all contribute to the current status of land and political authority in Zambia and Senegal, a common feature of former colonies. Customary institutions with roots in the precolonial period were undoubtedly transformed in a variety of ways by colonial and subsequent independent government policies.<sup>57</sup> Yet many remained resilient even as states attempted to weaken them. Despite significant change over time and heterogeneity across precolonial institutions, historical legacies continue to impact contemporary politics. This book builds upon scholarship that has examined the long-term legacies of customary institutions

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<sup>57</sup> See Ajayi 1968 for a discussion of African institutions' continuity and adaptation in the colonial era.

through the study of their institutional structures. As I will show, we cannot understand contemporary state building and the roles of customary authorities without attention to this institutional heterogeneity.

African political institutions prior to colonization featured varying degrees of organizational complexity.<sup>58</sup> Some precolonial political institutions were states that developed through long processes of war-making and state-making. Such precolonial state building mirrors what we understand of the development of states elsewhere in the world: the need to provide protection under threat of war generated systems of law, taxation, and identity nationalism.<sup>59</sup> These polities developed complex institutional structures with multiple levels of authority, known as hierarchy or centralization. For example, Cheikh Anta Diop's foundational work on precolonial Africa describes the Cayor of Senegal and the Mossi of Burkina Faso as constitutional monarchies, with kings governing through ministries, bureaucrats, and militaries in the nineteenth century.<sup>60</sup> The Lozi kingdom in Zambia had the administrative apparatus to organize mass labor campaigns for major infrastructure projects, multiple levels of authority, governance councils, and a powerful military.<sup>61</sup> In Cameroon, the Bafut precolonial state used spiritual power, as well as control over trade routes and military might, to exercise centralized authority.<sup>62</sup> Robert Bates' comparative study of precolonial state formation highlights a set of key indicators of centralized political institutions: national armies, bureaucracies, and monarchs. His findings suggest that these precolonial states were also more likely to have developed aristocracies, commoner councils, and the capacity to provide public goods such as roads or bridges.<sup>63</sup>

Other precolonial political institutions governed communities without state-like structures. These political communities never developed centralized authority above the village level, resulting in their label as stateless societies.<sup>64</sup> The Kikuyu of Kenya, for example, had established systems of conflict resolution and age-grade societies for community governance, but power was highly decentralized within the polity.<sup>65</sup> In northern Ghana, each village in the Chakali institutions had its own political leaders, spiritual leaders, and councils of elders who functioned independently of authorities in other villages.<sup>66</sup> Such nonhierarchical institutions are sometimes termed decentralized, segmentary, or acephalous (headless) institutions.<sup>67</sup> Scholars use the terminology of hierarchical/nonhierarchical, state/stateless and centralized/decentralized to represent this foundational difference among institutional structures.

Political economists have advanced the study of such institutional legacies by identifying patterns that result from variation in the precolonial structures. In cross-national quantitative studies, hierarchy is correlated with improved development outcomes. For example, Philip Osafo-Kwaako and James Robinson showed that hierarchy was associated with economic

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<sup>58</sup> Ki-Zerbo 1972; Ayittey 1991; Nabudere 2004.

<sup>59</sup> Carneiro 1970; Hintze 1975; Tilly 1990; Spruyt 2002; Thies 2004.

<sup>60</sup> C. Diop 1960.

<sup>61</sup> Mainga 1973.

<sup>62</sup> Asombang 1999.

<sup>63</sup> Bates 1987.

<sup>64</sup> Ayittey 1991.

<sup>65</sup> Kenyatta 1938.

<sup>66</sup> Daannaa 1994.

<sup>67</sup> Fortes and Evans-Pritchard 1940; Geschiere 1993; Mahoney 2010; Yaro 2013.

institutions that contribute to public goods provision and economic development, such as credit access, transportation routes, security services, and market exchange.<sup>68</sup> Stelios Michalopoulos and Elias Papaioannou found that areas that were ruled by hierarchical precolonial institutions now have greater nighttime light density, a proxy for economic activity and infrastructure access; Marcella Alsan's research replicated this finding.<sup>69</sup> This effect is independent of a number of potentially confounding variables, such as population density and geographic endowments. Similarly, Nicola Gennaioli and Ilia Rainer showed that precolonial hierarchy predicts a set of improved health and education outcomes, as well as an increase in paved roads.<sup>70</sup> These are signs of greater public goods investments in zones with hierarchical institutions, which suggests systematic patterns related to institutional heterogeneity.

Within-country comparisons of historical institutional structures have also identified the long-term effects of hierarchy. For example, Sanghamitra Bandyopadhyay and Elliott Green showed that Ugandan citizens living in areas with hierarchical customary institutions were wealthier than fellow citizens in areas with nonhierarchical institutions.<sup>71</sup> However, in Nigeria, some of the poorest regions have hierarchical legacies. Belinda Archibong has argued that hierarchical institutions with leaders who rebelled against the state lost the ability to lobby for public goods, leading to long-term differences in infrastructure access.<sup>72</sup> This scholarship connecting institutional structure to developmental outcomes illustrates clearly that these legacies impact contemporary politics. However, these works have generally focused on establishing the correlation between historical structure and contemporary outcomes. In response, scholars have called for increased attention to the mechanisms that generate these differences between institutions and to how these differences reinforce themselves over time.<sup>73</sup> This book takes on these tasks.

Existing literature has emphasized three important mechanisms that connect hierarchy to contemporary political outcomes. First, hierarchy can increase the bargaining power of customary leaders.<sup>74</sup> As Catherine Boone has described, hierarchical structures raised the credibility of rural elites' "threats/promises to control peasants and mobilize collective action (through the use of persuasion or coercion)."<sup>75</sup> A hierarchical structure allows leaders to influence more citizens than a decentralized institution could, which may increase the leader's leverage against the state. Central to this mechanism is the distribution of power: A leader in a hierarchical customary institution has concentrated control over a larger number of people. Second, chiefs in hierarchical institutions may have stronger ties of loyalty and obedience with their citizens.<sup>76</sup> Much like the bargaining power that results from having more followers, increasing the strength of these ties also increases the chief's political influence within the state. Customary authorities with more obedient followers can more effectively and quickly mobilize them, for example, to protest or vote in a certain way.

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<sup>68</sup> Osafo-Kwaako and J. Robinson 2013.

<sup>69</sup> Michalopoulos and Papaioannou 2013; Alsan 2015.

<sup>70</sup> Gennaioli and Rainer 2007.

<sup>71</sup> Bandyopadhyay and Green 2016.

<sup>72</sup> Archibong 2019.

<sup>73</sup> Holzinger, Kern, and Kromrey 2016, 475.

<sup>74</sup> Boone 2003; Baldwin 2014; Archibong 2019.

<sup>75</sup> Boone 2003, 29.

<sup>76</sup> Koter 2016.

Third, hierarchical customary institutions may also impact contemporary politics through their ability to generate legitimacy for state institutions. Pierre Englebert theorized that a territorial overlap with a hierarchical customary institution makes it easier for state politicians to consolidate power without relying on patronage.<sup>77</sup> The Tswana customary institution of Botswana provides an example of this dynamic. Scholars studying Botswana's political and economic successes (and its evasion of the dreaded resource curse) have argued that the spatial overlap between state boundaries and the hierarchical Tsawan customary institution is a source of increased state capacity and accountability among leaders.<sup>78</sup>

My research builds on these studies by exploring how hierarchical institutions can facilitate the pursuit of collective interests over the autonomous interests of individual chiefs, to retain a source of power: control of land. In contrast to mechanisms that emphasize how hierarchy strengthens leaders, I demonstrate that in a context in which the institution's interests and the state's interests are at odds, hierarchy can weaken individual leaders. Hierarchical institutions have a greater capacity to generate checks on the autonomy of elites through stronger internal ties of accountability. Chiefs who are not embedded in hierarchical institutions are, by contrast, freer to respond to their individual interests. Contemporary institutions in Senegal and Zambia illustrate how variation in the strength of internal accountability functions as a hierarchy mechanism. Specifically, I use comparative case studies of customary institutions to show that within each country, chiefs in hierarchical institutions are more constrained than their neighbors in nonhierarchical institutions. Further, I explain why the capacity to influence the outcomes of individual decisions that would undermine an institutional power base is part of a dynamic process of reinforcing the differences in strength among institutions. In doing so, the theory and findings in this book contribute new analysis of hierarchy mechanisms and suggest how such legacies are replicated over time.

There is much to be learned from African political systems about how local institutions impact the state and retain influence over time. Customary institutions are a key subtype of political institutions. They draw on claims of legitimacy that are independent of the state. Such institutions are particularly influential in countries with weak state structures and boundaries formed by colonialism, but customary institutions vary considerably across many dimensions. This creates a challenge for identifying systematic patterns that are generalizable across contexts. Drawing broad theoretical conclusions from this diversity of institutions requires a degree of abstraction. This has, in part, led to the growth of studies described previously that rely on a binary of hierarchical or nonhierarchical institutions. Such a binary categorization can be a useful analytical tool for identifying systematic patterns. However, it is not comprehensive of the many sources of variation that impact the ways in which customary authorities and institutions functioned in the contemporary era or prior to colonization. The statistical analyses in this book rely on the simplified binary categorization of institutions as hierarchical or nonhierarchical, while qualitative analyses in Senegal and Zambia provide comparative case studies that detail a sliver of the diversity among customary institutions today. This approach seeks to balance breadth and specificity in the study of hierarchical legacies and contemporary customary institutions. It highlights the impact of these institutional legacies on one specific outcome: the expansion of state control over land.

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<sup>77</sup> Englebert 2000a; 2000b.

<sup>78</sup> Englebert 2000b; Acemoglu, Johnson, and J. Robinson 2003; Samatar 2005; Hjort 2010.

## 1.4 LAND TITLING AS FRAGMENTED STATE BUILDING

State building throughout the world has been a process of replacing competitors to the state's authority over property rights. As states struggled to formalize land rights in the seventeenth century British countryside and in nineteenth century Japan, they strengthened the rule of state law and built their tax bases. When the United States replaced settler land rights in the nineteenth century American frontier, it established its monopoly of authority over citizens. Indeed, the enforcement of property rights and control of territory are central to our understanding of the modern state.

However, the state's expansion of authority over land has never been an easy or linear process. Shifts to state property rights challenge existing social and political structures. As the state gains authority over a valuable resource, another set of elites loses authority; resistance to state-led land reform is therefore embedded in broader struggles over political authority. For example, in Stalin's Russia, the state's collectivization schemes targeted landowners and village-level political institutions. These produced thousands of incidents of protest and "mass disturbance" against the state in 1930 alone.<sup>79</sup> In Switzerland, the state's attempt to exert control over the nation's forests through a series of new laws in the nineteenth century provoked resistance from community groups that perceived this transfer of authority over valuable natural resources as a threat to their political power.<sup>80</sup> Today, similarly contentious transformations of land rights are occurring in African states, where governments have actively promoted land titling to reform existing systems of land tenure. In this context, customary authorities are the set of elites whose power wanes as the state's grows. The responses of customary authorities and communities to land titling reflect these broader historical patterns of state building.

Land titling is a tool of state building that serves four main purposes. First, land titling increases the geographic reach of the state's institutions within its defined territory. In postcolonial states, the state's presence in the everyday lives of citizens varies spatially, particularly between rural and urban populations, or the core and periphery of the country.<sup>81</sup> State administrative offices, health clinics, and schools are generally concentrated in densely populated areas. As a result, in more peripheral regions, citizens have fewer regular interactions with the state's services, institutions, and agents. Following Michael Mann's classic framework, one of the defining features of a state is its territoriality. Spatial disjunctures in the state's authority represent a challenge to the infrastructural power of the state, understood as the state's ability to "penetrate" society and implement its agendas "throughout the realm."<sup>82</sup> The state builds its infrastructural power through institutions and technologies that increase the "territorial reach" of the state.<sup>83</sup> The expansion of physical infrastructure increases the visibility of the state in the citizens' lives. Consistent with this conceptualization of state building, Jeffrey Herbst and

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<sup>79</sup> Viola 1996, 137.

<sup>80</sup> Zimmermann 1994.

<sup>81</sup> See, for example, Bierschenk and Olivier de Sardan 1997; Hydén 1980; Herbst 2000.

<sup>82</sup> M. Mann 1984, 189.

<sup>83</sup> Soifer 2008.

others have treated variation in the density of infrastructure, such as roads, as an indicator of the state's power and capacity.<sup>84</sup>

Land titling similarly expands the territorial or spatial reach of state power. It spreads state property rights institutions to places where they did not previously exist. It formally transfers the responsibility for enforcing citizens' property rights from a customary authority to the state. This strengthens the exchange between state and citizen, as citizens must comply with state directives such as taxation in order to secure their rights. Land titling also increases the visibility of the state in the citizen's life through interactions with civil servants who map land and process new titles, creating a document that is a new physical representation of the state's authority in the citizen's life. By establishing new links between citizen and state, titling increases the state's penetration in the daily lives of citizens, even in otherwise peripheral areas.

The second state-building function of land titling is to increase the legibility of land and of the citizens using that land. Legibility is the degree to which information can be comprehended, collected, and counted, in this case, by the state. Put simply, the state cannot control its citizens or their land without information about them. As James Scott argued, land titling standardizes complex systems of customary land ownership, creating a unified system of individual ownership that the state can understand.<sup>85</sup> It converts the system of land management from locally understood land tenure rules that are informal, unwritten, and regularly changing to a "rational" statutory system. This parallels other legibility processes such as standardizing languages and systems of weights and measures within the state's territory.<sup>86</sup> Increasing the legibility of land and citizens, sometimes termed "informational capacity," is critical to certain state functions. Information about individual residents strengthens the state's ability to monitor citizen behavior and enforce its own laws.<sup>87</sup> As a result, scholars have treated population censuses as indicators of state capacity<sup>88</sup> and identified voter registration as a means of expanding state power.<sup>89</sup>

The third state-building function of land titling is to increase the rule of state law. As Sandra Joireman has suggested, the very existence of plural systems for the enforcement of property rights in African states indicates the weakness of the rule of law: The state lacks a monopoly of authority in this domain.<sup>90</sup> Customary institutions feature different sets of rules for accessing and using land than those of the state. Despite attempts by the colonial states to codify what they termed "customary law,"<sup>91</sup> the rules of customary property rights vary widely over time and among different customary institutions. Customary property rights are not understood or executed by the state; rather, they are enforced by customary authorities. Further, the control of land undergirds the power of customary institutions in other domains of citizens' lives. This includes, for example, the alternative systems of justice and conflict resolution that customary

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<sup>84</sup> Herbst 2000; Thies 2009; Acemoglu, García-Jimeno, and J. Robinson 2015; Müller-Crepon, Hunziker, and Cederman 2021.

<sup>85</sup> Scott 1998.

<sup>86</sup> Weber 1976; Scott 1998.

<sup>87</sup> D'Arcy and Nistotskaya 2017; Lee and Zhang 2017.

<sup>88</sup> Centeno 2002; Brambor et al. 2020.

<sup>89</sup> Slater 2008.

<sup>90</sup> Joireman 2011.

<sup>91</sup> Chanock 1985; Moore 1986; Snyder 1981.



institutions provide.<sup>92</sup> The presence of alternatives to the state's institutions creates opportunities for citizens to avoid the state's laws when they are unsatisfactory or unenforceable. For example, Thomas Bierschenk and Jean-Pierre Olivier de Sardan described how a citizen in rural Benin has multiple arenas for seeking conflict resolution in the case of the theft, including both customary and statutory forums.<sup>93</sup> Marco Gardini argued that citizens in Togo engage with customary authorities for dispute resolution as an alternative to "the savagery of the State."<sup>94</sup> This can be an effective adaptation strategy for citizens, who have opportunities to seek the governance outcomes they desire without engaging with the state. However, from the perspective of the rule of state law, the existence of institutions that are not subsumed under state authority, but instead function in parallel to the state, is a challenge to its domination.<sup>95</sup> Consistent with this logic, Iliia Murtazashvili and Jennifer Murtazashvili framed the absence of legal titling as "anarchy."<sup>96</sup>

Titling is the legal process that replaces alternative rules for land access with the state's rules. Correspondingly, it can increase the rule of law by weakening alternatives to the state's authority over land. This can have broader impacts on the rule of state law by removing control over property rights as a source of political authority for chiefs. As a result, land titling can be understood as a softer alternative to the "building armies mechanism" of state building,<sup>97</sup> in which the state weakens challenges to its rule by increasing the size of its security apparatus and eliminating alternative authorities through sheer force. Land titling allows a state to increase its political authority without relying on the expansion of the state's coercive abilities. As Christian Lund has explained, control over landed property rights is central to both the formation and exercise of political authority.<sup>98</sup> Land titling thus builds the monopoly of state authority.

Expanding state control over property rights also impacts the state's fiscal capacity, which is the fourth state-building function of land titling. Fiscal capacity is the state's ability to generate and collect revenue, which states need to provide public goods and security, among other basic roles of the state. The ability to tax is so central to a state's ability to fulfill its agenda that taxation is often used as an indicator of state power.<sup>99</sup> Land titling is the first step in expanding the state's ability to extract revenue from land. Customary land cannot be taxed by the state, as it has not been mapped, measured, and attributed to an individual user. The state can tax the citizens who use customary land for their agricultural inputs and production, but it cannot extract taxes for land use itself until customary land has been registered in state property rolls. In Zambia and Senegal, the moment the land transfers from customary to state rights, it is subject to land taxes or ground rents.<sup>100</sup> A parcel with state property rights remains within the state's tax base, even if the owner of the title changes. For example, if the state revokes an individual's title for unpaid taxes or lack of development on the land, the state can then allocate the land to another user, who would again be subject to taxes. As a result, each hectare of land that shifts

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<sup>92</sup> Boege 2006; Oba 2011; Bennett et al. 2012; Aiyedun and Ordor 2016; de Juan 2017.

<sup>93</sup> Bierschenk and de Sardan 2003, 158.

<sup>94</sup> Gardini 2013, 254.

<sup>95</sup> See Holzinger, Kern, and Kromrey 2016 for an overview of parallelism and institutional dualism.

<sup>96</sup> Murtazashvili and Murtazashvili 2015. Note that their argument is that anarchy in land governance should be considered as an efficient policy option.

<sup>97</sup> Taylor and Botea 2008.

<sup>98</sup> Lund 2008.

<sup>99</sup> Centeno 2002; Thies 2004; Thies 2009; Besley and Persson 2010. See also Lieberman 2002.

<sup>100</sup> While the law is clear, the enforcement of these land taxes is far from consistent.

from customary to state expands the state's potential revenue base. This increases the state's fiscal capacity by making it possible for the state to extract revenue from a resource that was previously untaxable, regardless of whether the state does so at any given moment.

Analyzing land titling as a state-building process in the current era reveals a surprising consequence of global land markets: they can strengthen the state's authority. At this writing, land is treated as the last frontier in globalization by multinational investors, governments, and carbon traders, among others. While scholars have argued that globalization "eclipses" state power or undermines public institutions,<sup>101</sup> examining contemporary land titling processes demonstrates that global land markets catalyze state building by accelerating the conversion of land from customary to state property rights. Counter to their other effects on state power, global markets increase the state's authority in African countries by breaking down the institutional alternative to the state: customary property rights. Through changes in property rights regimes, this aspect of globalization in Africa is not "softening" the state's sovereignty, but rather is strengthening it. In this case, markets and states are not in opposition: state building occurs *through* the extension of land markets.

Land titling is thus a substantial step towards greater state capacity, which constructs the state's authority. It creates new opportunities for state actors to exert state power by expanding the state's territorial reach, increasing the legibility of land, weakening alternatives to its rule of law, and enlarging the state's revenue base. However, state actors choose to use their power in different ways. They may opt for "forbearance" from enforcing laws for political reasons<sup>102</sup> or because the costs of exercising their power are high. State capacity and state performance are conceptually distinct: Capacity is a tool that may be used towards different ends.<sup>103</sup> Therefore, although state capacity is necessary for the effective provision of social services and security, state capacity can also be used to oppress and dominate citizens. Perhaps most prominent among African countries is the case of Rwanda's extremely high state capacity, which facilitated the rapid and low-tech genocide of hundreds of thousands of civilians.<sup>104</sup> Land titling increases the state's ability to implement its agenda, yet it uproots existing social structures and systems of land ownership. The development of state capacity is therefore costly to different social actors. Consequently, the immediate impacts of titling on the average citizen are mixed – they are highly dependent on who the citizen is and how the state manages titled land. As a result, this book examines land titling and increasing state capacity not as a panacea for development, but instead as issues of power and control.

## 1.5 RECONSIDERING HOW SOCIETY IMPACTS THE STATE

Land titling is an interaction between states, citizens, and customary authorities. Thus, in addition to being a process of contemporary state building, titling is the outcome of interest for this study because of what it reveals about state-society relations. There is a long history of states employing land policy to reorganize society. Colonial authorities used land to fragment social

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<sup>101</sup> For a discussion of these arguments, see Evans 1997.

<sup>102</sup> Holland 2017.

<sup>103</sup> Centeno, Kohli, and Yashar 2017.

<sup>104</sup> J. Robinson 2002; Straus 2013.

groups and prevent challenges to the state.<sup>105</sup> Governments have initiated land reforms and redistributions to placate or punish certain constituencies.<sup>106</sup> Further, state land laws and practices create the boundaries and content of citizenship.<sup>107</sup> Land is a means for the state to impact society, yet this book highlights that it is also a forum in which social actors impact the state. My approach thus echoes Joel Migdal's analysis of rural elites' ability to thwart the government's attempts to consolidate social control in Egypt, by providing new examples of how "the society shapes the state even as the state deeply influences society."<sup>108</sup> Examining the politics of land titling generates new insights into an important set of intermediaries between the state and its citizens in African countries, and how customary institutions shape these interactions.

Customary authorities fascinate observers of African politics because of their influential and complicated relationships with the state. In both the colonial and contemporary states, governments have tried to harness the influence of customary authorities to implement the state's agenda. An extensive body of scholarship on customary authority in Africa has examined collaboration or hybridity between chiefs and the state<sup>109</sup> and the ways in which the state has molded customary authority.<sup>110</sup> Colonial governments used chiefs to collect taxes and mobilize forced labor; more recently, incumbent politicians have relied on customary authorities to broker votes in elections.<sup>111</sup> In contemporary African states, chiefs often assist in administrative tasks and state governance. Where the state is weak, governments depend on customary authorities to help implement their policies, thereby empowering chiefs as intermediaries. As a result, the boundary between state and customary is often blurred.

There is ample evidence that contemporary chiefs are strategic political actors who have used their connections with the state to increase their own power and wealth. In South Africa, for example, chiefs align with the political parties most likely to provide legal power and benefits.<sup>112</sup> Customary authorities have used their control over natural resources for short-term gains, particularly by selling land previously held in the customary domain. Kwame Boafo-Arthur, for example, described Ghanaians feeling betrayed after the loss of a community resource by "the decadent, traditional authority who, for want of personal wealth, dubiously and treacherously sold the Lagoon for peanuts."<sup>113</sup> Scholars have recounted the ways in which customary authorities were compromised by the colonial encounter and corrupted by their interactions with the post-independence state.<sup>114</sup> In many of the prevailing scholarly narratives, customary authorities in Africa have been treated as colonial creations lacking agency outside of the state's interests or as unconstrained big men.

Mahmood Mamdani's highly influential work reinforced the idea of chiefs as individual "despots," divorced from the institutions that undergird their local power. His "decentralized

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<sup>105</sup> Migdal 1988.

<sup>106</sup> Albertus 2015.

<sup>107</sup> Kuba and Lentz 2006; Boone 2007; Lund 2011.

<sup>108</sup> Migdal 1988, 181.

<sup>109</sup> Bayart 1989; Logan 2009; M. Williams 2010.

<sup>110</sup> For examples, see Colson 1949; Chanock 1985; Moore 1986; Mamdani 1996.

<sup>111</sup> Koter 2013; Baldwin 2016; Gottlieb 2017; Nathan 2019.

<sup>112</sup> de Kadt and Larreguy 2018. See also Hendricks and Ntsebeza 1999.

<sup>113</sup> Boafo-Arthur 2001, 8.

<sup>114</sup> van Rouveroy van Nieuwaal 1996; Ali, Fjeldstad, and Shifa 2020.

despotism” approach to customary authorities hinged on the claim that colonial states undermined internal institutional constraints and removed the meaningful differences among these customary institutions. Mamdani explained that the heterogeneity among the internal institutions of precolonial kingdoms and stateless societies (which became “administrative chieftainships”) affected how the leaders of precolonial institutions made decisions, governed, and controlled populations.<sup>115</sup> He then argued that these differences among these customary institutions were erased by the colonial state, which preferred to have the same type of customary institutions throughout the territory. In his terms, “the point about colonialism was that it generalized both the conquest state and the administrative chieftainship and in doing so it wrenched both free of traditional restraint.”<sup>116</sup>

However, the colonial state’s strategy of homogenizing customary institutions was not sufficient to generate its intended outcomes. As Sara Berry and others have emphasized, the colonial regimes “rarely exercised enough effective control to accomplish exactly what they set out to do.”<sup>117</sup> This book probes the continuing sources of variation among customary institutions and chiefs in Zambia and Senegal. It suggests that the colonial state did not have the resources to completely erase the important differences among the institutions underpinning individual chiefs, which, in some cases, had been built over centuries. Colonial states changed the roles and incentives of chiefs through, for example, the use of indirect rule and attempts to reify customary law. Differences in a customary institution’s internal organization were more difficult for a colonial or postindependence state to transform. These include the internal accountability mechanisms that can constrain the chiefs. By focusing on the real and historically-rooted, differences among the institutions in which chiefs are embedded, we gain further insight into the variation in the roles and behaviors of these political actors within the state. Among other implications, my institutional approach highlights that “retraditionalization policies”<sup>118</sup> within any given country empower a set of actors with very different institutional constraints. The continuing heterogeneity among customary institutions impacts how chiefs govern and how they mediate the relationship between citizen and state.

Further, examining the local politics of land titling demonstrates how chiefs that benefit from the power of the state retain their ability to independently challenge it. Customary authorities gain legitimacy from their interactions with the state and with customary institutions, making them a “hybrid” authority.<sup>119</sup> Citizens, for their part, are embedded in overlapping statutory and customary institutions. They draw on them creatively and strategically, in a process known as institutional syncretism.<sup>120</sup> Studying interconnected and, at times, collaborative forms of authority is challenging, but land titling provides a window into how members preserve an institution’s autonomy from the state. For customary authorities in Senegal and Zambia, titling is more costly than other forms of collaboration because it is a permanent, unidirectional change. Land cannot be “unregistered” from state property rights, even if its owners change. Titling involves a legal transfer of authority over resources, not an easily revoked or fluid status. Thus,

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<sup>115</sup> Mamdani 1996, 37–48.

<sup>116</sup> Mamdani 1996, 40.

<sup>117</sup> Berry 1992, 330. See also Spear 2003.

<sup>118</sup> Kyed and Burr 2007. On the wave of policies that empowered chiefs, see also Englebert 2002; Chiweza 2007; Muriaas 2009; Nuesiri 2012.

<sup>119</sup> Logan 2009; M. Williams 2010; Goodfellow and Lindemann 2013; Bauer 2016; Albrecht 2017.

<sup>120</sup> Galvan 2004.

land titling is closer to a zero-sum interaction between state and customary authority; unlike a decision to broker votes or facilitate policy implementation, the state's gain is the customary institution's loss. Probing circumstances in which customary and state interests differ provides new insight into the hybrid and autonomous nature of these authorities. It reveals how customary institutions can generate and facilitate the pursuit of interests separate from those of the state, despite their integration.

Studying the relationship between customary institutions and land titling also illustrates how these local institutions influence citizens' relationships with the state. I focus on land titling in this book because it is a forum for investigating why citizens choose to engage and disengage with different political institutions. My theory builds upon the insight that citizens seek new forms of property rights after weighing the existing system relative to alternatives. They evaluate the social and political costs of this change, in addition to economic considerations. In the case of land titling, citizens are turning toward the state and away from exclusively relying on customary authorities to protect their land claims. As a result, through these decisions, citizens act as agents who construct the state's and the customary institution's power. Thus, customary institutions impact a citizen's decision to interact with the state by creating or reducing demand for new property rights. This is consistent with research that shows how institutions that serve as an alternative to the state can shape citizen engagement with the state in other domains. For example, citizens decide among customary and state conflict resolution forums, selecting the ones that provide the best outcomes for their profiles<sup>121</sup> and choosing the state's agents when the customary system no longer efficiently provides justice.<sup>122</sup> Examining individuals' demand for state property rights reveals how local institutions shape their decisions to engage with the state as well as why customary institutions retain their influence.

## 1.6 EMPIRICAL APPROACH

The expansion of state authority over land through titling is occurring in countries across the continent. The motivating logic of the case selection for this book was to represent a key difference in systems of customary authority in African countries: official and unofficial chiefs. In Senegal, chiefs have local legitimacy in their oversight of customary land, but no statutory role in land governance. Other countries, including Zambia, follow a model of official customary authority. There, the state recognizes chiefs as the custodians of customary land. Such official status for customary authorities provides chiefs with more direct channels for influencing state policy. It can also tame them, by "co-opting" them or strengthening their ties to the state apparatus.<sup>123</sup> Further, it may hold implications for representation of citizens; for example, Fred Hendricks and Lungisile Ntsebeza suggested that it may reinforce ethnic divisions in South Africa.<sup>124</sup> Official and unofficial status is a critical and representative difference among forms of

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<sup>121</sup> Sandefur and Siddiqi 2013.

<sup>122</sup> Ensminger 1992, Ch. 6.

<sup>123</sup> Herbst 2000, 183. Henn (2020) makes a similar argument that chiefs with constitutionally-recognized powers become complements to the state, while chiefs without state recognition function as competitors in relation to public goods provisions.

<sup>124</sup> Hendricks and Ntsebeza 1999, 100.

customary authority in Africa.<sup>125</sup> In Zambia and Senegal, the variation in the legal status of customary authorities reflects the legacy of British and French colonial rule, respectively. Colonial powers laid the groundwork for the modern legal frameworks in African states. Following independence, the governments of Zambia and Senegal maintained the colonial scaffolding of the state's integration of customary authority.

Zambia and Senegal therefore function as most-different cases within a set of basic scope conditions. The two countries feature distinct types of customary authority, colonial histories, agricultural systems, and geographies. Zambia is a land-locked country in southern Africa with an economy that has been based on copper extraction since the 1920s. As a result, the Zambian economy rises and falls with international copper prices. To mitigate this vulnerability, state actors have tried to diversify the economy through commercial agriculture, with particular attention to promoting the staple crop, maize. By contrast, Senegal's economy is based on fishing and smallholder agriculture. Its primary exports have long been groundnuts and fish, while millet and rice are the staple crops for subsistence farmers. Mining is limited. In addition, Senegal is located on the West African coast and is a major regional power; historically, it was the seat of the federation of French colonies. However, the two countries also share key scope conditions. They fit within the set of African states that have not experienced protracted civil wars or major White settlement, factors that have the potential to radically transform rural social structures. They are both democracies. While the theoretical argument is not a priori limited to such cases, setting these scope conditions allows for a clearer comparison of the relevant factors at work. Table 1.1 presents key points of comparison between the two countries.

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<sup>125</sup> Kyed and Buur 2007.

TABLE 1.1 *Comparing Senegal and Zambia*

	<b>Senegal</b>	<b>Zambia</b>
Sub-Region	West Africa	Southern Africa
Regime Type (Polity IV score) <sup>126</sup>	Democracy (7)	Democracy (7)
GDP per capita USD (2013) <sup>127</sup>	1263	1620
Population Size (2013)	14 million	15 million
Population Engaged in Agriculture (%) <sup>128</sup>	50%	63%
Land Mass	193,000 sq km	743,000 sq km
Geographic Position	Coastal	Land-locked
Colonial Power	France	Britain
Statutory Recognition of Customary Authorities as Land Authorities	No	Yes

The questions that guide this study relate to the sub-national politics of land titling: How do customary institutions influence local responses to land titling? Why does the expansion of state control of land occur more rapidly in some areas than others? Yet investigating similar processes of state building within such different countries uncovers important trends in the continuing power of customary institutions. It reveals that strong customary institutions can impact land titling outcomes in countries with and without official chiefs, and with legacies of British or French land policy. My approach to answering these research questions triangulates multiple methods, levels of analysis, and sources of evidence. I use statistical analyses of national-level land tenure datasets to identify broad patterns in land titling and hierarchical legacies. At the local level, comparative case studies of institutions in each country clarify the mechanisms at work. In addition, individual-level survey data sheds light on the effects of status within an institution. Finally, the foundation for understanding these issues is a wealth of insights gleaned from interviews and primary documents.

The best measure of the expansion of statutory rights over land is the state's own record of titles. In both countries, government agencies shared land titling records which I used to create national datasets of the amount of customary land that had transferred to statutory titles in every

<sup>126</sup> Monty G. Marshall, Ted Robert Gurr, and Keith Jagers, "Polity IV Project, Political Regime Characteristics and Transitions, 1800-2015," Center for Systemic Peace, 2016.

<sup>127</sup> GDP per capita, Population Size, Land Mass data from World Bank, *World Development Indicators* (Washington, DC: World Bank Group, 2021).

<sup>128</sup> In Zambia and Senegal, 63% of the population and 50% of all households rely on agriculture, respectively. Central Statistics Office, 2012, "2010 Census of Population and Housing: National Analytical Report," Lusaka, Zambia: Government of the Republic of Zambia; Agence Nationale de la Statistique et de la Démographie (ANSD), 2014, "Rapport Définitif-RGPHAE 2013," Dakar, Senegal: Government of the Republic of Senegal, 151.

district of the country. These data are a product of the state-building process itself, which reflects the state's capacity to collect data on land titling, in addition to being an aggregated measure of land titling outcomes. If customary institutions do impact local responses to land titling, these patterns should be evident at the national level. These datasets also facilitate analyses that adjudicate among the other factors that should impact the development of state property rights, described at the start of this chapter (and detailed in Chapter 2): land values, land quality, infrastructure access, population density, and distance to the capital city. This approach allows me to examine whether the strength of customary institutions has an impact that is independent of alternative (and additional) explanations for land titling related to geography and land markets.

Determining how customary institutions shape actors' behavior is more difficult than isolating statistical patterns in outcomes. The internal rules of customary institutions are informal and generally unwritten. They are also dynamic: political procedures that have been documented in the past may have changed. Instead, it is the contemporary practices within these institutions that are most relevant to land negotiation outcomes. Comparative case studies illuminate some mechanisms through which customary institutions influence land titling. Each country chapter includes a comparison of neighboring customary institutions that have different historical structures but fall in the same agricultural zone. This approximates a most-similar case selection, which helps isolate the differences in the institutions while maximizing similarities related to geography and land. This lessens concerns that land quality and agricultural practices between different agricultural zones are determining the variations among institutions and in customary authorities' responses to land allocation requests. These local-level case studies illustrate how customary institutions generate constraints on their leaders.

This project also relies on two individual-level surveys to examine how customary institutions impact the likelihood that citizens who are smallholder farmers<sup>129</sup> engage in land titling. These surveys identify who has titles for their small plots of land in rural communities and how this relates to their position within the local customary institutions. The two surveys in this book are designed to be complementary. The Zambia survey is an excellent agricultural census collected by the Indaba Agricultural Policy Research Institute (IAPRI) in Lusaka.<sup>130</sup> It includes every province of the country, representing a range of customary institutions. The Senegal survey is an original survey that I fielded with a team of enumerators and designed to be representative of rural communities within two districts. Both are geocoded at the household level, which allowed me to identify household attributes that are not part of the survey, including distance to infrastructure. Analysis of these surveys helps identify how institutions can impact citizens' decisions to title their land, while accounting for relevant individual characteristics such as wealth, geographic location, and education. Combined, the surveys from two different countries suggest generalizable effects of privilege within the customary institution on the likelihood smallholders title their land. Further, the large, nationally-representative sample of smallholder farmers in Zambia provides an additional opportunity to investigate the relationship between hierarchy and titling, using an individual-level dataset.

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<sup>129</sup> Smallholders (or small-scale farmers) are defined as households using less than 20 ha of land. The average agricultural household in the Senegal and Zambian smallholder surveys used between 2 to 3 ha of land. In this book, titles ranging in size from 100 ha to 200,000 ha are considered large.

<sup>130</sup> Author's institutional host during fieldwork.



All three empirical strategies depend heavily on interviews, focus groups, and other qualitative data collection. This includes 81 interviews with customary authorities in Zambia and Senegal, 15 focus groups with smallholder farmers in Zambia, open-ended survey questions from an original survey of 1,001 smallholder farmers in Senegal, and 98 interviews with local council members, bureaucrats, and agricultural investors. These findings rely on additional primary evidence in the form of documents from government ministries and investors, as well as historical land records, correspondence, and reports from colonial archives. Newspaper articles also play a role in this research; they help triangulate reported land deals and allow me to quote what public figures say in the press without violating the confidentiality of my research interviews.

Interviews were also critical for identifying where there is demand for land titles and where land negotiations fail. Quantitative datasets of land titles reflect successful conversions from customary to state property rights, but they do not show how many attempts were unsuccessful. This issue is only partially mitigated by including measures that approximate demand, such as land value. As a result, my interviews focused on reconstructing specific land negotiations and identifying the causes of failed negotiations. Customary authorities shared how often they had been approached for large-scale land titles in the past five years and explained the logic of their responses. Interviews with state bureaucrats and investors probed how they had selected land before they approached any customary authorities. The insights gleaned from these interviews establish the interests of state actors, customary authorities, and citizens in the land negotiations described in the pages that follow.

## 1.7 PLAN OF THE BOOK

The expansion of state power through titling is shaped by systems being replaced, and customary institutions have an important role in this process. The rest of the book elaborates these points. Chapter 2 provides an overview of the contemporary context of customary authority and control over land in Africa, while situating Zambia and Senegal within broader cross-national trends. It shows that institutional pluralism in land rights at the local level is widespread and provides necessary background on the key mechanism driving incremental shifts in the control over land: piecemeal land titling. The chapter traces the titling process in Zambia and Senegal, including how customary authorities use unofficial and official channels to exert agency over it. In addition, Chapter 2 presents two alternative explanations for the uneven expansion of state control over land. One approach highlights the state's capacity and interests, suggesting that land remains in the customary domain where the state lacks administrative capabilities or is disinterested in expanding its authority over property rights. Other explanations emphasize the importance of structural processes of induced institutional change (IIC) in property rights, such that customary land tenure continues due to low land values and limited competition for land. However, without frameworks that examine the agency of citizens and customary authorities, and the ways in which institutions shape their decisions, our understanding of this fragmented state-building process is incomplete.

Chapter 3 lays out a new theoretical model, which highlights the tensions between collective costs and concentrated benefits that make land titling political. Institutions matter

because they impact how members perceive and are held accountable to these collective costs, including to the institution's power base. After elaborating mechanisms by which institutions influence the decisions of chiefs and citizens, the chapter introduces the second element of the framework, that historical legacies impact the contemporary strength of customary institutions in Zambia and Senegal. This theory helps explain why two chiefs would have different responses to the same land deal, as a result of the institutions in which they are embedded. Similarly, it shows why citizens with high or low privilege in an institution would have different evaluations of titling. This framework creates expectations about how institutions impact aggregate patterns of land titling, which are elaborated and tested in Chapters 5, 6, and 7.

However, we cannot proceed to the contemporary context of customary institutions, state power, and land rights in Zambia and Senegal without examining the institutional interplay that generated it. This book is not about precolonial legacies alone. Precolonial institutional endowments were shaped by the colonial state and the independent states, which contributed to the unofficial or official status of their leaders today. Chapter 4 provides an overview of three layers of superimposed political institutions in Zambia and Senegal. It places particular emphasis on the differences between the British and French colonial era institutions. These colonial institutions established distinct legal foundations for the independent states. The Zambian and Senegalese governments responded to the existing institutional frameworks. As a result, the difference between the two countries in the official role of chiefs in land governance remains, despite active domestic debates about land policy reform.

This comparison of colonial institutions is essential to one of the book's conclusions: the impact of customary institutions on land titling is not confined to countries where chiefs exercise unofficial influence and can therefore claim independence from the state apparatus. Nor is it uniquely an attribute of countries where chiefs are officially recognized as custodians of customary land. This comparison demonstrates that neither French nor British colonial rule erased the ability of the leaders of customary institutions to retain autonomy from the state; nor did they eradicate the variations in internal mechanisms which allow members of customary institutions to advance their power interests. Despite the many differences between Senegal and Zambia, the comparison reveals a fundamental similarity in the important impacts of customary institutions on state building through titling.

Chapters 5 and 6 turn to the role of customary authorities in the contemporary era. Each chapter examines how customary institutions shape land titling through their influence on a powerful set of decision-makers—their own chiefs. Customary institutions impact titling: 1) despite the state's interest in expanding control of land and facilitating global land markets, and 2) because chiefs have real agency in the piecemeal land titling process. Customary authorities are not merely responding to the state's will, but weigh different considerations in their responses to titling. Chapters 5 and 6 begin by addressing each of these two points within Zambia and Senegal, respectively. They continue with comparative case studies that illustrate mechanisms through which customary institutions can constrain their own leaders and hold them accountable to collective goals. Each chapter then presents a similar sub-national pattern of land titling that supports the hypothesis that institutions with hierarchical legacies slow the erosion of customary control over land today.

Chapter 5 examines the influence of customary institutions on land negotiations in Zambia, where, as in many former British colonies, chiefs are recognized by the state as custodians of land. The state's recognition endows individual customary authorities with highly concentrated power over the decision to convert land to titles. Some chiefs accept the compelling individual incentives to cede customary land and are unfettered in their decisions. However, some institutions can generate ties of vertical accountability among their chiefs. Superior chiefs can monitor, punish, and reward inferior chiefs, creating checks on their decisions. A comparison of two customary institutions with different historical structures that share a language group and climactic zone illustrates this mechanism. Statistical analyses of the national-level and individual-level land titling datasets provide support for the argument that customary institutions shape titling outcomes in Zambia. Examining the amount of land that has been titled by district reveals that areas with nonhierarchical institutions have greater overall rates of land titling, all things being equal. Further, living in a zone with hierarchical institutions also decreases the likelihood a smallholder farmer has a land title. This chapter includes analyses of two distinct land titling datasets to support the argument that hierarchical institutions make it harder to access title in their domains.

The parallel approach in Chapter 6 identifies how customary institutions in Senegal shape land titling in the era of global land markets and piecemeal titling policies. In Senegal, customary authorities have unofficial influence over land, which allows horizontal ties of accountability to more effectively constrain chiefs. To illustrate how institutions in Senegal facilitate horizontal constraints among their leaders, this chapter examines a land deal attempted in two neighboring institutional zones. It shows how the negotiations over land differed as a result of the distinct historical structures of the customary institutions in these communities. The chapter then turns to patterns of land titling and customary institutions throughout Senegal. As in Zambia, I find that land titling is slower to replace customary property rights in zones with hierarchical customary institutions. These results are independent of important alternative explanations including the value of land, distance to the state's capital, and group size.

Chapter 7 shifts focus to the citizen level in both countries, revealing how customary institutions impact smallholder land titling. It shows that titling is not an economic decision alone; it is also a strategic choice between engaging with the customary institution or the state. This updates conventional approaches to land titling, which assume that all citizens want state titles but are constrained by a lack of financial resources. First, the chapter introduces the argument that replacing one's customary property rights with state title is a form of exit and that an individual's decision to exit is informed by the privilege afforded to them by their local institution. Second, it reveals a common pattern within the diverse customary institutions in Zambia and Senegal, that smallholders with customary privilege are less likely to have titles. This is the case even among citizens with otherwise similar profiles, who have accessed land through inheritance and with the same levels of education. The statistical analyses then probe two related mechanisms connecting privilege and titling: increased tenure security and concern for collective costs. These results illustrate that customary institutions shape citizens' engagement with the state by structuring privilege within the community and impacting access to land titles.

Chapter 8 concludes by examining the implications of these findings for the role of customary institutions in the modern state, for the political determinants of property rights, and

for policy design. This book explores how customary institutions, citizens, and chiefs impact the expansion of state control over land, determining how state capacity grows and why it is spatially uneven. It shows that, by influencing how chiefs and citizens weigh competing incentives in their decisions, customary institutions can divert the outcomes intended by state policy or predicted by market forces. Local power dynamics and the agency of members of customary institutions are thus critical to understanding both the resilience of customary land tenure regimes and the continuing influence of customary institutions in citizens' lives.