The law of the land: Communal conflict and legal authority

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Abstract

Common notions about the source of communal land conflict in Africa have long explained it as growing out of conditions of environmental scarcity. This article argues instead that the institutional structure of the legal system is central to understanding which countries are prone to experience communal land conflict. When competing customary and modern jurisdictions coexist in countries inhabited by mixed identity groups, the conflicting sources of legal authority lead to insecurity about which source of law will prevail. Because the source of law is contested, conflict parties cannot trust the legal system to predictably adjudicate disputes, which encourages the use of extrajudicial vigilante measures. Using new data on communal violence in West Africa, this argument is examined for the period 1990–2009. The results show that in countries where competing jurisdictions exist, communal land conflict is 200–350% more likely. These findings suggest that researchers should consider the role of legal institutions and processes in relation to social unrest and collective violence.

Keywords

communal conflict, legal institutions, non-state conflict, West Africa

Introduction

Communal violence over land occurs throughout West Africa.[1] At its most violent it has resulted in upwards of 2,000 deaths in the space of a few weeks. The implications of such violence for civilians can be likened to civil war: they can be victimized due to their ethnic affiliation, internally displaced, and robbed of their livelihoods. Such violence undermines the authority of the state to hold a monopoly of violence; it can further entrench ethnic animosity and make the underlying disputes even more intractable.

The foundations of many communal conflicts lie in disagreements about land, particularly in West Africa. These countries are some of the poorest in the world, with the vast majority of the population engaged in the primary sector.[2] Land is a valuable good that is central to the distribution of power and wealth throughout the region (Onoma, 2010). But while disputes over land are endemic to the entire region, these disputes result in communal violence in only some countries. The question that this article addresses is: Why are some countries more likely than others to experience communal violence over land?

I argue that the design of the legal institutions that are mandated to adjudicate disputes over land are

[1] The term communal violence indicates the occurrence of violence between two communal groups that define themselves along identity lines. I modify Melson & Wolpe (1970) to define communal groups as being comprised of members who share a common culture, identity, and means of communication and who can encompass the full range of demographic divisions within a wider society. I accept the expression of group membership set forth by the groups themselves. Communal violence excludes purely interpersonal conflicts and conflicts that involve the state. Communal conflict, unless otherwise specified, is used as a synonym.

[2] In 1990, West Africa had eight of the ten lowest ranked countries on the UN Human Development Index (UNDP, 1990). West Africa here includes Benin, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

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central to understanding the incentives for violence. Specifically, I posit that when there are competing jurisdictions with overlapping mandates the probability of communal violence over land will be higher. The bifurcation of authority wrought by competing fora creates dysfunctional adjudication procedures, a breakdown in the rule of law, and threats to the legitimacy of the competing fora. The uncertainty engendered by such a system also restricts the ability of security forces to enforce decisions, compounding the incentives for groups to settle disputes extrajudicially through violent vigilante measures.

Using new data on communal land conflict throughout West Africa, I find that countries with competing jurisdictions are 200–350% more likely to experience communal land conflict than countries with single jurisdictions for land disputes. These findings suggest that the organization of legal authority serves as a structure that impacts on group calculations regarding the utility of employing violence to resolve disputes.

This article contributes to the literature on collective violence in two ways. First, by drawing upon new, large-N data, this article provides one of the first quantitative cross-national examinations of the sources of communal land conflict. The second contribution relates to the incorporation of legal institutions into the study of violence. There is a rich tradition of studying institutional choice and development in Africa but the focus has been primarily on political institutions, corruption, land rights, and local governance (Arriola, 2009; Bates, 2008; Berry, 1993; Boone, 2003; Herbst, 2000; MacLean, 2010; Mamdani, 1996). While there is a literature on legal institutions in Africa (Chanock, 1985; Onoma, 2010; Roberts, 2005), the role of the judicial system has not yet been included in most models of domestic political violence.[3] While the scope of the findings is likely to be restricted to sub-Saharan Africa, the broader implications suggest that analytical leverage can be gained by incorporating the study of legal institutions and processes into models of social unrest and collective violence.

Land conflicts in West Africa

Disputes over land are prevalent throughout West Africa – unsurprising for a region where the vast majority of the population is engaged in the primary sector.[4] Indeed, not only is the population dependent on access to land for subsistence and wealth, the laws and institutions regulating land tenure systems are complex and ambiguous. Moreover, the distribution of power in the region is often tied to ethnicity, in large part due to patterns of patrimonial governance. When political and social mobilization occurs along ethnic/tribal lines, conflicts which originate in interpersonal disputes can trigger existing cleavages to mobilize the wider ethnic group (Lund, 2008). The result is a tinder box: land disputes can lead to the eruption of violence between differing communal groups when disputants come from different communities.

In the vast majority of cases, however, communal groups live in peace with one another (Fearon & Laitin, 1996). Considering the extensive proliferation of communal disputes throughout the region, violence is in fact uncommon. Given the extensive problems of conflicting land tenure regimes, dysfunctional local governance, and group enmity, it is notable how infrequently land disputes turn violent, and how rarely they mobilize larger communities.[5] But the phenomenon is nonetheless important to study because these conflicts lead to the loss of life and property, often resulting in devastating consequences. They also have the potential to escalate to entrenched forms of violence like civil war, making it crucial to understand why in some countries communal land disputes become violent while in others they do not.[6] The roots of the armed conflict in Darfur, for example, lie in patterns of communal conflict over land (cf. Brosché & Rothbart, 2013). This article addresses this puzzle. It is important to underscore that only those disputes in which the participants use violence and in which the violence mobilizes communities are under study.

Land conflicts in West Africa can mobilize different types of communal groups. One cleavage is based on modes of production: conflicts between pastoralists and farmers.[7] While claims abound that herder–farmer

[3] The research which has studied the relationship between the law and communal conflict has focused on the functioning of the institutions; the specific problem of competing jurisdictions has not yet been theorized in the context of armed conflict.

[4] Research suggests that as many as one-fourth to one-half of households are entangled in some form of land dispute (Lund, 1998: 114). See also Bassett (1988), Berry (1993), Breusers, Nederlof & van Rheenan (1998), Crook (2004), Dafinger & Pelican (2006), Herbst (2000), and O'Bannon (2006).

[5] In a study of all land disputes in the Court of Appeal in Sévare, Mali, Benjaminsen et al. (2012) note that about 10% of land disputes involve violence (interpersonal as well as group violence).

[6] Deininger & Castagnini (2006) also find that because land conflicts affect productivity they can lead to diminished economic growth.

[7] The dividing line between herders and farmers is not always clear. Some herders are semi-sedentary and some farmers have begun keeping livestock (Moritz, 2006b).

violence is on the rise due to desertification, scholars have noted the lack of adequate empirical evidence for this assertion (Benjaminsen, 2008; Hussein, Sumberg & Seddon, 1999). Land conflicts can also be found between groups that engage in the same mode of production. Herder versus herder violence itself is often described as endemic to pastoral areas (Meier, Bond & Bond, 2007), and violent conflicts over property rights and land tenure frequently take place between farmers. Most often defined in ethnic terms or cast in a discourse of outsiders ('immigrants/settlers' versus 'indigenes/autochthons'), these disputes normally fall along communal lines.

Conventional wisdom and some previous research posit that environmental scarcity is the main cause of communal violence, particularly where people are engaged in the primary sector.[8] Yet large-N studies have found that conflict is more likely in wetter years (Meier, Bond & Bond, 2007; Theisen, 2012; Theisen & Brandsegg, 2007),[9] suggesting that resource variables may be related to violence not due to grievances over resource scarcity but because of groups' tactical considerations: wetter years see more violence because it is easier to organize and sustain raids when there is dense vegetation (Meier, Bond & Bond, 2007; Witsenburg & Adano, 2009). Other research suggests that there is a relationship between cash crops and political violence, as resource-related rent-seeking shifts the incentive structure for peaceful versus conflictual interactions (Boone, 2007; Berry, 2009; Woods, 2003); rising land values due to cash crop production patterns encourage conflicting claims of ownership that often result in violent altercations.

Legal pluralism and the adjudication of conflict

Given that considerable communal violence in West Africa takes place over land, it is odd that land tenure rights and the institutions which adjudicate disputes over these rights have been paid relatively little attention.[10] By the time land disputes turn violent, they normally have a long history of nonviolent conflict between the participants, and adjudication is usually the first step taken by claimants to resolve their dispute (Lund, 2008). Adjudication should function as a central conflict resolution mechanism in local-level conflicts over property rights, yet it has been largely absent in the literature on communal violence.[11] While a body of literature on property rights and communal conflict has arisen, it has focused on the functioning of political institutions, giving particular weight to inefficiency and corruption within the political systems, rather than legal systems.[12]

I argue that how traditional forms of customary law have been incorporated into the modern legal system developed after the end of colonialism is central to understanding communal violence. In particular I distinguish whether customary courts[13] have been incorporated into the modern legal system, so that no overlap exists between courts' mandates, which I term *single jurisdiction*, or whether customary courts exist parallel to the modern court system and offer litigants the possibility of forum shopping, which I term *competing jurisdictions*. I argue that when there are competing jurisdictions with overlapping mandates – as is the case when customary and modern courts can adjudicate the same dispute – the legitimacy of the system is undermined and the resultant incentive structure for people to settle disputes extrajudicially through the use of vigilante measures is enhanced. In the next section I describe the evolution and variation in legal systems in West Africa in order to provide context; thereafter I develop the argument.[14]

[8] This literature is an outgrowth of the environmental scarcity literature popularized by Homer-Dixon (1999). Resource scarcity is argued to lead to a reduction in survival essentials. As a result, people either fight over the resources or migrate to other areas, raising the risk that migrants and existing inhabitants clash over the distribution of goods (Nordås & Gleditsch, 2007). Other research suggests that resource scarcity can lead to poor macroeconomic outcomes and reduced state capacity, and therefore various armed conflict (Hendrix & Salehyan, 2012; Homer-Dixon, 1999; Kahl, 2006), or that decreased agricultural output results in lower opportunity costs for recruitment to an armed opposition group (Theisen, 2012). This literature has largely focused on civil or international war as the outcome of interest.

[9] Hendrix & Salehyan (2012) also find that social unrest is more likely in wetter years in a country-level study of a subset of states in Africa.

[10] One notable exception is Butler & Gates (2010), whose formal model of herder–farmer conflicts concludes that violence prevention requires both property rights protection and the absence of bias in property rights enforcement.

[11] I focus on adjudication by recognized judicial authorities. Benjaminsen et al. (2012) note that taking a dispute to court is often a last resort and that many are solved through other conflict resolution mechanisms.

[12] For more on property rights and land conflict, see also Deininger & Castagnini (2006). Previous research on state institutions and communal conflict includes Bassett (1988), Turner (2004), Moritz (2006b), Benjaminsen & Ba (2009), Benjaminsen et al. (2012), and Dafinger & Pelican (2006).

[13] Customary law is based upon the traditions and customs of a community. Common attributes are that laws are seldom written down, they embody an organized set of rules regulating social relations, and they are agreed upon by members of the community (CIA, 2010).

Legal systems in West Africa

The legal systems throughout West Africa are quite heterogeneous, despite their common roots in colonial institutional structures. During the colonial period in French West Africa, the *Code de l'indigénat* established a set of laws creating a distinct legal status for natives of French colonies. In the French system, all Europeans were subject to French civil law, as were those Africans who had obtained the status of French citizens or who were born into the Four Communes (Robinson, 1992).[15] The rest of the colonial inhabitants were subject to traditional law through customary courts until reforms following World War II. Customary law was administered by appointed indigenous authorities and religious courts, and enforced by native police, all of whom operated under the authority of French administrators.

The British, for their part, employed indirect rule, a method of colonial administration which relied upon the maintenance of pre-colonial chiefs and other political structures, which were in turn subject to the authority of British representatives. As in the French colonies, the British employed a dual system which mandated that customary courts adjudicate disputes as they had done prior to the arrival of the British while Europeans fell under the English common law system. Thus, both systems relied on traditional chiefs to rule rural areas and maintained dual systems of customary and modern civil law.[16]

So during the colonial period, several different systems of law co-existed, including the civil law system of the colonizer; customary law, which could vary geographically and across ethnic groups; and in some Muslim areas, Sharia law. During the colonial period, there were clear demarcations regarding who was subject to which system of law. In the post-colonial period, the independent West African states reformed their legal systems and civil law based on modified versions of the law used during the colonial period. Customary law was managed in different ways: in some countries it was codified and incorporated to varying extents into the civil law system, while in others it remained parallel to the modern civil law system.[17]

This distinction is central to the theoretical argument: Was a single unified system created, in which disputants are directed to a single forum to adjudicate their dispute, or are multiple, competing fora allowed to co-exist?[18] It is important to emphasize that the focus is not on the type of law used; indeed, single jurisdiction systems can be based on modern law or on a mix of modern and customary law. The legal system in question can thus combine customary and modern law (i.e. legal pluralism)[19] or consist exclusively of one type or the other (cf. Peters, 2004); for my purposes, these are equivalent.[20] In single jurisdiction systems, the source of law can employ both customary and modern civil law elements within different fora within the system, but these different fora are not placed in competition; the system has been unified such that a dispute can only be adjudicated in a single forum.[21] The Liberian system illustrates this phenomenon: government-created customary courts adjudicate cases in the countryside, in which locally elected town chiefs, clan chiefs, and paramount chiefs enjoy original jurisdiction in customary law cases. Judgments are appealed first to paramount chief courts, then to district commissioners and superintendents, and eventually to the Office of Tribal Affairs in Monrovia (International Crisis Group, 2006). The sources of law are mixed with this system, but there is only a single institutional stream and the force of law does not exist outside of this stream.[22] The distinction central to my argument

[14] A couple of studies have raised the topic of competitive institutional environments (political and legal), but these do not make any explicit claims about the production of violence (Lund, 1998, 2008; Schmid, 2001).

[15] The Four Communes were the four oldest colonial towns in French-controlled West Africa.

[16] See Boone (2003) for a discussion about how the level of indirect versus direct rule varied within French territories.

[17] There is no literature which addresses why countries followed different paths regarding their choice of single or competing jurisdiction systems. I return to this topic in the analysis.

[18] I do not consider 'private ordering', that is, when people choose to resolve disputes in private ways without a public outcome or consistent set of rules or principles, since the focus is on institutional arrangements which have the force of law.

[19] Legal pluralism indicates when there are multiple systems of law within one geographic area. It does not distinguish between when these systems provide for single versus multiple fora for adjudication or whether these fora exist within or outside the state (cf. Forsyth, 2007; Sezgin, 2004).

[20] This is a simplifying assumption and while the theoretical argument does not provide a logic which would suggest any differentiation between these two types, it nevertheless would be interesting to investigate whether there is a pattern in the empirics. Mixed-law single-stream systems are sufficiently rare, however, to make assessing any difference unfeasible.

[21] Deininger & Castagnini (2006) suggest that competing legal systems will increase the number, duration, and impact of land-related conflicts, though they do not subject this claim to empirical inquiry.

is solely whether the legal system provides for a single forum or whether it legitimizes competing fora in which a land dispute can be adjudicated.[23] Given that I am interested in the perception of legal authority among communities, I include all cases in which de facto competing jurisdictions exist which are recognized by local communities as legitimate authorities for the provision of justice. In some cases, such competing jurisdiction systems are recognized de jure by the state through its written legal code. In many other cases, however, such written acknowledgement is lacking but tacit acceptance by the state allows the de facto provision of judicial services.

Why competing jurisdictions lead to communal violence over land

Throughout West Africa, access to land is vital for the survival of individuals and communities. Yet property rights come in many forms, most of which are 'considerably less exclusive than what we would normally associate with the term ownership' (Lund, 2008: 15). Shipton (1994: 348) lists multiple ways of accessing land: 'birth rights, first settlement, conquest, residence, cultivation, habitual grazing, visitation, manuring, tree planting, spiritual sanction, bureaucratic allocation, loan, rental, and cash purchase'. The multiplicity of paths is indicative of the uncertainty individuals face in calculating the reliability of access to land.[24] Tenure uncertainty combined with the salient politicization of ethnic identities creates a volatile situation that in theory places virtually all of West Africa at risk for communal violence. I posit that what distinguishes those countries in which people resort to violence is to a considerable extent the structure of the legal system.

I suggest two main mechanisms that may explain why competing jurisdictions are more likely to increase the probability of communal land violence. The first has to do with the breakdown of the rule of law wrought by competing jurisdictions. When individuals can adjudicate in several fora, the authority of any given forum is undermined by the existence of the others. For the litigants, the practical implications are that even if a dispute is adjudicated in a forum, it may not be resolved since the authority of the forum will be challenged by the losing party.

For the stakeholders in each forum, there are also contestations over authority and dominion; as a result, they will often undermine competing legal organs. Customary authorities generally govern those belonging to the same ethnic group. Thus, in countries where populations are intermixed, the question of who should adjudicate inter-community disputes is the crux of the matter. For example, in northern Nigeria where farmers and herder populations co-exist, each turns to its own traditional authorities to adjudicate disputes.[25] The result, as one could easily predict, is that herder authorities find for herder litigants and vice versa.[26] As a result, interpersonal disputes can activate existing communal cleavages and escalate into conflicts which mobilize the wider group. The authority of traditional leaders is undermined when their decisions are contested by other authorities.[27] Thus, when litigants have the possibility of forum shopping, the authority of all fora is undermined, causing friction not only between litigants over which forum is appropriate but also between the fora over the legitimacy

[22] Some competing jurisdiction systems are full-blown parallel systems which provide multiple courts of appeals while others either do not provide for appeal or provide for appeal through the modern civil law system. These are treated as equivalent; what is essential is that multiple entry points exist into different fora.

[23] Thus, I remain agnostic as to whether customary or modern law is preferable for adjudicating land disputes. Some posit that the flexibility of customary systems of land tenure are more adapted to local circumstance and have higher levels of legitimacy among the populace, while others note that privileging customary authority leads to politicized competition that may generate rather than prevent conflicts (Lund, 2008). Traditional authority is often criticized for leading to bias towards established interests and the disenfranchisement of large parts of the population (Peters, 2004). In a survey of disputants in three Ghanaian courts (a competing jurisdiction system), Crook (2004) finds that a majority of respondents go directly to the state due to concerns that chiefs would be partial.

[24] Indeed, Benjaminsen & Lund (2001: 18) state that the 'mutual contingency of political processes, property regimes and the performance and development of production systems imbues peoples' lives with a good measure of uncertainty'.

[25] For herders, the locales of conflict may shift based on transhumance but the structures which facilitate their escalation are bound by administrative boundaries. See Moritz (2006a) on unclear jurisdiction boundaries between traditional and civil authorities.

[26] As this line of argumentation implies, it need not be the tension between competing forums within the customary and modern civil law systems which facilitates the use of violence; competing jurisdiction systems allow for multiple competing customary courts and it is likely that these competing local authorities agitate communal disputes by generating ethnically biased decisions.

[27] Indeed, when such authorities hold both judicial and political power, the contestation of their legal decisions can be perceived as a challenge also to their hold on political power, increasing the costs of losing the dispute. While it is beyond the scope of this article, future research should examine the conflict potential of systems in which judicial and political power is held by the same authority.

of their own authority.[28] Indeed, 'the institutional and normative plurality prevailing in most of Africa means not only that people struggle and compete over access to land but that the legitimate authority to settle conflicts is equally at stake' (Lund, 2008: 10). The resulting uncertainty and unpredictability in the adjudication process creates opportunities for people to use violence to resolve the dispute. When the judicial system is dysfunctional, extrajudicial measures are justified as a reliable means to settle conflicts: by taking the power of the law into their own hands.

The second mechanism relates to the coercive power of the state and its willingness to enforce decisions and keep the peace. In single jurisdiction systems, victims can petition the security apparatus to react to infractions. A single forum, whether based on customary or modern law, is more predictable and consistent in the laws because they are codified in writing or in established praxis. Thus, a single body of precedent is established which can be invoked when laws are transgressed. This facilitates the enforcement of laws without the need to adjudicate the dispute first. Even when adjudication is necessary, the security apparatus is more likely to enforce a decision when it comes from the sole authority tasked with making that decision than if there were contesting sources of legitimate authority, that is, competing jurisdictions. The overlapping mandates of competing fora undermine security forces' ability to determine which forum is the legitimate authority to determine the interpretation of existing laws. Because overlapping jurisdictions open up to interpretation, the question of which system of law to follow may become a political issue for local politicians seeking to maximize their own local influence by choosing to ally with a particular traditional authority. Security forces will be cautious in enforcing any contested law until it is determined which is preferred by the local power-holders. Knowing this, and because possession is quite often what determines ownership, individuals or groups will have incentives to settle the dispute themselves by force. Indeed, land claims are sometimes expressed violently in order to provoke police or military intervention that would otherwise not be forthcoming (Lund, 2008: 180). A single legal system thus reduces uncertainty about the consequences of violations and serves to inhibit extrajudicial violence, while a system with competing jurisdictions encourages such actions. These arguments lead to the main hypothesis of this article:

Hypothesis: Competing jurisdictions will increase the likelihood of communal land conflict occurring.

It is important to note that this argument does not posit that the structuring of legal institutions themselves *trigger* communal land disputes. Rather, the organization of legal authority serves as a structure that constrains or facilitates groups' calculations regarding the utility of employing violence to resolve disputes.

Research design

Independent variable

I measure competing jurisdictions with a country-level dummy for the presence of multiple fora in relation to land tenure and property rights. In practice, I examined whether individuals had a choice of adjudicating land disputes at either customary or modern courts (or multiple different customary courts). Sometimes legal systems differ depending on the issue area, so that family matters, for example, are adjudicated in competing fora while land tenure matters see exclusive jurisdiction by a single body. The coding relates only to land tenure and property rights laws.[29] This variable is coded based on whether there are multiple points of entry, and it is coded at the national level. There is no single source which provides data on this variable, so I used multiple case-specific sources for the coding.[30] In many respects, it would be rewarding to study this question at the subnational level, since the extent to which multiple fora exist can vary in practice across subnational regions. That said, there is an astonishing lack of data regarding customary law even at the national level; the data do not exist at a subnational level. Appendix Table AI shows the coding of these cases across the independent and dependent variables. A country is coded as having competing jurisdictions if their presence was noted anywhere in the country.

Dependent variable

The raw data used to code the dependent variable are taken from the beta version of the Uppsala Conflict Data

[28] To clarify, the opportunity to forum shop is unregulated in competing jurisdiction systems. In some countries (like the USA), individuals may have opportunities to engage in forum shopping, but this is regulated, effectively creating a single jurisdiction system.

[29] The measure for competing jurisdictions is largely time-invariant and legal institutions are relatively fixed; reforms regarding land tenure generally affect the content of laws rather than the structure of the system itself. The advantage of a time-series format is that it allows for the inclusion of numerous controls that are time-varying.

[30] Some examples include David (1984), GlobaLex (2010), and Mwalimu (2005).

Program Georeferenced Event Data (UCDP GED), which records events of organized violence (Sundberg & Melander, 2013). I extracted a subset of all *non-state conflict* events in West Africa, which is defined as 'the use of armed force between two organized armed groups, neither of which is the government of a state' (Sundberg, Eck & Kreutz, 2012). A single annual fatality is required for inclusion in the analysis, though in robustness tests I explore higher thresholds. The UCDP gathers its data from a variety of sources.[31] The primary source is media reports, from both international news bureaus (e.g. BBC, Agence France Presse, and Reuters) and local sources like Nigeria Watch, Radio Lomé, etc. The news sources are available primarily in English, but French and Portuguese sources were also consulted. BBC World Monitoring reports provide local language news translated into English, which facilitates the coding of non-English sources. In addition to news sources, UCDP also consults region-specific secondary sources like *Africa Research Bulletin*, Integrated Regional Information Networks (IRIN), and Human Rights Watch, as well as case study work.[32] In cross-validating the UCDP GED data with my own canvassing of the case literature on communal land conflicts, I found a high level of convergence. The uneven distribution of media and NGO reporting raises the question of whether the data are comparable. This is an important issue, and one which researchers have begun to tackle with regards to the use of these data (Weidmann, 2013; Davenport, 2010). Because this study focuses on the occurrence rather than the magnitude of violence, and because it employs a low threshold for inclusion – a single death – I would argue that there is less cause for concern than for studies which examine the intensity of violence. It is easier to be confident that some violence has occurred than to determine how much.

Using descriptions provided by the UCDP GED for each non-state event, I coded a specific subset of violent communal land conflicts. All event descriptions in which land was stated as a grievance or mobilizing factor were given the value of 1. The result is 62 country-years which are coded as having communal land conflicts of a possible 340.[33] I operationalize land conflict as a binary measure of occurrence for theoretical reasons. The argument which connects competing jurisdictions to communal land conflicts speaks to the occurrence of violence in such situations, but remains agnostic as to the extent to which the violence will result in more or fewer fatalities. It is plausible that the factors which drive the occurrence of violent land conflicts may vary from the factors which cause these skirmishes to escalate into highly deadly episodes. Indeed, previous research from the civil war literature suggests the correlates of conflict onset and intensity may differ (Eck, 2009; Kalyvas, 2006; Lacina, 2006).

Control variables

It is not straightforward to determine proper controls due to the lack of literature on the sources of competing jurisdictions in West African legal systems. There is no research which directly details why some states opted for harmonizing their legal systems into a single institutional stream while others allowed the proliferation of differing sources of legal authority. Thus, they have been selected through a reading of the literature on West African history and institutional development, casting a broad net in order to examine as many potential confounders as possible.

The first control is for *colonial legacy*. Of the former British colonies, 60% have systems with competing jurisdictions and 40% with a single jurisdiction system, while this relationship is the inverse for the former French colonies. It is plausible that there is a difference between the former colonies in the type of legal system they chose to adopt, and that the colonial legacy will also have different consequences for the production of violence, be it due to the history of indirect rule or the type of electoral or governance system inherited from the colonizer. For these reasons, I include a dummy for whether the country was a French colony prior to independence.

To capture the state's willingness and ability to prevent communal conflict, I also include several state-level variables. The first, *Polity2*, captures the type of political system; it ranges from –10 (full autocracy) to +10 (full democracy) (Polity IV, 2006; Marshall & Jaggers, 2007). I also include *gdp* per capita as a proxy for the state's administrative reach and its capacity to use coercion to prevent communal conflicts (World Bank, 2011). Both of these values are lagged by one year. A measure of

[31] For more information on UCDP's data collection procedures and coding procedure, see Eck & Hultman (2007) and Sundberg, Lindgren & Padskocimaite (2010). The UCDP GED is presented in greater detail in Sundberg & Melander (2013). For a discussion of strengths and weaknesses of UCDP GED and other events data, see Eck (2012).

[32] For example Jönsson (2007) and Zinn (2005).

[33] If there were multiple land conflict events in the same country-year, either due to conflicts between different groups or due to the same group clashing multiple times, the observation took a value of 1.

ethnic fractionalization is included in case the ethnic composition of the country influenced the integration of customary law into the formal civil law system as well the likelihood of communal land conflicts (Alesina et al., 2003).[34] A measure of *cabinet size* is included to proxy the level of patronage in the political system; politicians may design the legal system differently in clientelistic systems and such systems may also suppress (or increase) violence (Arriola, 2009). In the case that the land tenure system itself affects the development of competing jurisdictions and communal conflict, I include a dummy for countries which recognize *customary land tenure* (Herbst, 2000). Two measures of past events are included. The first is a control for the *time since independence*, in keeping with ideas that countries with longer histories of independence will have a head start in creating coherent institutions. The second is a dummy for whether there is an *armed conflict in the previous year* (data from UCDP). Finally, I create cubic polynomials to control for time dependence, and estimate robust standard errors.[35]

Results and analysis

Table I reports results from a cross-sectional time-series analysis of West Africa for the period 1990–2009, using a dichotomous measure of communal land conflict.[36] Results from Table I indicate that the results for the competing jurisdiction measure are positive and significant across all of the models. In the bivariate model, the probability of a country-year experiencing communal land conflict increases from 10% to 38% when going from single to competing jurisdiction systems, an increase of 279%. Model 2 includes all of the controls, Model 3 adds a lagged dependent variable, and Model 4 adds the customary land tenure variable, while Model 5 omits the cabinet measure since it is the source of considerable missing data. Across all of these models, the effect of multiple jurisdictions remains strong and significant: the probability of land conflict in single jurisdiction systems ranges from 3.9–7.9% across the models, and increases to 17.6–27.9% in competing jurisdiction systems, estimated using the modal and mean values for the other variables. Thus, across the models, the existence of competing jurisdictions results in a 200–355% increase in the probability of a country experiencing a communal land conflict.

These findings provide support for the argument that the authority of any given forum is undermined by the existence of the others. On the ground, this means that individuals do not have any incentives to accept the judgment of a court if it is not to their advantage, creating incentives for violence. For example, Beeler (2006) describes how Fulani herders in Mali forum shop between village chiefs and local councils or courts, depending on where they believe they have the best chance of winning, sometimes diverting to a new source of authority if the village chiefs do not find in their favor. Frustrated with this state of affairs, farmers often take action outside of the law. In areas like the Nioro district, such events can escalate to the mobilization of groups, where deadly clashes are frequently reported between Fulani cattle breeders and Soninke farmers, especially over grazing fields and water (PANA, 1999).

Because ex-French colonies is the modal value, the above estimations are for such countries.[37] When re-estimating the marginal effects for non-French colonies, the baseline probability of communal land conflict is higher but the effect of the legal system is roughly the same: single jurisdictions have probabilities ranging from 13.5% to 22% for communal land conflict, while competing jurisdictions have probabilities ranging from 36% to 60%, an increase of 168–217% in the probability of communal conflict.

To ensure that the results are picking up the competing jurisdiction phenomenon and not rule of law writ large, I have included the World Bank's Rule of Law indicator, which is available for the period 1996–2009 (Kaufmann, Kraay & Mastruzzi, 2010).[38] As Model 6 shows, the results for the competing jurisdiction variable remain robust and the Rule of Law measure is not statistically significant, which should assuage concerns that

[34] The data are based on estimates from the period 1983–98. While this raises the issue of endogeneity, ethnic composition tends to be slow-moving, and even the worst episodes of non-state conflict in West Africa during this period are unlikely to lead to changes in ethnic fractionalization at the country-level.

[35] See Carter & Signorino (2010). The results are robust to the exclusion of the cubic polynomials (cf. Dafoe, 2011) or to using a random effects model.

[36] Table I reports a one-fatality threshold, but the results are also robust to five- and ten-fatality thresholds. The analysis includes 16 countries due to missing data on the competing jurisdiction variable for Guinea Bissau.

[37] The results indicate that former British colonies are more likely to experience communal conflict. One explanation for this finding may be that the legacy of French administrative reach helped to suppress and manage the outbreak of disputes.

[38] Rule of Law captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.

Table I. Competing jurisdictions and communal land conflict

	Model 1	*Model 2*	*Model 3*	*Model 4*	*Model 5*	*Model 6*
Competing jurisdictions	1.7005** (0.304)	1.4507** (0.413)	1.2875** (0.429)	1.6695** (0.445)	1.623** (0.334)	1.0014* (0.428)
French colonial past		−0.853* (0.406)	−0.599 (0.435)	−1.9457** (0.711)	−0.8193* (0.351)	−1.0186* (0.515)
GDP per capita (*t*–1)		0.001 (0.002)	0.001 (0.002)	0.0005 (0.002)	0.0022 (0.002)	0.0041* (0.002)
Polity2 (*t*–1)		0.0022 (0.044)	−0.0147 (0.046)	−0.0396 (0.047)	0.0235 (0.038)	0.0961 (0.065)
Polity2, sq. (*t*–1)		−0.0111 (0.011)	−0.0057 (0.011)	−0.0147 (0.012)	−0.012 (0.01)	−0.0212 (0.02)
Ethnic fractionalization		3.4439 (3.155)	2.5887 (3.069)	0.549 (2.576)	5.045 (2.735)	3.8256 (5.217)
Intrastate armed conflict (*t*–1)		0.4238 (0.501)	0.437 (0.496)	0.5065 (0.507)	0.3296 (0.435)	0.9106 (0.575)
Years since independence		−0.0663** (0.017)	−0.0562** (0.018)	−0.058** (0.019)	−0.037 (0.021)	−0.0273 (0.028)
Cabinet size		0.038 (0.024)	0.0314 (0.025)	0.0079 (0.031)		
Land conflict (*t*–1)			0.891 (0.548)			
Customary tenure				−2.1253* (0.861)		
Rule of law						−0.0042 (0.024)
Constant	−3.979** (0.769)	−4.831* (2.393)	−4.296 (2.702)	−0.852 (2.236)	−6.331** (2.298)	−7.069 (9.586)
N	320	255	239	255	320	176
Log pseudo-likelihood	−138.051	−95.5504	−92.2039	−89.692	−127.1723	−68.8799
Pseudo-R2	0.1225	0.2253	0.2218	0.2728	0.1916	0.1746

Logit estimation with robust standard errors in parentheses. Time polynomials included in all models. *$p \leq 0.5$; **$p \leq 0.01$.

Table II. Robustness checks (based on Table I, Model 2)

	Effect of var.	*Effect of C.J.*	*C.J. pred. prob. (0→1)*
Population density	+	+**	8%→25%
IMF Structural adjustment programs	–	+**	6%→22%
Leader tenure	–**	+**	4%→32%
Monopolization/domination of ethnic coalition	+	+**	6%→22%
Elected state officials	+	+*	6%→21%
Population per parliamentary representative	+**	+*	3%→13%
Cotton	–	+**	7%→32%
Cocoa	+	+**	6%→22%
Coffee	+	+**	6%→23%
Fruits	+	+**	7%→23%
Groundnuts	+*	+**	6%→25%
Agriculture (arable and crop land)	+	+**	7%→21%
Agriculture, value added (% of GDP)	+	+*	8%→19%
Private ownership	–**	+**	6%→29%
State leasehold	+	+*	8%→19%
Fearon & Laitin ELF	+**	+*	5%→11%
EPR ELF	+	+**	6%→18%
Regime transition: minor	+	+**	6%→23%
Regime transition: major	+	+**	6%→22%
Rainfall deviation	+	+**	6%→22%
Rainfall deviation squared	+	+**	6%→22%
Rainfall deviation * C.J.	+	+**	6%→22%
Rainfall deviation squared * C.J.	–	+**	5%→27%
3-year conflict lag	+	+**	6%→22%
5-year conflict lag	+	+**	6%→23%

*$p \leq 0.5$; **$p \leq 0.01$. Predicted probabilities based on modal and mean values and ex-French colonies.

the competing jurisdiction variable is proxying rule of law or state legal capacity.

Robustness checks

These results are robust to model specification and the omission of any of the controls.[39] Table II reports the results of robustness checks, including the direction and significance level of the included variable as well as the direction, significance level, and change in predicted probability when going from 0 to 1 for the competing jurisdiction variable. Descriptions of these variables and data sources can be found in the replication data files. As Table II shows, the competing jurisdiction variable remains robust to the inclusion of any of the above variables. It is also robust to the omission of any of the countries from the analysis. There is little risk for reverse causation, given that communal violence over land, unlike civil wars, tends to be sporadic and of short duration. Furthermore, while laws are often modified, legal institutions themselves are highly static. To the extent that the role of customary law in legal institutions has been modified in West Africa, it has been in the direction of creating a more unified, single jurisdiction system. This suggests that even if violence over land in previous periods has led to changes in the legal system endogeneity should attenuate, rather than overstate, the results.

Taken as a whole, the results show support for a correlation between the competing jurisdiction systems and the occurrence of communal land conflicts. The greatest weakness with these models is the possibility of omitted variable bias. In particular, it is possible that the development of a country's legal system is not random or exogenous to the development of other institutions; the multiple jurisdiction variable may thus be proxying a more general malaise in state institutions. Because of the lack of previous research on the development of these legal systems, it is impossible to know the extent to which this is true, though there are two points to keep in mind. The first is that this concern builds on the assumption that the reason multiple jurisdictions will be correlated with weak states is because

[39] Regression output for these and all other robustness tests are available in the replication files.

leaders will be unable or unwilling to challenge traditional authorities in order to divest them of these responsibilities. This reasoning is problematic because traditional authorities are often present in single jurisdiction systems as well, but they have been sanctioned by the state as the sole authority of first instance (as opposed to having to compete for jurisdiction). The second point to keep in mind is that the findings are robust to the inclusion of variables that capture various facets of state strength, including rule of law, GDP per capita, level of democratic consolidation, and whether officials are elected or appointed. Scholars on the ground have emphasized that the structuring of local legal systems is vital to the production of conflict (Lund, 1998, 2008; Berry, 2009), suggesting some face validity for the causal story from the case study literature. Nonetheless, restraint is warranted in gauging the validity of the causal story; additional research, particularly detailed historical and ethnographic work, is needed.

Conclusion

In this article I address the question of why communal land conflict varies across West Africa, despite the entire region suffering from the similar problems of land tenure and ethnic patronage that encourage communal land conflict. I argue that the design of the legal institutions that are tasked with adjudicating disputes over land rights is central to understanding the incentives for violence, and posit that when there are competing jurisdictions with overlapping mandates, the legitimacy of the system is undermined and the resultant incentive structure for people to settle disputes extrajudicially through the use of vigilante measures is enhanced. I test this proposition using new data on communal land conflicts throughout West Africa, and find that countries which have competing jurisdictions are 200–350% more likely to experience communal land conflict than countries in which there is only a single, exclusive jurisdiction for any given dispute. These findings suggest that the organization of legal authority serves as an enabling structure that constrains or facilitates groups' calculations regarding the utility of employing violence to resolve disputes. Competing fora create dysfunctional adjudication procedures and a breakdown in the rule of law; the uncertainty wrought by such a system also restricts the ability of security forces to enforce decisions, compounding the incentives for groups to use violence to resolve their disputes. In terms of previous work on this topic, the resource scarcity research agenda should be seen as a complementary rather than competing approach: scarcity arguments can speak to the timing of the outbreak of conflict while an institutional approach helps to explain how participants will gauge the utility of violence in resolving disputes.

While these findings are based on data from West Africa, they are likely to travel to the rest of sub-Saharan Africa, where the legacy of mixed legal systems under colonialism has led to differing institutional strategies for adjudicating disputes. Indeed, communal land conflict is also rife throughout the rest of sub-Saharan Africa, but it is far from uniform in its manifestation across countries. Beyond this, the broader message of this article is that legal systems matter for the regulation of conflict and, as such, can influence whether disputes turn violent. The workings of legal systems – their institutionalization, content, and functioning – are likely to provide leverage on understanding a wide array of social unrest. The functioning of legal systems may differ from the functioning of other political and bureaucratic institutions that are more commonly studied; this article suggests that disaggregating and analytically disassembling these institutions may be valuable for understanding patterns of violence.

The findings presented here generate one primary policy implication: because single jurisdiction systems are associated with a decreased probability of communal land violence, if authorities wish to reduce this type of violence, reforming legal systems to create a single institutional stream is likely to reduce the risk of communal land violence. This policy implication comes with two caveats, though. The first is that authorities should be aware that in the short term, changes to the legal system may lead to a continuation or even an increase in communal violence as parties seek to establish their rights within the new system. Reforms to land laws in both Niger and Ghana led to increased instability and uncertainty, and efforts to unify and clarify the law led to intensified competition; the same is likely to be true for reforms to the institutions of law (Lund, 1998, 2008; see also Deininger & Castagnini, 2006).

The second caveat is that while single jurisdiction systems are associated with lower levels of communal violence, this need not imply that they otherwise function ideally. This article has only examined the effect of single versus competing jurisdictions on the production of communal land conflict. Whether this distinction in institutional design matters for a bevy of other concerns is not addressed in this article, nor, to my knowledge, has it been studied. Civil law is designed not only as a conflict resolution mechanism to prevent violence, but also to generate and uphold norms regarding justice writ large; as such, it is relevant to ask which system is more

likely to produce results which are deemed fair by the litigants and wider populace, is better able to manage a diversity of cultural norms, is better designed to adapt to changing norms and legal standards, and so on. Before advocating for a particular legal system one would need to examine the differential effects on a wide array of outcomes that are valued by society.

It is also important to emphasize that while single jurisdiction systems produce less violence than competing jurisdiction systems, they are not without their problems. Both institutional arrangements suffer from a variety of ills, such as the incapacity of local courts to handle the case load expeditiously.[40] The result is that many injustices are never solved, and many people are deprived of their rights by the unchecked illegal actions of others. The legal systems in West Africa have also been castigated for corruption, manipulation, and the non-observance of laws (Lund, 2008: 135; Benjaminsen & Ba, 2009). Indeed, it remains an open question as to whether the different institutional arrangements engender variation in efficiency and other facets of performance, and the extent to which the performance of these institutions affects social unrest and violent conflict.

In addition to underscoring the importance of legal institutions in understanding various forms of social violence, this article also contributes to the burgeoning study of communal conflict. Communal conflict can include a variety of violent behavior, from ethnic riots of the type that bedevil Nigeria and India (see Varshney, 2002; Wilkinson, 2004) to rural land conflicts. The intuition that drives this article is that there is analytical leverage to be had by distinguishing between different types of communal conflict. This article is one of the first cross-national studies of communal conflict, as most previous research has been focused on single countries.[41] This article contributes by demonstrating that theorizing institutional arrangements is critical for understanding how incentives for communal violence are structured in various settings.

Replication data

The dataset and do-file for the empirical analysis in this article can be found at http://www.prio.no/jpr/datasets. The statistical analysis was performed in Stata 12.1.

[40] In Ghana, for example, the average minimum time for a litigant who goes through all of the levels of the modern civil appellate system is three to five years, but could be as much as 15 years (Crook, 2004: 8).

[41] Exceptions include Kreutz & Eck (2011) and Theisen & Brandsegg (2007).

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Appendix

Table AI. Coding of cases

	Competing jurisdictions	*Single jurisdiction*
Land conflict		
	Cameroon	
	Ghana	Chad
	Mali	Guinea
	Niger	
	Nigeria	
No land conflict	Togo	Benin
		Gambia
		Ivory Coast
		Liberia
		Mauritania
		Senegal
		Sierra Leone
		Burkina Faso

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