

Towards a theory of claim making: Bridging access and property theory

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Abstract

This article proposes a framework for studying and understanding how people make claims to land and other natural resources. We argue that a focus on claim-making practices of actors (individuals, groups, institutions, companies, the state), and the processes of appropriation, accessing and contestation that come along with it, best responds to Sikor and Lund's call to examine "the grey zone" between access and property. We identify and discuss three practices of claim making: "grounding claims" is the practice of inscribing or altering the landscape with visible markers connoting ownership; "talking claims" is when speech is used strategically to make, justify and contest claims; and "representing claims" is when claims are represented on material objects (maps, title deeds) that are detached from the resource. We contribute to debates on enclosure, large-scale land acquisitions and resource grabbing by providing a lens of claim making through which these processes can be conceptualized.

Introduction

This article advances a theory of claim making. It sets out an analytical framework for studying and understanding how people make claims to land and other natural resources. Our point of departure is Sikor and Lund's call to explore and investigate what they refer to as "the grey zone" between access and property, i.e. the zone "between what people have [property] rights to and what they merely have access to" (2009, 2). Its "central dynamic is created by people's attempts to secure rights to natural resources by having their access claims recognized as legitimate property by a politico-legal institution" (Sikor and Lund 2009, 1). The general gist of this dynamic is geared towards turning access to land and other natural resources into recognized property. Sikor and Lund highlight the process of legitimization in this dynamic by centring their discussion on the legitimizing practices of politico-legal authorities or "authorizers" as they sanction and legitimize claims as property (2009, 2). We are interested in the process of appropriation that is simultaneously at play here, driven as it is by the property claimants in their quest at making land or resources their own. Our focus on those who claim (rather than those who legitimize) and how they claim enables us to recognize another process, one that moves in the opposite direction. This process starts when property exists but without access and unfolds as property holders try to turn their rights into actual access and use. This dynamic has been referred to as "accessing" (Milgroom et al. 2014). In this article, we broaden Sikor and Lund's discussion of the grey zone to not only consider processes of turning access into property (appropriation) but also to explore reverse processes of property translating into access (accessing). We suggest that these processes not only link access and property empirically, i.e. when an actor's social position of "having access" becomes a position of "having property" too, or vice versa, but also that a process-focused

approach connects and bridges the theories of access and property conceptually.

Both appropriation and accessing are about excluding others from use and benefit, the former in a legitimate way (Hall et al. 2011). Attempts at appropriation and at establishing access are, therefore, often contested and far from guaranteed. They may be reversed, halted and undone or end in violent conflict, as counterclaimants successfully challenge claims or authorizers refuse to recognize property claims. Contestation is a third process that we explore. We suggest that to understand how these processes unfold, it is key to focus on what people actually *do*, i.e. how actors (individuals, groups, institutions, companies, the state) try to appropriate natural resources, how they seek to concretize access when they only have property, but also how others try to undo or challenge these endeavours. Appropriation is about making claims, just like accessing involves claim-making practices. Contestation, in turn, is about countering those claims. We focus on the practice of claim making, including the making of *counterclaims*, to understand the processes of the grey zone by distinguishing three ways in which actors make claims to land and natural resources: “talking claims”, “grounding claims” and “representing claims”. By looking at access and property through the lens of claim making we adopt a processual approach that recognizes that access and property are not fixed entities, but have to be maintained through the constant negotiation of claims.

Claim making takes place in many historical and contemporary contexts, in the global north as well as in the global south, and can be done individually, collectively or by institutions like the state or a company. It also occurs in relation to different kinds of resources. Although land is the resource that is given most attention to here, the three forms of claim making mentioned above may also be practiced in other contexts, for example, in a more marine environment with regard to mobile resources such as lobsters (Acheson 1975). On the other hand, the nature and specificity of the resource may affect

the way accessing and appropriation play out (Peluso 1996; Milgroom et al. 2014). Land, however, has a particularity that sets it apart from other natural resources. As Li (2014) explains, land is fixed, its span is extensive, it has life-giving “affordances” and a propensity for generating struggle and conflict, all of which make it difficult to accomplish exclusion. This compels claimants to articulate their claims and counterclaims in various ways and through diverse means, which makes the context of land a particularly suitable resource for exploring the different forms of claim making.

We hope to shed new light on such topical debates as enclosure, large-scale land acquisitions and resource grabbing. These are processes where the grey zone between access and property is revealed empirically. We introduce an approach that is able to “capture” enclosure, acquisition and grabbing concretely, as they happen, and come about through the strategic claim-making practices of actors. This can provide insight into the different ways in which claims manifest, drawing attention to forms of claims and counterclaims that may not be recognized as claims at first sight, such as those that are subtly embodied in the landscape or the more explosive claims that come in the form of violence.

This article turns now to a theoretical discussion of claim making by exploring the concepts of access, property and appropriation. We then examine the three practices of claim making and illustrate them with empirical cases drawn from the literature. The conclusion wraps up by highlighting the theoretical contribution to the access and property scholarship.

Claim Making as the Common Ground between Access and Property

Appropriation is about making property where no property existed before. Appropriation was key to Locke's treatise on the origin of private property, which he developed with the history of the English enclosures in mind (Olivecrona 1974). He is perhaps the first scholar to have engaged with the grey zone by explicitly linking a process of appropriation to property. In fact, most of the theorizing we draw from in this section comes from property scholars, who have been concerned with questions regarding appropriation and enclosure.

We follow Sikor and Lund's (2009) definition of property and Ribot and Peluso's (2003) approach to access. Access is "the ability to benefit from things" (Ribot and Peluso 2003, 153, 155), the "things" considered here being natural resources and land in particular. "Property" on the other hand is about "legitimized claims, in the sense that the state or some other form of politico-legal authority sanctions them" (Sikor and Lund 2009, 4). The difference between property and access resides in the fact that while property presupposes legal, customary or social sanctioning of claims, access does not, because it refers to all the ways in which people can benefit from resources, not only through legal property but also by way of illegal practices such as through theft or the use of violence (Ribot and Peluso 2003). The concept of access is thus broader in scope than that of property (Ribot 1998). Hence property is generally considered to be a subset of access as a form of "legal access" (Ribot and Peluso 2003, 162). But the concept of property too extends beyond access: people may legitimately claim property over resources, but may not be able to access and derive benefits from them (Sikor and Lund 2009). Thus, the concepts of access and property overlap partially (Sikor and Lund 2009). It is this conceptual overlap that is at the core of the grey zone, as people seek to move

from a position of “having” only access or only property to a position where they “have” both property and access. To unravel this overlap, we need to dig deeper into the theoretical underpinnings of the concepts of access, property and appropriation.

In line with legal anthropology, which is concerned with how property operates in the real world as opposed to the more dominant instrumental or (neo-)utilitarian approach that discusses how property regimes should best be designed (von Benda-Beckmann et al. 2006), we believe that “property regimes are not ‘things’ which are there or not, they are what people *do*” (Juil and Lund 2002, 4 emphasis in the original). Similarly, Busse and Strang move away from static ideas of property and property relations and instead focus on the “*acts of owning and appropriating*” (2011: 1, 6 emphasis added).¹ In their view, ownership is not static possession, and to uphold ownership, it needs to be continuously asserted and actively affirmed (see also Busse 2012). Property is processual. It requires effort – it is something that takes work (Blomley 2013). Sikor and Lund’s definition of property as “legitimized claims” brings in the issue of legitimacy, and legitimacy, they observe, “is not a fixed and finite substance” (Sikor and Lund 2009, 6). What is considered legitimate varies across space and time, and in social settings of legal pluralism,² other legitimacies may undermine previously legitimized claims (Sikor and Lund 2009). Thus, “having property”, like “having access”, should be seen as social positions that temporarily crystallize at particular historical conjunctures. Having your property claims legitimized is not the end of the process of appropriation: to

¹ Busse and Strang build on Rose’s (1994) ideas of “acts of possession”, which will be discussed below.

² Legal pluralism refers to the coexistence and interaction of multiple normative or legal orders with different institutions and authorities and different sources of legitimacy within a single social setting (Griffiths 1986).

remain in this position, property needs to be maintained and defended in a process of ongoing assertion.

The notion that property is always in the making or unmaking, or needs to be maintained, has an important implication in the sense that “property is about *claims* which are considered legitimate” (Sikor and Lund 2009, 6 emphasis added). By adopting the idea of property as legitimized claims, we choose a notion of property that centres on “claims” over the more conventional idea of property as “rights”. Although these two terms are often closely related in the property and access literature, and are sometimes used interchangeably, we consider that a clear distinction is apposite to clarify the dynamics and struggles that go with the process of appropriation. The term “rights”, or property rights, has dominated the property scholarship ever since Maine coined the phrase “a bundle of rights” to describe property in 1861. The major contribution of this conception has been that it drew attention to the possibility of multiple rights or interests in one thing as well as that different combinations of bundles of rights might exist empirically in one place (Meinzen-Dick and Pradhan 2002; von Benda-Beckmann et al. 2006). Schlager and Ostrom (1992; see also Ostrom and Schlager 1996) for example, distinguish five property rights (of access, withdrawal, management, exclusion and alienation) that individuals or groups can hold bundled, often cumulatively, with regard to common-pool resources such as fisheries and grazing lands.³ The idea of rights is thus very useful and appropriate for a synchronic snapshot analysis of property. However, it

³ Their use of the term “access” is different from “access” in access theory. Ostrom and Schlager use it to denote “simple access”, i.e. “the right to enter a defined physical area and enjoy nonsubtractive benefits” (1996, 131), as in having the right to hike in a forest reserve but without having the right to harvest forest products (Schlager and Ostrom 1992).

connotes a degree of permanency and fixedness that does not mesh well with the agency behind property making that we want to highlight here. Various authors have positioned property in its diachronic and historical dimension as changing, relational and negotiable (Berry 1993; Peluso 1996; Hann 1998; Juul and Lund 2002; Meinzen-Dick and Pradhan 2002; von Benda-Beckmann et al. 2006; Leegwater 2011). In our opinion, the term “claims” rather than “rights” better captures the temporariness, contingency and negotiability of property.

Tucked away in Rose’s (1994) essay on possession and property is a very illuminating exposé on property as based on claims. Rose was preoccupied with the same question of original property as Locke: how do you make an owned thing out of an unowned one, or, in other words, how do you establish individual property by taking something out of “the great commons of unowned resources” (1994, 9)? She focuses on the “acts of possession” that support a property claim. “First possession” involves the clear act of publicly declaring one’s intention to appropriate, whether verbally or not. The statement “this is mine” is an act of possession (Rose 1994, 16, 18). A non-verbal act of possession, would be putting up a fence, or using land in a way that is recognized by others as a claim of ownership. What Rose calls “acts of possession” are our “claim-making practices” and her “first possession” is akin to what we understand under “appropriation”. But what Rose adds to our argument is the idea that others are needed with whom claimants can “communicate”. The notion that claimants must announce and inform others of their claims is key to her insight that possession involves communication:

“Possession now begins to look even more like something that requires a kind of communication, and the original claim to the property looks like a kind of speech,

with the audience composed of all others who might be interested in claiming the object in question” (Rose 1994, 14).

This means that to be effective, claims need to be communicated and that this must be in a language that is understood, which varies according to the audience (Rose 1994). “Audience” differs from “authorizer”. They constitute different actors with different roles in the processes that unfold between access and property. The term audience refers to the wider society and includes potential counterclaimants, as explained in the quote above. It may also include people that may take up the role of authorizer. But the point is that audiences become relevant in the process of appropriation: for a claimant, it is important that the audience understands his or her claim. Authorizers (elders, earth priests, chiefs, local administrators, judges, etc.) usually only come into play when claims are contested and need to be confirmed or legitimized institutionally (Lentz 2005).

The notion that claimants must “persuade” (Rose 1994; Lentz 2005) an audience points to the fact that claim making involves performance (Poteete and Ribot 2011) and is performative, as it “enacts” (or rather, tries to enact) property into being (Blomley 2013). However, claim making is not always about the gentle persuasion of audiences. Claim making entails the exclusion of other (potential) users and may involve force and violence (Hall et al. 2011). Violence, like persuasion, is performative (Lantz 2016) and a form of communication too (van der Merwe 2013). Rather than pitting persuasion against violence, we suggest to see them as different expressions of claim making along a continuum of communication.

Ingold (1986), in writing about tenure and territoriality, makes similar observations to those of Rose on appropriation, claims and communication. He describes land tenure, what we would call property in land or landed property, as “a *mode of*

appropriation, by which persons exert claims over resources dispersed in space” (1986, 133 emphasis in the original). Ingold insists that “every claim is part of a continuous process” and during this “appropriative movement” information is conveyed to others that communicates territorial demarcation, behaviour he describes as territoriality (1986, 138). Speech is one way of communication but when people are not in direct audio-visual contact, they resort to sign language:

“[t]hese signs have, as it were, to be ‘written’ down onto the landscape (or seascape) in the form of durable boundary markers of diverse kinds – notched trees, stone cairns, buoys, etc. – whose implicit message can be ‘read off’ on encounter by others” (Ingold 1986, 147).

Territorializations such as these, with their potent communicative attribute, serve to organize relations of access and exclusion, and, in effect, help to materialize property in the socio-spatial world (Blomley 2016). If the act of “writing down” signs (i.e. territorializing) is aimed at communicating claims over land or other natural resources, then we propose that those notched trees, stone cairns and buoys are not just *supporting* property claims but, in fact, *are* claims, just like Rose’s fence, land use and saying “this is mine” are property claims to land.

If a claim is clear, is taken seriously and no one objects, this would mean that the wider society accepts the claim to property, or at least, acquiesces in ownership (Rose 1994). Furthermore, once property is established, the owner or owners need to continue communicating their claim, to “*keep on speaking*” as Rose writes (1994, 14 emphasis in the original), in order to not lose it. Therefore, we argue that property is a process (Ingold

1986; Berry 1993; Peluso 1996; Busse and Strang 2011; Busse 2012) and not a finished product.

The idea of property as a process blends well with the processual view of access that Ribot and Peluso (2003) advance in their theory of access. They break up the concept of access into three processes, namely “access control”, “access maintenance” and “gaining access”. Gaining access refers to “the more general process by which access is established” (Ribot and Peluso 2003, 159). Access control and access maintenance go together because access maintenance involves expending resources or investing in a social relationship “to keep a particular sort of resource access open” that is controlled by another actor, who has “the ability to mediate others’ access” (Ribot and Peluso 2003, 158, 159). For our present purposes, the term “access control” is of particular interest because, as Ribot and Peluso observe, claiming property is a form of access control. This insight already narrows down and identifies the zone of overlap between the concepts of access and property to that area where claiming property and controlling access intersect. The idea of claiming property being alike to controlling access also ties nicely into the notion of property as “legitimized claims” confirming that the terms claims, claiming and claim making offer a common language and a bridge between access theory and property theory. If we view both access and property as processes that revolve around claims and claim making, then we propose to focus on this common ground as a way of understanding the grey zone between access and property.

A Typology of Claim-making Practices

The communicative aspect of appropriation as highlighted by Ingold and Rose is key to our notion of claim making. Laying claims to land and other natural resources only makes

sense when the claims are understood as such by others. An anecdote by one of the authors (Kronenburg García) nicely illustrates this point:

During my research on land use change and tenure transformation in Kenya, I accompanied a young man to the place where he had started constructing a new homestead. The new homestead was located in the bush, across some hills, at some distance from the cluster of homesteads of the locality, in an area that was used by the locality residents as common grazing land. As we walked from his father's homestead towards the new site, I noticed freshly cut branches that had been laid down on the ground in a straight line. Accustomed to asking questions, I inquired my companion about them. He told me that the branches had been placed by one of his neighbours, who, like him, wanted to build his own homestead, and the branches were there to tell others of his intention to settle down at that particular spot: they functioned as the boundary of the land he claimed as his. He pointed out another line of branches further ahead (placed there by another neighbour), and, as I looked around and continued walking, I suddenly realized that there were more cut branches laid down across the landscape, some placed in lines and others demarcating and enclosing clear pieces of land.

What was encountered here was a land rush, the initial phase of a process of enclosure: people were tentatively staking out individual claims to land by using branches. But the important point here for our current argument is that while the meaning of the branches was obvious to the young man, it wasn't at first for the researcher whose untrained eye at "reading the landscape" and understanding its social messages had almost missed these crucial signs of claims to private property.

So far, we have discussed two forms of communication: speech (for example, saying “this is mine”); and through signs or markers “written” onto the landscape. These means of communication form the basis for two of the three types of claim-making practices that we identify and for which we use the terms “talking claims” and “grounding claims” respectively. *Grounding claims* is the practice of inscribing or altering the landscape (or seascape, cityscape, etc.) with visible markers that are socially understood as conveying the notion of individual or collective property. The practice of cutting branches and laying them down on the ground in lines or polygons is an example of grounding claims. Grounding claims is on-site work that involves doing something with the claimed scape or resource. There is an interesting parallel with Locke’s understanding of property and appropriation in this regard. In Locke’s writing, a person can make something his or her property by “mixing” his or her labour with it and improving it, such as by clearing, ploughing and cultivating a piece of land (Olivecrona 1974), a view which is shared by, for example, the Dagak in Indonesia (Peluso 1996) and the Dagara of Burkina Faso (Lentz 2005).

We understand “labour” in its wider sense as in effort and action and not just in the conventional physical and hard labour sense of cutting down the bush, ploughing and building houses. Locke also referred to labour in this wider sense of “exertion” and “action” (Olivecrona 1974, 224). Effort may for example also extend to include investments made in time, resources and social relationships that are needed to make a claim effective,⁴ or to the time and work that goes into the honing of “persuasion” skills (see later).

⁴ For example, the time to construct a fence, the money to pay for the barbed wire and the social relationships to organize a working party.

Talking claims is when speech is used strategically to make, justify and contest property and access claims. We borrow the label “talking claims” from an article by Fortmann (1995) entitled “Talking claims: discursive strategies in contesting property”. Fortmann’s case on Zimbabwe is about speech in the form of stories, i.e. black villagers telling each other stories of their past and white commercial farmers recounting stories of their own good deeds among themselves to articulate and assert their claims to land. This is an instance of stories told *within* groups involved in a struggle over access and property. But the notion of talking claims can also be used to refer to the face-to-face spoken claims and counterclaims between conflicting parties such as during land dispute meetings. Audience matters here: stories told are strategic and will depend on whether the audience is an ally or an adversary (Lentz 2005). Lentz (2005) describes a case of competing face-to-face claims in Burkina Faso and analyses the narratives employed by the chief and member of the earth-priestly family of Kierim and the Ouessa earth priest during a meeting to resolve a land conflict between two villages. She analyses the migration-and-settlement histories told by these men as “property narratives” employed strategically to state, defend and contest claims to land. It is important to note that the practice of talking claims is not only limited to oral societies, i.e. those without cadastres, land ownership maps and written titles such as in Lentz’s case, but they are also important in contexts governed by written law such as the property regime under statutory law. Court cases, like land dispute meetings governed by oral law, are arenas where lawyers’ arguments are often decisive for the final interpretation of law.

Blomley (2007), in his study on hedges during the English enclosures, argues that the scholarship on enclosure and property has been dominated by a “representational” focus. This representational focus is evident in the importance given to estate surveying and map making and “the making of representations on paper” more generally (Blomley

2007, 4). The interest for the representational is not only evident in historical studies like those on the English enclosures but also in studies on more contemporary processes, such as on land acquisitions where attention has been given to the role of title deeds, land deals or contracts (Cotula 2011). As Blomley rightly points out, maps and surveys are also signs with meaning like hedges, but their meaning is not grounded in the claimed landscape. So, while hedges emphasize the material dimension of the sign in the sense that they constitute “[t]he rearrangement of things on the ground” (Blomley 2007, 4), maps and surveys highlight the representational dimension of the sign embodied as it is in pieces of paper that connote property yet are detached from the landscape in question. Boundary lines or tracings on the map function alike hedges on the ground: they are both forms of claim making. As signs, they are both means of communicating property claims. We build on Blomley’s representational dimension of the sign to identify a third practice of claim making, which we refer to as *representing claims*. Examples include map making, gathering GPS points and registering landownership. Landownership maps are “represented claims” but so too are land surveys, cadastres, land deals and contracts. Representing claims is when claims are represented on material objects that are detached from the landscape or resource, unlike grounded claims which find meaning in their surroundings.

What we have described as “claims” in this section, Li (2014) called “inscription devices” used to inscribe boundaries of exclusion such as fences, title deeds, laws, zones, regulations, landmarks and story-lines. With our typology, we bring more nuance by differentiating forms of claims (or devices) and tying them up to different claim-making practices (see Table 1).

Table 1 Overview of cases of claim-making practices discussed in this article.⁵

Claim-making practice	Grey-zone process	Actor	Natural resource	Manifestation of the claim
Grounding claims				Grounded claim
Cutting branches and laying them on the ground (author's anecdote)	Appropriation	Individuals (young men)	Land for building a new homestead	Cut branches
Hedging in (enclosing) land (Blomley 2007)	Contestation	Individuals (enclosers) versus group (commoners/protestors)	Land	Hedges and destroyed hedges
Starting investment activities on the ground (Milgroom 2015)	Accessing, contestation	Institution (company) versus group (local people)	Land	New boundary versus stolen vegetables, sugarcane and other property
Violent eviction of local population (Kobusingye et al. 2017)	Accessing, contestation	Institution (the state) versus group (post-conflict returnees/local population)	Land for wildlife conservation versus ancestral land	Landscape free of human habitation
Having the cattle deposit dung (van Dijk 1996)	Appropriation	Individuals (agro-pastoralists)	Land for cultivation	Dung, soil fertility
Talking claims				Talked claim
Telling stories (Fortmann 1995)	Accessing, contestation	Individual (white farmer) versus group (villagers)	Land for commercial farming versus land for grazing and tree products	Story of ecological stewardship versus story of mythical gates
Telling migration-and-settlement histories (Lentz 2005)	Contestation	Two individuals on behalf of two groups (villages)	Territory	Migration-and-settlement histories
Disputing land during a meeting (Kronenburg García 2015)	Appropriation, contestation	Two individuals (neighbours)	Land	Arguments and counterarguments
Representing claims				Represented claim
Making maps (Orlove 1991)	Accessing, contestation	Institution (the state) versus group (peasants)	Reed beds	State maps versus peasant maps

⁵ Based on cases from the text, this table illustrates how the three claim-making practices may be configured for different actors (individuals, groups, institutions) and natural resources. It also shows for each example how the claim manifests and which grey-zone process or dynamic it reveals.

Manifestations, Characteristics and Dynamics of Claims and Claim Making

The Materiality of Grounded Claims

A fence, as a visible marker, is an example of a grounded claim, however ramshackle it may be. It is a powerful assertion of property over the enclosed piece of land: a “statement” (Rose 1994, 1, 6). It is a territorial marker of property (Blomley 2016), a “technology of access control” (Ribot and Peluso 2003, 165), performed property (Blomley 2013). Fences, hedges, ditches: they all are manifestations of grounded claims.

Blomley (2007) highlights a distinguishing feature of grounded claims, namely their materiality. Representations of claims, i.e. maps or estate surveys, are also material things but they lack the corporeal element that may come with the materiality of grounded claims. Blomley shows how the enclosing hedge in the English enclosures functioned both as a sign and a barrier. It was a sign that, like maps and surveys, communicated exclusive claims to land and signalled private property. But the hedge also did important practical and physical work: it aimed to enforce and materialize private property’s right to exclude by making “it difficult for human and nonhuman bodies to move as they had done in the past” (Blomley 2007, 8). As a physical check to movement, it is therefore not surprising that the hedge was targeted by those, the commoners, whose previous access to the enclosed land was being denied. The hedge was thus an instrument of exclusion and dispossession that did not only constitute “an unprecedented assault upon the commons” (Blomley 2007, 13), but also on the bodies of the commoners.⁶

⁶ The term “commons” creates a lot of confusion. Commons’ enclosure is generally taken to mean the conversion of common property into individual property, suggesting a transformation of one property

Blomley observes how there is little evidence that protestors targeted surveyors (whom we would describe as engaging in the practice of “representing claims”) or maps (i.e. represented claims). He attributes this to the fact that “[e]ven when surveys were accomplished and maps produced, it is not necessarily the case that material rearrangements occurred” (Blomley 2007, 4). Protestors, however, did target hedges, as noted above.

Grounded claims like hedges and fences with their strong connotation of exclusion are frequent causes of property-related conflicts (see for example Fortmann 1995). The point is that hedges and fences rearrange access in a very material way. Blomley’s (2007, 2) hedges “remade property on the ground”, while surveys and maps remade property on a more abstract and imaginative level as representations on paper that were detached from local social conditions.

This resonates with Milgroom’s (2015) distinction of politics “in the air” and politics “on the ground”, which she introduces in relation to large-scale land acquisitions in Mozambique. With politics “in the air”, Milgroom refers to “the networks formed around a large-scale land acquisition at the level of the state, donors and foreign private company when they are functioning far from the land itself”, and politics “on the ground”

regime into another rather than a change from access to property. While this might be the case in some instances, it is not generally applicable. For one, not all commons (forests, grazing lands, fisheries, etc.) are controlled and managed as common property (Bromley 1992), and for some commons such as the atmosphere it is difficult to control access and we rather talk about open-access regimes (Ostrom and Ostrom 1977). Therefore, when it comes to commons and enclosure we find it more useful to focus on how actors claim resources as their own (property) that they previously used and shared with others (access to the commons), and highlighting how this happens through the exclusion, dispossession and loss of access of former users, processes Blomley (2007) rightly emphasizes in his study on the English enclosures.

involves “the residents of the land and local actors affected by the project in practice, including the private foreign company itself when it begins to implement activities in the terrain” (2015, 588). In her case on the ProCana “land grab”, ProCana being a sugar and ethanol producing company, politics “in the air” was about interpreting policy to favour the land acquisition, the convergence of networks, applying for and allocating land use and benefit rights, the signing of contracts, the conducting of carrying capacity studies and the drafting of agreements with villagers during community consultations – all to secure the targeted land. Politics “on the ground” started when ProCana “began to engage in activities on the ground” (Milgroom 2015, 598). The move to actually benefit from the acquired land, i.e. the process of accessing, gave rise to all sorts of tensions. For example, the cutting of trees by ProCana to mark the boundary was opposed by the community as this boundary was closer to the village than the agreed boundary. In reaction, local people responded by stealing vegetables, sugarcane and other property belonging to the company.

Sometimes, politics “in the air” does not translate in politics “on the ground”. McCarthy et al. (2012) call this “virtual land grabbing”. Virtual land grabbing refers to those cases, in which only the initial stages of enclosure in land acquisitions occur. According to them, only a fraction of the recent large-scale land acquisitions actually lead to on-the-ground projects, and suggest that this is because the real agenda is often “to appropriate subsidies, obtain bank loans using land permits as collateral, or speculate on future increases in land values” (McCarthy et al. 2012, 523) and not the proposed investment project. Claims to land in the cases they review end up embodied in spatial plans, land development permits and concession licenses, which are what we call represented claims, but do not necessarily translate into practices of grounding claims. These cases reflect property on paper but no access on the ground, and apparently, no

intention to press for access, though benefits are arguably being derived indirectly through the property claim.

Contestation, Claims and Counterclaims

Tearing down hedges, destroying fences, burning plantations and stealing from the company express contestations of grounded claims. The stealing can be seen as a form of counter-appropriation of resources on land taken from the local residents without agreement (Fortmann 1995). The destruction of fences and hedges signal contestation and are instances of grounding *counterclaims*. Contestation aims to thwart or undo claims, and to stop or reverse processes of appropriation and accessing.

Fortmann's (1995) case, which is about disagreements over access becoming property, also showcases counterclaiming practices. But what is particularly interesting about this case is that these claims and counterclaims occur both in the form of grounding (counter)claims and talking (counter)claims. She recounts one particular conflict between a former white owner of a large-scale commercial farm and the African residents of the neighbouring Communal Area in Zimbabwe. The villagers, who had long used the farmland for grazing and for harvesting tree products, resented the fact that the white farmer had fenced the area with barbed wire. The fence then became the site of struggle and contestation, but the black villagers and the white farmer told different stories about this fence, each story strategically legitimizing their own claim to the land, which in the case of the farmer was a claim of property and for the villagers it was a claim of access. So, while the farmer accused the villagers of time and again taking the fence down and carrying it away, the villagers talked about mythical gates in those fences that allowed them to continue using the area as they had done before. In this way, the villagers

emphasized the recognition of their historical right to use the land in the form of a gate. In general, white commercial farmers legitimized their property claims to land by telling a story of ecological stewardship: they defended trees from destruction by villagers and therefore needed to put up fences. This case is not only a nice example of contestation but also illustrates that claims and counterclaims over the same resource can be simultaneously expressed with different claim-making practices.

Orlove's (1991) article "Mapping reeds and reading maps: the politics of representation in Lake Titicaca" presents a case of competing claims revealed in represented claims. He examines a conflict between peasants and the state over control of reed beds in Lake Titicaca in Peru by studying the different maps that peasants and government officials produced. The conflict started when the Peruvian government declared these reed beds to be part of the Titicaca National Reserve, and attempted to regulate and limit their harvest. The peasants opposed this move in a (successful) effort to retain their historical access and use of the reeds. Orlove shows how the "state maps" and the "peasant maps" differed in their depictions of the reed beds, the land and the lake, and in relations between different social groups in the wider landscape. These depictions told different stories over who controlled the reeds. For example, the absence of towns in one of the peasant maps is striking. Had towns been included then they would have diluted and transformed peasant control "by locating the countryside in relation to the centres from which state control is exercised" (Orlove 1991, 15). Instead, the map depicts peasant communities as contiguous along the shore, so that no unoccupied space is left between them, suggesting that "each community controls a specific territory [including portions of the reed beds] and that the communities jointly control the entire region" (Orlove 1991, 21) and excluding the state as a political actor. In contrast, in one of the state maps of around the same time, which depicts the reed beds and the boundaries of

the reserve, the peasant communities are almost invisible. Orlove concludes: “[e]ach group presented a set of maps that was congruent with its claims for legitimate control of the reed beds” (1991, 24). By analysing how and what was depicted, Orlove shows how the state and the peasants both claimed control of resources through competing maps.

Contestation and claim making can turn violent. In another case that involved the state, violence was used in an attempt to consolidate and impose a claim in northern Uganda that had only existed on paper during a short period between independence and the breakout of the Lord’s Resistance Army war (Kobusingye et al. 2017). This claim on an area for wildlife conservation had actually been annulled in 1972 but was revived by the Uganda Wildlife Authority (UWA) when relative peace was restored to the area. Yet in the meanwhile the area had been re-occupied with post-conflict returnees claiming it their ancestral land. In 2012, the local population was forcefully evicted by the UWA and the police, resulting in deaths, destruction and the imprisonment of youths. This violent eviction was a powerful performance of a grounded claim. In this case, the visible marker was not the putting of something but rather the emptying of the landscape of humans to make it a place for wildlife. The performative aspect of claim making resurfaced once more in 2015 during this prolonged land conflict, when a group of elderly women “counterclaimed” in front of two ministers by stripping naked in protest.

Claims Can Be Strong and Weak, and Can Become Stronger and Weaker

The previous sections make it clear that making claims to land requires effort, whether this is putting up a fence (or tearing it down) or drawing a map (or producing a counter map). Claiming property is “hard work” (Juul and Lund 2002, 4). If we go back to Locke’s idea of establishing property in land by clearing, ploughing and cultivating that piece of

land, we may see that there is a temporal dimension to it which suggests that the more effort, the stronger the right or claim. Claims can thus be strong and weak, and can become stronger and weaker. A cleared piece of land is already a relatively strong (grounded) claim, but a planted one with crops growing is arguably an even stronger one. The branches described in the anecdote above represent a very tenuous claim and will need to be followed up with more work like putting a barbed-wire fence or clearing the bush to strengthen the claim before the branches decay or scatter.

These ideas can be extended beyond the practice of grounding claims. The literature on land acquisitions gives an example of how this would look like in the practice of representing claims. A “land deal” may actually involve multiple contracts (i.e. represented claims): from a “memorandum of understanding” to an “investment agreement” or “convention of establishment”, through to a “land lease contract” (Cotula 2011, 7). Of these, the latter constitutes the strongest property claim, as it represents the actual changing of hands of the land, at which time the land deal is concluded after a long period of negotiation and renegotiation.

Skills are also important for making claims stronger. This is true for all three ways of claiming, but particularly evident in the case of talking claims. Kronenburg García (2015) analysed a land dispute meeting in a Loita Maasai locality in Kenya, which involved two neighbours who quarrelled about a boundary that one of them had marked. She shows how the personal traits, abilities and negotiation skills of one of the disputants (and the lack of these in the other) eventually led to the former winning the case even though this person was considered a “trickster” and an unscrupulous land grabber by the locality residents. Particularly the skill of “knowing how to talk” appears to be crucial. This does not only refer to being articulate, an eloquent public speaker and versed in using socially acceptable arguments. It also includes the capacity to manipulate the

direction of the meeting and to steer it to one's own advantage, knowing the rules of the game (i.e. what (or what not) to say, in what manner and at what time), having the ability to navigate accusations and use social conventions strategically, knowing when to use catchy proverbs and when to be harsh and direct to press a particular argument. Maasai even have a proverb that links talking skills with land appropriation: "the good mouth [i.e. the good talker] will take the land". Knowing how to talk requires social know-how and a keen sensitivity to the ambiance of the moment and the mood of the audience, including the mediator who has been appointed to arbitrate the dispute. It also includes knowing how to behave (body language, facial expression, etc.) in a "strong" manner: to remain composed and calm and not confrontational and agitated. A "talked" claim's strength depends not only on the speaker's social and talking skills, but also on his skill at performing in the arena of a land dispute meeting. All these skills are needed to "persuade" (Rose 1994) people of one's property claim, and effort goes into the honing of these skills.

To maintain a certain strength of a claim to property also requires effort: fences need to be maintained and fields need to be worked year in year out to maintain that claim. This may prove urgently important when one's claims to land are challenged. To defend a property claim, in turn, also requires effort as we saw in the section on claims and counterclaims. Van Dijk's (1996) study on land tenure and territoriality among the Fulbe (agro-)pastoralists in Mali nicely captures the centrality of effort in the interplay of strengthening, maintaining and defending claims. The effort that entitled the Fulbe to cultivate the land of their deserted cattle camps consisted of having their animals deposit dung in these soils during the previous rainy seasons. However, when they would not maintain this claim, i.e. by not taking the land into cultivation or no longer depositing dung, the power of their claim would decrease over time, as the manure would wither

away and lose its strength. By being present in these camps, they were also able to prevent people with counterclaims (neighbouring Riimaybe cultivators), who used to cultivate the land in between these camps before, but had given up due to Fulbe herds repeatedly running over their fields. The dung was therefore not only ensuring property to the Fulbe, but also a wider territorial claim on pastoral territory that they considered was theirs.

Claim-making Practices in Context

The three practices of claim making distinguished in this article may interrelate, combine, and even collide with each other in interesting ways. How this happens concretely depends on the socio-political, historical and legal context, and the nature of the resource, and must be determined empirically. We close this discussion on the theory of claim making by giving an example of how the different forms of claim making may play out in one particular context.

Kronenburg García (2013; 2015) shows how land appropriation among the Loita Maasai of Kenya always starts with the practice of grounding claims, which is part and parcel of the process of gaining access to land for cultivation and settlement that had previously been used collectively for the seasonal grazing of livestock. As long as the grounded claims go unquestioned by others (the audience), they may be seen as socially accepted claims to property. But when grounded claims are challenged, typically by a neighbour with an interest in the same piece of land, a land dispute meeting is called to resolve the matter. During land dispute meetings, claims and counterclaims are talked at length, but ultimately the mediator (the authorizer), with the help of the local leaders, resolves the issue by granting, rejecting or adjusting a particular claim to land according

to the customary rules of access and property. If a claim to land is confirmed, the land can be considered the claimant's property. What makes the Loita Maasai case interesting is that land appropriation occurred in the context of a widespread belief that state-led land adjudication and registration was imminent. People were thus staking out individual property claims in *anticipation* of state formalization, a process that would bring state surveyors to mark and map existing property claims to ultimately hand out title deeds (represented claims). The strategy was to first ground claims with the hope of having them represented later. But as we saw, grounding claims may or may not translate into talking claims, depending on whether the claim is contested, and if successfully contested, the process of appropriation may stall and even reverse.

Conclusion

This article partakes in the theoretical debate on access and property. Ribot and Peluso (2003) offered the first systematic conceptualization of access by clearly outlining how it differs from and relates to property, and Sikor and Lund (2009), in their broader discussion on how access and property relate to authority and power, drew attention to the dynamics between access and property by pointing to people's struggles and attempts at turning access into property. They called this the grey zone between access and property and it is this conundrum that we sought to clarify and theorize further. We did this by bringing access and property theory into dialogue with different, though related, bodies of work (on appropriation, territoriality and possession). In doing so, we moved away from a conception of property as based on rights to an understanding of property as based on claims. The notion of claim making, we propose, best captures the dynamics of the grey zone as claims are a way to move between access and property.

Furthermore, if claims are a bridge between access and property, they can work both ways, i.e. claims to turn access into property, or claims to turn property into access.

Several scholars have already argued that access and property are not static entities but processes (Ingold 1986; Berry 1993; Peluso 1996; Ribot and Peluso 2003; Sikor and Lund 2009; Busse and Strang 2011; Busse 2012). What we add to this understanding is the insight that it is through *claim-making practices* that these processes are constituted – an insight which formed the basis for the typology of claim making developed in this article. Property and access claims, once consolidated, may be challenged, and to maintain them they need to be negotiated and asserted through ongoing claim making.

We distinguished three modes in which actors make claims: grounding claims, talking claims and representing claims. We think this is valuable because it recognizes a wide range of actions (stripping naked), objects (cut branches, dung, maps) and spoken words (migration-and-settlement narratives) as claims that are integral and formative of processes of appropriation and accessing. Finally, by showing that access and property can be claimed and counterclaimed on different fronts, at different times and in different ways, we hope to contribute to debates on enclosure, land acquisitions and resource grabbing by offering a conceptual framework that enables more nuanced analyses of how these processes unfold.

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