

CAMBRIDGE BOOK PROJECT

Title: Property Rights in Transition

Subtitle: The Development Context

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I. Subject and Project Description

Property in the developed world has been a relatively coherent socio-legal institution, and has been understood generically as enforced norms with respect to use, allocation, and transfer of tangible or intangible economic objects. With many developing countries transitioning to a market growth model, the understanding of ‘property as institution’ is being reassessed. In the global development context the socio-legal institution of property is in transition.

This transition is manifested in (i) the declining relevance of jurisprudential debates concerning their nature of property; (ii) the declining significance of property as a particularized bundle of rights; and (iii) the declining importance of a distinction between common law and civil law approaches. I now briefly elaborate on these three points.

(i) The ‘grand’ jurisprudential narratives based on rights theories – ‘property and liberty’, ‘property and social rights’, and ‘property and natural rights’ – may still have rhetorical and academic importance but they are not central to an understanding of the institutions of modern economic development. In the global development context there is growing demand for greater rights of citizenship and more democratic participation. In this framework the traditional bundle of property rights vested with a single ‘sovereign’ owner disintegrates. The norm of ‘airtight exclusionary rights’ in property ownership becomes more difficult to sustain because it is being challenged by the growing proliferation of technology, and the expansion of local markets and global market exchange networks. These changes are transforming the idea of property into kind of contractual arrangement.

(ii) In the global development context property is less about a bundle of rights, privileges and powers with respect to things, and more about values, markets, public-private benefits, and civic space. While traditional social structures of family, kin, gender, local community or class are still important in regard to resource management, security and justice, new factors such as the globalization, urbanization, and the knowledge economy have changed the landscape about understanding property. This is primarily due to increasing specialization, economies of scale, and efficiency of exchange between distant strangers across national and global markets. In this context property rights are becoming more and more grounded in justifications of economic efficiency, the behavioral nuance of ‘place’, and are increasingly treated and allocated as utility sets.

(iii) Although the common law and the civil law remain distinct, their socio-legal differences are not significant determinants in explaining the variance in the levels of social and economic development across countries. The recent transition of many countries to a competitive market model contributes enormously to the spectrum of constantly emerging hybrid concepts and interpretations of property mixes, combining in

different degrees, common, civil, and customary law features. This is particularly apparent with respect to both contract and property law concepts. More and more individual country cases cut across different legal systems, borrowing legal ‘infrastructure’ without regard to its origin.

The main argument in my project will be that the concept of property, as an institution which bundles many basic or residual rights, is *fragmenting* across countries and local settings. This becomes more apparent with a closer look at specific cases and with reference to particular themes about property rights in a development context. The sources of fragmentation are the diverse local development practices (e.g., legal systems, doctrine, customs, norms, and cultural values) and how they frame the justifications of property rights vis-à-vis ‘non-territorial’, globalized institutional attributes (e.g., scarcity, utility, rationality, justice, risk, liability, mobility, access and regulation). By mixing public with private interests in the concept of property many transition and developing societies converge not around the same *modus operandi*, but around similar welfare outcomes. This is true despite their different normative legal formulations, and their different starting points for transition to market operations.

This work will present the argument in two steps. The first part of the project provides an evolutionary perspective about property rights from an institutional point of view and reviews the current status of several debates, e.g., property rights justifications, commons and anti-commons, property as a relational value and transaction, and the rhetorical role of property rights. The second part of the project examines how these criteria operate in regard to cross-cutting themes of transition and in terms of application in specific countries.

II. Importance

Secured contracts, properly functioning judicial systems and low costs of government regulation are believed to be critical to the development of productive investment, growth, and poverty reduction. Although it is not going to break a new ground as far as basic principles of property law are concerned, this project provides a fresh systematic institutional perspective and comparative view on property in the context of selected development topics and transition countries. In doing so, the project also attempts to normalize a discourse across several social science disciplines – law and economics, development and areas studies, and specifically to be resourceful for three directions of property rights related inquiry: (i) growth; (ii) development model; and (iii) poverty.

(i) *The role of property rights institutions and growth.* After the collapse of growth in the 1980s and 1990s in the developing countries, and the further widening gap between the rich and poor countries, new empirical evidence has emerged showing that well-specified aggregate property rights enhance growth, and vice versa - deficient property rights, risk of expropriation and repudiation of contracts reduces the ability to absorb technological innovations and investments from abroad.

(ii) *Development model and property rights.* The old developmental models were geared around closing the financing gap, particularly in more capital intensive areas in the developing and transition countries as a precondition for these countries to catch up. One of the main criteria used to measure the success of national development was the increase of incremental capital to output ratio (ICOR) factored in import substitution models. More and more institutional criteria about the quality of the property rights and contracts turns into an accounting proxy about complex institutional effects on development— from prudent governance, to property rights enforcement and judicial performance.

(iii) *Property rights and poverty reduction.* Property rights are a central component in devising effective poverty reduction strategies within the international development community. The market as main intermediary remains blocked for entry by the low-income and low-asset poor who also lack formal rights over assets and are cut off from leveraging secured market transactions. “Growth” without institutions providing equal and formal property rights continues to deepen the poverty gap in the developing countries by suppressing investments, property values, productivity, labor mobility, and tax revenues. Various reform agendas across different countries are addressing these issues and will be covered in the book.

III. Geographic Scope and Coverage

Property law reflects the different cultural origins of property conception. Anglo-American property law is an example of how different origins increase the variation of property incidents and taxonomies for property use if compared to other systems (e.g., the civil law). However, across many transition and developing countries the path-dependent thesis concerning origin does not hold, and the differences between the Civil law and the Anglo-American common law system are blurring.

This project supports an approach which views property as an open-ended system for a geographic travel that is not dependent on economic efficiency criteria promoted in Anglo-American law. The approach assumes that private property and its counterpart, public property, are both formless complementary composites and can be opportunistically mixed to mitigate risks in diverse situations. This project will illustrate this by presenting individual country analysis concerning property law changes. In part this will be examined with reference to such countries as China, Russia, Vietnam, Egypt, Argentina, and Peru.

IV. A market comparison

Property rights have been the subject of significant attention throughout the last decade in various research and policy agendas -- institutional economics, comparative law, privatization and market reforms, legal and judicial reforms. In this regard, from the longer list of literature it is important to note Yoram Barzel's *Economic Analysis of Property Right*, Stephen Munzer's *Theory of Property*, Tom Bethell's *The Noblest Triumph: Property and Prosperity through the Ages*, Robert C. Hunt and Antonio Gilman's *Property in Economic Context*, Itai Sened's *The Political Institution of Private*

Property, Hernando De Soto's *Mystery of Capital* and Ugo Mattei's *Basic Principles of Property Law*. While these books are noteworthy they do not offer a direct comparison of property rights with a specific application and links to broader socio-legal development themes of civic inclusion, social capital, cultural values, and economic criteria beyond efficiency that are important for countries with emerging and transitional market economies.

V. Audience and Readership Market

The market segment which this project can target are development practitioners, economists, lawyers, institutional historians, and undergraduate and graduate students working on a wide range of issues: law and economics, law and development, property rights, real estate, urban land tenure and housing finance, as well as cross-cutting topics such as property, institutions and development, emerging issues and urban migration, and property rights in comparative legal system research. The organizations and professional associations which are the readers' market include: readership groups which typically acquire titles from the multilateral development banks (ADB, AfDB, IDB, EBRD, IBRD) and multilateral and bilateral agencies (e.g., UN Habitat, CIDA, DIFD, USAID); institutes of practitioners and consultancies (e.g., Centers for Property, Land Tenure and Urban Studies); and associations (Law & Society Association, Association of American Law Schools Section on Property, Political Science Association).

VI. Project Length: 280-320 pages

VII. Expected completion date: August 31, 2005

Note: Portions of this book will build on substantially revised existing dissertation research, restructured and extended to incorporate important recent information and studies on topics and country cases tailored to the wider professional audience listed above.

Table of Contents

Chapter I: Institutional Evolution and Property Rights

The opening chapter will place property rights in the history of institutions and will review the evolution of property through the angle of how property rights changed throughout the various institutional sets and practices. Here I will also outline the background about the importance of property today for the development and transition setting.

Chapter II: Justifications of Property Rights

This chapter will provide a review of the normative and positive trends in the contemporary debate about justification of rights, and property rights in particular. Given the fact that during many property reforms, particularly in Eastern Europe and Russia, property was acquired in fraudulent devolution, asymmetric information, and graft, this requires revisiting some main questions - what justifies ownership? what does it mean to own? what is left from the property bundle after property interactions grew from simple commodity exchanges into complex network transactions? Here I intend to debate the rigidity of the path dependent justifications of property rights, and provide interpretation of property rights as relational value.

Chapter III: Main Concepts of Property Rights in Transition and Development Setting

The principal condition for the successful transition is considered the transformation of the property systems across countries, and the underlying legal order to guarantee stability of possessions, sense of ownership, and respect to contracts. From the previous chapter, I will continue the thesis that well-defined property rights regimes have no single mandated default consistent only with the efficiency of the common law. If property rights are not any more justified as natural rights, this chapter will review some of the institutional attributes of property rights examining such basic concepts as: (a) markets and organizations; (b) scarcity, value, utility and capital (physical capital, human capital, social capital); (c) sustainable development; (d) commons and anti-commons tragedies; (e) regulation and takings; and (f) exclusion, efficiency and poverty.

Chapter IV: Main Themes of Property Rights in Developmental Setting

This chapter will illustrate the multifaceted role of property rights in various development themes, and provide a wide range of comparative

examples from the experience of the industrialized countries and transition and developing countries. The chapter will look at globalization and diffusion and transplantation of property rights laws, tenure issues in urban settings, property rights in corporate governance context; expropriation and compensation for resettlement and indigenous people, migrant rights and property rights; property and gender. The chapter will be structured around six developmental topics: (a) Urbanization; (b) Globalization; (c) Governance; (d) Environment, Livelihood, Resettlement; (e) Migration; (f) Gender.

Chapter V: Market Transition and Property Rights Reform: Selected Country Cases

This chapter will look at property rights as part of the development strategy of several transition and developing countries. It will focus on the norms and rules concerning private sector activity and entrepreneurship. The country cases are selected to be representative about the variety of the country context, legal systems, geography, and their magnitude of reform effort: China, Russia, Vietnam, Egypt, Argentina, and Peru.

Chapter VI: Conclusion

The closing chapter will wrap-up the main lines of analysis about fragmentation and variation of the property rights across the selected development topics and country examples.

Please note: all chapters' headings are working titles and might be modified to better reflect the final version of the contents.

Author's C.V.

Ivan Velez serves as a Corporate Strategy Officer with the World Bank, Washington DC, working on strategy formulation, business planning and policy issues of Bank's lending operations for urban infrastructure. He is a member of the World Bank international network of practitioners working on cross-cutting land and real estate issues in development countries, and has worked on a wide range of property subjects: property formalization, property and market institutions, urban and municipal governance, titling and registration systems, involuntary resettlement, urbanization and property rights for the poor. The geographic scope of his work covers Eastern Europe, Russia, China, East Asia and Africa. Previously he has occupied various positions with policy think tanks and international government organizations. He holds a BA, MA from Moscow State Institute of Foreign Affairs, and a Ph.D. in Social Sciences from the Maxwell School, Syracuse University, NY.