

Legal Pluralism, Land Tenure and the Production of “Nomotropic Urban Spaces” in Post-colonial Accra, Ghana

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Urban Accra is haunted by the colonial vestige of legal duality reflected most prominently in its customary and statutory legal land systems. This paper addresses two critical issues within the urban legal nexus of Accra by placing nomotropism in dialogue with legal pluralism. The first addresses the rules which guide land use decisions/actions in urban Accra. The second questions the motivations of actors who adopt these rules. The paper communicates two key arguments. Accra’s urban space is increasingly being unveiled as a complex mix of rule violations and compliances—typifying Accra as a mix of nomotropic urban spaces. Therefore, the designation of a ‘truly’ informal space may only apply when both legal land systems are violated. Second, the urban poor have little or no motivation to comply with customary and/or statutory legal land systems because of increasing land prices and other bureaucratic processes which increase transaction costs pertaining to land.

Keywords: Postcolonial Ghana, Accra, nomotropism, legal pluralism, land tenure, Global South, informal settlement, urbanization

This paper brings legal pluralism into conversation with nomotropism to conceptualize how individual land use actions are undertaken in post-colonial Ghana. Legal pluralism examines the co-existence of different, yet mutually constitutive normative orderings or legal systems¹ (Merry, 1988; Tamanaha, 2008) and nomotropism refers to the actions pursued in light of rules (Chiodelli & Moroni, 2014; Conte, 2000). These two analytic lenses will be used to interrogate the urban legal nexus in urban Accra, Ghana. We explain the urban and its formal and informal spaces as part of a “semi-autonomous” social milieu (Moore, 1973) whereby statutory and customary legal systems have been adapted by actors whose ultimate goal is to maximize benefits/minimize sanctions and legitimize their land use actions. In other words, they are guided by *survival and/or utility maximizing rules* within these spaces. The existence of contradictory legal land systems engenders conflict within

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the land delivery system in post-colonial Ghana. Hence, individuals who are aware of this conflict exploit subsequent opportunities in their land use actions.

While widely acknowledged, it is yet to be ascertained how Ghana's legal land system problematizes the city's urban legal nexus. Scholars have treated the ways in which the dual legal land system perpetuates land conflicts (Crook, et. al., 2007; Kasanga, et. al., 1996; Wehrmann, 2002), promotes gender and income discrimination related to land access (Benneh, et.al., 1995; Manuh et.al., 1997), and undermines state urban planning efforts (Anderson et.al., 1999; Baffour Awuah, et. al., 2014). Less attention has been given to the socio-spatial and legal intricacies in the enactment of dual legal land systems.

What is uniformly agreed upon is the inherited contradictory systems that underlie post-colonial developing nations like Ghana. Statutory land delivery systems have failed to cope with rapid urbanization (Pugh, 1995), which leave non-statutory or 'informal' land occupations as a primary alternative (Nkurunziza, 2008). The on-going debate in Ghana has centered on whether to maintain the customary or statutory legal systems on land (Obeng-Odoom, 2014). One perspective holds that the inherent flexibility and adaptability of customary tenure makes it easier to address the needs of the poor (Anyidoho et. al., 2008; Berry, 1993, 2008; Ubink and Quan, 2008). Another challenges this flexibility notion by arguing that customary tenure only adapts to meet the ever increasing demands of the highest land bidders (Amanor, 2008).

This paper takes up some of these complicated debates and interlaces them with empirical studies, to explicate the complexity of enacting dual legal land systems within the urban space of Accra. We argue that informal spaces are the manifestations of historically entwined and often conflicting legal systems or "normative orderings" (Tamanaha, 2008, 398) within the urban, engendering survival and/or utility maximizing rules for individuals seeking to disentangle themselves from urban land scarcity. Accra's history as well as its socio-political and economic processes is deeply embedded in national contexts. Our discussion starts by sketching out the evolution of the dual legal land system in Ghana. We then define the framework of nomotropism and legal pluralism. These conceptual discussions are then paired with two critical questions²: what rules guide land use decisions/actions in urban Accra? And what motivates actors to adopt these rules?

Building on the view that urban land use decisions are geared towards minimizing eviction and maximizing legitimacy strategies for actors, this paper argues that the dualism of legal land systems in Accra offers the opportunity to make land use decisions which are paradoxically legal and illegal at the same time. The paper marshals a theoretical argument which points to the confluence between nomotropism and (new) legal pluralism. We explicate how multiple legal systems on land generate multiple rules and "rules shopping" (Benton, 1994, 237) opportunities for actors to explore and apply different rules and procedures to justify decisions and actions on land. The result is the creation of variegated urban spaces whereby landseekers

take into account a maximum benefit/minimum cost equation and weigh prospects of legitimacy associated with complying with or transgressing these multiple rules. This rule shopping and resultant complex co-mingling of legal and illegal urban spaces exposes the problematic of the “formal versus informal” taxonomy of classifying urban spaces in the Global South. We contend that the variegated spaces produced through such actions should be looked at as *nomotropic urban spaces*, rather than the dominant oppositional binary of formal versus informal.

LAND MATTERS IN COLONIAL AND POST-COLONIAL GHANA: REGULATING AND COMMODIFYING LANDS

The emergence of Ghana’s dualistic legal land system has been shaped by multi-scalar socio-political and economic processes involving state and non-state actors. Historically, land use and ownership rights have primarily been the domain of the customary legal land system in Sub Saharan Africa.³ Customary legal land systems or what Amanor terms the “theory of African communal tenure” (2008, 60), refers to the variegated land interests or rights⁴ vested in indigenous institutions, comprised of chiefs (both stools and skins)⁵, autochthonous land priests, and family or clan heads. This section toggles between contemporary and historic Ghana in unpacking legal dualism.

Dualistic legal land practices gradually emerged at a period when many rules were successively put in place in the Gold Coast.⁶ Regulating and commodifying lands were linked processes, especially during the 1880s “gold rush”, when the British attempted to vest these lands in the Crown (Amanor, 1994, 2008). Three highly contested legislative ordinances were introduced—the Crown Lands Ordinance of 1894, the Lands Bill of 1897, and the Forest Bill of 1910 (Kimble, 1963; Sarbah, [1897]1968). These marked the direct introduction of statutory legal instruments for land. However, the Aborigines Rights Protection Society (ARPS), a coalition of local elites, businesses and chiefs, successfully contested these ordinances because they breached land ownership and use rights of the Aborigines (see historical analyses in works like Firmin-Sellers, 1996; Ubink & Amanor, 2008). As a result all Gold Coast lands include allodial (chiefs, and clans/family heads) and usufructuary title-holders (title held by indigenous community members) (Amanor, 2008).

In order to appropriate land and exploit its resources, the colonial state had to confront and realign its land interests with the local political and economic interests embedded in the indigenous legal system. Firmin-Sellers, in her “logic of indirect rule”, explicates how the colonial state and local interests were realigned. According to this logic:

“British officials sought to maintain law and order in the colonies, but they lacked the information needed to devise appropriate policies. They therefore chose to delegate authority to traditional rulers, relying on them to advise the

colonial rulers on policy making, and implement British policy decisions..." (Firmin-Sellers, 1996, 28).

Indirect rule became a "selective involvement" strategy by the colonial state, whereby the colonial authority seemed paradoxically absent and present at the same time in legal and institutional matters of the Gold Coast. Chiefs were made to rule their people subject to the political interests, mandates and legal prescriptions of the colonial state (Amanor, 2008). Indigenous norms and values, regarded as promoting "natural justice, equity and good conscience" (Adewoye, 1981, 55; Bentsi-Enchill, 1969), were adapted by the colonial authorities and the educated local elites (especially the chiefs) to form the customary legal system. For instance, the state seemed absent when Ofori Atta and his council (Okwehene's Council)⁷ passed the Akyem Abuakwa Stool Lands Declaration in 1929 (Firmin-Sellers, 1996). The colonial state later amended the declaration and redefined stool lands as "land attached to the stool over which the stool exercises *some measure of control* [such as approval before sale]" (ibid, 64). Hence, through indirect rule and the adoption of certain indigenous norms and values—i.e. the birth of the customary legal system—colonial and local interests were realigned. This enacted the co-existence of dual (customary and statutory) legal systems for land in colonial Ghana. Customary legal systems were not simply adapted indigenous norms and values (Snyder, 1981), but were partly the creation of the colonial state (Merry, 1988, 869).

Because the definition of the law in the Gold Coast was more than the superimposition of European law on indigenous norms and values⁸, resultant re-orderings were also concerned with the continuing transmogrification of indigenous norms and values into customary legal systems, and their complex interaction, competition and co-existence with the statutory legal system. Merry (1988) refers to these reconfigured social fields as the new legal pluralism. Fitzpatrick (1983) explains the legal landscape as indicative of integral plurality wherein the statutory legal system, often seen as the higher legal ordering, is mutually constituted by its interactions with other normative orderings present within the field. Moore envisions social fields as semi-autonomous; they have "rule making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance" (Moore, 1973, 720). For instance, the indigenous norms and values within Akyem Abuakwa were invaded by the colonial statutory legal system at the invitation of Ofori Atta who used "the law [statutory ordering] skillfully ... to ordain what was and was not 'customary' law [at least within the social space of Akyem Abuakwa]" (Rathbone, 1993, 62).

One consequence of the state's selective involvement is the co-existence of competing, regulated and unregulated marketized land systems. For example, in Ghana under the Accra Industrial Estate Ordinance of 1956, which oversees the acquisition of lands, the state acquired Agbogbloshie and Old Fadama indigenous lands belonging to the Ga indigenous people for the Accra-Fadama for Korle Lagoon

Development project in 1961 (Grant, 2006). Kotey (2002) estimates that the state has acquired over half of Ga land over the years. Again, the 1962 Administration of Lands Act (Act 123) and the State Lands Act (Act 125) resulted in the state's control of lands in the northern part of Ghana (Lund, 2008). The state, however, failed to act by not using some of these acquired lands for designated purposes or by selling them off. Old Fadama, for example, was acquired but not used by the state so it became an encroached upon area (Grant, 2006). Lund (2008) has documented similar circumstances in the Northern part of Ghana. In the state's bid to control and regulate land, there are now land conflicts among the state, allodial rights holders, and encroachers. These conflicts are perpetuated as the state's regulatory frameworks fail to clearly identify ownership and use rights within the context of legal duality. One example of many is the state's right to set-up regulation (such as enacting zoning ordinances) for the use of lands it does not own.

Additionally, public lands, compulsorily acquired through the state's eminent domain powers, are frequently appropriated to well-connected individuals (Owusu, 2008) in a move referred to as "encroachment by public/government land officials" (Kasanga et. al., 1996, 32). These practices occur amidst neoliberalization and increased commodification of lands, furthering the exploitation of migrants and other marginalized groups by allodial title holders (Berry, 2008). In Ofankor, one of Accra's peri-urban settlements, although the government has compulsorily acquired 85% of stool and family lands, the landowners still manage to sell some of these lands (Kasanga et. al., 1996). Owusu (2008) identifies complicating factors which lead to an unregulated land market. These include: the rapidly urbanizing nature of Accra; increased land commodification; and landowners' fear of the state's eminent domain powers. In other words, the state has paradoxically promoted dual exploitation comprised of both *regulated* and *unregulated* land market systems.

CO-EXISTING STATUTORY AND CUSTOMARY LEGAL LAND SYSTEMS IN POST-COLONIAL GHANA

We have now seen how the statutory and the customary legal land systems operate under different and often mutually exclusive procedures, but are expected to co-exist within the same frameworks. Procedures on land transactions and regulatory/institutional frameworks, as depicted in Figures 1 and 2, show the duality of legal systems in managing land in Ghana. A landseeker or applicant could acquire land from customary land owners or from the state. However, customary lands acquired must be registered/titled at the state's designated land registry department. Although it is deemed mandatory to register customary land, the complications in the registration process highlight the problematic nature of Ghana's dual legal land systems. For instance, it is more of the norm for customary land holders to resort to their own means, such as employing private surveyors, which causes development

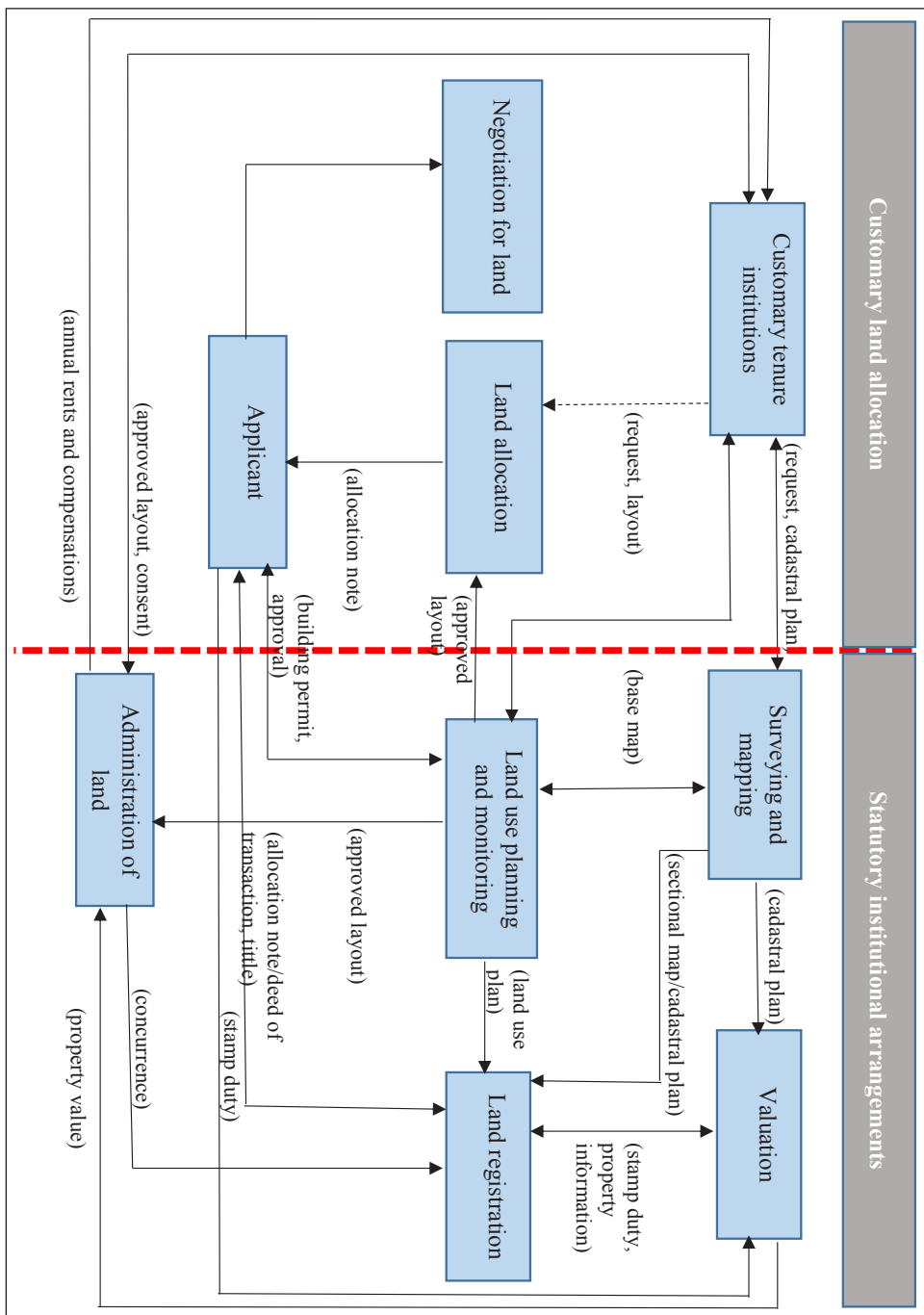


Figure 1: Dualism of Ghana's Land Acquisition Procedures. Source: Arko-Adjei (2011)

to precede state registration and approval (Gough & Yankson, 2001). Due to the persistence of multiple sales of landholdings⁹ (Arko-Adjei, 2011; Kasanga & Kotey, 2001), landseekers try to ensure due diligence before and after land purchases, which often involves dealing with a complex network of institutions (see Figure 2).

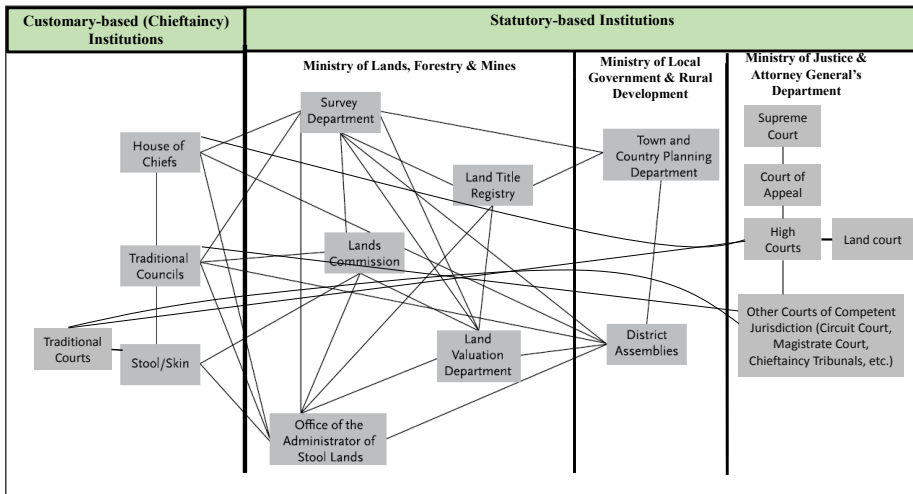


Figure 2: Dualism and Complex Institutional Networks in Ghana's Land Management. Source: Diagram modified from the work of Arko-Adjei (2011)

In order to unify customary and statutory legal land systems to simplify land acquisition procedures and reduce conflicts, the Land Administration Project (LAP) was introduced and serves as the current national land reform policy. The LAP has established a decentralized Customary Land Secretariat (CLS) expected to: "... provide effective land management harmonized with government land agencies and district assemblies, so as to establish a unified, decentralized public record of land availability, use and transactions" (Ubink & Quan, 2008, 205). We contend that LAP presumes individual voluntary compliance and/or mandatory compliance with both statutory and customary legal land systems, thereby underestimating landseekers' abilities to navigate and exploit the discord between customary and statutory legal systems to deal with the increasing land scarcity in urban Ghana. Moreover, LAP overestimates the ability of either legal systems to ensure compliance. For instance, Wood (2002) estimates the minimum adjudication time on land cases to be between three and five years, but it could take as many as 15. The reality in Ghana is that there is ample room within customary and statutory legal systems for actors to negotiate, contest and re-interpret rules regarding land. Juul and Lund (2002) note that the negotiability of rules is a key feature in African societies resulting in the insecurity of ownership and use rights in Ghana.

RETHINKING RULES AND TRANSGRESSIONS IN LAND OWNERSHIP AND USE

The issue of rules and transgressions within the urban spaces of Global South countries is complicated. Non-compliance, as noted by Iszatt-White (2007), is often not in opposition to the politico-economic and legal structures of African countries. Rather, non-compliance is the creation of complex interactions among these structures. Informal spaces, therefore, manifest decisions that individuals enact to survive and/or maximize their benefits in their access and use of scarce urban lands. We argue and demonstrate that dual legal land systems support the enactment of multiple rules by these individuals, which further conflates the line between legal and illegal land use actions.

Nomotropism is one of the analytical lenses used in this paper to interrogate the rules and actions explaining how individuals disentangle themselves from urban land scarcity. It is defined as acting in light of rules, but not always in conformity with them (Conte, 2000, 2011). Chiodelli and Moroni (2014) apply this to interrogate transgressions of land rules which have given rise to unauthorized settlements characterizing most cities in the Global South. They posit that rules related to land ownership, have “Y and X effectiveness”. Rules generally can have causal influence by inducing actions to conform to (Y-effectiveness) or be performed *in light of*, not necessarily in conformity with (X-effectiveness) the rules (Chiodelli & Moroni, 2014). Transgressing regulations are therefore either nomotropic (entailing awareness and non-conformity) or a-nomic (entailing unawareness and non-conformity) (Conte, 2011). Chiodelli and Moroni (2014, 164) argue that rule transgressions in informal settlements are more nomotropic than a-nomic because those who transgress these rules do so in order to concurrently achieve the goals of minimizing eviction risks, and maximizing the chances of public recognition. We illustrate Conte’s concept of nomotropism (2000; 2011) in Figure 3 below. Chiodelli and Moroni (2014) use “gecekondü”— the Turkish term for informal settlements, which means literally “building in one night” (Demirtas-Milz, 2013; Erman, 2001, 2011; Karpat, 1976)—to indicate nomotropic transgressions in land use decisions/actions. The complications associated with demolishing a building, on unauthorized land, completed overnight (or in a few days), are exploited by residents. Here actors are aware of the rules and sanctions, yet they act contrary to these rules because the benefits of transgression outweigh the costs.

The deeply complicated nature of rule transgression and compliance reflects the *plurality of rules* often co-existing in post-colonial nations. “Rules” governing actors’ decisions on land use are aligned with multiple legal systems, which are competing for legitimacies. Within this context, an inquiry into transgressions on land use decisions/actions must address the following mechanisms: the rules transgressed; motivations for such transgressions; and the rules that should be used to determine whether an action is legitimate (legal, formal, authorized) or illegitimate (illegal,

informal, unauthorized).¹⁰ If the premise of inquiry starts from the pluralistic nature of these rules, then an analytical impasse is reached in addressing the above concerns. Hence, we advance our course by borrowing from (new) legal pluralism and its complementary sub-concepts like “semi-autonomous social fields [spaces]” (Moore, 1973) and “rule shopping” (Benton, 1994) to argue that customary and statutory legal land systems with their competing claims to legitimacy exist within the urban space of Accra, whereby actors (landseekers, bureaucrats, land owners) are aware of the conflict between legal systems (Tamanaha, 2008). Multiple rules on land acquisition and its development are engendered within this space, providing an opportunity for actors to adopt specific rule(s) to minimize costs, and maximize benefits and legitimacy in the use of land.

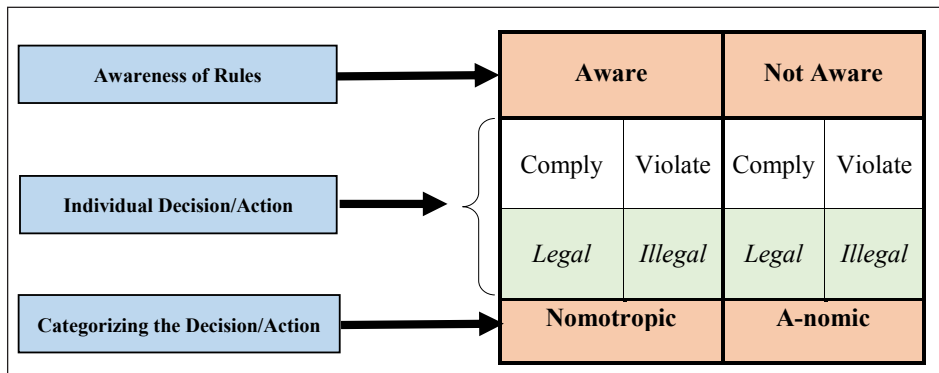


Figure 3: Nomotropism

The urban space is a social field, where actors create “their own customs and rules and the means of coercing or inducing compliance” (Moore, 1973, 721). Within any social field there is a “legal order(s) [normative ordering(s)]” (Weber, 1954) governing conduct. Tamanaha (2008) contends that an invocation of legal pluralism should recognize that within every social field, there are multiple normative (legal) orderings/systems competing for legitimacy within them. He sees the law as a ‘folk concept’ which is context specific—accepted and labelled as the ‘law’ by social groups at different times and places (Tamanaha, 2001, 2008). Hence, depending on place and time, either of these normative orderings may be recognized and labelled as the “law”. Be that as it may, this process of categorization does not negate the existence of competing normative orderings: society has always been legally plural (Tamanaha, 2008). The issue has never been about the co-existence of legal orders—*in casu* customary and statutory legal land systems—but the competing claims to legitimacy among these legal systems whereby: individuals become uncertain about

which legal order applies to their specific situations; and/or individuals take advantage of the multiple co-existing legal orderings to advance their parochial interests.

Actors who are aware of competing claims to legitimacy are constantly involved in an ad hoc strategy of what Benton refers to as "rule shopping" (1994, 237). Landseekers shop for rules to minimize sanctions or maximize benefits and legitimacy in the use of land. As a result, the law on legitimizing land claims in Ghana shifts continuously. There have been instances in state courts where customary land titles have been upheld over statutory prepared titles and vice versa (Kasanga et. al., 1996). Therefore, depending on time and place, the most 'bolstered' legal system(s)¹¹, those which the public respect and recognize as fair (Frier, 1985; Lanni, 2006, 141), become "law" determining which of the "rules" guiding actors' decisions/actions are legitimate or illegitimate. If there is more than one bolstered legal systems, then the law of determining legitimate and illegitimate actors' decisions/actions on land ownership and use rights can be an ambiguous business. In short, the implication is the following: if bolstered legal systems are contingent upon temporal and spatial factors and/or there are competing legal systems, then determining actors' decisions/actions as legitimate or illegitimate becomes tenuous.

INTERROGATING THE URBAN LEGAL NEXUS IN ACCRA

From Ghana's dual legal land system emerges a complex web of violations and exploitations. Kasanga aptly surmises that, "If the government were to charge people for defying its legislation affecting land, almost the whole country would be on trial" (1988, 52-53). Bureaucrats exploit allodial title holders by not compensating them for their compulsorily acquired lands and/or appropriating such lands for purposes other than which they were acquired. Allodial title holders also exploit both bureaucrats and landseekers by "illegally" selling compulsorily acquired lands to landseekers. In turn, bureaucrats exploit landseekers by selling lands which are already being contested by allodial title holders. Of importance to this paper is the fact that landseekers exploit both allodial titleholders and bureaucrats by squatting (occupying such lands freely). The exploitation in this case is not malicious as Iszatt-White (2007) notes, but rather is motivated by self-interest, which is embedded in a larger socio-spatial framework. Figure 4 below is a conceptual expression integrating legal pluralism, rule shopping and nomotropism. It shows a complex mix of violations and compliances, made either nomotropically or a-nomically. Four rules are presented, specifying four possible actions that landseekers could follow in a dualistic legal land system. Based on archival analysis of newspaper articles and empirical studies of land issues in Ghana, we highlight that these rules operate in urban and peri-urban Accra; and that certain factors motivate landseekers to enact many of these rules when deciding to acquire urban or peri-urban lands. It should be noted here that in this analysis, we only consider land acquisition processes. In

reality, landseekers may comply with customary legal land procedures in acquiring land while they violate multiple statutory provisions as they develop the land (an example would be not conforming to building codes).

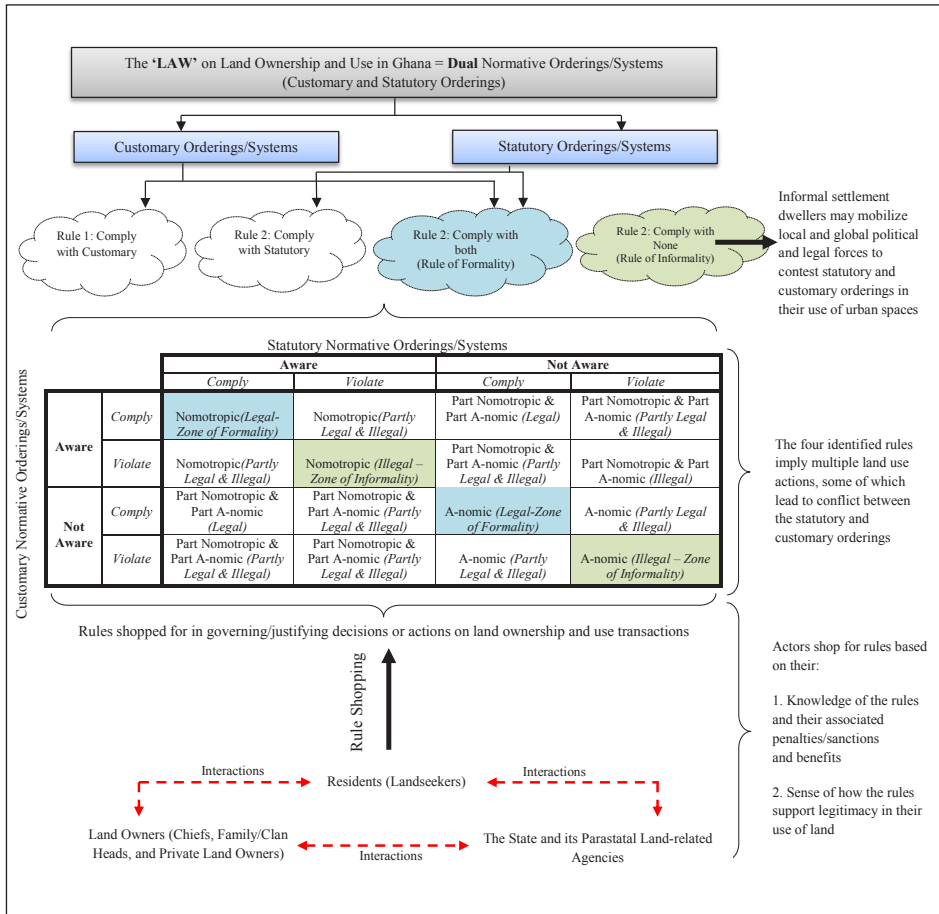


Figure 4: Legal Dualism and Landseekers’ Nomotropic Decisions/Actions: A Semi-Autonomous Urban Space¹²

The first rule from Figure 4 has landseekers complying with customary legal land systems but violating the statutory legal system. This rule operates within the unregulated customary land market where customary land owners sell lands to the highest bidder. In acquiring land, landseekers may comply with the customary land acquisition process, including stages such as contacting the customary land owner, and negotiating with the owner, as shown in Figure 1 above. However, regardless of

landseekers' awareness of the statutory legal land procedures, they may violate the land registration/titling component. Gough and Yankson's (2001) study on peri-urban lands in Accra showed that about 60% of acquired customary lands are not registered. Two key motivations have been identified as informing landseekers decision to comply with customary land acquisition procedures while violating statutory land registration/titling processes. These include increasing land security and minimizing cost (time and money) involved in registering land (Arko-Adjei, 2011; Barry & Danso, 2014; Gough & Yankson, 2001; Kasanga & Kotey, 2001; Obeng-Odoom, 2014). Registering land with the state may seem to offer landseekers the benefits of tenure security, but this view, according to Abdulai (2006) and Barry & Danso (2014), is tenuous in reality because their studies found that landholders with registered titles in Accra still felt insecure about their lands. What is more, the legitimacy of court verdicts on land titles is constantly being challenged and reinterpreted by chiefs who claim to be the sole authority on customary legal systems (Ubink & Quan, 2008). The transaction cost in registering land is also high, especially in Accra (Arko-Adjei, 2011; Aryeetey et. al. 2007).

Complying with the customary land acquisition process while violating the state registration/titling process favors the rich migrants and businesses with the means to resort to other strategies of maximizing the benefits/minimizing cost in their use of land. These strategies include erecting structures quickly on land (Barry & Danso, 2014), and employing land guards (Obeng-Odoom, 2014). Hughes (2003) indicates that even the majority of people with registered land titles employ land guards to secure their land from both state and non-state agents. The land guard phenomenon continues to be a problematic characteristic of the urban legal nexus in Accra. In October 2014, the police arrested a land guard gang leader for allegedly opening fire on three individuals over a land dispute (Daily Guide, 2014). As a result, police in Accra issued this statement: "This act of lawlessness and indiscipline on the part of individuals who, under the guise of protecting their lands, mobilize young men and resource them with all kinds of offensive weapons to cause mayhem and terrorize innocent people immensely undermines law and order" (Daily Graphic, 2014).

Landseekers can also comply with the statutory legal land system but not the customary one; shown in Figure 4 as the second rule. This rule also operates within the regulated statutory land market whereby the state sells land to the highest bidders, who are often well-connected to bureaucrats. There are two sides to this rule. The first side is that since public lands are legitimately acquired (through eminent domain) from customary landowners, acquiring public lands from the state complies with statutory as well as customary legal land systems. Tenure is viewed to be relatively more secure with public lands and dealing with just the statutory legal land system could imply a faster and simpler land acquisition process. However, how fast or simple the process is, was found to be dependent on how 'well-connected' a landseeker is to the bureaucrats and/or the ability to pay bribes (Kasanga et. al., 1996; Kasanga & Kotey, 2001; Owusu, 2008). The second side to this rule of ac-

quiring public lands is that the state may violate the customary legal land system in its exercise of eminent domain powers by not compensating customary landowners and/or using the lands for purposes other than for which they were acquired. In this way, public lands, albeit complying with the statutory legal land system, violate the customary legal land system.

Hence, on the surface, acquiring public lands may be seen as legal (since it complies with both legal land systems), but the legality becomes contentious when its original owners challenge the validity of the state's legal claim to the land. For instance, the proposed National Sports Complex area near Ofankor and Abeka in Accra was contested by as many as 375 compensation claimants because the land was appropriated and now occupied for purposes other than for which it was acquired (see Kasanga et. al., 1996; Maxwell et. al., 1998). The allodial title holders have also contested compulsorily acquired lands in areas like the former Star Hotel, Government Bungalows on 4th and 5th Circular Roads, and Airport City, Accra Central (Ayee et.al, 2011). The allodial owners want unused, misused and lands with expired leases returned to them (Ayee et. al., 2011).

The third rule is when the landseeker decides to comply with both statutory and customary legal land systems. Such dual compliance occurs when a landseeker's action can be considered 'truly' legal in a dual legal land system society. In land acquisition for instance, a landseeker would decide to purchase the land and follow all procedures established within the customary legal land system, and then later proceed to register the land with the state. The goal of Ghana's current land reform (LAP) policy is to achieve such dual compliance (Ubink & Quan, 2008). Landseekers' compliance with both legal land systems occurs either voluntarily or by coercion. Due to poor enforcement of regulations and the self-interests of landseekers, coercion seldom works – especially if compliance with both systems is not perceived by landseekers as helping them to secure their tenure and maximize benefits or minimize sanctions in their acquisition and development of their lands. For instance, since communities have to spend money and allocate land parcels in dealing with land disputes, registering the lands in Gbawe, a settlement in Accra, was considered to be in the best economic interest of customary land owners (Kasanga et. al., 1996). This is in line with other studies that suggest that improving tenure security and gaining access to loans inform landholders' decision to register their customarily acquired lands (Arko-Adjei, 2011; Gough & Yankson, 2001) (Arko-Adjei, 2011; Gough & Yankson, 2001; Kasanga et. al., 1996).

Complying with both legal systems is less practiced in Accra. As previously discussed, even though registering land may improve tenure security, evidence suggests that landholders often opt to hire land guards to protect their lands in Accra (Daily Graphic, 2014; Hughes, 2003; Obeng-Odoom, 2014). The argument that complying with both legal systems helps in securing loans (Graham Tipple & Korboe, 1998; Payne, 1997) is contested. It is viewed as failing to understand the complex metrics banks use to assess the credit worthiness of individuals, especially slum dwellers

in Accra (Bromley, 2009; Obeng-Odoom, 2014). Finally, the transaction costs involved in concurrently complying with both legal systems is often high; it takes up to five or more years to register land in Accra (Gough & Yankson, 2001; Kasanga et. al., 1996). Returning to Gbawe, the chief had to offer monetary incentives and plots of land to judges, clerks, and other public officials as "favors" (Kasanga et. al., 1996, 36). In the 2013 Global Corruption Barometer survey, 52% of Ghanaians surveyed indicated that they paid bribes for land services to various state agencies; and as many as 75% who paid bribes said it was the only means to obtain a service or speed up bureaucratic processes (Transparency International, 2013). Consequently, it could be inferred that as the costs of complying with both legal systems increase, the probability of landseekers' enacting this legal nomotropic rule of *dual compliance* also decreases. Hence, this third rule, like the previous two, also favors wealthy and well-connected landseekers in Accra with the means to secure their lands with the state or through the use of land guards.

The fourth and final rule entails landseekers who decide not to comply with either of the dual legal land systems. This occurs when landseekers occupy lands without acquisition from the customary owner or state. Such actions would then be considered 'truly' 'illegal' in a society of dual legal land systems; hence we refer to this as the '*rule of informal urbanism*'. In Accra, almost all informal settlements emerge out of this rule and are often enacted by the urban poor, mostly poor migrants from conflict areas in the Northern part of Ghana (Grant, 2006). Since the urban poor cannot afford increasing land prices or land guards and are not well-connected to bureaucrats, they cannot play by the 'rules' in either the regulated or unregulated land markets (the first, second and third rules). Occupying urban and peri-urban lands without acquiring them from the owners becomes the means by which the urban poor reduce increasing transaction costs. Although occupying these lands without complying with both legal land systems threatens the tenure security of the urban poor in Accra, they progressively secure tenure through continuous mobilization of local and global advocacy groups to contest and negotiate with the state and other landowners in their use of urban spaces (Gough & Yankson, 2001; Grant, 2006; Kasanga et. al., 1996; Owusu, 2008).¹³

When critically subjected to the lens of the framework proposed in Figure 4, the legality or illegality of Old Fadama/Agbogbloshie, the infamous twin informal settlements in Accra, epitomizes the complexity of this framework which makes qualifying them as either informal, semi-formal or formal too simplistic to offer any meaningful understanding for policy intervention. The two settlements emerged and grew to their present state because of bureaucrats exploiting the conflict between statutory and customary legal land systems and landseekers also exploiting this same conflict to occupy these lands to cement their legitimacy over time. After compulsorily acquiring Agbogbloshie and Old Fadama in the name of restoring the Korle Lagoon, the state failed to use all the lands nor did they return the lands to the original allodial title holders¹⁴ (Grant, 2006). The state resettled traders from the

demolished Makola market on these lands in the 1980s. The displaced Northerners from the Nanumba-Konkomba conflict were also resettled in these areas. The resettlement of these traders and conflict victims in the acquired Agbogbloshie/Old Fadama was not part of the purpose for compulsorily acquiring these urban spaces. However, since the statutory legal land system grants the state the right to acquire these urban spaces in the interest of the public (eminent domain), it becomes continually problematic for allodial title holders to contest this (Kasanga et. al., 1996; Winter, 1999).

As statutory and customary legal systems continue to contest the “law” for legitimizing ownership and use rights of Ga lands, the urban poor will continue to shop for and enact this rule of dual violations of statutory and customary legal land systems because it offers them some legitimacy in the use of the land. Old Fadama and Agbogbloshie are thus paradoxically formal and informal urban spaces shaped by actors’ nomotropic decisions and actions who either comply or not with some legal systems depending on expected benefits/sanctions.

CONCLUSION

In post-colonial Accra, the emergence of dual legal land systems, resulting in regulated and unregulated marketized land systems, have engendered complex urban spaces shaped by landseekers’ compliance with one or none of the legal systems. In the unregulated customary land market system, the highest bidders command the attention of customary land owners. Purchasing customary-held land in Accra does not mean the landholder will register it with the state due to reasons discussed above; this illustrates the first rule. In the regulated state land markets, the highest bidding and/or well-connected landseekers are favored by the statutory land market system. Purchasing state-held lands is registered by default, but that does not necessarily mean compliance with the customary legal land system due to reasons discussed in the second rule. The third rule discusses the instance of dual compliance with both legal land systems in customary and statutory land markets. Such dual compliance is not usually the norm due to reasons discussed in the third rule. Because the urban poor cannot play by the rules in these emerging market systems, non-compliance of either legal systems often guides their land acquisition and use actions. The urban space of post-colonial Accra is therefore differentiated, characterized by dualistic compliance or violation of the legal land systems in some spaces, and monistic compliance within other spaces.

This characterization of Accra’s urban space leads to two major propositions. First, in dual legal land system societies, in order to qualify any land as being occupied illegally (informally), both customary and statutory legal land systems must have been violated (dual violations). Along the same lines, both customary and statutory legal land systems should have been complied with (dual compliance)

in order to qualify as being occupied legally (formally). Any other practice suggests a need for new categorization. The 'true' illegal (informal) urban spaces (where there is dual violation), in contrast to legalized (formal) or authorized urban spaces (where there is dual compliance), are not anarchic (in opposition to any legal land system) as Iszatt-White (2007) notes. They are rather the spatial manifestation of a 'crowding-out effect' of the urban poor. As Accra rapidly urbanizes, leading to increases in urban and peri-urban land prices¹⁵, one could assume that the urban poor, crowded-out of both land markets, will continually seek other means to satisfy their urban land needs. The on-going debate between pro-customary and pro-statutory legal land systems scholars (Anyidoho et. al., 2008; Berry, 1993, 2008; Kasanga & Kotey, 2001; Obeng-Odoom, 2014; Ubink & Quan, 2008) may still miss the point if their arguments fail to address the inherent, evolving and systemic biases against the urban poor in the land market. The emphasis should be on creating and strengthening the connections between the state, customary land owners, and the urban poor with specific emphasis on clear land acquisition powers and procedures. Particular attention should be paid to land pricing agreements, and cost recovery measures for government infrastructure provision on lands, and community land trusts (Pugh 1995; Matthei & Hahn, 1991).

Second and finally, from the matrix in Figure 4, when there are a total of 16 possible actions a landseeker could take in a dual legal land system, the probability of s/he being aware of the intricacies of both systems is lower than being aware of only one system. In other words, there are 4 out of 16 and 8 out of 16 chances respectively for a landseeker to be aware of both and one legal land systems. Hence, the probability of complying with only one legal land system is higher than complying with both systems. Thus, there is a complex mix of rule violations and compliances suggesting that the binary of compliance vs. violation is inadequate. Even when they know both systems, the matrix shows that the probability of complying with only one of the systems is also higher (2 out of 4 chances) than complying with or violating both (1 out of 4 chances).

The relatively high probability of violating one and complying with another implies that monism in compliance or violation in a dual legal land system like Accra will often be more of the norm than dualism in compliance or violation. In effect, an urban space with dual legal land systems creates a situation whereby it is highly probable that landseekers' will selectively comply with one of these legal systems based on perceived benefits and costs. Because monistic compliance is highly probable in the context of multiple legal land systems, these spaces are better conceived of in terms of 'nomotropic urban spaces' rather than the binary of formal versus informal urban spaces.

Urban Accra has been the subject of this paper and there are specificities which perhaps pertain solely to the indigenous institutions and practices described. However, there is a more general relevance. Undoubtedly the research informs African communal tenure along with the non-linear relationship between non-compliance and

informality. But, at a larger scale our findings bring to light points of friction and disjuncture within property regimes in the Global South and the historical impacts of the construction of dual land systems and their intersection with everyday practice.

NOTES

1. Legal ordering(s), legal systems and normative ordering(s)/systems(s) will be used interchangeably throughout the paper.
2. To answer these questions, the paper draws on archival records of land issues in Accra, scholarship on urban land practices in the Global South and Ghanaian newspapers on the subject of land tenure systems, land conflicts, land guards in Accra from as far back as online records are available.
3. Customary legal land system (tenure) is loosely used here to distinguish it from statutory legal land system. It is estimated that about 80% of Ghana's land is held under customary land tenure while the state holds the remaining 20% (Kandine et.al., 2008; Larbi, 2009). GTZ (2002) estimates that 78% of the total land is under customary tenure with the remaining 22% being under statutory tenure. Kasanga and Kotey (2001) also estimate that 80 to 90 percent of Ghana's underdeveloped land is held under customary tenure.
4. These interests or rights include: Allodial title - Unfettered ownership title vested in indigenous chieftaincy institutions, or family/clan heads held in trust for the community; Freehold title/"common law freehold" - Allodial title transferred to a private party through sale or gift; Customary freehold title/'usufructuary right' (Meek, 1968) - Title held by indigenous members of a community on behalf of the allodial title holder; Leasehold - A time-bound right offered to individuals or groups for a fee for up to 99 years for Ghanaians and 50 years for foreigners; and Sharecropping/"abunu and abusa" - Farming lease where the renter pays one-half (abunu) or one-third (abusa) of the harvests to the landowner (Kasanga & Kotey, 2001; Sarpong, 2006; Ubink & Quan, 2008).
5. The stool is the throne of a chief (king) in the southern parts of Ghana and it is symbolic of the chief's office. In the northern part (Northern, Upper East and Upper West Regions), the skin of an animal is also the chief's throne a symbol of his office.
6. Since Ghana was referred to as the Gold Coast during its colonial era, Gold Coast and Ghana will be used respectively when referring to its colonial and post-colonial periods.
7. Akyem Abuakwa was one of the British colonies with considerable mineral lands. Its traditional authority structure is denoted by a paramount chief, who bears the title of "Okyehe", and has several divisional chiefs, some of whom govern other smaller jurisdictions within Akyem Abuakwa.

8. Merry (1988) refers to the conceptualization of legal systems as being hierarchical and superimposed as “classic legal pluralism”, which differs from how “new legal pluralism” conceptualizes legal systems as being networked and co-constitutive
9. In a survey of 14 Ghanaian communities Crook et al (2007) identified that the multiple sale of landholdings forms a significant part of the adjudicated land dispute cases.
10. In the paper we engage the concept of nomotropism as a broad category of action which is caused in light of rules (and may involve the violation of those rules). We treat non-compliance entailing awareness as one possibility for action within the relations between unauthorized settlements and institutional regulations (see detailed discussions on transgressions, informality, and noncompliance in works like van Gelder, 2013; Porter, 2011; Roy, 2005; McFarlane, 2012; and Chiodelli and Moroni, 2014). This is noted explicitly throughout the paper (see for example 11).
11. Lanni (2006, 141) uses ‘bolster’ to discuss how the legal system in Athens increasingly gained its legitimacy when citizens regarded certain aspects of the adjudication procedures as fair.
12. This framework is conceptual and lends itself to game modeling to test the different rules provided in the cells.
13. This is the case of the well-known twin informal settlements of Agboghloshie and Old Fadama, nicknamed after the Biblical Sodom and Gomorrah (Grant, 2006; Obeng-Odoom, 2014).
14. Two Ga families, J. E. Mettle and Ablorh Mills families, are contesting the state that they own approximately 80% of the Fadama/Agboghloshie land area, and are demanding compensation (Grant, 2006).
15. In a 2005 household survey, Owusu (2008) indicates that higher land price is the most pressing issue regarding tenure in peri-urban Accra. Between 1995 and 2005, the percentage increase in housing land prices for indigenous peoples and migrants in peri-urban Accra were respectively 680% and 784% (Owusu, 2008, 189).

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