

Chapter 1

Towards a Fourth Wave of Property Reform

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This was one of my prayers: for a parcel of land not so very large, which should have a garden and a spring of ever-flowing water near the house, and a bit of woodland as well as these.

(Horace, 1st century B.C.)

Introduction

These notes have been prepared as background material for a presentation scheduled for The World Cadastre Summit in Istanbul. They are built on an earlier presentation given to the FIG International Congress in Sydney (McLaughlin 2010).

The Sydney presentation provided a simple framework for reviewing the post-war history of property reform and the concomitant history of developments in the field of land management. That history was divided up into three overlapping chapters, or waves, and built upon a narrative of emerging interests in the importance of property to development, the subsequent investments in major initiatives, some early and important success stories, followed by a growing awareness of the challenges and limits to this aspect of development. Along the way, an unfortunate side effect has been that the rich elite have too often high-jacked the administration services to secure land assets at the expense of the poor and the most vulnerable in society.

The framework was, and is, overly simplified and requires careful attention to the significant caveats and limits associated with such an overarching narrative. However, it was generally well received at the time and has provided a useful platform for discussing the impact of property reform on both economic and social development and for assessing lessons learned.

In this presentation, we'll briefly rehearse this history, with a focus primarily on the third chapter of reform (roughly from the late 1970s). The discussion will examine some of the key drivers (especially technology advances, systems develop-

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ments in a number of Western countries, coupled with a renewed interest in the role of property and land reform within the international development community).

After a brief historical tutorial, the presentation will then review some of the major lessons learned over the past 30 years and the current consensus (to the extent that this is possible or indeed desirable) on the importance and direction of property reform. For example, the Western hasn't transplanted well into the dynamic environments of developing countries with high levels of urbanisation, leaving citizens exposed to eviction and land grabbing.

Next, and perhaps most importantly, we will attempt to make the case that we are now witnessing the movement towards a fourth wave of reform, based in part on lessons learned, new technologies, and new development priorities, but also with both the intellectual and professional leadership increasingly coming from a group of so-called middle income countries. Put simply, we in the West are now passing the torch!

Finally, and very briefly, we also want to discuss the role of the surveying profession throughout this history. In the past, both authors have periodically expressed their concerns about the profession, but (subject to plenty of caveats) in this presentation we will advance the argument that surveyors are actually rather well placed to make a significant contribution going forward.

Framing the Historical Narrative

The Sydney presentation provided a fairly detailed review of the post-war land and property reform story, primarily from an active practitioner perspective. It began (no surprise) with the reforms immediately after World War II and especially in South Asia, primarily Japan, Taiwan and South Korea. While these reforms, if remembered at all, are often seen as part of a policy to contain communism and weaken local elites, rather than as one of the most important measures taken for market economies to flourish.

Indeed, over the years the Asian examples have featured in the core narrative about the importance of fundamental land reform to the economic development agenda. And with good reason. But we have also come to appreciate the flaws in these reform programmes, programmes imposed from without (a la Douglas MacArthur in Japan) with limited sensitivity to the social and cultural norms within which they were implemented, and embedded with institutional flaws that in some cases only emerged decades later. These early success stories largely failed to be replicated elsewhere, the Swynnerton Plan in Kenya often cited as a cautionary example, and this first wave of reform gradually grew to a close.

The second wave of land reform, which featured prominently in the 1960s and 1970s, had a very strong Latin American dimension (McLaughlin, for example, was a graduate student at the University of Wisconsin during the time when the Land Tenure Centre was actively involved with Allende's government in Chile) and was very much ideologically driven. As one would imagine, this chapter has proven to

be very complicated and controversial. Although dated, a great introduction to that period for anyone interested is Russell King's *Land Reform: A World Survey* (1977). For a detailed critique of this period, see Dasgupta (2010).

Whatever successes may be attributed to this era, the overall impact was to sow doubt on the motives and concerns of property reform as part of the development agenda, and there was a wholesale retreat from the field by the funding agencies. But not for long. By the late 1970s a new generation of technocrats and development specialists were rediscovering the fundamental importance of land and property (and more often than not were trained by a distinguished cadre of pragmatic specialists who came of age in the immediate post-war era). Thus began a third wave of reform which we discuss in somewhat more detail in this paper.

The Third Wave

This most recent chapter in the property reform narrative has a large number of strands, from the major World Bank investment in property projects such as Thailand, to the East European reforms in the post-Soviet era, to Latin American jurisdictions such as Peru (with its language of formalization), to South Africa and elsewhere.

Early drivers in this chapter included:

- a renewed interest in the importance of property in Western countries (and especially its relationship to the emerging environmental agenda);
- the importance of land and property reform to the international economic agenda (beginning with the focus on economic liberalization and the so-called Washington consensus through to the Millennium Development Goals); and
- the need for social stability following the collapse of communism (which led to fast, innovative programmes for the restitution of land and compensation to the former owners).

The World Bank in particular played an especially important role in shaping this agenda, arguing for example in its 2003 Annual Report, that “increasing land rights for poor people is the key to reducing poverty and stimulating economic growth”. This has been reflected through the World Bank funding loans of over US\$1 billion to 40 land projects in 23 Europe and Central Asia countries in support of the land and property sector (Satana et al. 2014). This is the largest programme of land reform the world has ever seen and has included: land privatization, especially farm restructuring; business, housing and enterprise privatization; restitution; systematic registration and improved services. New programmes include land consolidation, NSDI, state land management, planning, property taxes and e-government.

Another important dimension in this third wave was the re-emergence of land administration as a significant field of endeavour. Early attempts at automation, especially in the field of land registration, were followed by the introduction of modern systems engineering concepts and the evolution of new models for the inte-

gration of the various components of land administration (including surveying, registration, valuation and so-forth). Beyond all of this, the concept of the land parcel as a fundamental window into the information world (introduced, for example, by McLaughlin and Palmer (1996) in his work from the multi-purpose cadastre through to the spatial data infrastructure concept and published in a series of seminal US National Academy of Sciences publications). Out of all of this came a series of major programme initiatives in Canada, Australia, Scandinavia, and elsewhere, led by such iconic programs as the Land Registration and Information Service (LRIS) in the Maritime Provinces of Canada. These influential initiatives provided the framework and thinking for citizen services and citizen engagement in land management under the emerging e-government agenda, and were forged with increasing partnerships with the private sector (U.S. National Research Council Committee 1980, 1993).

Building on this brave new world, and with the emergence of a new generation of creative and motivated land administration officials, focus shifted to the developing world. The Thailand Land Titling Project (an initiative of the Royal Thai Government, the World Bank and the Australian Agency for International Development) can serve as perhaps the iconic initiative of this chapter, receiving the World Bank Award for Excellence in 1997. The project stood out for its ambitious goals (including both institutional strengthening of the Thai Department of Lands and its commitment to delivering approximately 13 million titles to Thai landowners); it also became a major international reference site due to the extensive assessment of its progress by Gershon Feder and his colleagues (see, for example, Feder et al. 1988).

The intellectual foundations for this chapter built on a significant post-war literature, especially the richly documented case studies of organization such as FAO and the incredibly useful depositories provided by some very special libraries (the Office International du Cadastre et du Régime Foncier in the Netherlands and the library of the Land Tenure Center at the University of Wisconsin come immediately to mind). As well, there was a small, but immensely influential professional practice literature represented (in the English-language) by such works as S.R. Simpson's *Land Law and Registration* (1976), a seminal work at the time which contained such memorable pearls of wisdom at "land registration is only a means to an end. It is not an end in itself. Much time, money, and effort can be wasted if that elementary truth be forgotten". Indeed!

The third wave of property reform has subsequently benefited from a series of extensive programme reviews, which have explored (from a variety of perspectives) its significance to economic and social development under many different circumstances. For example, Feder and Nishio (1999) undertook a rigorous examination of the benefits of land registration and titling, concluding that "there is convincing evidence from around the world that land registration has led to better access to formal credit, higher land values, higher investments in land, and higher output/income." They went on to note, however, that "there are prerequisites for land registration to be economically viable, and social aspects which need to be considered when designing a land registration system".

Following the significant investments in countries in transition in Central and Eastern Europe through the early 1990's, the UN Economic Commission for Europe collated the experiences in a set of land administration guidelines (UN ECE 1996). This provided an important framework to guide investments in land administration in the region and influenced the significant reforms implemented in the Baltic countries, especially Lithuania.

Further east in Central Asia, the World Bank provided significant loans to countries of the former USSR for land administration and management programmes. The World Bank had learned that speed, innovation and Fit-For-Purpose were key characteristics of a new generation of land administration programmes. The World Bank has enabled the implementation of some very successful programmes in Kyrgyzstan, Russia and Georgia, for example. In Kyrgyzstan over five million parcels were registered in 3 years using para-surveyors and this resulted in the annual number of mortgages doubling between 2002 and 2007 and value increasing from US\$85 million to \$1 billion; this represented about 30% of GDP in 2007. Georgia is now the number one in the World Bank's 'doing-business' league table for registering a property. The experience from these projects is influencing approaches in the developing world. The best example is Rwanda where a nationwide systematic land registration started after piloting in 2009 and was completed in 2013 using para-surveyors. 10.4 million parcels were registered and 8.8 million of printed land lease certificates were issued. The unit costs were about 6 US\$ per parcel. This is an example of a Fit-For-Purpose approach (FIG/World Bank, 2014) that is significantly influencing the fourth wave.

Closer to home, the Cadastre Modernization Project for Turkey, with major funding from the World Bank, provides a significant case study of the potential role of land administration reform to the broader e-government agenda (World Bank 2015).

More recently, a systematic review of the quantitative literature on the effects of tenure formalisation in developing countries funded by the U.K. Department for International Development (Lawry and Samili, 2014) concluded that formal registration of individual land rights increases investment, productivity, and household consumption (although this review also included the important caveat that productivity had not risen as much in Africa as in Asia and Latin America). These findings, coupled with a review of the literature on best practices and policy direction (the *Voluntary Guidelines on the Responsible Governance of Tenure* (FAO 2012) providing an especially interesting and important example) will be briefly addressed in our talk.

The Committee on World Food Security has formally endorsed these guidelines, which resulted from an unprecedented negotiation process chaired by the United States, and which featured broad consultation and participation by 96 national governments, more than 25 civil society organizations, the private sector, non-profits and farmers' associations over the course of almost 3 years. The new guidelines provide a set of principles and practices that can assist countries in establishing laws and policies that better govern land, fisheries and forests tenure rights, ultimately supporting food security and sustainable development.

Towards a Fourth Wave

The property reform story, and the crucial contributions being made by the land administration community, continues to evolve and feature prominently in the international development agenda. And while much of the professional practice literature continues to be based on paradigms developed in the West, there is a significant and growing contribution by academics and practitioners based elsewhere (the recent paper by Demir et al. (2015) being a good example). But at a deeper level, we are also witnessing the evolution of a new narrative: about the nature and importance of property, the institutional and administrative underpinnings required and the role of citizens and civic society for the successful and sustainable implementation of reform.

The beginnings of this new narrative date back decades. One is reminded, for example, of the pioneering work done by Solon Barraclough and his colleagues at FAO a half a century ago on the need to recognize the importance of communal land tenures, and the overarching commitment to providing more equitable access to agricultural land. These themes were often marginalized in the heady days of the neo-liberal agenda, but are very much back on the table today. Similarly, Hernando de Soto, a prominent Peruvian development economist has made a huge contribution to the way we think about property and its role in civil society through his framing of the narrative through the formal/informal lens. His work, from *The Other Path* (1989), through *The Mystery of Capital*, to his most recent documentary for Public Broadcasting in the US (*Unlikely Heroes of the Arab Spring*) have been especially successful in connecting with the most senior leaders in the political and business worlds.

Another major strand in advancing a fourth wave narrative relates to Deng Xiaoping and his rise to power following the Third Plenum of the Central Committee Congress of the Communist Party of China in December 1978. The household-responsibility system and the famous experiments in Xiaogang village, Anhui, and subsequently in Sichuan and Anhui provinces, which led to dramatic increases in agricultural productivity and nationwide adoption since 1981 have fundamentally changed the world!

Furthermore, while there seemed to be a widespread perception in the West that China somehow created capitalism out of thin air, without the initial imperative of securing private-property rights and imposing limits on state power, in fact this view is wrong. As the economist Yasheng Huang from MIT has argued, institutions in fact have mattered as much in China as elsewhere. While China doesn't have well-specified property rights security, in the early 1980s it moved very far and very fast toward establishing security of the proprietor. "One should never underestimate the incentive effect of not getting arrested" (Huang 2008). See also Caryl (2013) for an excellent review of this remarkable story.

Social-media is also reshaping how land administration services are being provided and how citizens and communities are engaging in the process. A movement of democratisation of land rights is emerging that will allow citizens to directly

record their evidence of land rights and post it on a global platform. This is outside the formal land administration domain and is based on trust and information transparency. This has inherent risks that have to be managed effectively, but has the promise to be inclusive and scalable – something that hasn't been achieved in the past.

Future land administration services must also increasingly support solutions to the twenty-first century global challenges of climate change, critical food and fuels shortages, environmental degradation and natural disaster as today's world population of 6.8 billion continues to grow to an estimated nine billion by 2040 when over 60% will be urbanised. This is placing excessive pressure on the world's natural resources. This support will be reflected through the inclusion of global land indicators in the post-2015 Sustainable Development Goals currently being negotiated by the United Nations to replace the Millennium Development Goals. There will be no hiding for land sector community! As well, we are beginning to witness the development of new administrative and professional practice models which (although they still embed much of the thinking and experience from the West) reflect a very different set of priorities and realities. In this regard, the increasing importance of the urban agenda will inevitably lead to new land administration priorities and practices in local government (such as can be seen in the emergence of new land taxation strategies in China, where local government carry out over eighty percent of the country's public spending but receive less than half of the taxes). From a surveyor's perspective, the FIG/World Bank statement on Fit-For-Purpose is expected to be especially influential in shaping the professional practice model (Enemark et al. 2014).

We will conclude our paper with a few thoughts on this theme, arguing that increasingly the leadership in our profession is going to come from a new generation of land administration specialists largely based in the developing world. An excellent example is provided by an outstanding property specialist, Dr. Clarissa Augustinus (Chief of the Land and Tenure Section at UN-Habitat), and her colleagues in fashioning the Social Tenure Domain Model (Lemmen 2010) and coordinating the Global Land Tool Network that is delivering pro-poor solutions. This transition in leadership will be dependent on how effectively capacity is built in developing countries, especially at the management level, and how successfully new innovative approaches, driven by Fit-For-Purpose, are accepted and implemented. If successful, Africa in particular has the potential to become a land administration powerhouse.

To provide context for that discussion, we rather arbitrarily divide the property world into three components.

Different Worlds, Different Agendas

At one end of the spectrum lie those traditional economies ranked as low on the human development scale by the UNDP (including Nepal, Kenya, Nigeria, Yemen, Haiti, Sierra Leone and Congo). These societies are largely outside the formal economy, confounded by the issues of deep poverty, food security, lack of institutional integrity, and so forth. The importance of property reform to the economic and social development agenda in these societies is vitally important – as recognized for example in emerging concerns about land grabbing (Pearce 2012). In this regard, the importance attached to property reform in the Sustainable Development Goals (the successor to the Millennium Development Goals scheduled to be agreed to by world leaders at the UN General Assembly) will be of special significance. However, any success in tackling the subject will continue to be frustrated by the severe limitations of the institutional foundation. As Deininger and Feder (2009) have put it, the realization of the benefits from land administration reforms (they focus on registration) depend “on the broader socio-economic and governance environment and the nature of interventions. Bad governance and an ineffective or predatory state will hinder benefits from such interventions, or even cause negative outcomes.”

Deep, sustainable reform is unlikely to come from government any time soon; rather we anticipate real change coming much more from bottom-up initiatives. Some of this new direction is reflected in the current interest in the potential role of behavioural economics by the development community (the most recent World Development Report providing an instructive example). Ultimately far more important, however, are the emerging voices in the market and in civil society captured in the new social media world (through platforms such as <http://timbuktuchronicles.blogspot.ca/> and <http://africanarguments.org/>).

At the other end of the spectrum are those post-modern economies (the EU 15, the US, Canada, Japan, etc.). In these countries the role of property and its supporting administrative infrastructure is moving beyond its traditional role of supporting the real estate market to being viewed as an important component in re-imagining the role of civil society (including a new dialogue with indigenous peoples) and the increasing importance of the environmental agenda – see, for example Grinlinton and Taylor (2011). In our talk we will very briefly discuss this theme from an institutional geography perspective. But it is a third group of nations that are mostly likely to provide the leadership for the next chapter.

The New Leadership Agenda

The heart of this next chapter of property reform will be based in a group of modernizing nations, which may be thought of as primarily (albeit not exclusively) the approximately 50 nations ranked in UNDP Human Development Index as “High

Development Nations”. This will include such countries as Uruguay, the Russian Federation, Malaysia, Turkey, Mexico, Peru, Thailand, Tunisia, China and Ecuador.

It is in these countries where we can expect the next generation of academic and professional leadership to evolve. For example, we anticipate that prominent academic departments within these countries (such as the hosts of our conference – Geomatics Engineering at ITU – and others such as the Department of Cadastre at Warsaw University of Technology) and at the intersection of the advanced and developing worlds (such as the Department of Land Surveying and Geo-Informatics at Hong Kong Polytechnic University) will play an increasingly important role in fashioning the new intellectual and professional narrative. Similarly, we are already witnessing the professional centre of gravity moving to practitioners in these countries.

The International Federation of Surveyors, especially during the tenure of its President, Professor Stig Enemark, has been especially pro-active in nurturing this new agenda. See, for example, Enemark et al. (2009).

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