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The Legal Environment and Incentives for Change in Property Rights Institutions

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Summary. — Land conflicts in many parts of the world indicate pressures for change in the property rights institutions governing land acquisition and land use. Whether or not institutional change occurs depends on the incentives and capacities of political actors. This article argues that the legal environment is one factor influencing incentives for institutional change. Three case studies of land governance in Southeast Asia's palm oil industry illustrate three types of legal environment—rule-by-law legalism, legal pluralism and lawlessness, or routinized illegality. The cases show that the legal environment shapes modes of resistance to property reallocations in the palm oil industry. Rule-by-law legalism supports legalized modes of resistance through the court system. In contrast, legal pluralism and lawlessness favor the use of political strategies to contest property reallocations. The mode of resistance in turn determines whether actors acquiring property have incentives to gain legal cover, or whether investing in political resources is more rewarding. Although the effectiveness of resistance is largely determined by the distribution of political resources, the mode of resistance helps explain whether there is demand for property rights institutions that offer generalized legal certainty in property protection. Path-dependence arising from the legal environment therefore influences the direction of institutional change.

Key words — property rights, institutional change, law, legal pluralism, Malaysia, Indonesia

1. INTRODUCTION

In many developing countries, property rights institutions governing land access and ownership are complex, changing, and contested (Boone, 2014; Hall, Hirsch, & Li, 2011; Neef, 2014). Large-scale land acquisitions for plantation agriculture have raised the visibility of property conflicts and drawn attention to the diversity of property regimes across the world (White, Borras, Hall, Scoones, & Wolford, 2012). Amidst this complexity and change, it is often not clear what change is occurring and why, particularly in terms of the relationship between property rights and law. Legal certainty in property rights protection is influentially argued to be the pivot upon which "high-quality" development depends (Acemoglu, Johnson, & Robinson, 2001; Bates, 2001; Rodrik, 2000). Yet reforms intended to create greater legal certainty in property rights protection have in many cases produced perverse social effects and privileged political insiders (German & Schoneveld, 2013; Oldenburg & Neef, 2014; Peters, 2014). Land conflicts are often shaped by processes of social negotiation and interpretation rather than by legal rules (Van Leeuwen & Van Der Haar, 2016). In part because legal reforms to property rights systems often fail, increasing scholarly attention has been directed to explaining change in property rights institutions.

Such institutional change is a fundamentally political project. Land tenure regimes, understood as "property regimes that define the manner and terms under which rights in land are granted, held, enforced, contested and transferred", constitute political order and shape patterns of land conflict (Boone, 2014, p. 4). Change in the property regime is therefore inevitably political, but it is structured by institutional context. This article examines property rights institutions as they have governed land acquisition and land use in a large-scale and rapidly growing industry, Southeast Asia's palm oil industry. It argues that both the legal environment and the distribution of political resources affect incentives for change in the property rights regime. In making this claim, the article proposes that the legal environment can be usefully differentiated in ways that go beyond the issue of "more" or "less" legal certainty or distance from the rule of law. Three cases from Southeast Asia all show large deviations from the rule of law, or generalized legal certainty in property rights protection, but in different ways. "Rule-by-law legalism" prevails in the case of Sarawak in Malaysia, "legal pluralism" in West Kalimantan in Indonesia and "lawlessness" or routinized illegality in Indonesia's Riau province. These differences in the legal environment have shaped patterns of resistance to property reallocations in the palm oil industry and incentives for change in the property regime. Incentives for institutional change thus reflect path-dependent processes arising from the legal environment, as well as exogenous change to the distribution of political resources.

The Sarawak case shows that the legal environment exerts an independent effect despite a high level of political centralization and very few constraints on those holding political power. Sarawak's legal system has been functional and legalism, or "rule by law", is entrenched as a mode of governance. This has opened up legalized avenues of resistance and—even though such avenues have led to very limited successes on the part of those contesting coercive property reallocations—an incentive to secure legal cover for property acquisitions by the powerful. Path dependence arising from the legal environment can also be seen in the cases of Riau and West Kalimantan in Indonesia. Here, decisive political change in

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the form of decentralization and democratization from 2001 diffused political power and introduced constraints on those holding political office. But Indonesia's chronically dysfunctional and confused legal system meant that in both the authoritarian and democratic eras, property rights have not been enforced using legal means. However, an increase in the status of customary law has created an environment of legal pluralism in West Kalimantan. This has led to customary law figuring in the property regime as a negotiating resource in this province, and in this way law has become a factor shaping outcomes in property conflicts. In contrast, in Riau, there has been almost no recourse to customary law in property conflicts and the property rights regime governing land for palm oil remains "lawless" in the sense that legal restraints have little effect on the ground. In consequence, resistance to coercive property reallocations in Riau has largely not taken legal form and those benefitting from such reallocations have little incentive to gain legal cover for their acquisitions.

2. THEORIZING CHANGE IN PROPERTY RIGHTS INSTITUTIONS

Formal property rights defined in law and enforced in ways that give rise to generalized expectations of property rights protection through legal means have come to represent something of a gold standard for property rights institutions in mainstream development policy circles (Haggard, MacIntyre, & Tiede, 2008; North, 1995). Broadly liberal approaches to property rights that uphold this view link property rights institutions and the rule of law through the stipulation that secure property rights are defined in law and protected through legal means, at least consistently enough to ensure generalized expectations of enforcement. The rule of law thus becomes an element of a desirable property rights regime.

The rule of law has different facets and is subject to competing measures (Haggard & Tiede, 2011; Skaaning, 2010). A general definition holds that the rule of law is "a system of previously enacted clear and general rules accompanied with abstract reasoning that constrains the discretion of a governing body" (Hadfield & Weingast, 2014). Property rights institutions that reflect the rule of law are therefore ones where property rights are bestowed and transferred according to processes recognized in law.

(a) *Political conditions*

How do formally legalized property rights institutions come about? The New Institutional Economics (NIE) school has set out a theory of institutional change that resonates with liberal approaches in depicting a "virtuous circle" of political pluralism leading to the rule of law and generalized legal protection of property rights (Acemoglu & Robinson, 2012). In this line of thinking, institutional change is driven by the need of an absolutist political ruler to strike a bargain with other actors, very often commercial elites on whose investment the ruler depends (North & Weingast, 1989). In order to commit credibly to such a bargain, a ruler needs to limit his or her own capacity for capricious behavior. This may lead rulers to introduce institutional innovations that create self-binding mechanisms, such as judicial independence or the devolution of power to parliament (Stasavage, 2002).

In the post-decolonization era, international development organizations such as the World Bank have attempted to bring about institutional change in the direction of the rule of law and liberal property rights institutions.[1] From the Cold War-era "law and development" movement to its current incarnation in governance reform and rule of law advocacy (Krever, 2011), such efforts have supported legal reform programs through actions such as funding national land titling schemes or providing legal expertise. However, many legal reform programs failed to produce their intended outcomes. The outcomes associated with reforms to legalize property rights are very mixed, and reformist projects frequently have adverse impacts on local livelihoods and access to land (Hall *et al.*, 2011; Oldenburg & Neef, 2014; Peters, 2014; Spiegel, 2012).

Such failures point to the need for local actors to champion reforms if they are to be effective (Newton, 2008). Following this pathway, a key determinant of institutional change toward a liberal property rights regime that protects the interests of the vulnerable and politically marginalized is the existence of influential actors with an interest in generalized property protection. We can assume that all holders of property prefer that their own claims be made secure at the least personal cost. This does not always translate into a preference for generalized, legal property protection. Empirical studies have found widespread support for formal titling and legal enforcement of such titles, both on the part of those whose property claims remain insecure and by powerful actors able to use the titling process as a route to acquiring property (Hall *et al.*, 2011). Yet, influential actors have not always favored generalized or clear property rights regimes (Binswanger, Deininger, & Feder, 1995). In Southeast Asia, colonial authorities attempted to introduce "modern" property rights regimes defined in law, meeting strong opposition from rulers in independent Siam, who understood the reforms as threatening (Larsson, 2013). In practice, colonial authorities—and their post-independence successors—were highly selective in terms of who was accorded legal rights to property in land.

The time horizon of ruling elites may explain whether they have a preference for generalized, rule-based property protection (Acemoglu, Johnson, & Robinson, 2002). Uncertainty also tilts preferences toward a property regime that provides for generalized clarity and security in property rights. Faced with uncertain on-going political protection, for example, Russia's post-transition "violent entrepreneurs", who accumulated wealth through coercive and extra-legal means, developed preferences for more legalized protection (Volkov, 2002). Investors facing such uncertainty have in some places formed coalitions to promote a generalized, rule-based property protection regime (Markus, 2012).

Fundamentally, uncertainty occurs when rival claimants (whether dispossessed original owners or newcomers) can impose costly resistance on those favored by particularistic protection. Coercively imposed property regimes incur monitoring and enforcement costs (Levi, 1988). More generally, a lack of state legitimacy in the eyes of the society it governs undermines the rule law (Dawson, 2013). As resistance to coercive reallocations of property rises, the more those benefiting from such reallocations will need to spend on particularistic protection. At some point, even those actors who previously benefited from particularistic property protection (and the insecurity of others' property rights) will prefer a property regime that provides for generalized security. Resistance, therefore, is an important determinant of change in the property rights regime.

Resistance may also shape the property rights regime more directly, as both overt resistance and low-profile acts of evasion (Scott, 1990) produce changes that are institutional as well as political. As shown in the work of Scott (1990,

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2013), practices such as under-reporting of assets, obfuscation of ownership, and the construction of enabling narratives are acts of resistance can erode the effectiveness of rules fashioned and enforced by dominant actors. Thus while "institutional structure [of the land tenure regime] shapes politics" (Boone, 2014,p. 8), the practices fashioned in response to the prevailing property regime can also bring about incremental shifts in the *de facto* functioning of property-related rules and institutions.

(b) *The legal environment*

The legal environment shapes resistance to the property regime and the distribution of property rights within it by enabling—or precluding—particular strategies of either overt resistance or hidden evasion. Three types of legal environment are discussed here, each associated with different dynamics and incentives for change.

(i) *Rule-by-law legalism*

Much of East Asia has been governed by "legalism" or "rule by law", in which law is an instrument of government rather than a restraint on it (Clark, 1999; Jayasuriya, 1999). A shift toward the rule of law (on some measures) only occurred in a few of the more democratic East Asian countries since the early 2000s (Hamilton-Hart, 2014). Instrumental legalism, while far from the rule of law, can pave the way for more generalized legal protections. E.P. Thompson's (1975) seminal study of the emergence of new private property laws in England at the turn of the eighteenth century showed that those holding political power made blatantly instrumental use of law in order to amass and cement wealth. Despite this instrumentalism, the fact that the new oligarchic elite chose to use the law to acquire and protect property provided the basis for the later evolution of more generalized property rights protection through the rule of law, as those dispossessed learnt to use the legal system and were able to press their own claims through legal avenues. Given that elites face some compulsion to uphold the bases for their claim to power (Scott, 1990, p. 11–18), a system that enshrines legality as a key principle offers marginalized groups potential avenues for resistance through the legal system. Similarly, a recent study of rule-by-law legalism in authoritarian countries shows that even authoritarian governing elites can have a functional interest in legal system autonomy, which can produce unpredicted consequences in the form of legal restraints on ruling elites (Ginsburg and Mousafa, 2008).

Drawing on these insights, the Sarawak case presented below illustrates the proposition that rule-by-law legalism influences patterns of resistance to coercive property reallocations. Formal legalism is unlikely to constrain powerholders when power is extremely centralized, but it does create legal avenues of resistance and therefore incentives for even the powerful to gain legal cover for their acquisitions.

(ii) *Legal pluralism*

Legal environments characterized by legal pluralism create different incentives for change. Although almost all legal systems are in some sense pluralistic, the term is used here in its original sense of describing the "plurality of legal orders" created by the intrusion of European colonial law in contexts where indigenous legal traditions operated according to very different precepts (Merry, 1988). Legal pluralism thus exists where two (or more) such systems of law co-exist within the same territorial jurisdiction, each operating according to different jurisprudential norms and applying substantively different rules.

The potential conflict among competing legal orders creates uncertainty that is inherent to pluralistic legal environments (Tamanaha, 2008). Which rules will apply and which legal authorities will adjudicate? This itself makes it harder for the uncertainty-reducing functions of legalized property rights institutions to work as supposed in NIE-influenced theorizations. It is also characteristic of the legal pluralism in post-colonial societies that indigenous legal institutions create legal rights and responsibilities that are at least in part specific to particular groups, defined by ethnic, religious or kinship identifications. In such contexts, attempts to introduce liberal property regimes based on generalized application of the law are fundamentally threatening to local authorities who enjoy discretionary power on the basis of ascriptive identity and local status (Boone, 2007, 2014).

The potential for forum-shopping and the uneven access to different legal institutions creates a further source of uncertainty in environments characterized by legal pluralism, but the pluralism itself can be a source of change as different orders impinge on each other (Benjamin, 2008; Meinzen-Dick & Pradhan, 2002). How such changes play out will depend on the specifics of local context. Technocratic actors in international development agencies, for example, may support greater legal pluralism as a means to promoting the "rule of law" as a developmental project (Jayasuriya, 2012). However, the groups empowered by the increasing status of customary law have strong interests in maintaining the distinctive, generally localized, bases of institutional authority of customary law, even as they press for greater statutory recognition of customary law. To the extent that rising groups are able to secure their demands for change within a pluralistic framework, legal pluralism is likely to prove resilient, rather than being a pathway to a property rights regime characterized by legal certainty (Fitzpatrick, 2007b).

(iii) *Lawlessness, or routinized illegality*

A final variant in the range of legal environments discussed here can loosely be described as "lawless", although it is characterized by routinized illegality rather than the absence of law. Such a legal environment may look superficially like the legalism of rule-by-law systems, in that a plethora of laws is likely to exist, but law does not restrain the powerful. Governments that routinely break their own legal rules (and allow politically privileged private individuals legal impunity) often still pass many laws and invoke them frequently. Indonesia's long-lived authoritarian New Order regime (1966–98), for example, was known for widespread illegal action by state officials despite its repeated claims of being a state based on law (Lindsey, 1999). This continues in the post-democratization era, when "the involvement of state officials in illegal activity is both ubiquitous and a matter of public knowledge" (Aspinall & van Klinken, 2011). This type of illegality differs from rule-by-law legalism in the effective irrelevance of legal institutions: courts are rarely used to settle disputes and, even if law is invoked, law is not an effective instrument of rule compared to control of political and coercive resources.

NIE-influenced approaches to institutional change implicitly view such legal environments as either preceding the evolution of modern state institutions or reflecting their breakdown (Bates, 2001). Institutional change thus occurs as a result of the emergence of centralizing power, which then becomes restrained (or not) according to the shifts in the distribution of power and the ruler's time horizon (Hanson, 2014). "Lawless" environments in which illegality is routinized are not, however, necessarily disorderly. They often exist in contexts such as Indonesia, where the state apparatus is far from nas-

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cent or lacking in power (Anderson, 1983; Aspinall & van Klinken, 2011). They may well be functional enough on many metrics to mean that incentives for institutional change are only weakly present.

Property regimes governed by routinized illegality can be remarkably resilient, even when faced with political change that injects greater plurality and uncertainty in the distribution of political power. In liberal models, the uncertainty generated by a changing distribution of power incentivizes elites to press for more legalized forms of property protection, in an attempt to freeze their current property claims. This pathway to institutional change, however, is not the only possible outcome from the diffusion of political power. In contexts marked by informality and illegality, political patronage can, even in highly fragmented political systems, yield sufficient assurances and accommodate rising groups (Aspinall, 2013). When political power rather than legal formalities govern the enforcement of property claims, those benefitting have little incentive to secure legal cover for coercive acquisitions. Any consequent conflict is more likely to be played out in political rather than legal arenas, thus it is more important to acquire directly coercive and political resources rather than seek formal legal status for property claims.

In sum, legal environments characterized by rule-by-law legalism, legal pluralism, and routinized illegality represent qualitative differences in the property rights regime, rather than different degrees of legal certainty. Recognizing this qualitative variation allows us to supplement theories of institutional change that emphasize political conditions. NIE models generally suppose a single trajectory of change toward a property rights regime based on the rule of law, in which change in the distribution of political power from absolutist to more plural distributions forces a degree of self-restraint on the ruler. In contrast, scholarship on legalism, legal pluralism, and illegality suggests that institutional change in the property rights regime is path-dependent, with the initial legal environment shaping incentives for institutional change in ways that a focus on the distribution of political resources cannot account for.

3. CASES

West Kalimantan and Riau provinces of Indonesia and the Malaysian state of Sarawak each represent different legal environments and provide evidence of differing incentives for institutional change in the property rights regime. From the 1990s until recently, Sarawak, West Kalimantan and Riau all stood at the frontier of the palm oil industry, as it rapidly expanded beyond established plantations in Peninsula Malaysia and North Sumatra (Pye & Bhattacharya, 2013). A fundamental feature of the property regime governing land acquisition for oil palm in each case was its ability to reallocate land rights from those who had pre-existing ownership claims to others who were willing to cultivate the crop (Hamilton-Hart, 2015).

Studies of the palm oil industry in Southeast Asia document the extensive patronage that has underpinned the industry (McCarthy, Gillespie, & Zen, 2012; Varkkey, 2012; Varkkey, 2015). The partnerships embedded in these informal relational ties functioned to "diffuse conflict and minimize potential disruption to plantation production and expansion" (McCarthy *et al.*, 2012, pp. 562–563). But informal mechanisms for collaboration do not fully resolve the issue of resistance. As a study of land governance in Indonesia has noted, democratization "has emboldened landowners. With overt coercion reduced, the costs of non-compliance have decreased. Meanwhile, there has been a parallel rise in a right-based consciousness among a newly empowered citizenry" (Davidson, 2010, p. 476). Land conflicts associated with palm oil expansion are now pervasive across Indonesia and Malaysia.[2]

These conflicts have taken different forms. Where the legal infrastructure is disorganized, unreliable, and inaccessible, as in Riau, resistance to land reallocations for oil palm has mainly been physical and directly political. In West Kalimantan, physical protests have been increasingly accompanied by semi-legalized avenues of resistance as customary law has gained status, albeit played out more as a negotiating resource than through the court system. In Sarawak, a formally legalized environment has structured patterns of resistance, with land disputes processed through the court system far more than elsewhere. The three cases suggest that legalized forms of resistance create incentives to gain formal legal cover for property claims, even for those able to secure advantage via informal relational ties. In plural or lawless legal environments, the property regime remains a negotiated one even when shifting power balances force an adjustment to property claims.

(a) *Legalism: Sarawak*

Sarawak's legal environment, like that of the rest of Malaysia, is one that meets the definition of legalism, or rule by law (Jayasuriya, 1999; Wong, 2008). The legal system is relatively efficient and functional, as measured on indicators such as time taken by the courts to rule on cases and perceived judicial independence (Kauffman & Kray, 2015). However, legal rules are often used instrumentally by political powerholders in Malaysia and the judiciary has faced episodes of overt political interference (Harding, 2012). Land governance in Sarawak shows both sides of rule-by-law systems: a relatively orderly, frequently used court system and body of land law, together with a lack of legal restraint on political authority.

Malaysia's constitution entrusts land administration to the states and in Sarawak land allocation and classification is carried out by the State Planning Authority, an agency under the Chief Minister's Office, together with the state-level Ministry of Resource Planning and Environment and its subsidiary departments, notably the Land and Survey Department. The Chief Minister has controlled all these organizations and enjoyed almost unrestricted discretion in matters of land classification and allocating concessions to use land (Aeria, 2002). As an instrument of the Chief Minister, the Sarawak civil service has been implicated in widespread patronage, particularly in the timber industry, which paved the way for oil palm (Ross, 2001; Straumann, 2014).

The 1958 Land Code recognized large areas of Sarawak as subject to "Native Customary Rights" (NCR), and most oil palm planting has occurred on state land and land recognized as subject to Native Customary Rights (NCR) claims. The legal status of the rights enjoyed by NCR claimants has been contested. The Land Code granted customary owners use-rights, but ownership resided in the state until formally alienated to individual owners through titling. Although customary owners able to prove continuous occupation may apply for title, few have succeeded (Majid Cooke, 2012; Ngidang, 2002, 2005). Nonetheless, the Malaysian courts have offered potential, if somewhat inconsistent, pathways for pursuing customary land claims based on occupation. One avenue has been through the common law principle of rights gained through effective occupation. Although Sarawak (like the other territories that later formed Malaysia) formally adopted a Torrens-type system of title through registration in the colo-

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nial period, customary law and English common law principles retain status (Wong, 2008, pp. 15, 69–70; Bulan, 2006). An alternative legal pathway arises from the constitutional recognition of rights of customary communities and international law protecting indigenous rights (Nesadurai, 2010). Here court rulings have diverged—on the one hand, the courts have recognized land as part of a constitutionally mandated right to life, but an influential ruling simultaneously decided this right could be curtailed through properly-made law (Suhakam, 2013; UNDP (United Nations Development Programme), 2013). In practice, claimants without formal title have not had secure property rights and securing legal title to NCR land has been so cumbersome that few have succeeded—except when title is tied to oil palm development (Majid Cooke, 2012). Gaining title to NCR land via oil palm development has occurred through an institutional innovation known as the NCR Joint Venture, or NCR-JV, whereby customary owners surrender their land to palm oil development and receive a share of a joint venture with a plantation company and a state agency (Bulan, 2006; Fold & Hansen, 2007, pp. 156–61).

Sarawak's formally functional legal environment has shaped patterns of resistance to coercive land reallocations. Initially, timber and palm oil companies with close patronage relationships to the Chief Minister (Straumann, 2014) benefited from the state's legal action against those protesting land transfers to the companies. Sometimes, however, the courts dismissed the charges, often on procedural grounds (Majid Cooke, 2003; World Rainforest Movement & Sahabat Alam Malaysia, 1990). Concurrently, indigenous land claimants acting to represent particular community-based customary owners (generally representing particular traditional "longhouses" in which customary rights reside) started articulating legal avenues for defending NCR property claims, bringing the first lawsuit against two companies and the Sarawak government in 1988, followed by three cases against companies for trespassing on NCR land (World Rainforest Movement & Sahabat Alam Malaysia, 1990, p. 151–174). As the local press noted, palm oil development under the NCR-JV framework has "led to an increase in litigation cases" brought by NCR claimants over terms of provisional leases, and the Kuching High Court has sometimes found in favor of the NCR claimants (Borneo Post, 2001). Since the late 1990s, the courts have increasingly recognized oral history and community mapping evidence as sufficient of continuous occupation of specific land areas and thereby establish title. Over the next decade, the number of NCR-related court cases continued to increase (Borneo Post Online, 2014).

Dispossessed claimants have had only limited successes: many cases are dismissed, court rulings typically take years, and legal victories are often undone by subsequent executive action, or simply languish unenforced (Nesadurai, 2010; UNDP, 2013). Legalized resistance has been countered by an instrumental use of the legal system. For example, a legal amendment classifying agricultural plantations as in the public interest allowed the State Planning Authority to expropriate land for oil palm development (Fold & Hansen, 2007, pp. 153; Majid Cooke, 2006). Formal expropriation, however, carried implicit recognition of prior ownership, rather than simply usufruct rights, which thereto had been the dominant state interpretation of untitled NCR claims. In another move, the government legislated to make unauthorized map-making illegal, after some litigants successfully established NCR claims using community mapping techniques (Straumann, 2014).

Those holding political power in Sarawak (being, for over thirty years, the Chief Minister and his close family, business, and political associates) are not restrained by the law, but the legalization of resistance over more than twenty years has created an interest in gaining legal cover for coercive or otherwise murky land acquisitions. Land transfers to privileged actors, either through the direct grant of title or under the terms of NCR-JV projects, gain legalized form through official record keeping, despite originating from extra-legal coercion and favor. Political power in Sarawak has been sufficiently centralized to overcome resistance to coercive land transfers. However, by the early 2010s it was foreseeable that power would slip from the hands of the Chief Minister, who resigned in late 2014 after 34 years in office. Before he stepped down, leaked data showed that large amounts of land had been transferred to family members and friends of the Chief Minister, without public tenders or other procedures required by law in the disposal of state assets (Sarawak Report, 2011). Notably, the beneficiaries found it worthwhile to have their claims officially recorded with the land registry, thereby legalizing their ownership.

Capacities for resistance by dispossessed land owners may increase with the diffusion of power after Taib's resignation, although the scope for greater political pluralism at the state level could be undercut by the federal government's increasingly desperate attempts to quell dissent as it faces an unprecedented corruption scandal (Chin, 2016). Given the federal political executive's ultimate control of the Malaysian court system (Harding, 2012), it is possible that a slide toward more personal and arbitrary rule will undercut the courts as a meaningful arena for contestation. Such a development would, however, mark a significant shift away from the legalism that has until now prevailed in Malaysia. The other possibility is that as the political elite becomes more fractured, a degree of pluralism will pave the way for the courts to play an even more central role in adjudicating disputes. In this scenario, even those previously favored by particularistic interventions will have a material stake in the legalization and protection of property claims on a generalized basis. Although any such change will be highly contingent, in many ways the infrastructure has been laid down. Precedent-setting court rulings in 2001 and 2005 recognized the common law status of custom in the property regime in ways that contradicted the interpretation of political elites over the preceding forty years (Bulan, 2006). This opportunity for judicial assertiveness was only possible because Sarawak's legal environment of rule-by-law legalism offered avenues for dispossessed claimants to seek redress in the courts. A second consequence of resistance through the legal system was that even when court cases have not restored property to those claiming it under customary principles, they provided the basis for popular narratives of mobilization to contest property settlements. For example, a customary annual celebration of "Warriors Day" by members of Sarawak's indigenous groups has incorporated the retelling of an early court decision to award compensation to members of one group into community ceremonies, creating an awareness of shared experience and suggesting a pathway of cooperative mobilization (Majid Cooke, 2003: 278). [3]

(b) *Legal pluralism: West Kalimantan*

Authority over land administration and the legal framework governing land acquisition for oil palm development has been fractured, contradictory, and unstable across all of Indonesia. The 1960 Basic Agrarian Law governing all land administration has always overlapped with the laws governing management of the forest estate, and the forestry laws have undergone significant revisions since 1999. Management of

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natural resources has devolved to the regions, but much authority over forest land remains officially with the central government. The revised forestry law of 1999 and its later revisions contradict the regional autonomy laws, spawning a "decade of ambiguity over which levels of government have authority to allocate land and forest rights" (Nielson, 2010). Because most of the land under oil palm has been converted from the forest estate, permits for oil palm planting issued by local governments have frequently had a contested legal basis.

Compounding the uncertainty created by overlapping mandates of central and local government, land administration has been confused by incomplete and contradictory mapping and land registration records (Resosudarmo, Pradnja, Oka, & Utomo, 2014, pp. 262–265). Land use has frequently conflicted with spatial planning laws, and the boundaries of concession allocations for oil palm and forestry development are often subject to overlapping claims. Partly this situation stems from disarray and inadequate capacity in the bureaucratic agencies responsible; more fundamentally it arises from the legal environment governing land in Indonesia: laws giving coercive control to state agencies exist alongside routine violations of legal principles and protections (McCarthy, 2006; Peluso, 2008). The Basic Agrarian Law of 1960 enshrined the state's right of control and has caused dispossession, leaving about 80% of all Indonesian landholders without formal title and in a "world of legal uncertainty" (Fitzpatrick, 2007b, pp. 136–139). [4]

When Indonesia was under authoritarian rule until 1998, land acquisition for extensive palm oil plantations in West Kalimantan was secured largely through coercive means and, even in the democratic era, extra-legal coercion, intimidation and manipulation by company representatives, village and district government heads, and police and military actors remain common in the "partnership" schemes that link large plantations to local smallholders (Potter, 2009; Sirait, 2009). These schemes have legal foundations, and in this sense legalization has been an instrument in securing access to land by privileged interests while often simultaneously dispossessing customary land owners (Pichler, 2015). However, the property regime has also been marked by pervasive legal uncertainty and confusion (Fortin, 2011).

West Kalimantan's legal environment has been marked by legal pluralism since the start of democratization in 1999. Legal pluralism exists when fundamentally different sources of legal authority operate in the same territorial or functional jurisdiction (Merry, 1988). In Indonesia, democratization and decentralization since 1999 has led to an increase in the status of customary law, known as *adat* (Fitzpatrick, 2007b). Although national-level political and legal authorities have granted only limited recognition of customary law, they have been forced to cede some ground to community groups who have promoted customary law and argued against the legal framework that privileged state property claims and overrode customary property institutions (McCarthy, 2000, 2006; Peluso, 2008; Pichler, 2015). A Constitutional Court ruling in 2013 recognized customary law-based claims to forest land, strengthening a pathway to the recognition of property claims based on customary law (Butt, 2014; Forest Peoples Programme, 2013). The recognition is tied, however, to ethnic mobilization strategies of "indigenous" groups in recognized customary communities. In West Kalimantan, such customary communities have been unusually powerful, due to a high level of mobilization along ethnic lines, which has cemented an ethnic Dayak identity (Davidson, 2009).

Resistance to contested allocations of land for oil palm development has largely taken physical form in West Kalimantan, targeting both plantation companies and the local government, as well as small-scale settlers from outside Kalimantan granted land in partnership with plantation companies. Resistance has been organized along ethnic lines, with local Dayak communities often forging alliances with other Dayak communities in the province and elsewhere in Indonesia. Many case studies describe different resistance actions, from protests outside company offices to protests at the local legislature, direct action to blockade company access roads and (more rarely) sabotage of company property or violence against company personnel. [5] Formal legal action through the courts has been rare. In one compilation of land conflicts during 1998–2001, only one of twenty documented cases involved a legal mode, and even in this case it is unclear whether any lawsuit was filed, since the threat to take the company to court was "not acceptable" to the district government (Potter, 2009, pp. 111, 118–119). Another compilation of land conflicts related to palm oil in West Kalimantan during 1997–2001 gave summary details of twenty-five conflicts, of which two included action taken by aggrieved local parties based on customary law judgements. All others consisted of demonstrations, blockades, and protests to the company or local government (Kalimantan Review, 2001, p. 14).

Community-based customary law institutions operating outside the formal legal system have become *de facto* part of the legal environment, often issuing "*adat* fines" or sanctions against companies. They appear to provide negotiating resources, as companies often do pay such fines and investors wanting land have increasingly had to engage in community consultation and negotiation. [6] Resistance through direct action protests and the invocation of customary law has thus raised the costs of oil palm development in West Kalimantan, causing some companies to renegotiate compensation and sometimes leave projects. [7] To the extent such resistance is successful, it is politically mediated, resting on democratization and anti-palm oil ethnic mobilization, with the palm oil industry often figuring prominently in local electoral politics (Potter, 2009). Companies and their patrons in local government have responded to more effective resistance by offering more concessions, providing greater compensation payments and widening the bases of co-option. The property regime remains negotiated rather than legalized, with even the customary law avenue of resistance more used as a negotiating resource than a route to unambiguous legal title.

The customary authorities empowered by the new legal pluralism of West Kalimantan's legal environment have every reason to oppose a liberal, property regime based on generalized principles of law: legal pluralism endows them with a basis for discretionary decision-making and cements their status. As Catherine Boone (2013, p. 199) has observed with regard to much of rural Africa, such "neo-customary" local institutions are "non-liberal, both in the way they define property and in the way they define political authority and citizenship." Absent a return to intensive central state efforts to codify and "make legible" through regularized, transparent systems of law and property registration (Scott, 2013), those privileged in such localized systems enjoy a strong position in a discretionary property regime negotiated at the local level.

(c) *Lawlessness: Riau*

As in West Kalimantan, land administration in Riau is subject to overlapping authority and contested legal mandates, amid extensive deviations from the rule of law. A fractured,

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contradictory, and disorganized land administration system has formed the backdrop for oil palm expansion. Unlike West Kalimantan, recognition of customary law has been low and customary or *adat* communities have not mobilized effectively (Afrizal, 2009). The contested legal status of oil palm plantations has not slowed the province's phenomenal increase in the oil palm planted area, but has afforded cultivators useful deniability for illegal burning and cover against allegations that investors failed to compensate local land owners (Hamilton-Hart and Palmer, 2016).

Riau's legal environment is one in which illegality has become routinized, in that both local and national laws and regulations are routinely ignored in practice. This "lawlessness" marks much of the oil palm industry, as strikingly indicated by the extent to which oil palm has been planted without formal legal authority in terms of the various use-rights and permits required by law. In 2014, the Minister of Forestry asserted that half of Riau's oil palm planted area had been planted without the necessary permits to operate and was illegal (Antara News, 2014). Illegal planting in protected national park areas and on deep peatland soil has been extensive and is rumoured to involve local politicians and powerholders operating outside of their official roles, referred to in the press as "rogue" officials (Potter, 2015; Sagita, 2015; WWF (Worldwide Fund for Nature), 2013). Confusion and contestation over the boundaries of concessions allocated to oil palm firms is also pervasive: the maps of different government agencies (and of the firms) often conflict. The willingness to make large investments without clear, legal cover points to the relatively low importance of legalization in Riau.

Unlike in Sarawak, legal avenues of resistance have rarely been used in Riau. There are almost no court cases brought by local communities wishing to contest palm oil development on land that they claim to be rightfully theirs. Compared with West Kalimantan, those resisting coercive land reallocations have been relatively unsuccessful. Dispossessed land claimants have protested and vented anger directly to the palm oil companies and local government leaders (both at the district and provincial level), through demonstrations, writing letters, blocking access roads and sometimes destroying property, but largely without winning either a return of land or adequate monetary compensation (Afrizal, 2009; Irawan, 2011).

On occasion, local government leaders have supported those protesting land acquisitions for oil palm. One district head, for example, ordered a company operating unpermitted on land subject to overlapping claims by both local farmers and two other companies to cease operations, but the company was reported as simply ignoring the district head (Sagita, 2015). In another district, the local government has led a genuinely smallholder-focused oil palm scheme that has positively incorporated members of poor communities who might otherwise have remained marginalized and dispossessed by the expansion of plantations (McCarthy *et al.*, 2012, p. 563).

Very recently, local NGOs involved in documenting and protesting coercive land reallocations in Riau have begun developing legal claims based upon customary law. For the most part, however, local activist groups in Riau have failed to focus attention on violations of customary property rights (Afrizal, 2009). The relative lack of mobilization in customary law communities arises from the weak position of *adat* in Riau, due to earlier land seizures that routinely ignored customary claims and entrenched local elites with an interest in plantation crop development (Hoshur, 1997; Potter and Badcock, 2004). Unlike in West Kalimantan, where indigenous *Dayak* identity became the rallying point for political mobilization and anti-palm oil protest, indigenous groups in Riau have been relatively marginalized. Those officially recognized as living in *adat* communities are comparatively very few, while the province's numerically large ethnic Malay population has remained fragmented politically, despite a cultural revival of Malay identity in the 1990s (Hoshur, 1997; Setyawati, 2011).

Facing ineffective resistance that has largely not taken legal form, investors in the oil palm industry in Riau have gained sufficient assurances for protection through decentralized benefit-sharing with political powerholders, as well as extensive co-option of both large and small landholders (Hamilton-Hart and Palmer, 2016; Potter, 2015). In the absence of legalized challenges, they appear to be relatively unconcerned with gaining legal cover for land acquisitions. In these circumstances, the evolution of the property rights regime governing land for oil palm in Riau has been one of increasing material benefit-sharing, to the extent it has been politically necessary, without the development of effective constituencies for legalization.

4. CONCLUSIONS

Incentives for change in the property rights regime are not purely a function of political conditions such as the distribution of political power. Rather, incentives for change depend on the forms of resistance to the settlements imposed by the current property regime. In turn, the form that resistance takes is shaped by the legal environment. Sarawak's highly centralized political system co-exists with a legal environment of rule-by-law legalism, which has allowed for legalized forms of resistance not seen in the other cases. In Riau and West Kalimantan, the legal environments of "lawlessness" and legal pluralism respectively have meant that resistance has taken the form of bargaining, political pressure and direct confrontation.

Land acquisitions for palm oil in Sarawak show formal legalism at work in the property regime. Although law does not restrain coercive property reallocations in favor of elite interests, formal legalism has created the grounds for legalized forms of resistance. The use of the courts by those resisting coercive property reallocations has in turn created a potential pathway to the law becoming something other than a tool of the politically privileged. It has meant that privileged actors have shown an interest in gaining legal cover for their acquisitions, even when they have achieved them through extra-legal means. A more decentralized power structure after the state's Chief Minister stepped down at the end of 2014 after 34 years in power may in future reduce the capacity of elites to make instrumental use of the legal system. Although this has yet to occur, the foundations for such a transition are in place.

Legal pluralism in West Kalimantan has created additional bargaining resources available to dispossessed claimants. Legal pluralism is thus a factor delivering evolutionary, negotiated change in particular property settlements, with customary law becoming a bargaining resource in negotiations between local communities and oil palm companies. For those so empowered, a negotiated property regime is more rewarding than rule of law liberalism, which would reduce the local discretion that is their source of advantage. Thus even with the diffusion of power brought about by decentralization and democratization, influential groups have little interest in mobilizing for institutional change in the direction of generalized legal certainty in property rights protection.

The Riau case shows that outcomes are not driven purely by the diffusion of power. Power in Riau has been no less frag-

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mented since 2001 than in West Kalimantan, but the property regime in practice has been largely "lawless", with almost no recourse to either the courts or customary law as a bargaining resource to resist property reallocations. Routine illegality in land acquisitions and conversion to oil palm did not prevent large-scale investment in the industry, which has grown faster in Riau than in almost any other province (Hamilton-Hart and Palmer, 2016). To the extent that decentralization and democratization have empowered the dispossessed, their routes to influence have notably avoided the legal system. This is consistent with path dependence in the dynamics of institutional change: in "lawless" environments where there is very limited legal enforcement and even the fig-leaf of pro-forma legalism is mostly absent, change is more likely to take the form of renegotiated property settlements as local power and interests shift. In Riau, to the extent that violent coercion has been unable to contain resistance in the post-democratization era, both elites and their challengers have pursued material benefit-sharing, rather than institutional reform of the property regime.

All cases remain a long way from providing generalized protection of property claims through legal means. Even in Sarawak, legalized resistance to coercive property reallocations has been met with coercion and instrumental legalism by power-holders. However, legalized resistance has prompted those benefiting from coercive and sometimes confused processes of land acquisition to gain relatively clear legal cover for land so acquired. This legalism, still formal and instrumental rather than approximating something like the rule of law, potentially lays the foundations for a subsequent transformation toward more universal legal certainty (Thompson, 1975). Even the groundwork for such a transformation is remote in Riau and West Kalimantan, where the property regime in the democratic era has met resistance through informal accommodation and exchange.

NOTES

1. Such agencies have also been responsible for a vast output of research investigating the antecedents and consequences of legalized property rights protection (Hadfield & Weingast, 2014)

2. Conflicts have been extensively documented by many researchers. See, for example, Colchester & Jiwan, 2006; Dewi, 2013; Jiwan, 2013; Nesadurai, 2010; Suhakam (Human Rights Commission of Malaysia), 2013.

3. The experience of engagement with the courts has thus enabled a "hidden transcript" of resistance that underlies and makes possible more overt resistance. See Scott, 1990.

4. Fitzpatrick (2007b, pp. 136–139). See also Fitzpatrick (2007a).

5. Colchester, 2011; Fortin, 2011; Potter, 2009; Sirait, 2009.

6. Examples are described regularly in the local press and secondary accounts. See, for example, Kalimantan Review, 2005, p. 17; Kompas, 2004; Kompas, 2010; Potter, 2009; Sirait, 2009.

7. Fortin, 2011, p. 11; Khor, 2013, p. 7; Potter, 2009, p. 109, 124; Obidzinski, Andriani, Komarudin, & Adrianto, 2012.

REFERENCES

Acemoglu, D., Johnson, S., & Robinson, J. (2001). The colonial origins of comparative development: An empirical investigation. *American Economic Review, 91*(5), 1369–1401.

Acemoglu, D., Johnson, S., & Robinson, J. (2002). Reversal of fortune: Geography and institutions in the making of the modern world income distribution. *The Quarterly Journal of Economics, 117*(4), 1231–1294.

Acemoglu, D., & Robinson, J. (2012). *Why nations fail: The origins of power, prosperity and poverty*. London: Profile Books.

Aeria, A. (2002). *Politics, business, the state and development in sarawak, 1970–2000* (Thesis submitted for the degree of Doctor of Philosophy). London School of Economics and Political Science, University of London.

Afrizal (2009). The trouble with oil palm. *Inside Indonesia, 98*, October–December.

Anderson, B. (1983). Old state, new society: Indonesia's new order in comparative historical perspective. *Journal of Asian Studies, 42*(3), 477–496.

Antara News (2014). Riau's two million hectares of oil palm plantation illegal: Minister. 6 August.

Aspinall, E. (2013). A nation in fragments: Patronage and neoliberalism in contemporary Indonesia. *Critical Asian Studies, 45*(1), 27–54.

Aspinall, E., & van Klinken, G. (2011). In E. Aspinall, & G. van Klinken (Eds.), *The state and Illegality in Indonesia* (pp. 1–28). Leiden: KITLV.

Bates, R. (2001). *Prosperity and violence: The political economy of development*. New York: WW Norton.

Benjamin, C. (2008). Legal pluralism and decentralization: Natural resource management in Mali. *World Development, 36*, 2255–2276.

Binswanger, H., Deininger, K., & Feder, G. (1995). Power, distortions, revolt and reform in agricultural land relations. In J. Behrman, & T. N. Srinivasan (Eds.). *Handbook of development economics* (Vol. III, pp. 2659–2772). Elsevier Science.

Boone, C. (2007). 'Property and constitutional order: Land tenure reform and the future of the African state. *African Affairs, 106*, 557–586.

Boone, C. (2013). Land regimes and the structure of politics: Patterns of land-related conflict. *Africa: The Journal of the International African Institute, 83*(1), 188–203.

Boone, C. (2014). *Property and political order in Africa: Land rights and the structure of politics*. Cambridge: Cambridge University Press.

Borneo Post (2001). S'wak to turn idle NCR land into productive plots. 28 May.

Borneo Post Online (2014). NCR cases a growing concern. 18 January. <http://www.theborneopost.com/2014/01/18/ncr-cases-a-growing-concern/>.

Bulan, R. (2006). Native Customary Land: The trust as a device for land development in Sarwak. In F. Majid Cooke (Ed.), *State, communities and forests in contemporary Borneo* (pp. 45–64). Canberra: Australian National University E Press.

Butt, S. (2014). Comment: Traditional land rights before the Indonesian Constitutional Court. *Law, Environment and Development Journal, 10*(1), 57–73.

Chin, J. (2016). Why Najib's prime ministership is over. *East Asia Forum*, 28 July. Available at <http://www.eastasiaforum.org/2016/07/28/why-najibs-prime-ministership-is-over/>.

Clark, D. (1999). The many meanings of the rule of law. In K. Jayasuriya (Ed.), *Law, capitalism and power in Asia* (pp. 1–27). London: Routledge.

Colchester, M. (2011). Palm oil and indigenous peoples in South East Asia. Forest Peoples Programme. Available at: <http://www.forest-peoples.org/topics/palm-oil-rspo/publication/2010/palm-oil-and-indigenous-peoples-south-east-asia>.

Colchester, M. & Jiwan, N. (2006). Ghosts on our own land: Indonesian oil palm smallholders and the roundtable on sustainable palm oil. Forest Peoples Programme and Perkumpulan Sawit Watch. Available

Please cite this article in press as: Hamilton-Hart, N. The Legal Environment and Incentives for Change in Property Rights Institutions, *World Development* (2016), http://dx.doi.org/10.1016/j.worlddev.2016.12.002

at: <http://www.forestpeoples.org/sites/fpp/files/publication/2011/02/ghostsonourownlandtxt06eng.pdf>.
Davidson, J. (2009). *From rebellion to riots: Collective action on Indonesian Borneo*. Singapore: NUS Press.
Davidson, J. (2010). Driving growth: Regulatory reform and expressways in Indonesia. *Regulation and Governance, 4*, 465–484.
Dawson, A. (2013). The social determinants of the rule of law: A comparison of Jamaica and Barbados. *World Development, 45*, 314–324.
Dewi, O. (2013). Reconciling development, conservation and social justice in West Kalimantan. In O. Pye, & J. Bhattacharya (Eds.), *The palm oil controversy in Southeast Asia: A transnational perspective* (pp. 164–178). Singapore: ISEAS.
Fitzpatrick, D. (2007a). Beyond dualism: Land acquisition and law in Indonesia Available athttp://ssrn.com/abstract=2007668.
Fitzpatrick, Daniel. (2007b). Land, custom, and the state in Post-Suharto Indonesia: A foreign lawyer's perspective. In J. Davidson, & D. Henley (Eds.), *The revival of tradition in Indonesian politics: The deployment of adat from colonialism to indigenism* (pp. 130–148). London: Routledge.
Fold, N., & Hansen, T. S. (2007). Oil palm expansion in Sarawak: Lessons learned by a latecomer?. In J. Connell, & E. Waddell (Eds.), *Environment, development and change in rural Asia-Pacific: Between local and global* (pp. 147–166). London: Routledge.
Forest Peoples Programme (2013). Constitutional Court ruling restores indigenous peoples' rights to their customary forests in Indonesia. 16 May. Available at: <http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2013/05/constitutional-court-ruling-restores-indigenous-pe>.
Fortin, C. J. (2011). The biofuel boom and Indonesia's oil palm industry: the twin processes of peasant dispossession and adverse incorporation in West Kalimantan. *Presented at the conference on Global Land Grabbing, 6–8 April, University of Sussex*.
German, L., & Schoneveld, G. (2013). Contemporary processes of large-scale land acquisition in Sub-Saharan Africa: Legal deficiency or elite capture of the rule of law?. *World Development, 48*, 1–18.
Ginsburg, T., & Mousafa, T. (Eds.) (2008). *Rule by law: The politics of courts in authoritarian regimes*. Cambridge: Cambridge University Press.
Hadfield, G. K., & Weingast, B. R. (2014). Microfoundations of the rule of law. *Annual Review of Political Science, 17*, 21–42.
Haggard, S., MacIntyre, A., & Tiede, L. (2008). The rule of law and economic development. *Annual Review of Political Science, 11*, 205–234.
Haggard, S., & Tiede, L. (2011). The rule of law and economic growth: Where are we?. *World Development, 39*(5), 673–685.
Hall, D., Hirsch, P., & Li, T. M. (2011). *Powers of exclusion: Land dilemmas in Southeast Asia*. Singapore: NUS Press.
Hamilton-Hart, N. (2015). Multilevel (mis)governance of palm oil production. *Australian Journal of International Affairs, 69*(2), 164–184.
Hamilton-Hart, N. (2014). Democracy, the rule of law and governance in Southeast Asia. In W. Case (Ed.), *Handbook of democracy in Southeast Asia*. London: Routledge.
Hamilton-Hart, N., & Palmer, B. (2016). Co-investment and clientelism as informal institutions: beyond 'good enough' property rights protection. University of Auckland Business School. unpublished manuscript.
Hanson, J. K. (2014). Forging then taming leviathan: State capacity, constraints on rulers, and development. *International Studies Quarterly, 58*(2), 380–392.
Harding, A. (2012). *The constitution of Malaysia: A contextual analysis*. Oxford and Portland: Hart Publishing.
Hoshur, C. (1997). Resettlement and the politicization of ethnicity in Riau. *Bidragen tot de Taal-, Land- en Volkenkunde, 153*(4), 557–576.
Irawan, S. (2011). Taking action in the provinces. *Inside Indonesia, 105*, July–September.
Jayasuriya, K. (1999). Introduction: a framework for the analysis of legal institutions in East Asia. In K. Jayasuriya (Ed.), *Law, capitalism and power in Asia* (pp. 1–27). London: Routledge.
Jayasuriya, K. (2012). Institutional hybrids and the rule of law as a regulatory project. In B. Tamanaha, C. Sage, & M. Woolcock (Eds.), *Legal pluralism and development: Scholars and practitioners in dialogue*. Cambridge University Press.
Jiwan, N. (2013). The political ecology of the Indonesian palm oil industry: A critical perspective. In O. Pye, & J. Bhattacharya (Eds.), *The palm oil controversy in Southeast Asia: A transnational perspective* (pp. 45–75). Singapore: ISEAS.
Kalimantan Review (2001). Dari Demo Sampai Tindak Kekerasan, No. 74, October–November.
Kalimantan Review (2005). Sawit! Penjajahan Gaya Baru, No. 116 April.
Kauffman, D. & Kray, A. (2015). Worldwide Governance Indicators. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#home>.
Khor, Y. L. (2013). Struggle for sustainability in palm oil industry shows results. *ISEAS Perspective No. 18*, 2013, 1 April.
Kompas (2004). Kawasan hutan Bengkayang dibabat: 16 alat berat ditahan. 4 November.
Kompas (2010). 200 konflik masyarakat adat-perusahan. 19 October.
Krever, T. (2011). The legal turn in late development theory: The rule of law and the World Bank's development model. *Harvard International Law Journal, 52*(1), 288.
Larsson, Tomas. (2013). *Land and loyalty: Security and the development of property rights in Thailand*. Singapore: NUS Press.
Levi, M. (1988). *Of rule and revenue*. Berkeley: University of California Press.
Lindsey, T. (Ed.) (1999). *Indonesia: Law and society*. Sydney: Federation Press.
Majid Cooke, F. (2003). Maps and counter-maps: Globalised imaginings and local realities of Sarawak's plantation agriculture. *Journal of Southeast Asian Studies, 34*(2), 265–284.
Majid Cooke, F. (2012). In the name of poverty alleviation: Experiments with oil palm smallholders and customary land in Sabah, Malaysia. *Asia Pacific Viewpoint, 53*(3), 253–340.
Majid Cooke, F. (2006). Expanding state spaces using "idle" Native Customary land in Sarawak. In F. Majid Cooke (Ed.), *State, Communities and Forests in Contemporary Borneo* (pp. 25–44). Canberra: Australian National University E Press.
Markus, S. (2012). Secure property as a bottom up process: Firms, stakeholders, and predators in weak states. *World Politics, 64*, 242–277.
McCarthy, J. (2000). The changing regime: Forest property and *reformasi* in Indonesia. *Development and Change, 31*, 91–129.
McCarthy, J. (2006). *The fourth circle: A political ecology of Sumatra's rainforest frontier*. Stanford: Stanford University Press.
McCarthy, J., Gillespie, P., & Zen, Z. (2012). Swimming upstream: Local Indonesian production networks in "globalized" palm oil production. *World Development, 40*(3), 555–569.
Meinzen-Dick, R., & Pradhan, R. (2002). *Legal pluralism and dynamic property rights*, Working Paper 22. Washington, DC: International Food Policy Research Institute.
Merry, S. E. (1988). Legal pluralism. *Law and Society Review, 22*(5), 869–896.
Neef, A. (2014). Law and development implications of transnational land acquisitions: Introduction. *Law and Development Review, 7*(2), 187–205.
Nesadurai, H. (2010). Land rights, global soft law regimes and land conflicts: An exploratory study of RSPO and REDD on Land Conflicts Using Sarawak as a Case Study. *EADN Research Report*.
Newton, S. (2008). Law and development, law and economics and the fate of legal technical assistance. In J. Arnscheidt, B. van Rooij, & J. M. Otto (Eds.), *Lawmaking for development: explorations into the theory and practice of international legislative projects* (pp. 23–52). Leiden: Leiden University Press.
Ngidang, D. (2002). Contradictions in land development schemes: The case of joint ventures in Sarawak, Malaysia. *Asia Pacific Viewpoint, 43*(2), 157–180.
Ngidang, D. (2005). Deconstruction and reconstruction of native customary land tenure in Sarawak. *Southeast Asian Studies, 43*(1), 47–75.
Nielson, J. (2010). Who owns the carbon?. *Inside Indonesia, 101*, July–September.
North, D. (1995). The new institutional economics and third world development. In J. Harris, J. Hunter, & C. Lewis (Eds.), *The new institutional economics and third world development* (pp. 17–26). London: Routledge.
North, D., & Weingast, B. (1989). Constitution and commitment: The evolution of institutions governing public choice in seventeenth-century England. *Journal of Economic History, 49*, 803–832.
Obidzinski, K., Andriani, R., Komarudin, H., & Adrianto, A. (2012). Environmental and social impacts of oil palm plantations and their implications for biofuel production in Indonesia. *Ecology and Society, 17*(1), article 25.

Please cite this article in press as: Hamilton-Hart, N. The Legal Environment and Incentives for Change in Property Rights Institutions, *World Development* (2016), http://dx.doi.org/10.1016/j.worlddev.2016.12.002

Oldenburg, C., & Neef, A. (2014). Reversing land grabs or aggravating tenure insecurity? Competing perspectives on economic land concessions and land titling in Cambodia. *Law and Development Review, 7*(1), 49–77.

Peluso, N. L. (2008). A political ecology of violence and territoriality in West Kalimantan. *Asia Pacific Viewpoint, 49*(1), 48–67.

Peters, P. (2014). Analysing land law reform. *Development and Change, 46*(1), 167–193.

Pichler, M. (2015). Legal dispossession: State strategies and selectivities in the expansion of Indonesian palm oil and agrofuel production. *Development and Change, 46*(3), 508–533.

Potter, L. (2015). Who is "land grabbing"? Who is deforesting? Will certification help prevent bad practice? Conference Paper No. 40, Conference on Land Grabbing, Conflict and Agrarian-Environmental Transformations, 5–6 June, Chiang Mai University.

Potter, L., & Badcock, S. (2004). Tree crop smallholders, capitalism, and adat: Studies in Riau Province, Indonesia. *Asia Pacific Viewpoint, 45*(3), 341–356.

Potter, L. (2009). Oil palm and resistance in West Kalimantan, Indonesia. In D. Caouette, & S. Turner (Eds.), *Agrarian angst and rural resistance in contemporary Southeast Asia* (pp. 105–134). London: Routledge.

Pye, O., & Bhattacharya, J. (Eds.) (2013). *The palm oil controversy in Southeast Asia: A transnational perspective*. Singapore: ISEAS.

Resosudarmo, I. A., Pradnja, N. P., Oka, S. M., & Utomo, N. A. (2014). Governing fragile ecologies: A perspective on forest and land-based development in the regions. In H. Hill (Ed.), *Regional dynamics in a decentralized Indonesia* (pp. 260–284). Singapore: ISEAS.

Rodrik, D. (2000). Institutions for high-quality growth: What they are and how to acquire them. *Studies in Comparative International Development, 35*(3), 3–31.

Ross, M. (2001). *Timber booms and institutional breakdown in Southeast Asia*. Cambridge: Cambridge University Press.

Sagita, D. (2015). Time to see the forest for the oil palm trees in riau row. *Jakarta Globe*, 11 May 2015.

Sarawak Report (2011). We release the land grab data. 19 March. Available at: <http://www.sarawakreport.org/2011/03/we-release-the-land-grab-data/>.

Scott, J. (1990). *Domination and the arts of resistance: Hidden transcripts*. New Haven: Yale University Press.

Scott, J. (2013). *Decoding subaltern politics: Ideology, disguise, and resistance in Agrarian politics*. New York: Routledge.

Setyawati, L. (2011). Contestation, negotiation and culture in the reconstruction of Riau's identity. *Antropologi Indonesia, 32*(3), 250–261.

Sirait, M. (2009). Indigenous Peoples and Oil Palm Expansion in West Kalimantan, Indonesia. Indonesia Country Report, Amsterdam University Law Faculty.

Skaaning, S.-E. (2010). Measuring the rule of law. *Political Research Quarterly, 63*(2), 449–460.

Spiegel, S. (2012). Governance Institutions, resource rights regimes, and the informal mining sector: Regulatory complexities in Indonesia. *World Development, 40*(1), 189–205.

Stasavage (2002). Credible commitment in early modern Europe: North and Weingast revisited. *Journal of Law and Economics, 18*(1), 155–186.

Straumann, L. (2014). *Money logging: On the trail of the Asian timber mafia*. Basel: Bergli Books.

Suhakam (Human Rights Commission of Malaysia) (2013). Report of the National Inquiry into the Land Rights of Indigenous Peoples. 5 August. Available at: <http://sarawakreport.org/suhakam/suhakam-chapter7.html>.

Tamanaha, B. (2008). Understanding legal pluralism: Past to present, local to global. *Sydney Law Review, 30*, 374–411.

Thompson, E. P. (1975). *Whigs and hunters: The origin of the black act*. New York: Pantheon Books.

UNDP (United Nations Development Programme) (2013). Human Development in Malaysia 2013.

Van Leeuwen, M., & Van Der Haar, G. (2016). Theorizing the land-violent conflict nexus. *World Development, 78*, 94–104.

Varkkey, H. (2012). Patronage politics as a driver of economic regionalization: The Indonesian oil palm sector and transboundary haze. *Asia Pacific Viewpoint, 53*(3), 314–329.

Varkkey, H. (2015). *The haze problem in Southeast Asia: Palm oil and patronage*. London: Routledge.

Volkov, V. (2002). *Violent entrepreneurs: The use of force in the making of Russian capitalism*. Ithaca: Cornell University Press.

White, B., Borras, S., Hall, R., Scoones, I., & Wolford, W. (2012). The new enclosures: Critical perspectives on corporate land deals. *The Journal of Peasant Studies, 39*(3–4), 619–647.

Wong, S. N. (2008). Post-colonial legal developments. In K. S. Jomo, & S. N. Wong (Eds.), *Law, Institutions and Malaysian Economic Development* (pp. 54–79). Singapore: NUS Press.

World Rainforest Movement and Sahabat Alam Malaysia (1990). *The battle for sarawak's forests*. Penang: World Rainforest Movement and Sahabat Alam Malaysia.

WWF (Worldwide Fund for Nature) (2013). Palming off a National Park: Tracking Illegal Palm Oil Fruit in Riau, Sumatra. 26 June. Available at: <http://www.worldwildlife.org/publications/palming-off-a-national-park-tracking-illegal-oil-palm-fruit-in-riau-sumatra>.

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