In recent decades, the claim that clear property rights are key to economic growth has shaped development discourses. Through an examination of the consequences of land privatization for Kenya’s Maasai pastoralists, this paper will show that formal property rights are not a one-size-fits-all reform suitable to all contexts. In sharp contrast with the theorized benefits of land privatization, individualized land tenure reform in Kenyan Maasailand has instead ushered in intensified environmental degradation, increased poverty, and further marginalization, threatening the continued existence of the Maasai’s pastoral livelihood. Going forward, more research on alternative approaches to land securitization is needed to give development agencies a more refined understanding of the role of land tenure reforms in stimulating economic development in different contexts.

In recent decades, land reforms in developing countries aimed at the individualization and privatization of property have become increasingly common. Reforms in the direction of individualized land tenure draw support from Western government-backed development aid agencies and institutions like the World Bank. The idea that formalized property rights are key to development finds its origins in the writings of political philosopher John Locke, and has more recently been refined and popularized by new institutional economics (NIE) theorists, and by scholars like Hernando de Soto, who argue that private property provides proof of ownership and protection from uncertainty, thereby incenting people in developing countries to invest their resources into productive capital. Increasingly, formal property rights have come to be seen as a one-size-fits-all reform suitable for all developing countries, and have had a particularly significant impact across the African continent, where large-scale land titling programs are replacing historical communal land tenure systems with individualized property rights.

This paper will explore the trajectory of private property in theory and practice, and will ask: Has the promise of economic growth and poverty reduction as a result of land privatization
materialized across the developing world? Through an examination of the consequences of land privatization for Kenya’s Maasai pastoralists, this paper will argue that, in sharp contrast to the theorized benefits of land privatization, individualized land tenure reform has instead ushered in intensified environmental degradation, increased poverty, and further marginalization, which has threatened the continued existence of the pastoral livelihood in Maasailand. Finally, this paper will outline the limitations of generalizing the Maasai case to other settings and how, through additional research, these limitations can be overcome, so that development agencies can move toward a more nuanced understanding of the role of land privatization in stimulating economic development in different contexts.

Private property: Theory and practice

The Lockean tradition

Western liberal-democratic thought on property has its origins in John Locke’s 1698 Second Treatise of Civil Government, a work that remains highly influential in discussions of property and land ownership today. Locke’s Second Treatise sets out to explain how the world, which has been granted to human beings by God “in common”, became “legitimately” parcelled into individual privately owned units (quoted in Mehta 1999, 123-124). According to Locke, the subdivision of commonly held land into private property occurs because labour makes land valuable. Locke contends that, “every man has a Property in his own Person” that is exclusively his property; when he “mixes it” with a parcel of commonly held land, he makes this portion of land “properly his” (Ibid.).

Locke’s understanding of what constitutes labouring on land has had a lasting impact on how private property is understood by Western societies. Locke defines labour in terms of European sedentary agriculture, and he does not recognize alternative forms of labouring on the land—hunting and gathering, foraging, pastoralism—as instilling land with value. As such, for Locke, the customary forms of land use of the “wild Indians” in North America did not add value to the land, making Amerindian customary land use a non-legitimate type of property ownership. Thus, in contrast to the highly “developed” system of European property ownership, Amerindian customary land use is seen as part of an earlier stage of European underdevelopment in “the state of nature” (Tully 1993). As a consequence of Locke’s understanding of labour, Amerindian—and by extension other alternative forms of agriculture—land relations are “subjected to the sovereignty of European concepts of politics and property” (Ibid., 139). The struggles of Aboriginal peoples today—and similarly, pastoral and other nomadic groups—to protect their title to their traditional lands has been, in no small way, bound up with ideas surrounding property and land that have their origins in Locke.
The CDAWN school

Using Lockean conceptions of property as a springboard, more contemporary scholars in the new institutional economic tradition have put forth a framework that traces changes in economic history to changes in institutions (notably, property rights). These writers, who Pranab Bardhan (1991) collectively refers to as the Coase–Demsetz–Alchian–Williamson–North (CDAWN) school, see transaction costs—and the institutions that develop to mitigate these costs—as being central to economic performance. Transactions costs include costs of information, negotiation, monitoring, coordination and enforcement of contracts. According to the CDAWN school, property rights are irrelevant when there are no transactions costs, because rights can be easily re-assigned in order to increase production. However, large transaction costs exist in most instances, in which case property rights become crucial to production. In this case, “the terms and conditions of contracts in various transactions, which directly affect the efficiency of resource allocation, now depend crucially on ownership structures and property relations” (Bardhan 1991, 5).

In the context of agriculture, transaction costs are posited to be low in “small, closed, face-to-face peasant communities,” and high in large-scale complex economies in which the impersonality of the exchange process breeds “opportunistic behaviour” (Bardhan 1991, 5). Although these small communities do not have problems with transaction costs, they suffer from high production costs because the size of their market is highly restricted. As a result, as the economies of Western societies have become increasingly large and complex, they have also developed property rights, effective enforcement mechanisms, and other intricate institutional structures, in order to minimize transaction costs while realizing the productivity gains associated with larger-scale and improved technology. According to the CDAWN school, advancements in the institutional rules that governed property rights were, “crucial to economic growth and development in Western Europe in the last century” (Ibid., 4).

Translation into policy

More recently, Peruvian economist Hernando de Soto has taken these theoretical ideas and looked at them from an explicit development perspective. According to de Soto, the absence of formal property rights in developing countries explains why these countries have been unable to translate their resources into capital, which is required to raise the productivity of labour and stimulate economic growth. De Soto argues that assets in developing countries are often undocumented, and thus, “cannot readily be turned into capital, cannot be traded outside of narrow local circles where people know and trust each other, cannot be used as collateral for a loan, and cannot be used as a share against investment” (de Soto 2000, 6). De Soto’s claims have come to shape international development aid discourses, which increasingly link clear land tenure rights with poverty reduction (Manji 2006). According to Ambreena Manji (2006), the World Bank has been at the forefront in its support for the
idea that unclear property rights impede development. For example, the World Bank’s 2003 report, Land Policies for Growth and Poverty Reduction, concludes unequivocally that “property rights affect economic growth” (World Bank 2003, xix). The World Bank’s 2007 report, Securing Property Rights in Transition, further suggests there is a “near-consensus on the importance of property rights” (Deininger and Jin 2007, 1). This policy discourse has shaped land policy across Africa, both directly through aid from organizations ranging from the World Bank to the United States Agency for International Development (USAID) and the UK’s Department for International Development, and indirectly through the broader ideas it perpetuates. As a result, across Africa—and in Kenya in particular—historically dominant communal land tenure systems are gradually being replaced by individualized property rights adopted through large-scale land titling programs (Besley 1995).

The Maasai people of Kenya

Kenya’s Maasailand experience with land privatization can help to illuminate how the transition from communal land tenure systems to individualized property rights has played out. Maasailand is a vast region spanning across the Tanzanian/Kenyan border. It is comprised of largely arid and semi-arid lands. Maasai pastoralists, a semi-nomadic people who survive by raising domestic animals on common property, have occupied these lands for generations. Cattle, camels, goats, sheep and donkeys are all raised for a variety of uses, including milk, meat and trade transportation. For millennia, pastoralism has enabled the Maasai to exist on land that cannot support agriculture (Fratkin 2011). Today, pastoralists occupy 70% of Kenya’s land, but make up only 1.5 million of its 30 million inhabitants—with the Maasai accounting for about 800,000 people (Ibid.). Many within the Kenyan government and international development agencies have long perceived Maasai pastoralism to be an inefficient use of Kenyan land (Homewood et al. 2009).

Land use in the Maasai region has consequently been a contentious policy issue over the past century, and the Maasai have been subjected to multiple land use and land tenure policy iterations. Three distinct periods can be discerned for the loss of Maasai common pastoral land. In the first period—colonial rule—Kenyan Maasailand was expropriated for white settlers and for “protected areas” (Homewood et al. 2009). Prior to colonial rule, Maasailand was managed as common property, with access being determined by location, clan, kin and/or friendship groups (Homewood et al. 2009). In a bid to attract white settlers to Kenya, the British administration introduced formal land tenure to the country (Rutten 2009). The British also turned massive plots of Kenyan Maasiland into game reserves aimed at tourists, and restricted the Maasai from grazing their cattle in these areas (Fratkin 2011). By the end of British colonial rule, the Maasai in Kenya had lost close to half of their land, including many of their best grazing areas (Rutten 2009).
Following Kenyan independence in 1964, the government experimented with setting up group ranches. These ranches were created under the Kenya Livestock Development Project and conferred legal ownership over communal land to groups of Maasai pastoralists. Pastoralists who were not part of the group granted ownership were excluded from grazing their animals on these group ranches. Group ranches thus represented a significant step in the direction of private land tenure (Mwangi 2007).

Two major factors led to the implementation of group ranches in Kenyan Maasailand. First, the move toward group ranches came at the behest of—and with financial support from—the World Bank and USAID (Fratkin 2011). These donor-sponsored and government-driven initiatives were underpinned by the belief that development depends on clear property rights, which facilitates investments in productive capital by providing proof of ownership. (Rutten 2009; de Soto 2003). Land ownership was argued to constitute a first step in the direction of a more profitable, sedentary, market-oriented meat production system (Rutten 2009). Group ranches were supposed to “raise living standards, increase the chances of procuring loans using the freehold title deed as collateral, minimize the exploitation of the poor by rich households, promote Maasai engagement in agricultural and industrial enterprises, and facilitate better maintenance of existing infrastructure” (Rutten 2009, 3).

Secondly, a major concern for the Maasai, and a central reason why they generally accepted the group ranch concept, was encroachment from other groups onto their historic lands. Kenya witnessed rapid population growth following independence, and poor farmers and other groups migrated onto Maasiland seeking to escape the overcrowded central highlands (Fratkin 2011).

However, it quickly became obvious that the Kenyan government was allocating the sections of land with the best pasture and permanent water sources to influential community members (Fratkin 2011). These community members began leasing or selling the land for personal profit at the expense of other members of the group ranch (Homewood et al. 2009). As a result, Elliot Fratkin (2011) argues that very few Maasai benefited from this “early” privatization. Instead, most Maasai continued to allow their animals to graze on the private ranches of other groups. The perception that the group ranch system provided uneven benefits led to growing support amongst Maasai herders for further subdivision into individual, titled units (Mwangi 2007). Further support for subdivision came from local governments, who, in response to substantial environmental degradation in the region, argued that private landowners would better conserve their own resources. As a result, group ranches slowly disintegrated and were largely privatized in the latter half of the 1980s, again with the support of the World Bank (Fratkin 2011).
How has the shift toward individualized land tenure affected the livelihoods of the Maasai? According to Marcel Rutten (2009), this shift has been problematic:

It was introduced by outsiders, was an artificial creation that lacked a firm traditional, sociological as well as ecological basis. Its implementation was overambitious in aiming to destock pastures and commercialize production while barely taking into account pastoralist strategies (p.3).

The privatization of pastoral land—referred to as spatial isolation in grazing ecosystems by ecologists—has undermined pastoralism for the Maasai people. Figure 1 shows how group ranches and land privatization has decreased the mobility of land users and inhibited access to landscape heterogeneity in Kajiado District, which (alongside Narok) is one of two main Maasai pastoral areas in Kenya. Figure 1 captures two problematic trends for the Maasai people. First, the Maasai practice pastoralism by taking advantage of resource and landscape heterogeneity (primarily of vegetation and water) across vast pastoral lands, which is limited when livestock movements become restricted as pastoral land is subdivided. Taking advantage of resource variation over time has also been crucial for preventing overuse of resources; the shift toward individualized land tenure has been accompanied by significant environmental degradation (Hobbs et al. 2007).

**Figure 1: Historic patterns of fragmentation in Kajiado district**

![Historic patterns of fragmentation in Kajiado district](image)

Downward arrows indicate the decreased mobility of land users and access to landscape heterogeneity. Source: Hobbs et al. 2007, 9.
Second, the Maasai traditionally responded to droughts (which have occurred almost every five years for the last 30 years in Kenya) by temporarily migrating to other areas (Fratkin 2011). The subdivision of pastoral land has made the Maasai more vulnerable to famine by limiting mobility. In response, pastoralists have taken on new livelihoods, including the blanket adoption of agriculture, hunting and gathering, and wage labour in the towns (Fratkin 2011). Figure 2 exhibits the main occupation of heads of household on the Meto group ranch in Kajiado. There has been a significant reduction in livestock keeping, coupled with a rapid uptake of cultivation and other business ventures, in the wake of the subdivision of the Meto group ranch. However, these alternatives do not provide the Maasai with the same levels of well-being as pastoralism. As a result, the Maasai now face more structural forms of poverty than they faced previously (Rutten 2008).

Contrary to the expectations of the World Bank, land privatization has also not inspired the Maasai to use their land as collateral to obtain loans from financial institutions. In his study of 500 Maasai households, Marcel Rutten found that only 17 applicants (2.2%) intended to or had actually mortgaged any of their territory (2008, 105). Instead, many Maasai in the study stated that they preferred to sell rather than mortgage their land, since this was a faster, less complicated way to obtain money. Moreover, financial institutions—the Agricultural Finance Corporation in particular—have also demonstrated reluctance to provide loans to Maasai that lack formal education or whose main source of income is livestock keeping (Rutten 2008). For the financial institutions it is thus not the lack of private property ownership that is deemed problematic, but the unpredictable nature of the pastoral livelihood in and of itself.

Not all Maasai have lost out from the privatization of Maasailand. Instead, an increased division between rich and poor has marked the shift toward individualized land tenure (Fratkin 2011). By and large, it has been the few wealthy pastoralists who have been able to secure the best land in Kenya by buying out the poorer families, while the poor are increasingly moving toward urban areas or working as herding laborers (Homewood et al.)
Thus, fewer families now own large tracts of privatized Maasailand in Kenya. The poorest families have diversified, not out of choice, but out of necessity, and have become further marginalized in the process (Ibid.).

Closely linked with individualized land tenure has been the continued expropriation of Kenyan Maasailand for wildlife enterprises. Tourism revenues account for more than 45% of Kenya’s GDP; as a result, international conservation groups are hugely influential within the Kenyan government (Fratkin 2011). Although the Maasai have been banned in most areas with tourist potential, conservation groups distribute bursaries for health and education purposes, and claim that tourist income further trickles down to individual Maasai households. However, according to David Western, “benefits in the form of bursaries and health care are too diffuse to offset household income losses to wildlife” (Western 2009, vi). The continued encroachment of game parks onto Maasailand is undermining the Maasai pastoral lifestyle, which is in turn causing the nutritional status of local Maasai (children in particular) to deteriorate (Fratkin 2011).

Despite the multitude of pressures on Maasai pastoral land stemming from privatization, livestock pastoralism continues to be a heavily practiced and viable form of food production in Maasailand (Ibid.). As these pressures continue to intensify, the question is: Can Maasai pastoralism be protected or even revived, or must it be abandoned altogether?

Lessons for land privatization from the Maasai case

The problems encountered by the Maasai in Kenya during the shift toward individualized land tenure challenge the position of the World Bank—inform ed by the CDAWN school and de Soto traditions—that land privatization will usher in economic growth and, by extension, poverty reduction. The example of the Maasai in Kenya suggests that, contrary to the commonly held development wisdom that private property is a cornerstone of successful economic development, formal property rights are not a one-size-fits-all reform suitable in all contexts. For the Maasai in Kenya, the evidence suggests that the privatization of land into individual land holdings has had negative (if any) effects on the sustainable use of resources, access to loans, disparities between rich and poor, wealth creation, and the ability of the Maasai to earn a living through pastoralism.

The Maasailand case also exposes some of the dangers of transplanting one culture’s understandings of land and appropriate land use onto another culture. It is evident from the current discourse surrounding land privatization in many Western development agencies that these agencies subscribe to the Lockean view of land and labour, defined in terms of European sedentary agriculture. Like Locke, authors in the orthodox development literature discount the possibility that alternative forms of land use—including hunting and gathering, foraging, and nomadic living—imbue land with value. As a result, in the Maasiland case,
proponents of land privatization overlooked the fact that, in the semi-arid context in which the Maasai tend their pastures, pastoralism is often preferable to sedentary agriculture because it protects pastoralists against drought by enabling temporary migration, and allows them to take advantage of resource diversity across vast pastoral lands to prevent resource exhaustion. As one African scholar cynically put it, “in addition to formal property rights, these international policy-makers from the West should have brought along their mild, mostly livestock-disease-free, climatic zone to this semi-arid area” (Rutten 2008, 116).

However, just as it is dangerous for Western aid agencies to assume that Western conceptions of land and land use apply to all contexts, it would also be dangerous to conclude from the Maasai experience that land privatization reforms are incapable of stimulating economic growth and poverty reduction in any context. Rather, the message is that a number of factors, including (but not limited to) environmental, political, economic and social factors, will invariably interact with land tenure reforms in determining their ultimate success. For example, in examining institutional building in Eastern Africa, Catherine Boone (2003) argues that—unanticipated by many proponents of individualized property—broad liberalization initiatives, such as formalizing property rights, vary greatly across regions, but that planners and financial agencies that support these reforms are often blind to the fact that “the effects (and effectiveness) of reforms are determined largely by broad features of the political-economic context in which reform is carried out” (4). As a result, the implementation of the same basic reforms can have different, even opposite effects in different places (Ibid.).

Limitations

Boone’s argument points to a crucial limitation of this paper’s research. The Maasai in Kenya provide only one example of the failure of land privatization to bring about poverty reduction. No doubt, land privatization has triggered economic growth in other contexts; the Maasai case is by no means generalizable. Nor it is even possible to generalize across different pastoral groups. As pastoralists, the Maasai are part of a broader group of approximately 20 million pastoral households (Blench 2001). These households, practicing pastoralism or transhumance (in which livestock are moved between fixed summer and winter pastures), are scattered across regions as diverse as Central-North Asia (the Mongols); South Africa (the Zulus); and the Arctic area of Northern Sweden, Norway, Finland and Russia (the Saami). These groups operate within very different economic, political and ecological contexts. Moreover, the extent to which outside pressures—especially stemming from in-migration and population growth—constrain these groups in practicing their pastoral livelihoods varies significantly within and across regions. As a result, the lessons learned in the Maasai region of Kenya will not necessarily extend to other pastoral areas.
Second, although the literature supports the overall conclusion that land privatization has not brought on economic growth or poverty reduction for the Maasai people in Kenya, some of the literature has also highlighted some limited successes in Maasiland as a result of privatization. For example, Marcel Rutten (2008) points out that, as predicted by de Soto and the CDAWN school, the individualization of property rights has triggered increased investment, in this case in water development. The subdivision of group ranches has encouraged Maasai to invest in their own shallow wells and water pans, which filter water and employ hand pumps or diesel engines to bring water to the surface for livestock and human consumption. These wells have improved livestock health, and have been particularly beneficial for women (who generally fetch water), since it has made water fetching less time-consuming (Rutten 2008). Thus, full privatization of land may have more nuanced consequences for the Maasai people than the overall conclusions of the literature suggest.

Recommendations for overcoming limitations

The diversity of outcomes arising from the individualization of land tenure—both within and across settings—suggests that land privatization is neither a one-size-fits-all path to economic growth, nor an easily dismissed approach to economic development in any context (including Maasailand). Going forward, the Maasai in Kenya will not face a black-and-white choice between a communal land tenure system and individualized property. This is because the legacy of colonialism, coupled with the realities of significant population growth and in-migration, create a certain degree of path dependency in terms of land use for the Maasai in Kenya that precludes Maasailand from again being managed solely as common property.

Keeping these limitations in mind, and remembering also that other pastoral groups may not be suitable comparators for the Maasai in Kenya, it would be worthwhile to examine Tanzania’s approach to land reforms vis-à-vis its pastoralists. As a result of the artificial state boundaries that permeate much of Africa today, both Tanzania and Kenya have significant Maasai pastoral populations. In the last ten years in particular, although the two countries have faced similar environmental, social and economic constraints with regards to their pastoral populations, they have implemented very distinct land tenure policies for these groups (Serneels et al. 2006). In contrast to Kenya’s general policy of land privatization, Tanzania’s 1999 Village Land Act, which forms the basis of Tanzania’s current land reform policies, was founded on the principle of user rights aimed at a “more explicit institutionalization of local land administration” (Boone 2007, 583). Instead of developing land markets and fully privatizing property, this approach tasked local institutions with securing—but not fully or immediately marketizing—land. In multiple instances, securitization was achieved by “simply recognizing customarily obtained properties as legally tenured as is, in whichever form and with whatever characteristics they currently possess” (Wily 2001, 88).
In many ways, Tanzania’s current approach to land tenure is an attempt at the middle-ground between privatization of land and communal land tenure. In securitizing land, Tanzania’s goal is to encourage financial institutions to lend to agriculturalists, stimulate investment and increase productivity on the land (Boone 2007). At the same time, Tanzania’s approach to land reform recognizes that full privatization of land may be at odds with the practices and livelihoods of many of its groups—including its Maasai people—living and working on Tanzanian land. Although research is thus far limited as to the outcomes of Tanzania’s 1999 land reforms on the Maasai people, Catherine Boone (2007) paints user rights reforms as an approach to land reform better suited to many African landscapes, while Homewood et al. suggest that, “in Tanzanian Maasailand, the Village Land Law…has in many ways helped pastoralist land rights” (2009, 9). Because Tanzania’s system of user rights acknowledges both the value of land securitization and of traditional land ownership, it may in fact be well suited to Kenya’s Maasailand, where it is clear that, although the promise that individualized land ownership would bring poverty reduction has not been fulfilled, it is no longer a feasible alternative to return to previous systems of communal land ownership. Unfortunately Tanzania’s alternative route to land reform has so far been under-examined by development experts studying Kenya. This is likely because Kenya has been at the forefront of land privatization in Africa—an approach to development that continues to be seen as the “right approach” by many development agencies. Thus, further fieldwork and data collection as to the interplay between user rights reforms and poverty reduction in Tanzania’s Maasailand is recommended, with the aim, in part, of drawing lessons for Kenya.

More broadly, rather than only focusing on the potential ultimate benefits of land privatization, there is a need for development agencies to pay greater attention to the gains and losses that occur in the transition between communal and individualized land tenure systems. As was highlighted in the example of the Maasai in Kenya, land privatization enabled wealthier Maasai to gain at the expense of the less well-off. This reflects the fact that distributing land rights is a politically powerful tool. Since colonial times, land tenure rules have frequently been manipulated to favour certain social hierarchies over others, or to “shore up the power of rural allies…promote the partial commercialization of agriculture, fix some rural populations to the land, and promote the geographic mobility of others” (Boone 2007, 561). Thus, land privatization reforms cannot be expected to in and of themselves promote poverty reduction. Rather, close attention must be paid to the actual politics of implementation surrounding such reforms.

Conclusion

In recent decades, the claim that clear property rights will stimulate economic growth has shaped development discourses. This discourse draws on ideas that date back to John Locke, and that have more recently been refined by new institutional economics theorists and scholars like Hernando de Soto. Formal property rights are increasingly seen as a one-
size-fits-all approach to development, and have been embraced across Sub-Saharan Africa, and in Kenya in particular. However, the experience of the Maasai in Kenya questions the orthodox development wisdom that private property is a cornerstone of successful economic development. For the Maasai in Kenya, instead of stimulating economic growth and poverty reduction, individualized land tenure reform has ushered in intensified environmental degradation, increased poverty, increased disparities between rich and poor, and threatened the capacity of the Maasai to earn a living through pastoralism. However, the experiences of the Kenyan Maasai are not easily generalizable to other pastoral or non-pastoral groups, who operate in different social, political and ecological contexts. Going forward, more research on alternative approaches to land securitization is needed. In the case of Kenya’s Maasailand, lessons might be discerned from Tanzania’s user rights land reform policies, which recognize that full privatization of land may not be suitable for all Tanzanians (including its own Maasai population), and instead attempt to chart a middle-ground between the privatization of land and communal land tenure. Moreover, rather than only focusing on the potential final benefits of land privatization, there is a need for development agencies to pay greater attention to the gains and losses that arise in the transition between communal and individualized land tenure systems. In doing so, development agencies can gain a more refined understanding of the role of land tenure reforms in stimulating economic development in different contexts.

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