

CHAPTER VI: CASE STUDIES

The 2011 IPRI presents five case studies exploring various aspects of property rights. The case studies also highlight the efforts by IPRI's partner organizations to improve the situation with property rights in their respective countries. We thank the contributors for their invaluable insights that have greatly enhanced the IPRI report.

Case Study: Immigration and property

By Marius Doksheim, Civita (Norway)

Immigrants to Norway, who now make up about 10 percent of the population, are quite successful. Even though they were, until recently, almost exclusively asylum seekers and refugees and tended to come from less developed countries, the immigrant population in Norway has a rate of labor-market participation almost as high as that of natives. Their youth also have higher rates of participation in higher education than among native Norwegian youth. Immigrant pupils and students achieve good results and a very high social mobility. Norwegians are generally more welcoming to immigrants than most others. *Why is this?*

One reason could be the Norwegian policies for property rights and ownership. As immigrants adapt and begin to own their dwellings, these policies help them take on homes that are more dispersed and diverse compared to other European countries. Just looking at neighbouring Sweden and Denmark, the differences are significant. We know that private ownership and diversified housing have beneficial effects. Moreover, we believe these traits have an impact on the integration of immigrants.

Obviously, there is much standing in the way of home ownership for immigrants. One out of every three immigrants has lived in Norway for less than five years. With a shorter resident history, immigrants often have less education, capital, or security. They also have poorer language skills and smaller social networks. These difficulties do not make it easy to compete in a high-priced housing market like in Norway. In addition, immigrants could face plain discrimination in this market.

It is, however, evident that a growing number of immigrants is becoming homeowners. The tendency is for immigrants to engage in the housing market just like any other Norwegian citizen. They increasingly avoid bad flats in impersonal and rundown apartment blocks and move on to freestanding houses with gardens and verandas.

Norway has very strong property rights, and a large proportion of Norwegians own their own home. Even in the cities, a large percentage lives in one-family homes or other small buildings. This has had positive effects for Norway and Norwegians. In the same way, the structure and ownership of immigrant homes can have beneficial effects for immigrants and their integration into Norwegian society.

If one compares neighbourhoods in Oslo with other cities in Europe, one can see several important differences. In Oslo (and other cities in Norway), immigrants are more evenly spread. While in Stockholm (Sweden) we find that residents from minority groups make up more than 90 percent of the local population in certain boroughs, no part of Oslo is made up of more than 50 percent first- and second-generation immigrants.

Additionally, one can see that most countries have focused their housing policies on municipal housing in large apartment compounds. In Norway, the emphasis has been on private ownership. This is seen in a variety of forms, from regular freeholders to joint ownership in private housing associations. Oslo certainly does have its share of rental-based housing complexes, but these large compounds still remain within much more diverse residential areas compared to other Scandinavian and European cities.

When low- and high-priced homes share neighborhoods, and newly arrived immigrants are domiciled within these diverse environments, the odds of successful integration are much more favorable. If this is coupled with strong incentives to become homeowners, immigrants will also tend to copy the housing trends of the majority of Norwegians. The places where immigrants most often live become special in their “extreme diversity, not only in religion and ethnicity, but also by class, living conditions, education.” This diversity makes Oslo rather unique.

In Norway as a whole, 45 percent of the immigrant population live in apartment buildings. While this is higher in comparison with native Norwegians, it is low considering that immigrants more often live in larger cities and have lower incomes. More importantly, this trend is quickly changing. Ten years ago 60 percent lived in rentals. The number of people living in freestanding privately owned estates has doubled from 13 percent in 1996 to more than 25 percent today.

Areas with big apartment blocks and impersonal surroundings can lead to social problems. These areas lack employment opportunities and separate those living there from the rest of society. Those immigrants who succeed move away.

The Norwegian pattern makes people with higher and lower incomes, at a higher degree than in most other countries, live side by side. Living side by side, a stronger sense of a diverse but well-integrated community is stimulated. A setting of natives living alongside immigrants allows for children to attend the same school. Just as important, it encourages successful immigrants to remain in the area longer, moving only from smaller to larger apartments or on to a villa. This again serves as a strong example for newly arrived immigrants and their children.

Together with other Nordic countries, Norway consistently performs among the top countries in the *International Property Rights Index*. Ownership is upheld and enforced by an efficient and trustworthy judicial system. Property can safely be used as investment objects, as collateral for other investments, or most commonly as a safe and lasting home for families. This, along with other policies supportive of private ownership, can explain why such a high percentage – 80 percent – of Norwegians owns their dwelling.

The immigrant population of Norway has higher ownership rates than immigrants in most other countries. Private ownership is increasing among immigrants as they receive higher income and better education. Today immigrants in Norway own their homes to the same degree as *all* of the population in the United Kingdom and Italy, as well as much more often than the populations of Sweden, France, and Germany.

In 2005/2006, 63 percent of immigrants owned their own homes. That is an increase of nine percentage points in only 10 years. This is beneficial for their integration. Private home ownership is beneficial for a plethora of reasons. Being private owners allows immigrants, like all other property owners, to get both the reward of increasing value and the penalty of decreasing worth. Ownership increases savings and financial security.

There are also wider effects to private possession of property. Home ownership has extended benefits. The reason is simple, really: the purchase of a home is the most important and most costly investment a family makes. Ownership gives increased stability and security in so many ways; it is a strong sign that you are staying. If the bank agrees to finance, it sure tells someone else they believe you will succeed as well. Greater stability and stronger ties to the surroundings will lead to a different attachment to the society in which one owns property. The success of that society becomes much more relevant to your own future.

Many social scientists and economists have shown the beneficial effects of ownership. Coulson (2002) argues that ownership works through three channels: owners are taking better care of their property, better care of their children, and become better citizens than renters. DiPasquale and Glaeser (1999) finds that ownership leads to increased investment in local well-being and increased social capital because ownership attaches the owner to the local area. Haurin, Parcel, and Haurin (2002) shows how owners give their

children a better environment for development, better results in schools, and fewer behavioral problems. Boehm and Schlottmann (1999) argues that children of people owning their home more often take higher education and earn more than the children of renters. Rossi and Weber (1996) maintains that owners participate more in their local society and politics. It also looks like high ownership rates makes for high social mobility, according to Rohe, Van Zandt, and McCarthy (2002).

Of course, it is not just that high ownership rates and strong property rights secure the successful integration of immigrants. Several other factors play in. But the ownership structure could perhaps explain some aspects of why integration into Norwegian society has been quite successful. Immigrants, and especially their children, are quickly adapting into the middle class.

Author's Note: This essay is strongly based on Civitanotat 5/2010: Innvandring og eiendom by Marius Doksheim, Civita.

Reference List

- Atterhög, M. (2005). *Importance of government policies for home ownership rates*. KTH Royal Institute of Technology.
- Blom, S., & Henriksen, K. (2008). *Levekår blant innvandrere i Norge 2005/2006*. Statistisk sentralbyrå. SSB.
- Boehm, T. & Schlottmann, A. (1999). Does home ownership by parents have an economic impact on their Children? *Journal of Housing Economics*, 8, 217–232.
- Coulson, E. (2002). Housing policy and the social benefits of homeownership. *Business Review of the Federal Reserve Bank of Philadelphia*, Q2, 7–16.
- DiPasquale, D., & Glaeser, E. (1999). Incentives and social capital: Are homeowners better citizens? *Journal of Urban Economics*, 45, 354–384.
- Haurin, D., Parcel, T., & Haurin, J. (2002). Does homeownership affect child outcomes? *Real Estate Economics*, 30, 635–666.
- Nore, Aslak. 2009. *Ekstremistan*. Oslo: Norway: Aschehoug.
- Rohe, W. M., Van Zandt, S., & McCarthy, G. (2002). Home ownership and access to opportunity: A review of the research evidence. *Housing Studies*, 17, 51–61.
- Rossi, P. H. & Weber, E. (1996). The social benefits of homeownership: Empirical evidence from national surveys. *Housing Policy Debate*, 7, 1–35.

Case Study: Creating Indigenous Property Rights: The Nisga'a Landholding Transition Act

By Joseph Quensel, Frontier Centre for Public Policy (Canada)

Introduction

A significant factor that explains indigenous poverty is the lack of enforceable property rights on Indian reserves.

Canada's Indian Act of 1876 recognizes the unique land ownership systems of its indigenous peoples. While the act preserved a scarce land base for native inhabitants, it locked these communities out of the modern economy by denying them access to commercial credit. The Indian Act states that the Crown (federal and provincial governments) holds title in trust and benefit to reserve lands, which are under federal jurisdiction under Canada's Constitution for Indians. Reserve lands could only be alienated to the federal government and are not subject to seizure, attachment, lien, or collateralization.

Leasing arrangements on reserve lands exist, but these do not generate as much value as fully transferable property rights. Observers long recognized that the Indian Act land system reduced land values and promoted low value land use. Peruvian economist Hernando de Soto said Canada's indigenous people face a problem common to many developing countries: the indigenous people possess land, but it is dead capital, meaning it cannot be leveraged in the wider economy.

Who are the Nisga'a?

The Nisga'a Nation is an indigenous community in rural northwest British Columbia (BC), Canada's westernmost province. There are reportedly 6,400 Nisga'a citizens, although a small proportion of that number lives on Nisga'a territory. Sources say the word Nisga'a comes from a combination of two Nisga'a words: *Nisk'* meaning "top lip" and *Tlak'* meaning "bottom lip." The term derives from the Nass River Valley, where the Nisga'a live. Nisga'a Nation consists of four villages, which are regional governments, and a central government named Nisga'a Lisims Government (NLG) that is based in the community of New Aiyansh.

Unlike much of Canada, most of British Columbia did not sign historic treaties. As a result, the Nisga'a sought a negotiated settlement over land and governance for over 100 years. The Nisga'a, the federal government, and British Columbia signed the Nisga'a Final Agreement in 1999. The Nisga'a are signatories to a modern treaty, Nisga'a Treaty, that came into effect in 2000.

The Nisga'a Treaty grants limited self-government in enumerated areas to the Nisga'a government, although many governmental powers and responsibilities are concurrently held with the federal and BC provincial governments. The treaty was controversial during its negotiation and adoption because Nisga'a law had supremacy in several legislative areas.

What's Happening?

Nisga'a Nation made history when, in a voluntary move, it passed a law granting fee simple property rights to its members. Nisga'a citizens who obtain fee simple title to their residential property under the law will be able to mortgage their property as security for a loan. They also may transfer, bequeath, lease, or sell their property to any person, whether they be Nisga'a or not, or even indigenous or not.

In October 2009, the Wilp Si'ayuukhl Nisga'a (WSN), the legislative body of NLG, passed the Nisga'a Landholding Transition Act. The Nisga'a Nation is developing a Torrens-style land title system to register fee simple interests. At present, registration will occur in a Nisga'a land title office.

Nisga'a sources claim, "It is believed to be the first Torrens-type, fee simple land title system established by an indigenous government anywhere in the world." It is uncertain if this claim is true, but it is true for Canada.

The NLG dealt with concerns about the potential erosion of the Nisga'a land base by including an important caveat. Although Nisga'a citizens who obtain fee simple title to their property under the act will be able to transfer their property to any person, the property will always remain part of the Nisga'a Lands and be subject to Nisga'a laws under the Nisga'a Final Agreement. This means fee simple holders will be subject to zoning and land-use regulations adopted by Nisga'a governments. Although the Nisga'a government shows interest in future expansion into commercial property, at the moment the legislation only applies to residential properties.

The move is not as radical as some claim and is in fact quite limited. Fee simple ownership only applies to residential properties. The lands affected are lots within Nisga'a villages zoned for residential use and are less than 0.2 hectare (approximately half an acre) in size. The total amount of land affected is approximately 100 hectares, or .05 percent of Nisga'a Lands.

The legislation recognizes two means of obtaining fee simple. The first is a Nisga'a village entitlement to a lot for a citizen at no charge. This meant if the lot qualified – did not have a mortgage, met size requirements, and was residential – the entitlement holder could accept or decline the offer. The second method is for an entitlement holder to request a lot. The village is required reasonably to consider the request, and appeals are available if the request is denied.

History of the Legislation

The decision to move toward individual fee simple rights was not one the Nisga'a government entered lightly or without deliberation, although the issue remains controversial today.

At a roundtable discussion in 2006, the WSN considered ways Nisga'a citizens could hold their residential properties. Nisga'a sources say the meetings identified the current restrictive system of Nisga'a Village Entitlements and Nisga'a Nation Entitlements as barriers to economic development. Over the next three years, Nisga'a living in the four Nisga'a villages and in Vancouver, Prince Rupert, and Terrace were consulted. The Nisga'a have what they call urban locals in these three communities, which provide representation for urban-based Nisga'a citizens. Numerous legislative options were considered by the Nisga'a Lisims Government, culminating in the introduction of the Landholding Transition Act.

In 2007, a report was prepared by the Nisga'a government for the executive regarding these community discussions. While there was support for unrestricted ownership of land, concerns were raised by community members over the potential loss of the land base. After community discussions, the executive brought forward legislation to create the possibility of unrestricted fee simple on residential lots in Nisga'a villages, which led to the passage of the aforementioned law in 2009.

At present, the Nisga'a government is developing and passing consequential amendments associated with the move, including appropriate zoning laws and revisions of land title systems.

Undemocratic Change?

Some Nisga'a opponents of the move criticized the democratic nature of the change. Nisga'a officials, however, point out that the Nisga'a Constitution requires a referendum be held if a disposition of more than 40 square kilometers is made by the Nisga'a Nation or a disposition of more than 10 square kilometers is made by a Nisga'a Village. Officials argue the Constitution does not require a referendum because the total amount of land that the proposed legislation affects is approximately one square kilometer.

Implications

As a result of the Nisga'a move, other Canadian First Nation communities are engaging in a substantive discussion about property rights for their own reserves. Manny Jules, an indigenous leader from British Columbia, has engaged other native communities in a discussion about a First Nations Property Ownership Act, which the Nisga'a move inspired. This proposed voluntary legislation

would allow participating Indian bands to opt-into a legislative regime in which land title could be transferred from the Crown to a willing First Nation government, which could then choose to transfer that land to individuals.

While some indigenous scholars and activists have directed intense criticism toward the Nisga'a move, other Indian bands are monitoring the change. The Assembly of First Nations (AFN), the body purporting to represent on-reserve Indians, has been cool towards the idea, not expressing a clear opinion on the matter. At a conference on the topic of Aboriginal property rights held in Vancouver, British Columbia in October 2010, several Indian bands expressed an interest in opting into the First Nations Property Ownership Act.

The eyes of the indigenous community and many other interested observers are fixed on the Nisga'a Nation as it embarks on this historic experiment. If the Nisga'a are successful in leveraging fee simple to improve their business climate and standard of living, the case for indigenous property rights in Canada may be bolstered and alleviate some of the apprehensions some communities have over such a system.

Recommendations

Observers should adopt a 'wait-and-see' approach to the Nisga'a fee simple plan. The limited and voluntary nature of the plan suggests Nisga'a governments are adopting a conservative and incremental approach. The Nisga'a are wise to include education and support for Nisga'a citizens who wish to assume fee simple ownership. An understanding on the risks of ownership and foreclosure would be crucial. Native communities would benefit by seeing the advantages, challenges, and potential pitfalls of full property ownership before embracing it.

Native communities under the Indian Act should consider the benefits of adopting the First Nation Property Ownership if (or when) it becomes a legislative option. The First Nations Tax Commission, which is spearheading the initiative, should proceed in galvanizing support for the bill and helping to make it a reality.

As currently conceived, the legislation is flexible and can be tailored to specific native realities. Some communities may not be ready for full property rights or may deem certain parts of the reserve inalienable or only available for sale to First Nation members. Lessons from the Nisga'a case study may help these communities in developing their own property regimes.

Reference List

Nisga'a Lisims Government. (2011). *Nisga'a individual landholding project*. Retrieved January 19, 2011, from <http://nnkn.ca/content/nisgaa-individual-landholding-project>

Case Study: A Half Century of Land Reform: Nepal's Experience

By Krishna Neupane, *Limited Government (Nepal)*

Introduction

Nepal still has a primarily subsistence-based agrarian economy. Agriculture contributes to 40 percent of gross domestic product (GDP). In the 1960s, with the vast majority (over 90 percent) of Nepal's population dependent on agriculture for their livelihood, land reforms were heralded for being a top priority under the system of planned development borrowed largely from then-socialist India. It was natural for Nepal to replicate policies after its century of isolation from the external world under a family rule.

Nepal pursued one of the largest programs of land reforms on record since the 1960s. The reforms were planned with an objective of redistributing land to rural peasants. The strategy behind this plan was to slowly acquire land through strict enforcement of a 'land ceiling' over so-called aristocratic families that possessed larger estates. The evidence on these reforms' outcomes on poverty is mixed. In contrast to its stated goals, land reforms led to a significant rise in poverty and food insecurity because of fragmentation. However, one achievement was its ability to properly title the available land to almost 99 percent of households.

History of Land Reforms

Ownership of land in Nepal is traditionally vested in the state. The most prominent forms of tenure were state-owned land rented to tenant (*raikar*), state-offered lands to private individuals (*birta*), current government employees (*jagir*), royal vassals and former rulers (*rajya*), religious and charitable institutions (*guthi*), and communal land ownership (*kipat*). A series of Land Acts were subsequently enacted in the 1950s retaining only the *raikar* and *birta* as the main forms of tenure. Table 1 demonstrates that the majority of the pre-1950s land in Nepal was possessed by the state.

Table 1: Land Tenure Before 1950

Form of Tenure	Area (hectares)	Percentage of Total Area
Raikar	963,500	50
Birta	700,080	36.3
Guthi	40,000	2
Kipat	77,090	4
Rajya, Jagir, Rakam, etc.	146,330	7.7
Total	1,927,000	100

Note: Because a part of land under *birta* was used by individuals as *guthi*, the total area under *guthi* tenure may have been much more.

Source: HLRC, 1995

Features and Outcomes of Land Reform in Nepal

The Land Reform Act of 1964 (LRA) fixes ceilings on the land an individual can own, protects the right of tenants by registering his or her name in the owner's deed itself, fixes rent on agricultural land, and does away with the traditionally very high interest rates for rural loans.

Population: Total and Farm Size

Nepal's population in the past half-century has increased by 2.5 times, while the farm population grew by 2.3 times from its 1961/62 level (Table 2). The proportion of people engaged in agriculture has declined by seven percentage points between 1961/62 and 2001/02. This does not indicate that the population involved in agriculture has declined significantly, which was a major aim of the LRA.

Table 2: Characteristics of Population in Nepal (1961/62-2001/02)

Classification	1961/62	1971/72	1981/82	1991/92	2001/02
Total Population (thousands)	9,413	11,556	15,022	18,491	3,151
Farm Population (thousands)	8,410	NA	12,877	16,258	19,032
Proportion of Farm Population	89.34	NA	85.72	87.92	82.21

Source: CBS (2001)

Redistribution of Land

Another primary objective of the LRA was to redistribute land to the landless and small holders to create an agrarian egalitarian society. The government, however, distributed only 1.5 percent of the total agriculture land among the landless. This raises a question: was the land reform truly necessary? The size of land holdings had already been small. The imposition of land ceilings has been one of the primary features of the reform for the government since 1964 and, in turn, has directly affected productivity on the land.

Land Holdings

There are two types of holdings: agricultural holdings that use land in farming operations and agricultural holdings that do not require land. Most holdings that do not require land are used for raising livestock and poultry. The number of agricultural holdings that use land has been proportionally increasing since 1961/62 but decreased slightly in 1981/82 and 1991/92. However, there was a slight increase in the proportion of holdings using land in 2001/02. The slight increase in the proportion of holdings using land resulted in a decrease in the actual number of holdings without land between 1991/92 and 2001/02 from 32,100 to 26,700. This drop indicates that fragmentation of land has significantly promulgated poverty.

Further Issues

Since the adoption of the Land Reform Act of 1964, the government has achieved land egalitarianism. On the other hand, a half-century with such reforms has led to land fragmentation and vulnerable property rights security, among other drawbacks highlighted below.

Disguised Unemployment

Land fragmentation has helped to keep people employed in the agrarian sector rather than seeking employment elsewhere.

Increased Land Fragmentation

At the national level, the average number of parcels per household has been steadily declining. Since 1961/62, the average number has decreased from 6.8 in 1961/62 to 4.4 in 1981/82, 4.0 in 1991/92, and 3.3 in 2001/02. The main reason for the decline is the decreasing size of an agricultural holding from 1.11 hectares in 1961/62 to 0.80 hectare in 2001/02.

Incomplete Registration

It is doubtful that government data over five decades old are accurate. The Badal High Commission for Land Reform stated in 1995 that even after four decades of promulgation of the LRA, more than 450,000 tenant households were not registered (HLRC, 1995). Even the registered households have not been able to avail themselves of their rights as tenants. It is estimated that around one million poor households have been deprived of their legitimate rights over land resources. Tenants have been cultivating land for generations but never had any evidence to support their claim. Hard-working tenants had no information about land registration and could not register within the stipulated time.

Conflict between Owners and Tillers

One of the main sources of conflict in the country is related to land with a great number of land cases flooding the Supreme Court. The majority of these cases involve proof of documents or tiller eviction. This gives an indication of the deep-sown seeds of strife between landowners and tillers.

Food Insecurity

By the end of the 1970s, Nepal's strong ability to export agricultural products was weakening as it turned itself into a net importer. As time passed after the land reforms, the food deficit became more prominent in some parts of the country. Officially, over 45 of 75 districts in Nepal today import food except for those in districts that share a border with India. The primary source of imported food is India.

Land Fragmentation and Productivity

According to the Central Bureau of Statistics, land productivity claims by reformers and subsequent implementers have been cast into serious doubt. Though measurable statistics are not yet available, there is widespread belief that the LRA has not brought the desired productivity goals.

Conclusion

A structured, secure, and properly defined private property rights system lubricates a modern economy. Tiny land-locked Nepal's political elites have succeeded in portraying land reforms with ultimately undesirable consequences as desirable. The presence of awkward limitations of property rights have regrettably insulated Nepal from the north-south economic warmth that we see in much of the rest of Asia. Even citizens whose livelihoods are thoroughly agrarian based are baffled by a situation marked by legal plunder. Mere access to land would not, of course, ensure that land productivity would increase and poverty would be reduced. Instead, a dynamic, commercially-oriented agriculture sector is the best hope to significantly increase farm incomes and reduce poverty.

References

- Central Bureau of Statistics (CBS). (2001). *Population census 2001*. Kathmandu.
- High Level Land Reform Commission, 2051. (1995). *Report of high level land reform (Badal) commission*. Kathmandu.
- Zamindar. (2010). In *Wikipedia*. Retrieved December 16, 2010, from http://en.wikipedia.org/wiki/Zamindari_system

Case Study: The Coase Theorem and Informal Property Rights

By Marcos Hidding Ohlson & Martín Krause, CIIMA/ESEADE (Argentina)

In his seminal paper, Ronald Coase (1960) presented what was later called a “theorem” bearing his name:

“It is always possible to modify by transactions on the market the initial legal delimitation of rights. And, of course, if such market transactions are costless, such a rearrangement of rights will always take place if it would lead to an increase in the value of production.”

One of the most quoted papers in economic history, it opened a flood of research and discussion. Some of it centered on transaction costs and whether these would be sufficiently high or low to inhibit or to allow such market transactions. Among these costs, the very definition of property rights takes an important role. If it is not clear to whom they belong or what use can be made of an asset, a good deal of effort may be needed first to clarify the issue and then to proceed with the transaction.

Nevertheless, if we stick to the subjective nature of value, costs are subjective as well and inimical to the acting individual. Valuation becomes evident only as “revealed preference” in action. Therefore, there is not much that an independent observer can say except that if the transaction was made it must be assumed that the involved parties thought “it would lead to an increase in the value of production” and if not, that the subjective costs were higher than the subjective benefits.

To test this proposition, we conducted a field research experiment in a shanty town in the suburbs of Buenos Aires where there is no formal definition of property rights in housing. Would there be transactions in this case? (Hidding Ohlson & Krause, 2010).

The Neighborhoods of San Isidro

San Isidro is located some 20 miles north of the place where Buenos Aires was founded in 1580, in a border zone between the areas occupied, or rather transited, by the Guaraní and Querandí tribes. Juan de Garay, the founder, distributed parcels on the northern coast of the River Plate among his men somewhere beyond San Isidro. Only two centuries later, a small town to be named San Isidro, Madrid’s patron saint, started to grow. It completed its development thanks to the migration of people resulting from the economic boom of Argentina in the second half of the 20th century.

Large estates were parceled and created the urban downtown with a residential neighborhood of large parcels and houses named Lomas de San Isidro. La Cava is an informal settlement created mainly on government land. In 1946, the state water company, Obras Sanitarias, asked the federal government for this plot of land to use the red soil to filter water and to manufacture bricks, generating a sink or “cava” – from the Spanish word to dig or to excavate – and giving its name to the estate. The digging soon reached groundwater and the project was set aside. The sink was partially refilled and started to be settled by squatters on the 50 acres of its present area. According to different census estimates, there were between 1,700 to 2,100 houses and between 8,000 to 11,000 people, though the area housed a larger population in the past.

In San Isidro, as in most of the other city neighborhoods, the right to property is guaranteed by a title recognized by law, granting its validity to any legal claim, allowing sale and purchase, mortgaging it, and protecting possession against usurpation. Of course, such guarantee is relative considering Argentina’s low institutional quality and the lack of trust in its political and judicial systems. The 2009 *International Property Rights Index*, for example, shows Argentina in position 80 with a total score of 4.3 (on a scale of 1 to 10).

In La Cava, only 16 percent of those polled said they have a property title for their houses. Some even asked what that was. Among the rest, 17 percent said they have an informal document, usually consisting of an informal sale/purchase invoice. Altogether, 84 percent said they do not have formal documentation. On average, they lived 15 years at the same house, which shows low turnover rates. Those who said they have a property title also have lived at the same house 15 years on average. When asked how they acquired their home, 37 percent bought it, while 26 percent built it. In many cases, people added homes as annexes of a family house. Six percent say they got their house from the government.

There are not many problems in the sale/purchase of housing because deals are made with people they trust and payment is in cash at the moment of possession (90 percent of respondents). Only 27 percent said there could be installments but much trust or familiar ties were needed.

We asked La Cava dwellers how they solve problems with neighbors when there is conflict related to continued coexistence, such as negative externalities. As an example, what happens if a neighbor whose home is at a close distance away plays music at a high volume or emits smoke or nasty odors? What if there are problems with the dividing walls or unclear borders between one property and the next, or someone builds a second floor blocking sunlight or damaging the other? Houses are quite precarious, and these are real possibilities.

Confirming conclusions from a subjective cost interpretation of the Coase Theorem, 76 percent said they solve these problems by talking with the other side. They prefer not having intermediaries, either from the same neighborhood or outside, and they avoid violence at all cost. Only in extreme cases do they resort to it. They know they cannot go to the authorities, and starting violence is a dangerous game. Besides, in a place where people live very close to each other, having a good relationship with neighbors is an important asset. Those unresolved cases have to do with the nature of the neighbor; they must evaluate his/her reaction, and sometimes it is better to bear the cost of the externality than the cost of attempting a solution.

As mentioned, one source of high transaction costs is a disagreement over property rights. It makes bargaining costly and prevents a negotiated internalization of the externality. Nevertheless, what really matters to the application of the Coase Theorem does not seem to be just the formal definition of the right to property, but that neighbors know and respect the informal right. This includes not just the definition of the land plot and its borders but also its accepted use and effects on third parties.

The high proportion of answers related to negotiated solutions shows there are common codes of conduct regarding alternative uses of properties, which facilitate negotiations. They are not legal “ordinances,” but they fulfill similar functions. They demand consensus and generalized acceptance to become “social norms.”

The lack of formal property rights does not prevent the transfer of the possession, although it does not allow for the existence of mortgage credit and disincentivizes investment. Acceptance of “informal” rights allows for a solution of negative externalities in most cases. Many “public goods” are supplied voluntarily, others not.

Personal relationships and goodwill are critical when there are no written rules or cases in which different rules apply to different people. It is important who happens to be your neighbor because there are no clear mechanisms to resolve disputes. Regarding security, they are at the mercy of criminals and must rely on their capacity to defend themselves. Houses are bought and sold among known parties, groceries lent to those who they trust, and people are afraid of moving if they do not know who will be their new neighbors.

A lack of formal property rights prevents dwellers of La Cava from accessing credit, some public services, even jobs, and having a sense of security provided by ownership. They cannot appeal to formal authorities to solve problems of negative externalities. The absence of authorities increases subjective transactions costs because residents must evaluate personal reactions among other residents.

In conclusion, the Coase Theorem is verified in such informal settings though it should probably be rewritten to take into account the subjective nature of transaction costs. We offer the following suggested rewrite: “It is always possible to modify by transactions on the market the initial legal or informal delimitation of rights. And, of course, if such market transactions are worth the subjective costs for the parties, such a rearrangement of rights will always take place if it would lead to an increase in the value of production.”

Reference List

Coase, R. H. (1960). The problem of social cost. *Journal of Law and Economics*, 3, 1–44.

Dedigama, A. C. (2009).

International property rights index: 2009 report. Washington, D.C.: Property Rights Alliance.

Hidding Ohlson, M. & Krause, M. (2010). The provision of public goods with an absent state: The case of La Cava, (unpublished manuscript).

Case Study: Hong Kong: Sidestepping Property Rights in Preservation

By Nicole Alpert, The Lion Rock Institute (Hong Kong)

Summary

In Hong Kong, the government applies an inequitable, ex post method of heritage conservation on privately owned sites. This retrospective approach often arrives out of crisis management, as a site's heritage status, or lack of one, is revisited once demolition is underway. At present, regardless of whether sites are deemed heritage worthy, the government will declare any privately owned site a "proposed" monument to allow for more time to negotiate with the owner to preserve the building, stopping development. This practice overrides the protection of property rights, which is stipulated in Hong Kong's Basic Law.

Jurisdictions that value the rule of law generally frown upon ex post facto practice. Owners of privately owned heritage sites rationally transact under the assumption that the government does not perceive any heritage value, yet under pressure from conservancy groups or members of the public, the government u-turns and places the property under monument status, halting all development. The ad hoc, ex post form of heritage conservancy puts property rights aside and creates the unintended consequence of uncertainty, for both the government's conservation efforts, the public, and owners.

History

Heritage preservation responsibilities are divided among many different departments. The Antiquities and Monuments Office (AMO), under the Leisure and Cultural Services Department, is one of the professional advisers to the government on heritage issues. At present, the Secretary for Development has the autonomous power to declare a site a proposed monument despite whether or not the site is perceived to possess heritage value. This legal interjection stops any planned demolition or development of the property, while the Secretary tries to meet a consensus with the owner. A proposed monument is then either extended to a "formal" monument, or downgraded to a "Graded" site.

Buildings with government conferred heritage value, but are not monuments are Graded One, Two and Three (highest to lowest) to reflect historical value, but only the conferral of monument status prevents demolition. Many of the sites that are "declared" monument status may never have previously been assessed or graded as possessing heritage attributes, leading to uncertainty about whether a privately owned heritage site truly deserves the name. The current legal and administrative framework for heritage assessment is inadequate, clearly lacking cohesion and a systemic strategy, evident in the number of instances where the AMO has undergone repeat assessments of the same sites, yet come up with divergent conclusions regarding actual heritage value.

The public generally agrees that some heritage sites are worth saving, but the idea that everything must be "saved" (development halted) is reckless and substantiates the government's ragtag heritage policy. Notably, a monument status can be declared at any point in time, with or without comprehensive review, thus redevelopment of a site becomes an unfeasible task since the Secretary's right to declare on private property is always looming. Using the declaration of monument status to halt demolition projects skews the grading process and undermines the AMOs credibility. In essence, a proposed monument allows the government to hold private property hostage, regardless of heritage value, eventually forcing private sector participation in the charade that is heritage conservation. The following examples illustrate how such declaratory powers lack any sense of property rights, but can halt actions of surprising owners who have planned demolition works or redevelopment for some time and have gone through the channels to commence work.

Case Studies

The Ho Tung Garden and Mansion, No 75 Peak Road

In a recent case, the government entered dialogue with the owner concerning preservation of the Grade One, 83-year-old site, but the government communication ceased abruptly. The owner, free to move ahead, secured plans to demolish the structure, at which point the Secretary held up development by declaring the site a proposed historic monument. The Secretary said that she will try to reach an agreement, but threatened "final" monument status should a consensus not be met. Such behavior clearly usurps any notion of lawful legitimacy and due process.

Should final monument status be conferred, the owner may claim a financial loss, a timely matter requiring significant financial resources that would need to be resolved in court. Although the Secretary has mentioned that economic incentives will be provided to compensate the owner (likely through land exchange) it is unlikely to equate to the multi-billion dollar development the owners originally had in mind.

Jessville Mansion, 128 Pokfulam Road

Jessville Mansion was scheduled to undergo redevelopment, but in the final months preceding construction, the Secretary declared the site a proposed monument. Months later, the site was downgraded to a Grade Three historic building after the owner agreed to use the site as a clubhouse, paying for its preservation. The site was reassessed, with a very different heritage valuation than was given in the months preceding. The u-turn in the government assessment and abuse of the Secretary's power to declare monument status, created confusion for the owners as to the value of their property, the economic opportunity and legal right to develop.

King Yin Lei, 45 Stubbs Road

The AMO had been invited numerous times over previous years to assess the site, however, the mansion was not Graded for any heritage significance, indicating it held no heritage value. In the early stages of demolition, a conservancy group campaigned to save the site and asked the government to intervene. Without justification, the Secretary declared the site a proposed monument, imposing considerable constraints in a last-minute attempt to stop the owner from exercising legitimate rights over the property.

The government used a land exchange preservation mechanism, in which the owner is held responsible for restoring the "new" heritage site to AMOs satisfaction at his own expense. The owner then surrendered the restored property for preservation and was granted an adjacent lot for private residential development. This case is a clear indication of the blatant abuse of power used to stop development at the Secretary's whim, regardless of any previous assessments.

Case Study Conclusion

The power to "declare" has effectively become a bargaining tool of the state, which is used to force landowner's to succumb to altering their initial plans and spending both additional time and resources in preserving sites where "heritage" value is often very questionable. Despite reviews stating that the current policy lacks coherence and advocating the need for some form of standard guidelines, nothing has been done and the administration is sticking to a ragtag policy that settles issues that come up on a case-by-case basis, refusing to take on any form of one-size-fits-all guidelines.

The Secretary for development stated that the government will take "no action if our enemy does not make any move," but this policy ensures both opportunity and real costs to owners, as well as destruction of heritage that might have been preserved had sufficient consultation and proper mechanisms been employed. Whether King Yin Lei deserved heritage status is, at best,

questionable, but by the time the government intervened, twenty percent of the mansion had already been defaced. Owners lose much in revenue, as development is wrongly halted while “negotiated” outcomes through ex post heritage ultimately mean conservation costs are borne out of the private owners’ pocket.

Conservationists believe there are many buildings in Hong Kong that are of greater heritage value than King Yin Lei, and remain ungraded. Notably, the government has said that purchasing sites such as those outlined above would be a very “last resort” because of the high costs involved as well as all the controversy that would be implicit in the use of taxpayers’ money. Yet, the government has no difficulty invading the property rights of legal owners by holding up development prospects and surprising owners with new or revised heritage claims. With over seventy percent of identified heritage buildings privately owned and more ungraded, the need for overhaul is pressing.

Remedies

All privately owned, heritage worthy sites have been in the same state for decades, thus there is no well-founded reason why, after years of government survey, research and assessment, that those sites which have not been declared monuments should suddenly be rendered protected as such. There is clearly a lack of a long-term, broad based heritage conservation policy that respects property rights. A standardized mechanism protecting property owners should be initiated.

Hypocritically, the Secretary for Development has said, “if a law can be played around by an official like this to stop someone from carrying out some lawful acts, I think it would not be accepted by the Council and the community at large. This would also be contrary to the three major principles mentioned in the land policy recently – certainty, stability and uniformity.” And yet, the government has “played around” with property rights and the law in precisely the same way, and sadly, there is no sign that this will change. Thus, infringing upon property rights will remain the principal strategy, leading to confusion for all stakeholders involved, while at the same time endangering heritage preservation, until it is overhauled.