

## THE PAST AND SPACE: ON ARGUMENTS IN AFRICAN LAND CONTROL

*Christian Lund*

‘Articulating the past historically does not mean recognizing it “the way it really was”.  
It means appropriating a memory as it flashes up in a moment of danger.’  
Walter Benjamin

‘The past is never dead. It is not even past.’  
William Faulkner

The presence of the past in the present is notable in Africa.<sup>1</sup> Conflicts over land and chieftaincy are characterized by an intense reference to the past as the source of unadulterated legitimacy of claims to the future. The past and lines of heritage are frequently rehearsed. It is a pastime in which everyone who depends on pedigree for position or privilege seems to engage with passion. However, different forms of past are often in play at the same time. In northern Ghana it is possible to distinguish two. On the one hand, reference is made to tradition as a timeless past, a reservoir of ‘how things have always been done’ in the constant flow of time. On the other hand, there is a past made up of significant historical events, of actions and transactions that are invoked with various vindications. The two pasts are rather different from one another. One justifies claims to the future as a seamless continuation of the past; the other justifies them as the result of salient fortunate events.

However, the past is not the only ambiguous shibboleth in conflicts over land and chieftaincy. Space is equally malleable within a concrete cultural setting.<sup>2</sup> Similarly to the way the past is invoked in two forms in northern Ghana, space figures in two, occasionally compatible, occasionally competing forms. As territory, space has certain political connotations, whereas property in land stems from initially spiritual and, later, legal land control. As territory, space is governed, but not owned by its governing agency. As property, on the other hand, space is owned, but not governed by its owners.

The contemporary construction of the past, as either tradition or history, and the competing projections of land control, as either property or political territory, interdigitate in complex ways. This affords certain rhetorical or discursive combinations that competing social elite groups instrumentalize. Each group sees its interests best served by a particular reading of the past and a particular conception of space. In the present study, two combinations emerge. One group

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CHRISTIAN LUND is Professor at University of Copenhagen. His works include *Local Politics and the Dynamics of Property in Africa* (Cambridge University Press, 2008); *Law, Power and Politics in Niger: Land Struggles and the Rural Code* (Lit Verlag, 1998); *New Frontiers of Land Control* (co-editor, Routledge, 2012), *Politics of Possession* (co-editor, Blackwell, 2009) and *Twilight Institutions* (editor, Blackwell, 2006). Email: clund@foi.ku.dk

<sup>1</sup>I owe this neat turn of phrase to Maurice Bloch (1977: 287).

<sup>2</sup>See, for example, Bening (1973); Comaroff and Roberts (1981); Lentz (2000, 2006a, 2006b); Peters (1994); Thompson (1991); and Walker and Peters (2001).

of actors claim space to be property and justify ownership with reference to a timeless – traditional – past. This is challenged by another group claiming space to be a territory governed by them. To justify this position, reference is made to an historical event of conquest in the past. In the following I briefly discuss different dimensions of the past and space. These are then contextualized and exemplified with a case from Ghana.

### CONCEPTUAL LANDSCAPES – PAST AND SPACE

The conceptualization of time – and the past – varies with context and history. Durkheim was probably the first to talk about ‘social time’ as a conception of time shared by a group (Durkheim 1915, here from Gell 1992: 3–14).<sup>3</sup> Social time is generally connected to different aspects of social life: to a specific set of activities, to specific political orders or to different rituals and beliefs, in a broad sense. Different kinds of social time therefore coexist. However, sometimes, different social times compete. When the items time categorizes and organizes change or acquire new attributes, distinctions become contested. Space – or more specifically, land – is one important element that social time organizes. However, when land becomes scarce, becomes commoditized, or becomes a basis for new political platforms, things may change. People may search for ways of conceptualizing time to accommodate their claims to space. The notions of social time, which used to organize different dimensions of space, become a source of interpretation for the distribution of entitlements to the new different attributes of it. The kinds of social time I investigate in this article share one perspective; they are concerned with the past.

While narratives about the past may actually be about the past, they are almost certainly about the present and the future. Guyer argues that ideologies of ‘time future’ may give us a better handle on positioning and manoeuvring in the present or ‘near future’ (2007: 411). Imagining the future, no doubt, shapes people’s actions in the present, yet in many cases designs for the future draw their legitimacy from different renditions of the past. The significance of certain mores and events are not intrinsic. Depending on the present circumstance and the ambitions for the future, such elements can either be recovered from the reservoir of the past to form categories, distinctions and principles – and thus become elevated as decisive – or they can be edited out of the past as ‘noise’. Or, sometimes, they can hibernate until they can effectively feed into a viable argument. ‘[D]elayed claims [thereby] have their economic and social rationales’ (Moore 1992: 30; see also Appadurai 1981 and Nugent 1999).

Two forms of past seem to have particular currency in arguments over land (see Berry 2009). On the one hand, tradition figures as a timeless past, an ‘antiquity’ laying out ‘how things have always been done’. This past has no beginning or end but stretches seamlessly over time from days of yore till this very one. On the other

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<sup>3</sup>No doubt the productive cycles of society inform the perception of time. Classic works demonstrate how cattle herding (Evans-Pritchard 1940), crop cycles (Bourdieu 1977) and early industrialization (Thompson 1974) divided the day, the year and life in portions and defined people’s idea of time.

hand, there is a past made up of significant historical events. It consists of junctures of actions and transactions punctuating time. Here, events that changed 'how things had been done', rather than the past itself, are invoked with various vindications.

People's relations to space are equally multiple. While they may claim that particular spaces belong to them, they may also claim to belong to a particular space. The social conceptualization of attachment and of space is wide-ranging, and cosmological, identitarian, political, economic and legal dimensions intersect and overlap. The questions of who belongs where, and what belongs to whom, find different answers depending on who asks and what dimension of belonging has our interest (see, for example, Ingold 1986; Jacob and Le Meur 2010; Shipton 2009).

For the present purpose, I shall narrow my focus to how social power is expressed through spatial control. Sack conceptualizes territorialization as 'the attempt by an individual or group to affect, influence or control people, phenomena and relationships by delimiting and asserting control over a geographic area' (1986: 19). This control of spatial ordering and of people in space combines different techniques and policies of classification, registration and mapping. It not merely structures the physical space, but also organizes the social and political perception of it. Territorializing strategies allow and disallow certain forms of land use and access; they regulate certain forms of mobility and transactions; and, by differentiating rights to resources, they contribute to the structuration of citizenship. The strategies may take the form of internal territorialization when pursued by states to establish control over natural resources and the people that use them (Vandergeest and Peluso 1995). But it is not merely states in the form of unitary government structures that employ territorializing strategies. Generally, politico-legal institutions that compete for political authority operate to legitimize their undertakings partly through territorial strategies. In fact, territoriality is often a key element in the exercise of authority (Lund 2006: 693–5).

Different perceptions of space lead to different forms of territorialization and spatial control. No doubt, different places exhibit different forms. For contemporary northern Ghana, two stand out. On the one hand, space can be conceptualized as political territory. Such a space is governed or managed. And the instruments of control can comprise establishment and reproduction of political relations between a population and a political authority, taxation, areal planning, provision of public infrastructure, political representation of the area *vis-à-vis* central government, and so on. On the other hand, space can be conceptualized as property. This kind of space is defined through the rights that particular actors have to use and transact access and value from it. Such a space is owned in various ways.<sup>4</sup> And the instruments can comprise deeds and other more or less tangible signs of public recognition of rights, ranging from physical markers in the landscape to circumambulation of the property, festivals and other ceremonies of cultivation and harvest. This does not reflect some intrinsic quality of space

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<sup>4</sup>It should be clear that here I employ 'ownership' in the loosest form of having some rights to use and or transact rights to the resource.

itself. Space, just like time, is social, and historical contexts validate different notions.<sup>5</sup>

Land legislation and territorial reorganization through decentralization offer opportunities. The changes and readjustments in local government structures and procedures also provide for significant socio-political rearrangement beyond a reform's intended scope. They bring together an amalgamation of legal and political conflict, passionate invocation of history and tradition, as well as images of space as either territory or property in an intense courtship and lobbying for support from without as well as from within the locality.

The following presents one instance of local political competition arising at moments of opportunity where strategic reference to the past is brought to bear. Various aspects of decentralization, chiefly rivalry, and the creation of a new district had direct impact on the ways space equally became a domain of competition, and how conflicts were conducted and perceived. Thus, various domains of local politics interlock and agendas cast in different discourses of space and the past collide to undermine or underpin each other. To fully appreciate the case, a brief introduction to the context of land control and to the political reform in northern Ghana is required.

#### THE CONTEXT OF LAND CONTROL AND POLITY REFORM IN NORTHERN GHANA

Chiefs occupy the customary office in most of Ghana. However, in the extreme north of the country, the now Upper Regions (East and West), customary offices are split between two complementary institutions, the chief and the earthpriest (Kasanga 1996: 8; Pogucki 1955: 8). The respective roles of the two institutions appear to be complementary; the chief constitutes the political and territorial authority whereas the earthpriest historically has had more religious or spiritual functions. Indeed, prior to each season of cultivation, the earthpriest must initiate the land and sacrifice to the gods, and it is also he who can appease the gods though pouring a libation in the event of an act of sacrilege. He establishes and sanctifies the connection between the land user and the land. In a pre-monetized world this is a spiritual sanction, but it is easy to imagine how this relationship is perceived as one of granting property rights when the idioms of modern economy and legality become important.

Historical sources such as Fortes (1940, 1945) and Pogucki (1951, 1955) argue that the earthpriest is always a descendant of the first settler in the area and generally he belongs to the senior segment of the lineage and thus represents the clan. With reference to the two offices of chief and earthpriest, Fortes observes,

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<sup>5</sup>In their *African Political Systems*, Fortes and Evans-Pritchard employ a similar distinction of land control to describe different types of African societies. In their terminology, territorial rule characterized societies with 'centralized states', whereas the territorial units in 'stateless societies' correspond to local communities and a particular set of lineage ties and bonds of direct cooperation (Fortes and Evans-Pritchard 1940: 10–11). While anthropologists like Fortes and Evans-Pritchard could meaningfully characterize societies as one or the other type, in their time, it makes more sense, in a contemporary analysis, to identify competing principles within society. Moreover, we are not dealing with fixed dogma, but with principles, which can adapt and adjust.

'[h]omologous though they are in many respects, [the chief] and [earthpriest] are polar functions indissolubly coupled together though opposed' (Fortes 1940: 255).<sup>6</sup> This division of roles between the two customary authorities did not pose a significant political or legal problem as long as land was not really transacted as a commodity.

For northern Ghana the colonial and independent governments controlled land by holding it in 'trust' on behalf of the people. This meant that governments' property rights to land were legally quite limited. Government was never the legal owner of the land, but it behaved as if it were. This influenced the common interpretation. The way the state managed its trusteeship of land developed an interpretation, shared by lay and learned alike, that tended to conflate governance of territory with extensive property rights. This interpretation of comprehensive land control was generalized thanks to government's unconstrained seizure of land and the fact that the state actually did possess a few plots of land on terms equivalent to those of private individuals or institutions. In many ways 'trust' was a thinly disguised euphemism for government's capacity to acquire land more or less arbitrarily. Thus, while holding land in trust for the owners, successive governments seized a significant amount of land for administrative and development purposes such as infrastructure and government buildings. In most cases government seized the land it needed for development without employing the proper legal instruments of acquisition; it never owned it legally. The government in fact usurped the land it decided it needed while paying little attention to the technical and legal procedures set out by law. Successive governments acted as sovereign, above and beyond law, and whether government 'ruled' space or 'owned' it seemed academic. This ambiguity of space was not expressed only in national government and legislation; it went right down to the smallest political entity of society. The integration of chiefs into the political structure through indirect rule cast a similar ambiguous light on their control over space. While they controlled space as political territory, they often acted as if they owned it as property.

The 1979 Constitution was an attempt to regulate land control by law. It declared that land held in trust by government was henceforth to be handed back to its 'original owners'. It never specified who they were, however. Hence, the question of what to do with land upon which government was now technically squatting became acute. This meant an opportunity for earthpriests, families, and individuals to rise and claim land rights or compensation from government and chiefs, and contest an order that had developed throughout the twentieth century.

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<sup>6</sup>The above representation of respective roles of the earthpriest and the chief reflects a general picture in much of the older literature and may well reflect the general opinion among many stakeholders as colonial ethnography and its image of society often quite effectively fed back into the society in question as 'authoritative texts'. However, research on the colonial ethnography calls into question the general validity of this picture. In particular, the neat patterns of an 'egalitarian, spiritually legitimated, democratic, decentralized society' versus a hierarchical centralized polity based on chiefs, as well as the evolutionary perspective of moving from the former to the latter, have been heavily criticized (Lentz 1998, 1999: 166). As I have written elsewhere (2008), earthpriests are not necessarily willing to be edged into history. Nor do they represent inherent egalitarian and inclusive principles of land rights (see also Allman and Parker 2005).

Earthpriests even formed an association in Bolgatanga (Lund 2008). After 1979 land struggles intensified in the Upper East and played directly into local politics because of the confusion over whose land rights were 'restored' by the constitutional changes.<sup>7</sup> A couple of landmark court cases in the early 1990s established that financial compensation for government acquisition was to go to those who had lost the possibility of using the land, that is, the villagers.<sup>8</sup> However, the compensation cases also established allodial<sup>9</sup> – or paramount – ownership with the earthpriests, and not the chiefs. Their mainly spiritual land control had through the High Court been translated into legal ownership or stewardship on behalf of their community. This was an unanticipated, but major, side-effect of the compensation cases. It once again split land control into ownership by earthpriests and customary territorial rule by chiefs.

Change in landownership was not the only reform that washed over northern Ghana over the past decades. Ghana has undertaken a policy of political decentralization since the late 1980s, and while there have been various combinations of appointed and elected leadership of district assemblies and sub-district councils, and while tax collection and service provision have lived through various forms, it is safe and sufficient to say that local assemblies and constituencies are central and valuable platforms in Ghanaian local politics (Crook and Manor 1998).<sup>10</sup>

Thus, the following case of the Kombosco lands plays out in the context of a recent but not altogether consolidated new structure of landownership and a process of political decentralization where creation of new districts and sub-districts seemed to be an important popular demand (Ayee 2000). Competition over customary land control and over the creation of new districts are primarily elite projects. In addition to the prestige, significant tangible benefits are in play. Status as a recognized customary land authority secures a portion of the collected land tax as well as a fee and gifts whenever a new lease on the land is established. As for the creation of a district, government money, employment, infrastructure

<sup>7</sup>The land reform element of the 1979 Constitution was later confirmed in the 1992 Constitution, though without any greater clarification of the ownership aspect.

<sup>8</sup>A figure, astronomical at the time, of 455 million cedis was awarded (Lund 2008: 59).

<sup>9</sup>The allodial title is the highest customary title capable of being held in Ghana and in principle subject only to such limitations, restrictions or obligations as may be imposed by the general laws of the country (Rocha and Lodoh 1995: 3). The term allodial title denotes a customary law interest in land not traditionally held by a tenant from a lord. Allodial title is therefore also known as 'absolute' or 'ultimate' title (Woodman 1996: 56). In Osborn's *Concise Law Dictionary*, allodium is described as 'Lands not held of any superior, in which, therefore, the owner had an absolute title and not a mere estate' (Osborn 1964: 23). Allodial title is, or rather was, established through discovery and first settlement and is essentially communal. Historically, Woodman (1996) and Rocha and Lodoh (1995) argue, allodial title could also be acquired by conquest and subsequent settlement. For doubts about the 'absolute' nature of allodial title, see Tait (1952).

<sup>10</sup>The political relationship between central government and the population in Ghana has been mediated through local political institutions such as chiefs and native authorities during the time of indirect rule and, since 1951, a variety of local government structures at district and sub-district levels (Ayee 2000; Staniland 1975; see also Boone 2003: 174–7). The political arguments accompanying readjustments of local government structures and processes often focus on service provision, accountability and the degree of discretionary powers accorded to the decentralized bodies (Ayee 1994, 2000, 2006; Crook 1987, 1994; Crook and Manor 1998; Dunn and Robertson 1973; Ladouceur 1979; Ribot *et al.* 2006; Saaka 1978).

and markets are but some of the sources of new wealth to be captured, and resources on which to mobilize political support. This does not mean that ‘ordinary people’ are not affected by the changes in elite platforms, and I have described this elsewhere (Lund 2008).

### SITUATING KOMBOSCO LANDS

#### *How did it all begin?*<sup>11</sup>

The case of Kombosco shows how competing claims over land engage different conceptions of space and as a consequence different takes on the past. It also shows how different stakeholders’ spatial ambitions for the future hinge on government’s reading of the past. The case, initially about land as property, stretches over decades and comes to be about political territory. Kombosco<sup>12</sup> is a relatively small village some three miles outside the centre of Bolgatanga town in the Upper East Region of Ghana. The population is generally known as Frafra,<sup>13</sup> but is divided into ethnic sub-groups based on dialects and chiefly allegiance. However, with the growth of Bolga, Kombosco has over the past 20 years gained increasing interest as a suburban residential area.<sup>14</sup> It is no accident that the controversies initially concerned urban and peri-urban space, where land value is high and resultant rents considerable.

#### *It began with a question of property . . .*

Even before the recent interest in Kombosco arose, the area had been identified for the development of housing. During the first decades after independence the government wished to promote affordable housing of good quality for the rural population. Through the Ministry for Rural Development, the Department of Rural Housing was supposed to develop pilot projects in all regions, and for the Upper Region Kombosco was selected.<sup>15</sup> In 1975 land was acquired through the Lands Commission, and the recognized allodial titleholder, the Beo Rana of Beo, was also consulted.<sup>16</sup>

The Beo Rana is one of the few customary authorities in the Bolga area who combines the two positions of chief and earthpriest. The Beo Rana thus performs the various spiritual tasks in connection with use, transfer of and litigation over

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<sup>11</sup>Thanks to Pierre-Joseph Laurent.

<sup>12</sup>The spelling of Kombosco varies a little between documents. In direct quotations I retain the spelling of the respective authors.

<sup>13</sup>The name Frafra is derived from the greeting of the Gruni people and remains a common generic sobriquet for all people of the Bolgatanga area.

<sup>14</sup>Entries for Kombosco in the Regional Lands Commission file book on land documents in Upper East Region.

<sup>15</sup>Interview with Daniel Agorinya, 30 March 2004. Memo, ‘Update of development at the Kumbosigo Rural Housing Project site since 1975’, DRU/UER/6/22/V.3 (123), of 8 April 2002.

<sup>16</sup>Most of the paper work was done, but as in so many other cases the proper acquisition was never fully completed. Thus, a report from the site advisory committee was established (20 March 1975), and a site plan was made (ref 1618/4, 16 July 1975). This was sent to the Chief Lands Officer in Accra for ‘further action’ on 8 August 1975 (UG59/vol 3/112), but no further action was taken.

land, as well as occupying the political role of a gazetted chief with the relevant prerogatives. 'I can drink from the calabash and wear the red fez', has been the motto of the successive Beo Ranas, alluding to this double capacity as an earthpriest and a chief. The Beo Rana is Tallensi and owes allegiance to the paramount chief of Tongo, and via him to the Mamprusi king, the Nayiri of Nalerigu.<sup>17</sup> The Beo Rana thus has customary political authority over his subjects in Beo and the allodial title to the land they occupy. However, in addition, historically the Beo Rana has also controlled the land as the earthpriest in neighbouring communities – even communities who are not Tallensi and do not depend politically on the Tongo chief and the Nayiri. Kombosco, on the outskirts of Bolga town, is one such village. It is under the traditional territorial control of the paramount chief of Bolgatanga – the Bolganaba. It is, however, under the spiritual custody and ownership of the earthpriest, the Beo Rana.

In order to facilitate his task as earthpriest in the large area, the Beo Rana had appointed representatives – *tengapogsigres* – to take care of the smaller tasks of performing sacrifices, overseeing land transactions, and keeping him informed. In Kombosco the Beo Rana had charged the chief of Kombosco with the responsibility of being his *tengapogsigre* since he was already an older man whose seniority matched the responsibilities of the task. Consequently, the chief of Kombosco – owing political allegiance to the Bolganaba who had enskinned him – also performed spiritual tasks relating to the land for the Tallensi earthpriest of the area – the Beo Rana. Hence, when the Department of Rural Housing consulted the Beo Rana in 1975, the chief of Kombosco was equally present. Whether this was in a capacity as the village chief or as the Beo Rana's earthpriest assistant was, at the time, irrelevant.

The Department of Rural Housing managed to construct 10 houses, which were handed over to the Rural Housing Society with the pomp and circumstance befitting such an occasion – involving, again, the Beo Rana and the Kombosco chief.<sup>18</sup> The Department of Rural Housing did not escape the general economic malaise in Ghana of the 1970s and 1980s, however, and therefore never managed to construct more than the first 10 houses out of a planned 50. Instead, members of the Rural Housing Society were assigned individual plots and were told to construct their houses themselves. With government's widespread non-legal acquisition of land in northern Ghana, the unfinished construction at the time of the divestiture of land from government with the 1979 Constitution, and with rising land values on the outskirts of Bolga, problems lay ahead.

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<sup>17</sup>In fact, the village of Beo was under the authority of the Ku-naba, one of the Nayiri's dependencies, until 1910, when the British brought it under Zuarungu as a way of punishing the Ku-naba. Later, in 1937, though, in a similar manoeuvre to clip the wings of the Zuarungu chief, Beo was brought under the Tongo Rana and became part of the Tallensi group. Throughout, however, Beo remained dependent on the Mamprusi king (the Nayiri) and only shifted around between intermediary masters (personal communication and handwritten notes on *The History of Beo and Winkogo* (no date) and *The History of Kumbosego* (no date) from Christopher Asaare, amateur historian of Bolgatanga, 12 November 2002). See also Anafu 1973 and Bening 1973, 1974, 1975, 1977, 1995.

<sup>18</sup>Memo, 'Update of development at the Kumbosego Rural Housing Project site since 1975', DRU/UER/6/22/V.3 (123), 8 April 2002.



In 1995, the Beo Rana was succeeded by his son.<sup>19</sup> On his coming into power things had evolved somewhat. Land in the vicinity of Bolga had gained value as public servants and other 'strangers' to the area were looking for accommodation. Moreover, after the 1979 Constitution people had become aware that lease agreements between lessor and lessee no longer required endorsement by government in the shape of the Lands Commission, but by the allodial title holder. In the years leading up to the enskinment of the Beo Rana, the *tengapogsigre* had endorsed leases on his father's behalf.

In 2000 the chief of Kombosco died and was succeeded by his son. However, the task of being the Beo Rana's *tengapogsigre* went to an older gentleman from another family. The two offices of chief and *tengapogsigre*, which had been combined in one person, were now split between two families yet again. However, the new Kombosco chief saw that land was being leased to the tune of 6 million cedis per plot,<sup>20</sup> and at the same time there were some 40 plots claimed by the Department of Rural Housing, which had never been fully developed. Land acquired by government before 1979 but which had never been put to use was, according to law, to revert to its original owners. The chief was made aware of this by a lawyer in Bolgatanga, and encouraged the local inhabitants in Kombosco to retake or lease the lands in question. Obviously, this provoked a reaction from the Department of Rural Housing. The regional director contacted the Regional Lands Commission.

The natives fully aware that the land has been lawfully acquired for Rural Housing Scheme in the interest of the society, still lay claim to the land and have gone to the extent of selling out the partially developed plots to some intruders who are encroaching upon that piece of land for development. Despite the on-going discussions with the natives and the chief of the area to find an amicable solution to the problem, they refused to heed the call to refrain from encroaching on the land.<sup>21</sup>

It is worth noting the hint of an amicable solution. Informally, the Department of Rural Housing had approached the chief to see if they could acquire the land once more, so to speak – this time by paying compensation, for which a total of 6 million cedis was suggested. The recent history of improperly acquired government property in Bolga and the immense amounts of compensation were undoubtedly looming in the back of the minds of the Rural Housing officials. However, similar thoughts probably occupied the Kombosco chief, and the protest and the suggestion of an amicable settlement met with self-confident scorn from the chief and his elders.

It is a fact that the said land was occupied by Government in 1975 without compensation for Rural Housing purpose. The said land contained 14 acres (which can be about 60 plots) but the Department of Rural Housing itself were only able to develop 15

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<sup>19</sup>Around 1983 the Beo Rana died. However, since his successor was gainfully employed in the South and not eager to assume the duties of office immediately, a regent was filling in for a while – as it turned out, filling in for 12 years until the proper enskinment of the new Beo Rana was performed in 1995.

<sup>20</sup>Plots are generally 100 × 70 feet.

<sup>21</sup>Letter from Department of Rural Housing, DRH/UER/6/22/V.3, 6 February 2002.

plots . . . since then to date. In the early 90s a group of people including the Foreman of the department called Society of the Development hijacked and distributed the undeveloped land to themselves to the detriment of the land owners and put up houses that are not designed by Department of Rural Housing. However, the land owners have taken back plots that are not yet developed by them. . . . I want to remind the Department of Rural Housing that the 1979 and 1992 Constitutions of Ghana has provided for the compulsory return of undeveloped lands occupied by Government without compensation to the owners and also compensate lands that are used up without compensation, so for the Department of Rural Housing to call the land owners encroachers . . . amount to intimidation because it is our *RIGHT* to re-occupy the undeveloped plots and *claim compensation* for the developed plots. We however wish to state that the plots are sold for at least six million (c 6.000.000) cedis, an amount of at least three hundred and thirty million (c 330.000.000) cedis is our demand as compensation for the land.<sup>22</sup>

At this stage the ambition nurtured by the chief of Kombosco (and encouraged by his lawyer) was to secure the land or compensation for it for the allegedly dispossessed villagers.<sup>23</sup> The final section of the letter indicates as much.

We also wish to state the ownership or titles to the undeveloped plots be it either propriety [should probably read 'property'] or absolute is our *BIRTH RIGHT* and Department of Rural Housing can not under any circumstance either directly or indirectly course or intimidate us into surrounding [should probably read 'surrendering'] such rights. So it is our *PEACEFUL* hope that you will use your honourous [*sic*] office to take and effect the necessary documentation for any one who bring legitimate and properly enclosed [should probably read 'endorsed'] document by the land owners, the chief of Kumbosigo and the Beo-Raana.<sup>24</sup>

Though not entirely clear, the mention of two forms of ownership, 'property' and 'absolute', and the mention of the Beo Rana as landowner, suggest that the chief of Kombosco recognized split land control and the Beo Rana's allodial title. Upon sending the letter, the Kombosco chief sued the Department of Rural Housing for compensation. At this stage, the controversy mainly revolved around original ownership or allodial title. The fault line lay between the government and the customary authorities. The latter claimed rights *vis-à-vis* the government and had begun to endorse leases. It is much less clear in what precise capacity these customary authorities acted. While the land control offices were once again split, several people occupied both as either Chief of Beo and earthpriest, or village chief of Kombosco and *tengapogsigre*. However, it was when the new attribute of space gradually emerged – its monetary value – that it became important whether compensation, leases and ultimately land taxes should be directed through the earthpriests' register of land control, or would flow through the social relations through which chiefs controlled space. The Beo Rana eventually refused to

<sup>22</sup>Letter from Kombosco chief to regional Lands Officer, 8 March 2002: 'Rejoinder to Department of Rural Housing letter on the subject issues arising from land ownership, Kumbusigo Rural Housing Scheme, Bolgatanga District'.

<sup>23</sup>The financial compensation for government acquisition is to go to those who have lost the possibility of using the land: the villagers. The establishment of allodial ownership with the traditional authorities was an unanticipated but major side-effect of the first compensation cases (see Lund 2008).

<sup>24</sup>Letter from Kombosco chief to regional Lands Officer, 8 March 2002.

support the chief's suit for compensation.<sup>25</sup> The Kombosco chief was left hanging with a case pending. However, new opportunities to vindicate his claims and even upgrade them soon materialized.

*... and then it became about territory ...*

In October 2002, President Kufuor had come to the Upper East Region and Bolgatanga on an official visit. During a speech he announced that a new district – the Tallensi-Nabdam District – was to be created, carved out of Bolgatanga District.<sup>26</sup> This was the culmination of a very long struggle for a district by the various Tallensi and Nabdam political forces, in particular the home-town associations, Tallensi Rock Union and Nabdam Literates' Association.<sup>27</sup> This situated the struggle over the lands in Kombosco in a larger arena with bigger actors and more comprehensive agendas. Only weeks after the President's speech in Bolga the chief of Kombosco, supported by the paramount chief of Bolgatanga, sent a petition to the Regional Lands Commission for a change in the processing of land leases in their respective areas. They saw it as urgent to recover the traditional land control from the earthpriests who might eventually reside in a different district and control land in Bolga. The petition lamented the fact that the earthpriest, Beo Rana, had begun to endorse leases following the landmark court cases that decided that landownership was a matter for the earthpriests.

The change to be Beo Rana [who endorses leases] around 1998 has hampered significantly law and order in the sale of land in these areas and leave the Chiefs with little or nor room to play their supervisory role on land matters. ... The Beo Rana politically and traditionally belong[s] to Tongo which is distinct from us and should *not* be principal signatory to leases and take royalties from one traditional area to another area. These three villages' chieftaincy is older than that of Beo-chieftaincy and chiefs of these three areas are *not enskinned* by the Beo Rana. Villages that are being ruled by [earthpriests] *do not have Chiefs* and the [earthpriest] is *not contested for*, but in the case of Beo Rana the Tongo Rana enskins him as a Chief. So Beo Rana is sub-Chief of Tongo and we can not allow a sub-Chief of another traditional area to rule over us.<sup>28</sup>

Compared to the previous claims for compensation, this petition signifies a change of gears. First of all, the petition neatly shifts land matters from spiritual

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<sup>25</sup>The Department of Rural Housing had recently successfully defended itself against a similar suit in Navrongo, and this could have influenced the decision. Interview with Kombosco chief, 16 March 2004.

<sup>26</sup>Local Government Act 462 (1(2)) of 1993 confers on the President the powers to sign Executive Instruments to this effect. The EI must later be confirmed by Parliament.

<sup>27</sup>The Tallensi area had previously been an administrative entity: Tallensi Native Authority (1940–58); Tallensi Local Council (1958–60) and Tallensi District Council (1960–6), until it was absorbed into the Frafra District (1966–88) and finally Bolgatanga District (since 1988). In 1983, however, Bolgatanga District was divided into three electoral areas (Bolgatanga, Tallensi and Nabdam) with an MP for each. For an account of 'district making' in the Upper East, see Lentz 2006b.

<sup>28</sup>Petition for the change of the processing of lease of land in Kumbosigo, Yargabisi and Dulugu residential area', signed by the three chiefs and sent from the Bolganaba's palace, 14 October 2002.

earthpriests to political chiefs. As chiefs, village and paramount chiefs respectively, the authors of the petition would prefer to see the Beo Rana in his capacity of a chief as well and thereby as a ruler of a political territory. Comparing themselves with the same yardstick it would be evident that a Tallensi chief from Tongo, drawing his authority from the Mamprusi king, the Nayiri, could not claim any authority over chiefs from the Bolgatanga Traditional Area drawing their authority from the paramount Bolganaba.<sup>29</sup> The village chief of Kombosco did not 'share overlord' with the Beo Rana. Moreover, the petition plays the ethnic card in anticipation of the new district: Tongo is 'distinct from us'. The Beo Rana did not delay his rebuttal. In a petition to the Regional Lands Commission he argued that

[T]he Beo Rana has from time immemorial been the Earthpriest (Landowner) of all Beo Traditional lands before the advent of the institution of Chieftaincy in the Beo Traditional Area of authority. . . . That the conferment of chieftaincy . . . did not operate to vest in such individuals paramount or Allodial title to lands settled on by the inhabitants of the said areas. That the Beo Rana was similarly conferred with Chiefship in addition to his already existing customary office of Earthpriest in which office was and is as at date vested with the Paramount or Allodial title to all lands of the Beo Rana. . . . That the Beo Rana acquired the entire large stretch of land which includes . . . Kumbosgo [and other villages] by virtue of first settlement and occupation and exercised unrestrained and uninterrupted rights of allodial ownership of Beo Rana's lands and particularly of late over the lands settled on by the people of . . . Kumbosgo . . . as at date.<sup>30</sup>

There was no immediate written response, but soon the Kombosco chief was endorsing leases of land in the area without consulting the Beo Rana's representative. The chief argued that he (or indeed his father) had previously endorsed such leases in Kombosco. Leases do indeed exist signed by the Kombosco chief. However, the capacity in which he signed is unclear: was it as *tengapogsigre* – representing the earthpriest, Beo Rana – or was it as the chief, thereby suggesting himself as the allodial title holder? By the end of November 2002, the Beo Rana had sued the chief of Kombosco 'for and on behalf of the entire people of Kombosco'.<sup>31</sup> The Land Commission suspended the processing of land leases from Kombosco from that moment.<sup>32</sup> The case was to remain unresolved in court till the present day.

<sup>29</sup>In the early 1970s the Bolganaba refused to be enskinned by the Mamprusi king, the Nayiri. He thereby refused the latter's authority and ended the Bolgatanga chieftaincy's allegiance to the Mamprusi. The Bolganaba was after some political haggling elevated to paramouncy. This meant a breakaway from the Mamprusi hierarchy. The Tallensi remained loyal to the Mamprusi. See 'Record of Proceedings in the matter of appeal', Suit no. 1/AJ/80, Regional House of Chiefs, Bolgatanga.

<sup>30</sup>Re: Petition for the change of the processing of lease of land in Kumbosigo, Yargabisi and Dulugu Residential Area', signed by the Beo Rana, 13 November 2002.

<sup>31</sup>'Writ of suit between Earthpriest of Beo and Chief of Kombosco, 26 November 2002 (suit no. 17/2002) High Court of Bolgatanga'; 'Statement of claim, 14 April 2003'; 'Summons for directions, 27 May 2003'; 'Amended statement of defence and counter claim, 6 November 2003'; 'Reply to amended statement of defence and counter claims, 23 December 2003'; and 'Notice of additional issues, 2 March 2004'.

<sup>32</sup>People could still enter the File Book for Land Documents, but the effective processing of leases was interrupted.

While the Beo Rana's claim was based on his identity as earthpriest and first settlement, the Kombosco chief's defence relied on different categories of identity, namely ethnicity, which had recently been brought in with the imminent creation of the Tallensi-Nabdham District. The chief and his solicitor wanted to know 'whether or not ethnicity is a criterion or factor in the determination of allodial title ownership of land under customary law'.<sup>33</sup> Whereas the Beo Rana argued in terms of 'time immemorial' and tradition stretching back to the beginning of time, or at least well before the creation of chiefs, the argument of the chief and the Bolganaba was a little more complex. They argued that the concerned villages' chieftaincies were senior to that of Beo. However, by arguing in terms of ethnicity they alluded to the historical events that separated the Tallensi from the other Frafras, namely the Bolganaba's emancipation from the Nayiri. Thus framed in ethnic terms, the dispute became a question of chiefly territory where a chief from one ethnic group would have no jurisdiction over people from another. This is still to argue in terms of the past, but a past where different ethnic groups, each with a chief, conquered space or were appointed to rule it by the British. It thereby established space as political territory.

### *Mapping actors*

Different notions of space and land control coexist and compete. Yet, mapping remains a vexing enterprise. Competing maps had seen the light of day by the end of the 1990s in the process of lobbying for the Tallensi-Nabdham District.<sup>34</sup> In 2001 Tallensi Traditional Council, regrouping village chiefs of the Tallensi area and the paramount chief, the Tongo Rana, supported by Tallensi Rock Union, the Member of Parliament for the Tallensi electoral area, assemblymen and opinion leaders, forwarded the latest in a series of petitions for the creation of a district to President Kufuor.<sup>35</sup> In order to determine qualification for a district, the government, through the Electoral Commission, will assess a number of criteria. Population size and existing infrastructure are quite straightforward, whereas ethnic homogeneity and land mass are somewhat more open to interpretation.<sup>36</sup> The petition from Tallensi Traditional Council included a few maps, one of which proposed the geographical outline of a future Tallensi District. This proposal was roughly based on the existing electoral areas established in 1983.

As Tallensi Rock Union stated, these were the most innocuous boundaries and just served the purpose of 'getting' the district. Later, when boundaries were to be established concretely, they would establish 'natural boundaries'.<sup>37</sup> When

<sup>33</sup>'Notice of additional issues', 2 March 2004 (suit no. 17/2002), High Court of Bolgatanga.

<sup>34</sup>The Nabdham Literates' Association was formed in 1962 (NRG8/2/138). Tallensi Rock Union was founded in 1992 ('A brief report on Tallensi Rock Union', no date, material in private possession). Both associations lobbied for the creation of the districts and the development of their respective areas (see also Lentz 1995).

<sup>35</sup>'Petition for the creation of Tallensi District', forwarded by Tallensi Traditional Council, 15 September 2001, material in private possession.

<sup>36</sup>Interview with Regional Director of Electoral Commission, Bolgatanga, 29 March 2004.

<sup>37</sup>Interviews with the president of Tallensi Rock Union, John Zoogah, 8 November 2001 and 27 March 2004.

President Kufuor announced the creation of the district in 2002, the settlement of the fine lines of the boundaries was still outstanding. By 'natural boundaries' the Tallensi petitioners – and in particular Tallensi Rock Union – meant land 'controlled by the Tallensi people'. This would include land in Kombosco and other villages in the area, because land there was controlled by the Tallensi earthpriest, the Beo Rana. The ambition of the Tongo/Beo protagonists thus seemed to be to base future political territorial claims on existing recognized property rights. These rights were in turn based on a notion of the past as an inveterate source of mores, only interrupted by the invention of chiefs and their fabricated claims to land. If this line of reasoning was to prevail, however, it meant that the pending court case over the allodial title in Kombosco would be crucial. If the earthpriest, the Beo Rana, was vindicated, the Tallensi could claim to 'own' Kombosco. The dispute between Beo and Kombosco was already common knowledge, and as the various ideas about possible interpretations of 'natural boundaries' for the new district percolated through Bolgatanga, big men with big interests in what would become the decimated Bolgatanga District reacted.

Attack is the best form of defence. The District Chief Executive (DCE), the Bolganaba and others began to lobby with Tallensi villages for them to join the new Bolgatanga District, and thus reduce the size of the future Tallensi-Nabdam District. Efforts were particularly directed against people of Gono, the northernmost section of Beo, bordering Kombosco.<sup>38</sup> When in 1938 Beo was administratively transferred from Zuarungu to Tongo, Gono had been part of the package. Though speaking the dialect of Bolga, the people of Gono had subsequently engaged in Tallensi festivals and celebrations. However, for the past six years they had resumed the observance of the festivals of the people of Bolga as well. They had come to terms with living in a border zone by preparing adaptability to both sides, keeping options open in the event of opportunities. The District Chief Executive's choice of Gono was in all likelihood motivated by more than their plastic ethnic compatibility with Bolga, however. A fair amount of government infrastructure is situated in Gono, and although much of it was redundant at this period,<sup>39</sup> filing for compensation by government for non-legal acquisition of land was very promising in the area. The chief and elders of Gono were in favour of the plan and expeditiously organized an 'emergency meeting' on 27 December 2003. Here, a petition against the inclusion of Gono community in the new Tallensi-Nabdam District was prepared and sent to the District Chief Executive for his lobbying with the Ministry of Local Government.<sup>40</sup> The petition

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<sup>38</sup>Thus, when a party from the DCE's office was 'intercepted' in Beo, this caused a stir as it was believed that they were effectively marking out the boundaries in the landscape. Members of the party argued that it was merely a routine visit, but the atmosphere of the day did not favour this kind of interpretation. Interview with District Coordinating Director, Nong-Inga Nsor N'yabir, 29 March 2004.

<sup>39</sup>The old agricultural station and the meat factory were among these redundant but still negotiable sites.

<sup>40</sup>Petition against the inclusion of Gono community in the newly created Tallensi/Nabdam District', 29 December 2003, sent from the Gono chief palace and signed by the chief, elders, heads of families and representatives of the youth, material in private possession.

suggested that the new district boundary should separate Gono from Beo, placing Gono and its infrastructure in the future Bolga District.

Apparently, this only furthered the ambition and appetite of the District Chief Executive. Hence, during a meeting with the representatives of the new district in early 2004, another map was produced by the DCE and his administration situating not only Gono but also even Beo proper comfortably within the future Bolga District. This map did not go down well with the participants, and the meeting ended inconclusively.

The spatial strategy of the Bolgatanga-based litigants was virtually the opposite of the Tallensi group. The ambition of the District Chief Executive and the Bolganaba was to base property claims on recognized territorial divisions. If the territorial divisions would separate Kombosco from Beo, the Beo Rana's claim could be seen as an unwarranted, and hence weak, territorial vindication. If Beo could furthermore be wrested from Tongo and be included in the Bolga District, the Beo Rana's position – and thereby his land control – would be considered weakened. This argument, treating space as territory, depended on the notion of the past as history, where the fortunate event of the establishment of a new district conjugated with the historical and much deserved emancipation of the Bolganaba from the Mamprusis and the subsequent sequestration of land rights from the Beo Rana. Such a new district should respect – and in effect consolidate – the Bolganaba's chiefly – territorial – control over Kombosco. For this line of argument to be successful, favourable settlement of territorial boundaries was therefore crucial.<sup>41</sup>

Thus, while the creation of the Tallensi-Nabdum District was now a legal and political fact, the exact geographical contours and their territorial and property implications were still for some time to come dependent on the performance of political and legal acts, and how the past was most successfully invoked.

## CONCLUSION

The contemporary construction of the past and, as a frequent corollary, the representation of cultural identity, has been crucial for the successful vindication of political rights in Bolgatanga. However, more than a single past has proved potentially valid as a claim to land and office. When arguments of the past, confronting tradition with history, furthermore intertwine with competing projections of legitimate forms of control over space, complex combinations of claims emerge.

While the competition over chieftaincy and land depends on the framing of the past, success has hinged equally on fortuitous or clever reading of the structures of opportunity. Strategic, or open, moments have arisen from time to time. Changes of government, adoption of a new constitution and tenure reforms, decentralization policies and the creation of new administrative boundaries, government

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<sup>41</sup>In case the 'maximum option' presented by the DCE, including Beo in Bolgatanga District, were to be endorsed, the Beo Rana as a Tallensi would be in a difficult political position to defend his claims in a district overwhelmingly dominated by people from Bolgatanga.

policies relating to taxation or chieftaincy, and other factors have all, in isolation or conjuncture, created openings for a rearrangement of political rights and positions. The competition has been quite intense in such moments. The contestants seem to be aware that while rights and offices are essentially negotiable, certain moments are highly propitious for change while reproduction of the state of affairs is predominant at different times. Consequently, 'socially constructed' does not necessarily mean ephemeral or weak. Once successfully constructed, the past, identity and rights become markers for the future negotiation of society. Such settlements may stick for some time. The 'stickiness' of certain structured situations is related to the institutions involved in the competition. Whether the past was argued in terms of history or tradition, and whether land control was claimed in territorial terms or as property, legitimization was sought through validation of claims by the state, government or other official institutions.

The analogy between space and the past may at first sight not seem entirely satisfactory. Unlike the two pasts, both governance of territory and ownership of property are, in principle, clearly bounded, and both are ultimately political in the sense that their existence rests on the exercise of power, by a state or some other controlling agency. A third form of spatial control could therefore be expressed as sovereignty. The conquest of a space, above or beyond law where the conqueror is not accountable – at least not initially so – constitutes a sovereign moment. The British colonization of Ghana (well, colonization, *tout court*) constitutes a classical moment where new powers are established and a new structure of hegemony and law is imposed, through which new social contracts can emerge (Benton 2002; Boone 2003; Nugent 2010; Peluso and Lund 2011; Moore 1978). It lays down the tracks along which effective arguments can be pursued, and even if the colonial and the first independent governments were themselves effectively rather cavalier about the distinction between governed territory and owned property, these modern categories were established as ideas to structure arguments for different forms of control under the rule of a government. The tensions between the two strategies, and between political and legal institutions, demonstrate that while both are ultimately political, they are not identical modern forms of spatial control. Moreover, the boundedness of territory and property by a state or other controlling agencies presupposes their control. As I demonstrate above, however, such control is sometimes precarious. This distinction gets all the more blurred by the constitutional provisions, and social practices, that link allodial title to chiefly jurisdiction. The categories can slide into and become one another: control of territory may be a step towards ownership of land while ownership of land may be a step towards territorial control. Governors may indeed claim to own, and owners may very well pretend to govern.

The competition between different territorial claims and different claims to property is dynamic and changes through the influence of different socio-political processes. Policy and legislation can be important in this respect. Government policies may validate and endorse different principles of land control, such as territory and property. Such notions are surely a complex mix of cosmology, ideology, policies and actual use. Over time therefore, they do not necessarily reflect specific emic notions of space. Rather, aspects of such indigenous local notions are adapted to modern representation of space and the repertoire of



social, political, legal and even technical instruments employed in the efforts to control it.

While the registers are different, political territory and property share an element of explicit claiming. Narratives and symbols are employed to make spatial claims stick within an overall culture. Property as well as political territory requires communication to a relevant audience (Fortmann 1995; Rose 1994). That is, addressing all others who might be interested in claiming the space in question, and all relevant institutions of authority that may sanction the claim. Stories, allegories, metaphors and actual possession all contribute to persuade others of the justice of particular claims, and secondary symbols such as deeds and other recordings of transactions, maps and planning documents may become important props in the competing acts of persuasion. Many of these props represent or reflect different notions of the past.

The present validation of the past and the preferred projection of legitimate spatial control represent debate, friction and competition between various institutions of public authority and interest groups. The Traditional Council, the House of Chiefs and the Earthpriests' Association, the Regional Lands Commission and the Electoral Commission, hometown associations and the District Chief Executive and his administration, as well as the High Court, all provide a functional semantic terrain for time and space. Command over it is coveted by individuals such as chiefs and earthpriests and people with ambition to access their offices, as well as the very institutions that provide elements of convention for how to debate time and space. While neither the past nor space seem to be distinguished by infinite plasticity, there seems to be sufficient semantic scope for fluidity to characterize them. Opportunities will in all likelihood continue to emerge. To seize the day in northern Ghana, one must be able to seize yesterday, preferably in a form that resonates with tomorrow's spatial ambition.

Social time and social space are contextual. Thus the configurations described above are specific to northern Ghana, and they will combine in different ways elsewhere, but the ubiquity of 'the past' in African politics and the increasing competition over space suggests that the naturalness with which people refer to the past and conceive of space should be under constant scrutiny.

The analysis above encourages us to move beyond the discussion of whether custom is authentic or fabricated. While early anthropologists' accounts of African land use documented system, structure and regularity as custom, later critical scholarship saw what colonialism had inscribed as 'customary law' as a colonial creation. Customary law came to be seen as a colonial imposition creating or entrenching privilege and despotism, and thus custom was adjudged to be entirely manipulable by the powerful (Ferguson 1999; Moore 1986, 2001). Rather than passing judgement on particular practices as either authentic or fabricated (and how indeed would we make that call?), I believe it makes more sense to investigate the arguments. In a certain way, the objects of study are not land or history, nor law or custom *per se*; it is the arguments people have about those things. While arguments are peddled as a 'natural order', the past is, in fact, used to imagine a future by justifying certain claims to political identity, to property, and to authority. Thus, when we look at the past as an argument voiced in the present in view of the future, the inevitability of history is unsettled.

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#### ABSTRACT

The contemporary construction of the past is crucial for the successful vindication of political rights in Africa. Often, however, more than a single past proves potentially valid as a claim to land and office. When arguments of the past, furthermore, intertwine with competing projections of legitimate forms of land control, complex combinations of claims emerge. The ubiquity of 'the past' in African politics and the increasing competition over space suggest that the naturalness with which some refer to the past and others conceive of space should be under constant scrutiny. Based on work in northern Ghana, the article argues that the contemporary construction of the past, as either tradition or history, and the competing projections of land control, as either property or political territory, interdigitate in complex ways. This affords certain rhetorical or discursive combinations that competing social elite groups instrumentalize. Each group sees its interests best served by a particular reading of the past and a particular conception of space.

## RÉSUMÉ

La légitimation des droits politiques en Afrique passe par la construction contemporaine du passé. Or, il arrive souvent que plus d'un passé s'avère potentiellement valide pour revendiquer un droit d'accès à la terre et au pouvoir. Et lorsqu'aux arguments du passé se mêlent des projections concurrentes de formes légitimes de maîtrise foncière, des combinaisons complexes de revendications émergent. L'ubiquité du « passé » dans la politique africaine et la concurrence croissante pour l'espace suggèrent qu'il faudrait examiner constamment le naturel avec lequel certains se réfèrent au passé et d'autres conçoivent l'espace. S'appuyant sur des travaux menés dans le Nord du Ghana, l'article soutient que la construction contemporaine du passé, en tant que tradition ou histoire, et les projections concurrentes de la maîtrise foncière, en tant que bien ou territoire politique, s'intercalent de manières complexes. De cela découlent certaines combinaisons rhétoriques ou discursives que les groupes d'élites sociales concurrents instrumentalisent. Chaque groupe voit ses intérêts servis au mieux par une lecture particulière du passé et une conception particulière de l'espace.