Land Registration Systems Around the World

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Land Systems: Why?

• Government function has been to maintain records regarding land and other real estate to properly assess its value and collect real estate taxes
• Cadastres (Land books) were introduced to keep track of the technical attributes of territorial land inventories
• The earliest cuneiform records from 4th century B.C.E. in Mesopotamia are administrative property records dealing with land, animal husbandry and personnel management
• Over the last two centuries legal rights and responsibilities of both the private and public sectors engaging in real estate transactions have become a primary concern
Land Systems: Why?

- No country can sustain stability within its boundaries, or economic development within the wider world, unless it has a system of registering private property rights that promotes internal confidence between its people, its commercial enterprises and its government.
- Recognizing that private property rights are the major source of national wealth lies at the heart of good government and effective public administration. States that prosper promote widespread and secured private ownership of real estate as a foundation of social and economic policy.
Benefits of Land Systems

Modern Property Registration System

- Certainty of Ownership
- Security of Tenure
- Facilitated Land Reform
- Improved Land Resource Management
- Improved Land-market Monitoring
- Credit Security
- Increased Property Taxation
- Improved Conveyancing Public Confidence
- Land Market Stimulation
- Land Disputes Reduction
- Improved State-lands Management
- Improved Spatial Land-use Planning
Principles of Land Systems

Parties:
- Owners
- Tenants
- Mortgagors
- Trustees
- Caveators
- Attorneys

Properties:
- Parcels
- Buildings
- Construction
- Apartments

Rights:
- Ownership
- Leaseholds
- Servitudes
- Restrictions
- Encumbrances
- Caveats

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Essence of Land Systems

Bundle of Rights

- Real property rights defined and protected by Government.
- Real property rights have a legal dimension.
- Real property rights have a physical dimension; the things we can gain rights over may be tangible or intangible.
- Real property rights have an economic dimension; real property is a store of value, an element of wealth - a safe “harbor”.

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Essence of Land Systems: Rights

- Right of private property is defined by a Constitution, Legislation/Code, Regulations, and Customary Law
  - The British Common Law is an example of customary law
  - Many of the principles of this common law have been codified by legislation
  - Many countries have customary rights
- The rights are created by contract:
  - First from Government to Private Sector/Person
  - Subsequently, between any parties competent to contract
Essence of Land Systems: Rule of Law

- Legislation
- Documentation
- Procedures
  - Conveyancing
  - Registration
- Completeness of Records
- Access
- Cost
- Integration of Land Information
Land Systems: Market Expectations

• A Simple, Understandable Procedure for Recognizing Rights
• Effective, Secure Documentation of Rights
• Protection against Infringement of these Rights by Others
• A Public Record of these Rights so Others Know
• Records Complete and Incontrovertible Proof
• Convenient Methods for Transferring these Rights
• Effective Procedures for Preserving the Written Record

“The power to identify and isolate with precision every asset and every particular interest on that asset”
Land Systems: The Financial Sector

- Primary land markets created
- All transactions must be tracked
- Markets mature and confidence grows
- Securitization mobilizes funding

Source: Williamson
Land Systems: Toxic Paper?

“This poisonous paper is scaring off potential creditors and investors who lack the legal means to understand what this paper signifies, how much there is who has it, and who might be a bad risk.”

“A meager 7 percent default on subprime mortgages funded or insured by derivatives.....is debasing the rest of the economic paper and contaminating the entire economy”

*Hernando Desoto – Newsweek*, March 2, 2009 pages 47-48
Land Systems: Toxic Paper? History..

“This is the judgement of sober men
Will be this long desired Registry
Upon whose fond none can be cheated when They trade or trust on that security
Which if it pass as it is now fitted
The just are double blessed, the knaves outwitted”

Feet of Fine Deed: fictitious court cases used to record a conveyance.

1660’s England

Andrew Yarranton, ‘A Plain Dealer’s Prayer for a Registry’
Early Land Systems

• “Cursed be he that removeth his neighbour’s landmark” book of Deuteronomy in the Old Testament (ch 27 v17), 3,000 years ago

• In Mesopotamia, maps were "drawn" on clay tablets and depicted the Mesopotamian world including maps of individual settlements and properties.

Clay Tablet map from Ga-Sur, 2,500 B.C map of pre-flood Edenic Valley (now below the Red Sea).
Early Land Systems

• **Terminus** was the god of boundaries.

The stones used to mark borders were sacred to him. In February **Terminalia** was celebrated by the Romans. The stone or stump boundary-markers were “*drenched in sacrificial blood and placed on flowers to renew its protective powers*”, “*Without you every field would be disputed*”

• **Turf and Twig**

"The lucky new Commoner goes to his "given" acre and cuts a turf from the selected site and drops two shillings in the hole made. The High Steward then twitches him with a twig and sticks the twig in the turf, then hands it to him saying, "This turf and twig I give to thee, as free as Athelstan gave to me, and I hope a loving brother thou wilt be." The High Steward then takes the money out of the hole and the new landowner replaces the turf." 12th century – Athelstan King of England 924 -939
Early Land Systems

• **Livery of Seisin (feoffment)**

  “A ceremony performed in medieval England that effected the transfer of land from one party to another.” Livery of seisin was the dominant method of transferring land in England until 1536, and it continued to be legal until 1925. “A smack on the ear!”

• **Bargain and Sale**

  1536 began to replace Livery of Seisin
Early Land Systems: Customary

- These are not governmental systems, rather rely on private parties exclusively to perpetuate records.
- In the common law context, livery of seisin is a good example.
- In many countries, symbolic rituals witnessed by persons expected to be able to substantiate a transaction well into the future are common.
- Private conveyancing is the passage of original conveyancing documents from buyer to seller.
- England favored privacy (lease and release).
- Colonial bodies favored public recordings of deed transfers (Virginia Statute 1640 requiring).
Early Land Systems: William the Conqueror

“... surveyed so carefully that there was not a hide of land in England of which he did not know who held it and how much it was worth”.

Domesday Book, 1086
European Historical Consequence

Diagram:
- Cadastre
  - Fiscal
    - Ministry of Finance
- Land Books
  - Legal
    - Ministry of Justice
All Systems Need Maps

Showing Property Boundaries.....

'Fixed & General
  • Fixed boundary
  • General boundary
Registration acts typically allow both.

• Combined
  • Flexible
  • Point identifier as first step
  • Unique parcel ID number becomes essential in either case

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US History of Lands

- Native American lands
- Britain – 1585 – 1783 13 States
  - Crown Lands
  - Proprietor Lands
- France “Louisiana Purchase” Superior Council Records
- Spain late 1600’s SW, Florida, parts of Texas, California, and New Mexico. 1760’s Land Grants
- Mexico 1821 parts of Texas, Louisiana, New Mexico, Colorado, Arizona, Nevada, California and Utah empressario grants
- Metes and Bounds, PLSS 1785 Land Ordinance
- Federal and State Bounty Lands 1776-1912
- 1890’s Torrens in a few states
“That it is the sense of the delegates of the World’s Real Estate Congress that they should do what lies in their power to call the attention of their various State Legislatures to the benefits of the Torrens system and recommend its adoption, so modified as to suit to our State Constitution and laws”

‘World’s Real Property Congress’ World’s Colombian Exposition, Chicago 1893
Types of Land Systems Today

1. Customary – usually an oral agreement accompanied by symbolic /customary ritual
2. Religious (Waqf lands in Middle East)
3. Private Conveyancing
4. Deeds Registration
5. Title Registration
Land Registration Systems around the World

(from Prof. Stig Enemark)
Formal Land Systems

• Two formal systems of recording and making inventories of property have evolved
  • Deeds Register Systems
  • Title Register Systems
• Deeds Registers are older than Title Register Systems
• The legal framework provides protections for recording or registering rights (priority, security of tenure)
• Recording and Registration are the subject of special laws
  • Recording Acts for deeds systems
  • Title Registration Acts for registration systems
World Perspective

• Colonial Legacy – First with the Romans

• Deeds registration is common in Latin cultures in Europe (France, Spain, Italy, Benelux), in South America, and parts of Asia and Africa

• Still used in the United Kingdom which exported earlier version to the United States, but got its formal system from the Romans (54 BCE – 409 CE)

• Most of the United States.

• Different Deeds Systems - role of the cadastral (map) identification and surveyors varies significantly.
  - Netherlands – Private Notary
  - Chile – Private Notary
World Perspective

- Title registration is thought to have originated in the Germanic culture found in the central European countries (Germany, Austria, Switzerland).
- Hanseatic League or the UK?
- Versions of the German system in the Eastern European and the Nordic countries. Different use of the property concept and organization of the cadastre (fixed) and role of private licensed surveyors.
World Perspective

• Title Registration System in the UK, general boundaries are used to identify the land parcels on large-scale topographic map series.

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World Perspective

- Torrens Title system (developed by Sir Robert Torrens) and introduced in South Australia in 1858.
- Can be found in Australia, New Zealand, US, some provinces of Canada, and some countries in the Caribbean, Asia and Africa.
Collapse of the Soviet Union

- Social reform through cadastre
- Land reform
- Land restitution to former owners
- Righting the wrongs of the past
Land Fragmentation
Land Consolidation

- Average parcel size increased
- Number of parcels decreased
- All parcels have direct access to roads and water
- Saving of 4,000 $ per hectare
Post Conflict/Post Disaster States

- Liberia
- Sierra Leone
- Afghanistan
- Iraq
- Angola
- Mozambique
- Sri Lanka
- Indonesia
- Thailand
China & Vietnam

• “New” Market Communism
• Urban markets/ownership
• Limited rural land rights
Deeds vs. Title Systems

RELATIONSHIP BETWEEN MAN AND LAND IN TITLE SYSTEM

RIGHTFUL CLAIMANT (PERSON/ENTITY)  SUBJECT

RIGHT(S)  LEGAL RELATION

LEGAL LAND OBJECT  OBJECT

Source: Larsen

LEGAL LAND OBJECT  OBJECT

RIGHTFUL CLAIMANT (PERSON/ENTITY)  SUBJECT

RIGHT(S)  LEGAL RELATION

Source: Larsen
Deeds Systems

Definition: Deeds System

- Public Repository of Documents
- No Government Legal Analysis
- Review Only Formal Requirements
  - Signatures
  - Acknowledgement
  - Witnesses (where required)
  - Real Estate Taxes, Stamp Tax
  - Paper size, quality etc.
- Title Examination of Chain of Title Required
Deeds Systems (cont...)

- Indexing name, parcel or both
- Use of Cadastral Index Map
- Index Deeds by Parcel
- Requires Integration with a Cadastral Index Map (UPIN)
- Document Information from Title Records Indexed to Parcel
Public Function in Deeds Systems

- Generally very limited
- The government is simply a repository for the documents
- It receives the documents
- Indexes the documents, and
- Generally returns the document to the proper party (most often the grantee)
Public Function (cont...)

- For Deeds Systems the government normally does not check to see that the document actually accomplishes what it purports to accomplish.
- By accepting a document the government is not determining it to be valid.
- There are hybrid deeds systems, such as Egypt, where the government makes a more extensive investigation.
Use of Deeds Systems

• Since the government does not make a determination of the validity of recorded documents, a legal specialist must
• This involves two different activities:
  
The Title Search:
  1. This used to be done by lawyers and in some jurisdictions still is
  2. Title Insurance Companies and Abstractors are more likely to perform the search

The Title Examination:
  1. This is usually performed by title lawyers or conveyancers
  2. Involves a check of the sufficiency of each recorded document
Parcel Based Deeds Systems

- These are sometimes called improved deeds systems
- They exist in many jurisdictions
- Since the land is permanent and can be unambiguously identified over time a parcel base index is inherently better than a name based index
- Chile & Netherlands two good examples.
  - Assurance provided by bonded notaries.
  - Notaries (Notarios) are usually family businesses.
Title Registration System

Government Certified Title
- Appropriate Legislation
- Certificate of Title (Transparent to Public)
  - Ownership
  - All Encumbrances
- Indefeasible Title
- Government Maintains Adjudicated Title for Subsequent Transactions
- Parcel Based
- Guarantees (Mirror, Curtain, Possibly Monetary)
- Adjudication: Systematic or Sporadic
First Registration: Combined Approach

• May be most practical economically
• Trigger approach (most common) HMLR e.g.:
  • transfers for value,
  • mortgages,
  • subdivisions resulting in three or more parcels of land,
  • new condominium developments, and
  • Any proceedings that result in an adjudication of titles.
• Use systematic registration in certain problematic areas, sporadic in others
Government Functions

• There are two different phases in a title registration system
  • First registration, that is bringing a parcel into the system
  • Subsequent transactions after first registration
• First registration usually involves an adjudication process
  • This can be administrative, or
  • In a court action
Registered Title Guarantees

• Title registration systems guarantee that the persons named as owners in a certificate of title have an indefeasible title
• They do not necessarily guarantee boundaries, but a few systems do Austria and Germany
• They do not guarantee the validity of encumbrances
Registration: Three Guarantees

- Mirror guarantee: That the register reflects the current status of title
- Curtain guarantee: That the current register is the sole source of title information and that no other source, particularly historical real estate records, need be consulted in determining ownership and current encumbrances, and
- Indemnity guarantee: Often, though not always, that the government will reimburse persons suffering loss caused by errors, omissions, or misfeasance of the Registrar under legislatively defined conditions.
Encumbrances

- Encumbrances can’t be guaranteed, because their validity depends upon external facts
- Example: Mortgage
  - Could be usurious
  - Truth in Lending may have been violated
  - Other consumer protection may not have been followed
Registration Subsequent Transactions

• Registered title is considered adjudicated title
• Once a title is registered every transaction is scrutinized by the registry office for its validity
• This is in contrast to deeds registration where the validity of a transaction is not determined by the registry office
• The office must be staffed with highly skilled professionals
Registration: Title Examination

- The public needs access to the register in order to determine the current status of title.
- Because of the “curtain guarantee” there is no need for a title search and examination of the “chain of title.”
- There is no chain of title for a parcel that is registered in a title registration system.
Registration: Examination (cont.)

- Some jurisdictions allow direct access to view the register for a parcel of real estate
- Some jurisdictions require that an application be submitted stating the reasons for viewing the information
- All systems will provide a title report
- In many jurisdictions this report is a “certificate of title”
Structure of Report/COT

• The structure of the report is the same in all jurisdictions
• It is divided into three distinct parts:
  ▪ The geographic information (legal description, PIN, sometimes cadastral map or plan)
  ▪ Name and identifying information regarding the owner
  ▪ Encumbrances (type of instrument, date and date of registration, beneficiary, short memorial regarding the nature of the right in the memorial
Example COTs

**Certificate of Title**

Certificate Number: 1038758
Document Number: 301440

<table>
<thead>
<tr>
<th>Statement of Title</th>
<th>Date of Issue</th>
<th>Place of Issue</th>
<th>Name of Issuer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description of Property</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Transfer Information</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Republica de Haití**

**Certificado de Propiedad**

**Datos Generales de la Propiedad**

- **Tipo:** Arroz
- **Nombre:**
- **Dirección:** 100 metros de la Embajada de EE.UU., casa ju caí del área de negocio
- **Construcción:** Área en terreno frente del lado este del camino

**Datos de la Propiedad**

- **Propietario:**
  - **Nombre:** Juan Luis Ortega
  - **Fecha de Concesión:** 04/04/2003
- **Número de Identidad:** 7024243443
- **Nacionalidad:** Haitiana
- **Identificación:** 7024243443

**Transacciones**

1. **Datos de la Transacción**
   - **Fecha:** 04/04/2003
   - **Número:** 322
   - **Vendedor:** Juan Luis Ortega
   - **Comprador:**
   - **Dirección:**
   - **Construcción:**

**Certificado de Propiedad N°:** 30070098709

**Statement:**

This is a sample certificate of title for the property located in Haiti. The certificate details the property's description, ownership history, and transfer information. The certificate is issued by the Haitian government, and it includes legal descriptions, transference dates, and the names of the parties involved in the property's ownership.

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Registration: Examination (cont.)

- No title search to construct chain of title
- Attorney simply reviews the information on the certificate of title to advise client
- Mortgages, liens will have to be paid at closing
- These will be listed in the encumbrance section of the report/certificate of title
- Very easy to use for attorney
- Understandable to client
Registration: Bottlenecks

- Registration systems are often perceived as bottlenecks in a transaction because they require additional scrutiny.
- There is often a high rejection rate of documents.
- The registry office often requires multiple trips by parties to satisfy examiners.
Comparison of Deed vs Title Systems

- Deeds: little governmental scrutiny
- Title: high degree of governmental scrutiny
- Deeds: Rapid recording
- Title: Slower and bureaucratic
- Deeds: Burden on private sector to determine right holders
- Title: Burden on government to determine right holders for both first registration and subsequent transactions
## Running Costs

<table>
<thead>
<tr>
<th>Deeds System</th>
<th>Title System</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Relative minor</td>
<td>• Major administrative costs</td>
</tr>
<tr>
<td>• Normal administrative skills</td>
<td>• Requires highly skilled legal specialists</td>
</tr>
<tr>
<td>• The number of staff depends upon number of transactions</td>
<td>• Expensive</td>
</tr>
<tr>
<td>• Cost of maintaining registry is much less for government</td>
<td>• Cost of maintaining system is borne by government</td>
</tr>
<tr>
<td>• Rights validity is determine by private sector</td>
<td>• Rights validity determine by government</td>
</tr>
</tbody>
</table>

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Conclusions

- Literature generally favors title registration
- This is “arm chair” evaluation
- Deeds systems can be highly efficient and useful if parcel based but have “hidden” costs if not integrated properly/fully
- In U.S. deeds systems support most active real estate market in the world but......
International Lessons Learned

• Political will -- success requires commitment to reform and institutional cooperation
• Emphasize legal and procedural reform and development of human resources, not technology -- technology provides the tools not the answers
• Re-engineer procedures prior to computerization instead of the reverse
• Institutional reform – single executive agencies, revenue funds
International Lessons Learned

• Orient reform towards more efficient production and better client services
• Complete map coverage to a lesser standard of accuracy is preferable to partial coverage to a higher standard of accuracy
• Strong public support and participation are critical