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Source: *Journal of African Law*, 2014, Vol. 58, No. 2 (2014), pp. 250-265

Published by: School of Oriental and African Studies

Stable URL: <https://www.jstor.org/stable/24735215>

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The Legal History of Public Land in Liberia

Caleb J Stevens*

Abstract

This article demonstrates that there has never been a clear definition of public land in Liberian legal history, although in the past the government operated as if all land that was not under private deed was public. By examining primary source materials found in archives in Liberia and the USA, the article traces the origins of public land in Liberia and its ambiguous development as a legal concept. It also discusses the ancillary issues of public land sale procedures and statutory prices. The conclusions reached have significant implications for the reform of Liberia's land sector.

INTRODUCTION

The Liberia Land Commission was established in 2009 with a broad mandate to address all aspects of land reform.¹ A critical part of that reform effort is understanding Liberia's past land laws. No issue is more critical than the status of public land. In the past, the government of Liberia operated on the premise that all land not held in fee simple was in fact public land. Although there is no reliable data on the total stock of public land in Liberia, under this definition it is estimated that a significant amount of land in Liberia would be classified as public. This has significant implications for land tenure security in Liberia, as it calls into question the land rights of most rural Liberians. If all land which is not privately held is public, then many customary communities reside on public land. This would mean that the government could grant commercial use rights, such as concessions, over the lands of local communities.²

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- * Property rights specialist, World Resources Institute; policy and law reform fellow, Republic of Liberia Land Commission, 2011–13. The author would like to thank Thomas Mills of Cornell University and Dr Verlon Stone of Indiana University for graciously providing access to the Liberian collections of their respective universities. Much of the research for this article was done under the auspices of the Liberian Land Commission; the author would like to thank Chairman Cecil TO Brandy, Dr Jeanette Carter, Stanley Toe and all the officials and staff of the Liberian Land Commission, without whose friendship and professional support this article would not have been possible. All opinions and errors are the author's own.
 - 1 It was established under the Act Establishing the Land Commission, 4 August 2009. Sec 3.1 provides: "The general mandate and purpose of the Commission shall be to propose, advocate and coordinate reforms of land policy, laws and programs in Liberia."
 - 2 For an excellent analysis of commercial use allocation in Liberia, see P De Wit "Land inventory and land management planning in Sinoe County" (2012), available at: <http://eeas.europa.eu/delegations/liberia/documents/press_corner/20130916_02.pdf> (last accessed 3 February 2014).

However, to her credit the president has publicly endorsed the new Land Rights Policy, approved by the Liberian Land Commission in May 2013.³ The policy expressly recognizes the troubled legal history of public land and for the first time recommends a clear definition which recognizes customary land rights as equal to private ownership rights. Nevertheless, it is important to place these recommended reforms in their historical context.

Based largely on primary sources found in the Liberian collections of Cornell and Indiana Universities, this article sets forth the legal history of Liberia's laws concerning public land. The research uncovered some startling facts. There has never been a clear definition of public land, even though the government operated on a premise that would assign significant amounts of land in Liberia to the public domain. Also, the sale procedures have varied considerably from one law to the next, while the statutory prices for public land have remained unchanged since Liberia's founding.

This article starts with a brief overview of the history of public land in Liberia. It then answers the question whether Liberian law has ever clearly defined public land. The next section discusses past procedures for selling public land as well as the shift in meaning of the statutory prices. The article then attempts to answer why the government never clarified the legal status of public land, before offering a conclusion.

A BRIEF HISTORY OF PUBLIC LAND IN LIBERIA

During the colonial and Commonwealth periods (1822 to 1846), the government of Liberia, and its precursor the American Colonization Society, acquired land directly from indigenous peoples as public land.⁴ This practice continued after the founding of the republic in 1847 and the expansion of territory into the interior. As the government acquired land from indigenous peoples by cessation or conquest, it was transferred to the government as public land. The 1847 Liberian Constitution expressly prohibited Liberian citizens from purchasing land from indigenous peoples.⁵ All land transactions went through the government. The government granted public land to newly immigrated Liberian citizens on the condition that it be developed. If the development condition was met, then the putative owner was granted fee simple title. Public land was also allotted to churches, private companies and other organizations, as well as to indigenous persons who had become "civilized". Of course, land was also granted under concessions to Liberian and foreign companies. These concessions were granted pursuant to statutes

3 Land Rights Policy (approved by the Liberian Land Commission on 21 May 2013), available at: <<http://usaidlandtenure.net/commentary/2013/05/liberia-produces-first-ever-land-rights-policy-protects-customary-ownership>> (last accessed 24 February 2014).

4 See discussion in L Wiley So *Who Owns the Forest* (2007, Sustainable Development Institute / FERN) at 62–80.

5 Constitution of Liberia (1847), sec 14.

specifically enacted for that purpose. Although this practice is often said to date from the 1920s with the granting of the Firestone Concession, such statutes were passed at least as early as the late 19th century.⁶ In this way, much of Liberia's littoral land, and even some of its land in the interior, was transferred from public to private tenure arrangements.

As the government expanded its sovereign authority over the area that is now Liberia, most customary lands in the interior were reduced to a use and possession right on what was otherwise public land. The few exceptions to this were those communities that were able to obtain fee simple deeds for their lands. In other words, a significant increase in public land was a correlate of the expansion of sovereignty.

THE DEFINITION OF PUBLIC LAND

This section will address whether there has ever been a clear definition of public land in Liberian legal history. The current land laws and source materials reveal the absence of a clear definition of public land; on the contrary, there has been a rather elliptical approach to the issue. Some statutes strongly imply a definition, but the law has never expressly defined public land. In approaching this issue, this article first examines the most recent laws, then the preceding laws and finally Liberian Supreme Court cases.

By way of background it is appropriate to summarize the process for obtaining public land under the most recent 1973 Public Lands Law. This law prescribes different procedures depending on whether the public land was located in the hinterland (ie the interior lands beyond the coast) or county area (ie littoral lands).

For public land located in the hinterland the procedure was as follows. The purchaser obtained consent from the tribal authority and in exchange paid a "sum of money as token of his good intention to live peacefully with the tribesmen".⁷ The paramount or clan chief expressed the consent of the tribal authority by signing the tribal certificate, which was then taken to the county land commissioner. The county land commissioner then had to attest that the public land at issue "is not a portion of the Tribal Reserve, and that it is not otherwise owned or occupied by another person and that it therefore may be deeded to the applicant".⁸ The tribal certificate was thus conditional permission to survey the public land. That permission was conditioned upon paying the purchase price to the Bureau of Revenues at the Ministry of Finance and obtaining a survey order from the president. Once the survey was complete, the county land commissioner issued a deed to the purchaser who

6 For example, an Act to Grant Certain Concessions for the Charter and Construction of a System of Railroads in the Republic of Liberia, Session Laws, 21 January 1890; also see A Sawyer *The Emergence of Autocracy in Liberia* (1992, Ics Press) at 246–50.

7 Public Lands Law, title 34, Liberian Codes Revised (2004) (1973 Public Lands Law), sec 30.

8 *Ibid.*

then obtained the president's signature on the deed. The deed was then probated.

Prospective purchasers of public land in the county areas had to follow the same procedures, with one significant difference. They only needed to obtain the attestation of the county land commissioner, in the form of a certificate, declaring that the land at issue "is not privately owned and is unencumbered".⁹

The Public Lands Law, Registered Land Law and Aborigines Law

Section 2 of the 1973 Public Lands Law empowers the land commissioner to issue a certificate to a prospective purchaser "if satisfied that public land about to be sold is not privately owned and is unencumbered".¹⁰ There is some uncertainty about whether or not this clause clearly defines public land.

The language in section 2 reads as if the land's status as public land is a foregone conclusion and the land commissioner's role is to determine *alienability* through a public land sale. The land has already been deemed to be public land; the question is whether the public land about to be sold can in fact be sold. If the public land is privately owned or encumbered then it cannot be sold, but it is still public land. According to this interpretation there is no question as to the status of the land, only its alienability. Admittedly, this creates a bizarre result whereby privately owned land can also be public land.

An alternative interpretation is that the privately owned part and the encumbered part touch on different types of obstacles to sale. If the land is found to be privately owned then the land that was thought to be public is not, and so it cannot be sold as public land. If the land is found to be encumbered then the land is still public but it cannot be sold. Such would be the case if, for example, a concession was granted covering the public land. The privately owned part is an obstacle based only on the *status* of the land as public land, while the encumbered part is an obstacle based only on the *alienability* of the public land.

Section 30 of the 1973 Public Lands Law does not clarify the definitional problem. While section 2 refers to private ownership and encumbrances, section 30 provides that, before approving a sale, the district commissioner (ie the land commissioner) must be satisfied that "the land in question is not a portion of the Tribal Reserve, and that it is not otherwise owned or occupied by another person".¹¹ Again this passage is ambiguous as to whether a tribal reserve, ownership and occupation impact the land's *status* as public land or only the public land's *alienability* through a public land sale.

The paragraph addressing the sale of public land in the "county area" provides that the land commissioner must be satisfied that "the land in question" is "not privately owned and is unencumbered" before issuing a certificate.¹²

9 Ibid.

10 Id, sec 2.

11 Id, sec 30.

12 Ibid.

The term “public land” is only mentioned in an aspirational sense: “[a] citizen desiring to purchase public land”.¹³ As with the preceding paragraph, the use of the phrase “land in question” seems to undermine an interpretation based on alienability alone (ie whether the public land can be sold) and strengthen one based only on status (ie whether the land is public land). Not referring to the land as public land, but rather as “the land in question”, could mean its status as public land is not a foregone conclusion but hinges on whether the land is found to be privately owned or encumbered. But again the passage is ambiguous because the “land in question” phrase could mean it is not a foregone conclusion whether the *desire* to purchase the land can be realized, not whether the land is in fact public land. The privately owned obstacle and the encumbered obstacle could still relate to status and alienability respectively. In short, the passage brings us no closer to a clear definition of public land.

In addition, the 1974 Registered Land Law has this to say about public land:

“The registration of land as public land, subject to any registered encumbrances, which shall include without limitation, interests in and rights over such land granted in concession and other agreements made under authority of law, and by way of delineation of Tribal Reserve areas and communal holdings, shall enable such land to be disposed of in accordance with the provisions relating thereto contained in the Public Lands Law and in any other law providing for dispositions of public lands, by a disposition registrable under the provisions of this chapter.”¹⁴

This law seems to mean that land is still public even if held as a tribal reserve or communal holding. The passage that permits such “land to be disposed of in accordance with ... the Public Lands Law” is confusing. Does it mean that public land held as a tribal reserve or communal holding is not encumbered within the meaning of the Public Lands Law and can therefore be sold? Or does it merely mean that the land is public land and may be sold if at some point it ceases to be encumbered by a tribal reserve or communal holding? Again the status versus alienability issue is not resolved.

Another section of the Registered Land Law indicates that land held as tribal reserve or communal holding is still public land: “[i]f [the Referee] is satisfied that a parcel of land is entirely free from any private rights, or that the rights existing in or over it would be insufficient to entitle a person to be registered as owner of the parcel under the provisions of this chapter, he shall record the parcel of land tentatively as public land. *If such land is part of a Tribal Reserve or communal holding, he shall further record the fact that such public land is subject thereto ...*”¹⁵

13 Ibid.

14 Property Law, title 29, Liberian Codes Revised (2004) (Registered Land Law), chap 8, sec 8.123.

15 Id, sec 8.52(d) (emphasis added).

The last sentence indicates that tribal reserves and communal holdings are only encumbrances on what is public land. However, this is not a clear definition of public land, especially given the ambiguities found in the other part of the Registered Land Law and the 1973 Public Lands Law.

Finally, the Aborigines Law of 1956 states: “[e]ach tribe is entitled to the use of as much of the *public land* in the area inhabited by it as is required for farming and other enterprises essential to tribal necessities. It shall have the right to the *possession of such land* as against any person whomsoever.”¹⁶

This passage also does not define public land clearly. It is susceptible to two interpretations. The first is that all land inhabited by each tribe is public land. The second is that, if a portion of land inhabited by each tribe is public land, then the tribe has use and possession rights for the public land portion. In other words, if a tribe inhabits an area, some of it may be its land under customary tenure and some of it may be public land. Under this interpretation, the law is specifying that the tribe has use and possession rights over the public land portion which it happens to inhabit. The Liberian government has been acting as if the former interpretation is the correct one and not the latter. However, the point is that the text of the law is susceptible to either interpretation and thus does not provide a clear definition of public land.

This discussion reveals that there has never been a clear definition of public land. An examination of previous laws and Supreme Court cases relating to public land is therefore required to see if they put forth a clear definition. As the 1956 Public Lands Law uses nearly identical language to the 1973 Public Lands Law and likewise does not clearly define public land,¹⁷ it is necessary to look at laws prior to 1956. The next section examines laws and cases from 1824 onward. As will be shown, these laws and cases do not provide a clear definition of public land.

However, before proceeding, a brief history of the codification of Liberian laws may provide some useful background. Besides the compilations of Liberian statutory law in 2004, 1973 and 1956, there have been three others: the Statute Laws of the Republic of Liberia, printed in 1857 (1857 Statute Laws); the Statute Laws of the Republic of Liberia, printed in 1879 (1879 Statute Laws); and the Revised Statutes of the Republic of Liberia, compiled in 1911 and enacted in 1929 (Revised Statutes).¹⁸ The 1857 and 1879 Statute Laws are referred to collectively as the Old Blue Book (OBB).¹⁹ Cornell’s Liberian law collection holds the 1857 Statute Laws and the Revised Statutes.

16 Aborigines Law, title 1, Liberian Code of Laws (1956), sec 270 (emphasis added).

17 Public Lands Law, title 32, Liberian Code of Laws (1956) (1956 Public Lands Law).

18 R Culp “Sources of Liberian law” (1966) 2 *Liberian Law Journal* 130 at 134: “Prior to 1956, there had been two compilations of Liberian laws: the Statute Laws printed in 1856 and 1879 (known as the Old Blue Book) and the Revised Statutes compiled in 1911 and adopted in 1929.” Culp writes that the first Statute Laws was printed in 1856 but this is inconsistent with the digitized copy on Cornell University Library’s website, which plainly states on the cover page: “Liberian Statutes 1847–1857.”

19 *Ibid.*

A digitized version of the 1879 Statute Laws was found with the help of librarians at Indiana University.

Laws concerning public land prior to 1956

The 1931 Department of Interior Administrative Regulations is perhaps the law which comes closest to defining public land clearly. It states emphatically, “[t]he fundamental principle is that the primary title to all lands in the Republic is in the Government. The Government, however, recognizes the usufructuary interest of a tribe in the lands upon which it is settled.”²⁰ Although this expansive principle on its face applies to all land, it must be contextualized. The Interior Department was created in 1869 with jurisdiction over “uncivilized” indigenous Liberians.²¹ This regulation is part of the Interior Department’s decades-long campaign to govern “uncivilized” indigenous Liberians effectively. It is therefore sensible to interpret this principle as referencing primary title to lands that fall under the jurisdiction of the Interior Department. In other words, it should read, “the primary title to all [uncivilized indigenous] lands in the Republic is in the Government”. Following this declaration with one granting use and possession rights only for indigenous Liberians, implies that their land is in fact public land unless it is converted to fee simple ownership. That is, the regulation is the clearest expression of the government’s policy that all land not held in fee simple is public.

Alternatively, the principle could be interpreted as a declaration of the government’s radical title over all land. The concept of radical title originated in feudal England and “refers to the title automatically assumed by the Crown once lands were either acquired or conquered”.²² Once sovereignty is extended over a given land area the Crown, as the embodiment of the sovereign power, is vested with supreme authority over that land area. This is radical title or ultimate ownership of all land. The Crown, as holder of radical title, has ultimate authority to grant or expropriate lands as it sees fit, for its beneficial ownership or for the benefit of another. According to this interpretation, the principle means what it says: all land means all land. The regulation expands the definition of public land to cover, at least nominally, even land held in fee simple.

There are at least two problems with this interpretation. First, there is no evidence in Liberian legal history of the government articulating a radical title concept or, indeed, even using the term. An Interior Department regulation would have been an odd vehicle for the initial declaration of a significant land tenure concept with national implications. Secondly, Liberia imported US law from the beginning of its history and the US repudiated radical title

20 Department of Interior, Administration Regulation 53 (1931).

21 Act Creating the Department of the Interior, Session Laws 1868–69 (23 January 1869) at 12–15.

22 S Hepburn *Principles of Property Law* (2d ed, 2001, Routledge-Cavendish) at 44.

at independence. The American Colonization Society issued a “constitution” in 1827 which stated, “[t]he common law, as in force and modified in the United States, and applicable to the situation of the people, shall be in force in the settlement.”²³ After the American Revolution the states abolished feudal tenures premised on radical title, and, as in Connecticut, the citizens “became vested with an allodial title to their lands” (ie fee simple).²⁴ Radical title conflicts with Liberia’s early reliance on US law.

Other than the 1956 and 1973 Public Lands Laws, there have only been two public lands laws in Liberian history, understood as a compilation of provisions regarding public land sale procedures, prices and allotments, as well as miscellaneous issues (such as leases to foreign legations) concerning public land. These are the Public Domain Law and the 1904 Public Lands Law.²⁵ This fact is confirmed by a prior legislation notation in the 1956 Public Lands Law, which references sections 1285–86 of the Revised Statutes, which are the provisions of the 1904 Public Lands Law concerning the procedures for selling public land.²⁶ The notation also references “OBB 139, Act regulating the sale of public lands, secs 1–4”.²⁷ This is a reference to the Public Domain Law in the 1857 and 1879 Statute Laws (ie OBB), page 139 (the page on which the article on public land begins), and sections 1–4 (which concern the procedures for selling public land). The Public Domain Law in the 1857 Statute Laws is the exact same law that appears in the 1879 Statute Laws. It even appears on the same page numbers in each compilation.²⁸ This citation and the Public Domain Law in the 1857 and 1879 Statute Laws match perfectly.²⁹

In other words, the OBB page 139 citation in the prior legislation notation is referencing the article in the Public Domain Law concerning public land sales, found in both the 1857 and 1879 Statute Laws. This reading makes sense because, if the Public Domain Law had appeared in only one of the Statute Laws, or there had been a slight difference in the law between the two compilations, then the prior legislation notation would have referenced the 1857 and 1879 Statute Laws individually, rather than citing the OBB which refers to both of them.

This is strong evidence that the 1904 Public Lands Law and Public Domain Law are the only two public lands laws preceding the 1956 Public Lands Law. If there had been other public lands laws, then the 1956 prior legislation

23 World Bank “Liberia: Insecurity of land tenure, land law and land registration in Liberia” (report no 46134-LR) (22 October 2008) at 17.

24 F Hilliard *The American Law of Real Property* (1869, Weare C Little & Co) at 60.

25 Public Domain Law, 1857 Statute Laws (Public Domain Law) at 133; Public Lands Law, Revised Statutes (1904 Public Lands Law), chap LXI at 149.

26 The prior legislation notation under the provision on the procedures for selling public land in the 1973 Public Lands Law is identical to that in the 1956 Public Lands Law.

27 1956 Public Lands Law, sec 30.

28 Compare Public Domain Law, 1857 Statute Laws at 133 with Public Domain Law, 1879 Statute Laws at 133.

29 Compare Public Domain Law with 1956 Public Lands Law, sec 30.

notation would have referenced them. Because there are no other references to past public lands laws, it is reasonable to conclude they do not exist.

The Public Domain Law, which is the first public lands law, appears to be a collection of individually passed laws. From the face of the law it is not clear when it or its component laws were passed. One of its component laws is An Act Regulating the Sale of Public Lands (Public Lands Act).³⁰ Liz Wiley in her study on customary land tenure in Liberia indicates that the Public Domain Law was passed in 1848 and the component Public Lands Act was passed in 1850.³¹ This is consistent with the 1857 and 1879 publication dates for the respective Statute Laws.

Regardless of passage date, the important point is that nowhere in the Public Domain Law, which includes the Public Lands Act, is “public land” defined.³² The Public Domain Law consists of seven articles. Article I concerns the territorial boundaries of Liberia and does not even mention the term “public land”. Article II concerns the territorial boundaries of the counties, again not mentioning the term “public land”. Article III involves the administration of counties and towns and also does not reference “public land”. Article IV concerns allotments of land to newly arrived settlers; it seems to assume that the land is public land, for it does not mention the term “public land”. Article V aims to regulate towns and villages; this article uses the term “public place” (without a definition) but not “public land”. Article VI, however, is the Public Lands Act with five sections. Sections 1 through 4 concern the procedures for selling public land, including the price of public land. Section 5 authorizes the president to create an inventory of all public land “disposed of by the government”. Public land is not defined, but section 1 provides that public land reserved for public use may not be sold. Article VII concerns the appointment of surveyors for each county, regulates their conduct, and sets forth their role in public land sales; however, it does not define the term “public land”.

The 1904 Public Lands Law is the other pre-1956 public lands law and is equally silent on the definition of public land. It contains more detailed provisions than the Public Domain Law. It replaces the Public Domain Law’s article on allotments of public land to settlers with one concerning allotments to immigrants; it also adds provisions regulating land surveyors and concerning public land grants to Colonization Societies, as well as incorporating very similar procedures for public land sales found in the Public Domain Law. Nowhere is public land defined.

Other than the laws discussed above, there are many miscellaneous statutes which mention or touch upon public land. Not surprisingly, none of these laws defines public land.

30 Public Domain Law, art VI.

31 Wiley *So Who Owns the Forest*, above at note 4 at 106.

32 Public Domain Law, arts I–VII.

The Statute Laws of the Commonwealth of Liberia is a compilation of individual laws passed between 1824 and 1827.³³ Several of these laws relate to public land. For instance, one law passed on 19 August 1824 requires that one third of all lots granted to settlers be reserved for “public uses”. Other parts of the compilation are the first laws concerning allotments to newly arrived settlers, which also imposed building and cultivation requirements for them to secure title. The term “public land” is not used in these laws, only the unmodified “land(s)”. However, one law passed on 25 October 1827 refers to a “public reserve ground” but without defining it. From the context it appears that the public reserve ground was the land bordering a major waterway, such as the St Paul River.

On 22 April 1830 the Board of the American Colonization Society met and adopted a Report on the Public Lands. This document lays out the early colony’s public land policy. It specifies the acreage and building conditions of public land grants depending on where the land is located.³⁴ It also states that emigrants who are allotted public land are entitled to purchase additional acres at a fixed rate.³⁵ Finally, the report discusses in detail the rationale for exempting land from liability for debts.³⁶ What is interesting is that the document never uses the term “public land”. The assumption throughout is that all land which has not been allotted is public.

One of the first laws to refer to “public land” is the Constitution of the Commonwealth of Liberia of 1839. Article 12, entitled “Governor to control public lands,” provided that “land owned by the [American Colonization] Society and all other public property belonging to the Society” was to be controlled exclusively by the governor. The discrepancy between the article title and its text, which does not use the term “public land” but only “public property”, indicates that the two terms were regarded as interchangeable. The Plan of Civil Government for the Colony of Monrovia also used the term “public property”.³⁷ It required the register to “record all documents and instruments relating to the security and title of public or individual property”³⁸ It does not define “public property”.

Other laws concerning public land that were uncovered during the research for this article deal mainly with public land grants or allotments of one kind or another. Public land was allotted to colonization societies,³⁹ indigenous

33 Statute Laws of the Commonwealth of Liberia, 1824–27.

34 C Huberich *The Political and Legislative History of Liberia* (1947, Central Book Co) at 415–16.

35 *Id* at 416.

36 *Id* at 416–21.

37 Plan of Civil Government for the Colony of Monrovia, 1 April 1841, art X.

38 *Ibid*.

39 For example, a resolution authorizing the president to furnish the American colonization societies premium land for emigrants: 1857 and 1879 Statute Laws at 221–22, art I.

persons⁴⁰ and tribes,⁴¹ schools⁴² and former soldiers as compensation for their military service.⁴³ None of these laws defines public land.

Finally, several laws concerning public land (other than the 1904 Public Lands Law) were found in the Revised Statutes. These concerned: claims for public land;⁴⁴ public forests;⁴⁵ prohibition on purchasing land in fee simple from the “aborigines”;⁴⁶ the American Colonization Society ceding its “public lands” to the Liberian government;⁴⁷ eminent domain;⁴⁸ reversion to the government if lands leased for trading went unused;⁴⁹ and public land allotments to “aborigines”.⁵⁰ None of these laws defines public land.

However, the section on public land allotments to “aborigines” adds to the definitional confusion. It authorizes the president to grant public land in “fee simple” to male members of the Cape Palmas tribe in ten acre parcels, provided they develop the land.⁵¹ This is consistent with aboriginal land grants and fee simple holdings permitted to “civilized natives”. The problem is that the section continues, “[s]aid land shall be held subject to the provisions of the Chapter relating to Public Lands”. This is almost certainly referencing the chapter in the Revised Statutes concerning public land (ie the 1904 Public Lands Law). If the land is granted in fee simple, how is it public land subject to the 1904 Public Lands Law? A previous version of the law passed during the 1895–96 legislative session provided that land grants to male members of the Cape Palmas tribe were to be “subject to the provisions of the 5th

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- 40 For example, an Act Supplementary and Amendatory to an Act Regulating the Residence of Native Africans within this Republic (Acts Passed by the Legislature 1886–87, 12 January 1888) at 3; An Act Regulating the Residence of Native Africans within the Colony (Acts of the Governor and Council, 1839–47), sec 4; Huberich *The Political and Legislative History*, above at note 34 at 1492: “That Liberated Africans incorporated in the Colony, and who shall be deemed capable of managing, shall receive small grants of land.”
- 41 For example, joint resolution “Granting 10 acres of land in fee simple to each male member of the Cape Palmas Tribe in Maryland County” (Acts Passed by the Legislature 1895–96) (Cape Palmas Tribe Law).
- 42 For example, An Act to Grant Seventy Five Acres of Land for the Anna Morris School of Arthington, and to Incorporate the Same (Acts Passed by the Legislature 1886–87, 6 January 1887) at 3.
- 43 An Act Pertaining to Bounty Land (1879 Statute Laws), providing at 215 that those who “performed military service” during the colony’s or republic’s military campaigns “shall be entitled to Lands” in fee simple which were to be “surveyed from any Public Lands, not otherwise appropriated”.
- 44 Disposal of Claims for Public Lands (Revised Statutes) at 19, sec 1129.
- 45 Public Forests (Revised Statutes) at 63, sec 1197.
- 46 No Purchase of Real Estate in Fee Simple from Aborigines (Revised Statutes) at 137, sec 14.
- 47 Articles of Agreement between the Republic of Liberia and the American Colonization Society, entered into by the directors of the society and the commissioners of the republic, in the City of New York, on 20 July 1848, art I, Concession of Lands, Revised Statutes.
- 48 Special Proceedings (Revised Statutes) chap LXXII, sec 1385 at 239.
- 49 Trade and Trading (Revised Statutes) chap LXXV, sec 1421 at 277.
- 50 Aborigines (Revised Statutes), chap I, sec 2, at 298.
- 51 *Ibid.*

Section of An ‘Act’ pertaining to the allotment and improvement of lands, first Liberia Statutes”.⁵² This suggests that, in referencing the 1904 Public Lands Law, the intent had been for only sections 1273 and 1274 of this law, regarding allotments and improvements respectively, to apply to Cape Palmas tribe land grants.

Supreme Court case law

None of the Supreme Court cases concerning public land clarifies the statutory language of the public lands laws or provides a definition of public land. They quote the relevant laws and then apply the law as if what constitutes public land does not require clarification.⁵³ An example of this is *Fallah v Brown*. This case concerned an eviction action and a lower court order to conduct a survey of land the ownership of which was premised on a public land sale deed.⁵⁴ The court took judicial notice of section 30 of the Public Lands Law⁵⁵ and then quoted it extensively.⁵⁶ There was no recognition of the ambiguity in section 30 regarding the definition of public land.⁵⁷ One reason for this silence may be the unquestioned presupposition that, if the land is not deeded, then it is public land. But even if that presupposition is a correct statement of the law, it is not clearly reflected in the 1973 Public Lands Law. It is therefore surprising that the Supreme Court never took care to ensure definitional clarity.

PUBLIC LAND SALE PROCEDURES AND PRICES

Past public land laws have contained different procedures for public land sales. The 1857 Public Domain Law and 1904 Public Lands Law sale procedures⁵⁸ centred on the county land commissioner and required a public auction. Citizens expressed to the county land commissioner an interest in being allotted public land. The government surveyed the land. The land commissioner received the surveyor’s certificate, attesting to the location of the land, and then put the land up for public auction. The land commissioner

52 Cape Palmas Tribe Law, above at note 41.

53 For example, *Johnson v Beysolow* 11 Liberian Law Reports 365 (1953); *Jarkonnin v Akoi* 36 Liberian Law Reports 384 (1989); *Fallah v Brown* Liberian Supreme Court Law Reports, October term 2004, 161 (decided 1 March 2005).

54 *Fallah v Brown*, *id* at 162–63.

55 *Id* at 167.

56 *Id* at 168.

57 *Id* at 169: “We have mentioned the above quoted Section of the Public Land Law, which is still applicable in Liberia, to show that it is the clear intention of the Legislature that care must be taken by public officers not to execute any Public Land Sale Deed except upon prior investigation and confirmation by competent tribal and / or local authorities that the land to be sold (in the words of the statute just quoted) ‘is not otherwise owned or occupied ... and that it therefore may be deeded to the applicant;’ consent of the tribal or local authorities to be firstly obtained in each such case.”

58 Public Domain Law, art. VI, secs 1–5; 1904 Public Lands Law, sec 1285(1)–(4).

gave the purchaser of the land the surveyor's certificate with the date of the sale endorsed on the back. It is important to note that the ultimate purchaser of the land could be different from the person who originally expressed interest in purchasing the land. The purchaser then had 90 days to pay the purchase price into the Treasury and receive a receipt in exchange. The receipt was then given to the land commissioner who, in response, issued to the purchaser a certificate addressed to the Deeds Registry certifying that the purchaser had complied with the sale procedures.

Upon receiving the land commissioner's certificate and surveyor's certificate from the purchaser, the Deeds Registry was required to issue a deed to the purchaser.⁵⁹ If the land was not sold at public auction, as would be the case if for example the citizen initially expressing a desire to purchase the public land decided against the purchase, the land commissioner was empowered to sell the land through a private sale.⁶⁰ The 1956 and 1973 Public Lands Laws centralized the process in the president. The county land commissioners played a subsidiary role.

Thus, the pre-1956 public land system required sale primarily through public auction with an interesting role played by the statutory prices for public land. The most recent Public Lands Law (1973) and its almost identical 1956 predecessor list fixed prices for public land depending on the location of the land. "Land lying on the margin of a river" was sold at US\$1 per acre; "land lying in the interior" was sold at 50 cents per acre; and town lots sold at US\$30 per lot.⁶¹

These fixed prices were first enacted in 1956 as part of the Public Lands Law. That law also changed prices from *minimum* prices to the current *mandatory* prices for all public land sales. The prices of public land had previously been stipulated in the 1904 Public Lands Law, enacted as part of the Revised Statutes of Liberia in 1929. As mentioned above, the 1904 law required first that the public land be offered at public auction. If the land went unsold then the land commissioner was allowed to sell it through a private transaction. The minimum public land prices only applied to this private sale, requiring that the land commissioner sell the public land at or above the minimum prices noted above.⁶²

The Public Domain Law also set out minimum prices but they applied to both the public auction and private sales if the land was unsold at auction.

59 Public Domain Law, art. VI, sec 4; 1904 Public Lands Law, sec 1286.

60 Public Domain Law, art. VI, sec 3; 1904 Public Lands Law, sec 1285(4).

61 1973 Public Lands Law, sec 31; 1956 Public Lands Law, sec 31.

62 Sec 1285 of the 1904 Public Lands Law states: "All lands surveyed and offered at auction and not sold may be sold by the Land Commissioner at private sale, payment to be made in the same manner as for land sold at auction; provided that the minimum price of land lying on the margin of rivers shall be one dollar an acre, and those lying in the interior of the lands on the rivers shall be fifty cents per acre, and town lots shall be thirty dollars each, except marshy, rocky, and barren lots, which may be sold to the highest bidder."

The law stated: “[a]ll lands surveyed and offered at auction and not sold may be sold by the land commissioner at private sale, payment to be made the same as land sold at auction, provided it is not sold below the *minimum prices of land*.”⁶³

The provision goes on to list the same values for land that are in the 1956 and 1973 Public Lands Laws. This language denotes that all public land was subject to the listed minimum prices, whether sold at public auction or private sale by the land commissioner. The rationale must have been to prevent a sham public auction whereby a bidder was able to corrupt the auction and obtain public land for a nominal price. There was obviously an even greater risk of corruption in the case of private sale by the land commissioner.

One can only speculate as to why the system was changed in 1904 so that the minimum price only applied to private sales by the land commissioner. The early 20th century marked the period when the government began to expand its control further into the interior.⁶⁴ As government control and security expanded, demand may have increased for some public land in areas previously beyond the pale. Removing the minimum price for public auction could have been a device to allow certain well-connected individuals to acquire land more cheaply than the minimum prices permitted. The change may also have been a rational means to encourage the purchase of public land in frontier areas perceived to be undesirable because of their remoteness. According to this line of reasoning, the reduced prices were not in furtherance of nepotism but a response to low demand for public land in frontier areas. Either way, more private landowners in the hinterland would have bolstered the government’s control.

As shown above, the statutory price values from the most recent Public Lands Law date from at least 1857. It is truly remarkable that Liberian land law has developed, or failed to, such that these values have persisted since the founding of the republic. The prices probably degenerated into nothing more than a nominal purchase fee with the real price being ancillary costs (rent-seeking, transportation, surveying, etc).

WHY THE AMBIGUOUS LEGAL STATUS OF PUBLIC LAND?

Given the implications of public land for Liberian sovereignty and development, it is reasonable to wonder why a clear definition never emerged. The extant materials do not squarely address this question; any answer is therefore speculative. It is also important to point out that, as much then as now, the government of Liberia in the early days of the Republic was not a monolithic entity, but consisted of various factions with competing policies and ideas about Liberia’s *raison d’être*.⁶⁵ The issue of public land was bound up with

63 Public Domain Law, art VI, sec 3 (emphasis added).

64 J Levitt *The Evolution of Deadly Conflict in Liberia* (2005, Carolina Academic Press) at 137–39.

65 Sawyer *The Emergence of Autocracy*, above at note 6 at 94 and 107–108.

the land rights of indigenous communities because in many cases their land became the stock of public land. Government control of public land guaranteed the country's territorial integrity, offered opportunities for political patronage and, especially in the mid-20th century, ensured that land was available for commercial use. However, the government was not strong enough to impose its will wholesale on all tribal groups.⁶⁶ Rather, the ambiguous legal position could have developed because of the need to accommodate indigenous communities. Clarifying the definition of public land would have directly challenged indigenous land rights: a challenge the government did not have the resources to win outright.

In Liberia's early years indigenous peoples were probably perceived by the settlers, and probably felt themselves to be, outside the body politic. Conflict was frequent. From 1822 to 1876 at least ten major conflicts erupted between indigenous groups and the settlers.⁶⁷ Granting indigenous Liberians land ownership rights under these circumstances could have been thought tantamount to ceding sovereignty. In 1919 the Liberian Supreme Court seemed to support such a view by linking government acquisition of land with the establishment of Liberia's territorial sovereignty.⁶⁸ Although certainly offensive, requiring that indigenous peoples be "civilized" before granting them ownership rights may have been an expediency to ensure Liberia's territorial integrity. That is, only if an indigenous group signalled its commitment to Liberia through concrete acts, such as the adoption of western customs, learning English and providing military service, could their loyalty be assured. The promise of secure land rights could then be used as a reward for such acts and a means to discourage antagonism. Indeed, the laws granting certain tribes fee simple ownership did so expressly for this reason or, as one law phrased it, to "give[e] power and permanency to this rising state" and to have tribal groups "become, although now in heathenism and darkness, powerful coadjutors in the great work of religion and nationality".⁶⁹

Beginning in the early 20th century the government realized it could not prevail with military force alone. The policy of indirect rule followed, whereby chiefs were made government officials and, in some cases, granted statutory land rights on behalf of their communities.⁷⁰ However, in many cases the government retained formal ownership of the land without the existence of a statute clearly authorizing such an arrangement.

66 Levitt *The Evolution of Deadly Conflict*, above at note 64 at 137–39.

67 *Id* at 31–93.

68 *Karmo v Morris* 2 Liberian Law Reports (1919) 317 at 327: "Title was conveyed by deeds of cession and treaties. By this method our rights were established over a radius of about forty miles from the Atlantic littoral."

69 An Act Incorporating and Assimilating the Sinou Native Tribe, Residing in the County of Sinou, 22 January 1876, preamble.

70 Levitt *The Evolution of Deadly Conflict*, above at note 64 at 137–39; Sawyer *The Emergence of Autocracy*, above at note 6 at 242.

Indirect rule gave some tribal groups a sense of tenure security by either issuing them statutory deeds or, at the very least, appointing their leaders as government officials, and allowed the government to retain the use of public land for political patronage and resource extraction. Once the public land sale process became centralized in the presidency from 1956 onwards, public land allocation was almost certainly used on some occasions for political patronage, although solid evidence of this will only emerge when enough deeds have been analysed as historical records. A murky situation would have allowed well-connected individuals to buy land at rock bottom prices without directly challenging customary land rights. The requirement after 1956 that purchasers of public land obtain the consent of, and pay a token to, local traditional authorities could have been intended to mollify local communities and avoid direct conflicts over land rights.⁷¹ Finally, well into the 20th century, President William Tubman launched an open-door policy, seeking to attract foreign direct investment for resource extraction.⁷² The government's ability to allocate public land to companies for commercial use was a critical component of that policy.⁷³ Again, an ambiguous legal situation for public land would have allowed the government to use selected land for commercial allocation without a large scale challenge to customary land rights. In summary, it is possible that the ambiguous legal status of public land was the compromise position least costly to the government.

CONCLUSION

This article demonstrates that there has never been a clear definition of public land in Liberian legal history. Rather, the laws skirt the issue. The only drastic changes in the public lands laws were a move away from a public auction system to private sales with centralized control in the presidency and transforming minimum sale prices to mandatory ones still at 1857 levels. One can only speculate as to why this occurred. With the extension of sovereignty into the interior the issue of public land was necessarily bound up with customary land tenure. The article has proffered the explanation that ambiguity allowed the state to benefit from a mass stock of public land through territorial integrity, patronage and resource extraction, without risking direct challenges to customary land rights. As early deeds and other records come to light, there will no doubt be much to add to this historiography.

71 1956 Public Lands Law, sec 30: "A citizen desiring to purchase public land located in the Hinterland shall first obtain consent of the Tribal Authority to have the parcel of land deeded to him by the Government. In consideration of such consent, he shall pay a sum of money as token of his good intention to live peacefully with the tribesmen."

72 Sawyer *The Emergence of Autocracy*, above at note 6 at 244.

73 *Ibid.*