

ECONOMIC ANALYSIS OF NIGERIAN LAND
TENURE SYSTEMS

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Abstract

In this paper the criteria for the maximization of wealth in agriculture are given and briefly analysed. These criteria are: (a) whether or not property rights exist on land with legal and tenure certainty, (b) whether the cost reward structure internalises costs and benefits and (c) whether there is freedom and legal enforcement of contracts. The degree to which Nigerian land tenure practices diverge from the above optimal pattern is assessed in this paper with an analysis of the economic consequences of communal tenure of land in Nigeria.

A. Introduction

Conditions under which a Tenure System Leads to Increases in Wealth

As Omotunde Evan George Johnson has shown, a land tenure system facilitates increases in wealth when (a) property rights are properly defined with legal and tenure certainty, and (b) there is "freedom and legal enforcement of contracts when these do not have physically harmful effects on outsiders for which the contracting parties are not made to compensate."¹

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¹ Johnson also included a third criterion: that the cost-reward structure (the method of distributing wealth created from using land) internalizes costs and benefits within the system. Said he, "if within the land tenure system the cost-reward structure internalizes benefits and cost, each user of land is motivated to use land in space and time so as to yield the maximum wealth from the land. For any reduction in wealth as a result of his misallocate implies a *pari passu* reduction in his wealth....." But this last criterion is an outcome of the land tenure system (hence (a) and (b) above) for a private property right system leads to a concentration of benefits and costs which would reduce the incidence of non-internalization of externalities vis-a-vis communal system. See Omotunde Johnson,

Further, Johnson has shown that the legal and tenure uncertainties in African land tenure systems (specifically for Sierra Leone) militate against optimal land use. In his analysis, the uncertainties derive from the tendency for law enforcement agents to uphold customary law against individual ownership, the non-specificity of property rights with legal and tenure certainty, the unwritten nature of laws and contracts and the inconsistency in administrative and judicial decisions.

These also apply specifically to Nigeria. Because of the juxtaposition of customary law on statutory law in Nigeria, judicial decisions must take into account the laws and customs of the people concerned in any outstanding disputes.

The consequence is that decisions of courts of law of the statutory variety have always upheld customary law principles which by and large are opposed to alienation of land by sale. The hosts of restrictions that surround alienation of land seem to reduce the volume of such transactions. The cases that are available show the acquiescence of these law enforcement agents in these restrictions which inevitably lead towards a delay of the movement from communal ownership to private property rights in land.

Uncertainty about property rights is a consequence of communal tenure. Since, under communal tenure, land is owned by the group comprising the community, it gives rise to uncertainty about the rights of the individuals to particular allotments. Disputes often arise with respect to the use or transfer of these lands creating additional uncertainty.

The failure to keep written records about transactions on land is an additional source of uncertainty. Disputes arise as to these transactions and witnesses cannot be relied on for complete recall of the exact dealings that took place. These witnesses may die, the process of time could weaken their recall, or they may be subjected to bribes. Double dealings on land thus are rendered common as a result of absence of written documents.

"Economic Analysis. The Legal Framework and Land Tenure Systems," *Journal of Law and Economics*, 1972, pp. 260-268.

Also Omotunde Johnson, "Economic Analysis and the Structure of Land Rights in the Sierra Leone Provinces," Doctoral Dissertation, U.C.L.A., 1970, Ch. 3. In these, Johnson applies the arguments of Coase, Demsetz, Alchian, and other property right theorists to African land tenure systems.

In their approach to customary law, the British made its enforcement subject to "natural justice, equity and good conscience."² This gave wide discretionary power to law enforcement agencies and their interpretations of customary law have not been marked with consistency from one locality to the other.³

Thus in *Odu V. Akiboye*, the plaintiff claimed damages for defendant's unlawful reaping of the palm trees on the land granted to defendant by plaintiff's father. Evidence was conclusive that, in the area concerned, only the natives were allowed to reap palm trees and that a gift of land does not carry all rights of unconditional exploitation by the grantee. The defendant's claim to a right concurrent with that of the plaintiff to reap palm trees failed.

In a similar case, *Chief Etim and others vs. Chief Eke and others* it was held both that grantee of land in Calabar were entitled to occupy a concurrent right to cut palm nut with the grantors and that a stranger to the community could be restrained by injunction at the suit of the grantees from cutting palm nuts under a collateral arrangement with the donor grantors. As Judge Martindale stated, the only right remaining to the owner grantor as far as use of land is concerned is that of reversion, should grantee deny title or abandon or attempt to alienate.⁴

These uncertainties increase transaction's cost and in consequence should lower the value of land. Also the higher the cost of establishing ownership, the lower is the demand price of a potential buyer, lessee or center. In the equilibrium allocation of land, there will be a divergence between the marginal value of land in the original owner's use and its marginal value in the renter's use. Further, if the cost of establishing certainty is prohibitive, some lands would be unallocated to any use. This could give rise to the phenomenon of "land surplus" and

² *Supra*. Johnson (1972).

³ "From the stand point of economic use it matters not which way the law. For once the law is established. All that is required this certainty of law. For once the law is clearly established, landlords in their decision making will take the facts into consideration when determining whether to accept a stranger or not and what the nature of the ensuing contracts will be." See Johnson, *op. cit.*, p. 264 (1972).

⁴ Elias, Taslim Olawole, *Nigerian Land Law and Custom*. London : Routledge and K. Paul Ltd. 1962 P. 185.

"labour surplus" that is often used in describing the Nigerian situation.⁵

B. Economic Consequences of Communal Tenure

With respect to Nigeria, the presence of communal tenure should lead to the reduction of wealth for the farmer when compared to the alternative of individual tenure (with fee-simple rights on land). Further there should be a reduction of incentives for work especially with respect to improving the productive capacity of the land.

The reduction of wealth for the farmer is a consequence of positive transaction's cost.⁶ The positive cost of policing land consumption of fellow clansmen reduces the value to an investor of his investments in land.⁷ Also, as Johnson has shown, the discount rate used in discounting future income streams is higher when property rights are not clearly defined due to a risk premium. He said, "if at the optimal level of search owners are still not known with certainty there is a residual uncertainty that someone not a party to contract of sale, lease, rent or permission for investment, etc., may emerge with an ownership right in the land. Thus the risk premium added to the rate used for discounting income streams will be higher the less clearly defined are property rights."⁸

As such, investments that yield income streams in the near future would not fall in value to the investor as those which yield income streams further in the future for the higher the discount rate, the higher the present value of short-lived income streams relative to long-lived income streams.⁹

⁵ Hellener, G. K. : *Peasant Agriculture Govt. and Economic Growth in Nigeria* Homewood, Illinois. Rich. D. Irwin 1966 p. 10. Also Oluwasanmi, *Agric. and Nigeria Economic Dev.* Ibadan Ox. Univ. Press, 1966 pp. 52-53.

⁶ Omotude Johnson has dealt with the whole spectrum of allocative difference consequent on communal tenure in both his dissertation and a paper mentioned above.

⁷ If $0 < \alpha$ is the proportion of his investment he can capture on the land (assumed < 1), $M E. P. C.$, the marginal effective policing cost (assumed > 0) and MVI the marginal value of investment in land under individual tenure then $\alpha MVI - MEPC =$ marginal value of investment in land to an individual under communal tenure. Thus $(\alpha MVI - MEPC) < MVI$. See Omotunde Evan Johnson, "Economic Analysis and the Structure of Land....."

⁸ Op. cit., Johnson, p. 262.

⁹ *Ibid.*

Because of the lower degree of internalization prevalent in communal systems as compared to an individual rights system, we would expect that investments in and attached to land would be smaller within the communal system. Instead, land consumption, the practice of leaving a land less productive than one found it would be prevalent. As Demsetz put it :

“An owner of a private property acts as broker whose wealth depends on how well he takes into account the competing claims of the present and the future. But, with communal rights, there is no broker and the claims of the present generation is given an uneconomically large weight in determining the intensity with which the land is worked. Future generations might desire to pay present generations enough to change the present intensity of land usage. But they have no living agents to place their claims on the market. Under a communal property system, should a living person pay others to reduce the rate at which they work the land, he would not gain anything of value for his efforts. Communal property means that future generations must speak for themselves. No one has estimated the costs of carrying out such a conversation.”¹⁰

This seems a paradox since the communal system was intended for preserving the rights of generations yet unborn to the use of land. It happens, thus that the land the future generations would inherit under this system is land devoid of much of its productive value.

The presence of uncertainty could work towards underutilization of land. Since land is communally owned, all lands have potential usufructuary rights exercisable on them. As the Elesi of Odogbolu has said, “I do not know of any uncultivated land that does not belong to village.”¹¹ But this potential right is not an effective right. The insecurity of property rights combined with a high cost in terms of punishment meted out to one found using land for which he has no legal entitlement would make it preferable for him to let the land lie idle. In Nigeria, about 50% of the land is classified as unoccupied wasteland.¹²

¹⁰ Demsetz ; “Towards a Theory of Property Rights,” *American Economic Review* 1967, p. 352.

¹¹ Elesi of Odogbolu, *West African Land's Committee Report*, Vol. 1048.

¹² See Sample Census of Agriculture, 1950-51, and *Annual Report of the Forest Administration*, 1952-53.

William Allan¹³ gave reasons for the presence of fragmentations in traditional land tenure systems. Amongst these reasons was inheritance rights, which results in sub-divisions in order to assure fairness in type of land given to each inheritor. This could lead to a gradual accumulation of fragments. The absence of land markets would prevent consolidations as distant parcels are prevented from being sold and adjoining territories purchased, assuming these lands are homogeneous.

In Nigeria, farms range from less than one to several hundred acres, but the majority of farmers do not work more than five to ten acres.¹⁴ In most cases the farms do not consist of one compact piece but of dispersed plots separated from one another by the land of others or by bush fallow. Although a number of plots are within a mile distance from the farmer's dwellings, there are instances in which the farmer had to walk from three to five miles to reach his farthest fields.¹⁵ As a result, much expense of resources is incurred both in the transportation of his equipment and in the policing of the activities of family labour and the actions of other farmers that adversely affect his farms. These costs would be reduced when the various plots are consolidated.

Further, the different modes of transferring land in the communal system do not help matters. Inheritance rights have been shown to lead to fragmentations.¹⁶ Gifts, pledge, borrowing of land and leases all are not perfect substitutes for sale and thus give allocative effects which work to lower the value of the land in the demander's use. Since these are short-term expedients they lead to non-internalization of externalities, as the scrap value of investments attained under their use do not translate into the user's or demander's wealth. They lead to the same consequences as those analysed above. Leases When long-term will gravitate to a wealth maximizing pattern of alienation from society, s standpoint, and thus could be a substitute, though still not perfect substitute, to sale.

¹³ William Allan, *The African Husbandman*, Oliver and Boyd, 1965, p. 380.

¹⁴ Ch. A. P. Takes, "Problems of Rural Dev in Southern Nigeria," *Nigerian Institute of Social Economic Research*, Reprint series No 9 1965, p. 5. Also supplemented by my survey in Western Nigeria.

¹⁵ See Don N. Ike "Comparison of Communal, Freehold and Leasehold Land Tenure; A preliminary study in Ibadan and Ife, Western Nigeria *The American Journal of Economics and Sociology* Vol. 36, No. 2 April 1977.

¹⁶ *Loc. cit.*, William Allan,

Thus an investigator would find that incomes of farmers (income is short-run proxy for Wealth) would be less than those attained under private property right system. Further, individual tenants (freeholders) would tend to work harder given that the relative absence of externalities would lead to a concentration of benefits and costs calling forth the maximum effort of the farmers. There would also be a greater efficiency of factor use as a result of the above. These were explored further in the authors survey of western Nigeria.¹⁷

C. The Benefits and Costs of Individualization and Consolidation

The problems regarding specificity of property rights with legal and tenure certainty, the internalization of benefits and costs via the cost-reward structure, freedom and legal enforcement of contracts are greatly reduced with individualization which involves the creation of individual ownership in specific allotments.¹⁸ Individualization would reduce the constraints imposed by custom and tradition on expansion and/or consolidation.

Individualization eliminates the cost of negotiating long-term contracts among intra-family land owners in order to raise the private profitability of investments.¹⁹

It also reduces the cost of policing the activities of these intra-family landowners. Thus, it internalizes most of the externalities present in the erstwhile communal system. As such the value of land to the landowner would increase and the equilibrium level of investment undertaken by the landowner would approach an efficient level. Land

¹⁷ Don. N. Ike "Comparison of Communal..." *Loc. cit.*, pp. 191-195.

¹⁸ Individual ownership implies exclusivity of use and the right to alienate by sale or rental. With individual ownership there is specificity of property rights, further, the cost-reward structure internalizes costs and benefits since owner can realize the net values created in his land. Also the right to transfer or alienate land is implied by individual ownership. Individualization leads to individual ownership.

¹⁹ The modes of alienating land in communal system lead to lowered value of investments in land since they are all short term expedients. Long term leases could be a substitute for sale, but there are costs involved in making such long term contracts given the volume of transactions necessary to realize this with individualization, this costs is eliminated since there would no longer be a need to resort to these modes of transfer short of sale.

consumption would be eliminated since the present and future values of land affect the wealth position of the landowner. These summarize the benefits of individualization.

But individualization involves some costs. These costs are: (a) the costs of making contracts among the community members in order to create individual allotments, as well as (b) the costs of implementing the terms of the contracts so negotiated. Also as Johnson noted²⁰ there are some nonpecuniary costs, the fact that the individualist is derided in community as anti-social.

The benefits seem to be larger than the costs. The costs are one psychological, the other real contractual. When land is abundant in terms of population these costs would obviously be larger than the benefits. As shown earlier, the abundance of land removes land from the premises of economic goods (zero marginal product of land). The scarcity value of land must rise to a certain level before it becomes profitable to contract for these rights. In the output on the production function as a result of the authors survey of Western Nigeria the marginal products of land over all the classification were all greater than zero.²¹ Further, the marginal product-opportunity cost ratios are all greater than one showing that land is scarce in the agricultural sector. As such, land is no longer abundant and should be allocated like all scarce factors in an open competitive market.

Why have the people persisted in their earlier mode of allocation within the communal system instead of moving towards new benefit cost possibilities as envisaged by Demsetz?

Demsetz and others assumed a world of zero transaction's cost. The information transmittal mechanism, the *deus-ex-machina* as it were was assumed away in the literature. The persistence of custom, even when economic conditions dictate change, show that the information about the correct price vectors of different land parcels is made inaccessible by the forces of tradition.

²⁰ Op. cit., Johnson, "Economic Analysis and the Structure . . .", p. 67.

²¹ We have evidence to the effect that not enough land is being used in the agricultural sector by virtue of the high (greater than one) marginal product-opportunity cost ratios for land.

See Don Mnaemeka Ike "Estimating Agricultural Production Functions for some farm Families in Western Nigeria" *The Developing Economies* Vol. XV No. 1 March 1977.

The creation of land markets, it is argued, would reduce the cost of obtaining information about the exchange value of land as well as minimizing the costs of getting information about potential buyers and sellers. But the emergence of land markets depends on the extent of individualization, for without individualized allotments the cost of negotiating a sale would be relatively high given the institutional restraint to sale and the high (or large) volume of transactions necessary to establish sale within the communal system.

As regards consolidation, there are obvious gains. In a hypothetical world with homogeneous land, the gains are : (i) reduced transportation costs of labor and equipment to and from different parcels of land; (ii) reduce costs of policing the activities of different other farmers that impinge on the value of the erstwhile scattered holdings as a result reducing the cost of negotiating for the internalization of externalities ; (iii) reduced managerial costs involved in supervising the active of those employed (family or non-family) in the different land parcels, and (iv) the potentiality of benefiting from the economies of scale and the nationalization of cultivation.

The costs involved are the costs of negotiating contracts for sale of adjacent lands which would be relatively high when property rights are not yet defined with legal and tenure certainty but trivial when such rights have been defined. Thus the tendency towards consolidation is obviated by the absence of fee-simple rights on land. The high cost of negotiating contracts when land is communally owned predicates the persistence of fragmented holdings.

Conclusions

Nigerian system of land tenure is still communal and as such constraints are imposed on optimal allocation of factors in the agricultural sector with adverse consequences on the economic requisite for wealth maximization in this sector. Land cannot easily be bought and sold and efficient farmers do not thus have the opportunity to expand on contiguous territory buying out less efficient farmers. The result is fragmentation of holdings. The elimination of communal tenure by accelerated individualization of holdings and the emplacement of land markets to facilitate trading on agricultural lands will lead to wealth increases in this sector of the Nigerian economy as shown in the paper.