

## History of real property rights in Europe, or better:

### Institutional development: The Case of Continental European Real Property Rights

#### Intro

The purpose of this note is to identify research, which I think is interesting and relevant, and thereby support cooperation among like-minded, perhaps with the objective to present a joint publication in a few years.

#### Background

Recently, Oliver E Williamson suggested four levels of social analysis:

- L1 of social theory, addressing informal institutions, norms, and religion.
- L2 of economics of property rights and positive political theory, addressing the formal rules of the game.
- L3 of transaction cost economics, and
- L4 of neoclassical economics/ agency theory

More details appear from the figure of his article:

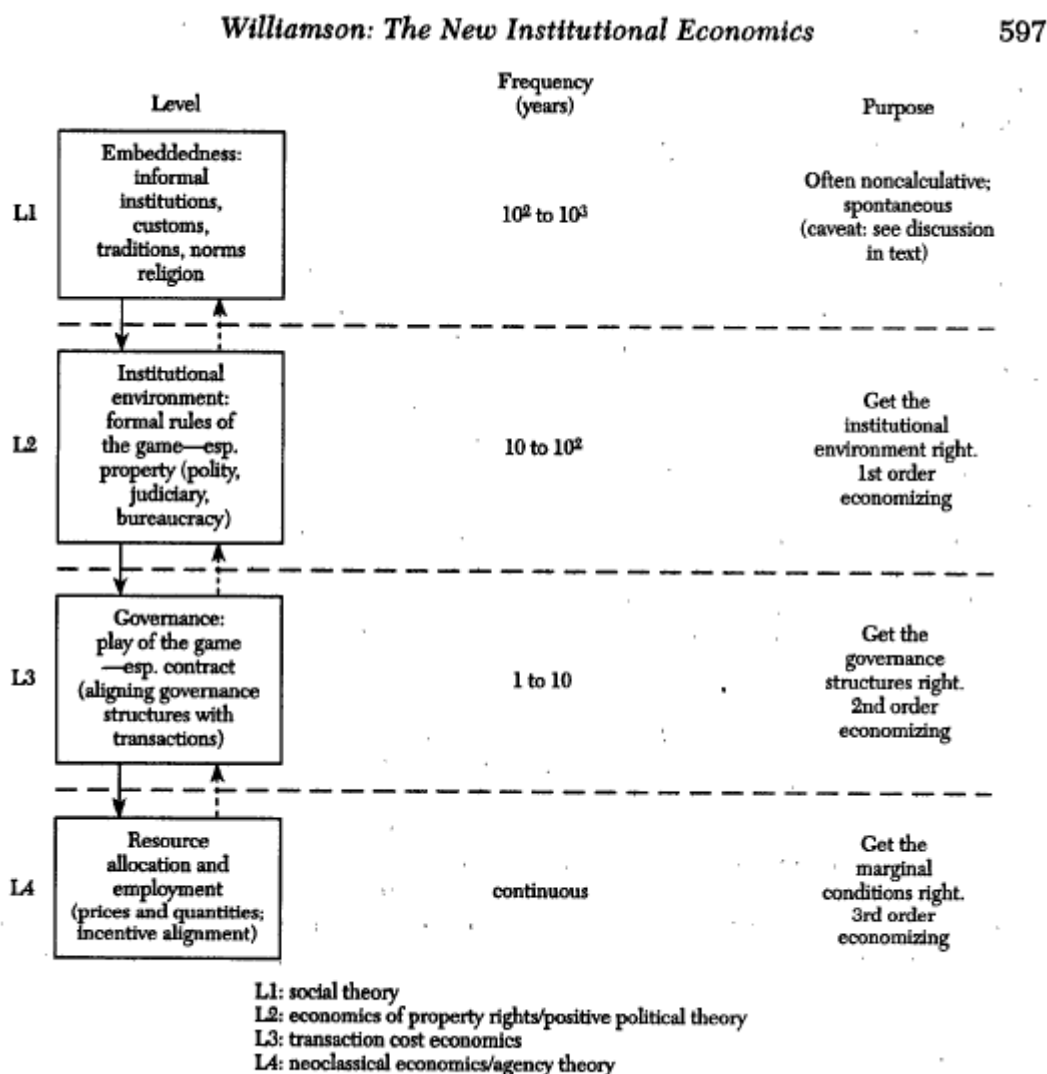


Figure 1. Economics of Institutions

In the present ESF-COST G9 action *Modelling Real Property Transactions*, we are addressing level 3: Describing the routine 'play of the game'. We do it with a view of developing models, which makes it possible to compare in some detail, e.g. the purchase of real estate as the transactions are performed in Denmark and England/Wales, respectively. We even try to assess the transaction costs, both from the perspective of the parties, as well as from the perspective of society. If someone should become inspired from our research, and wanted to improve the processes, it seems likely that such change of processes could be implemented within a time span of 1 to 10 year, as suggested by the model of Williamson.

Our research confirm what we already knew: Real property rights coexist with professionals: Legal experts, surveyors, real estate agents, etc., with fairly skilled, rule-obeying civil officers, and with national information systems. If we extend the scope to the whole world, we need to mention also, that in our European context, owners and other asset holders can read and write, and, moreover, that generally they think of their resources in money-economic terms. Of course, this has not always been the case. Only by about 1850 was illiteracy rooted out in Denmark; surveyors were introduced about 1750s, and our first 'national information system' was established in 1680s (for taxation purposes). These changes were only slowly implemented. For example, in the 1830s it was discussed, whether the land registry books (Danish: *tingbøger*) should be kept according to a geographical ordering, rather than the prevailing chronological entry of new records, one after the other. This idea was in fact implemented during the 1920s. Similarly, improvement of general education took decades to implement, if not a centuries.

Again, we find a correspondence with Williamson's model, now level 2, which addresses the *institutional environment*, including bureaucracy (in the Weberian, positive sense, I assume). In surveying circles, it is commonplace to consider maps and national information systems as (geospatial) infrastructures. I likewise would consider the cadastre as an *administrative infrastructure*, perhaps a technical bureaucracy (but this sounds odd these days), which is needed for real property rights to operate.

Now, why do we have formalized property rights in 'the West', compared to 'the Rest'. You need not be Max Weber to be aware, that Christianity prevails in the West for some centuries. Covariation is no causality, but here we leave it to figures like Max Weber, Randall Collins, and Samuel Huntington to reason on these links.

## Motivation

The book by Hernando de Soto (2000) *The Mystery of Capital - Why capitalism triumphs in the West and fails everywhere else* relates the above outline of issues of property rights to the discourse on development and poverty reduction. Some are enthusiastic about his findings and suggestions, others are more reserved. A group of 'heterodox' economists claim that the very policy prescribed by *The Washington Consensus* was never adopted by the hegemonic countries. The title of Ha-Joon Chang (2002) *Kicking Away the Ladder*, is indicative: We, the West, the rich, became rich because we (namely through the national states) orchestrated our national resources in a way that gave us a competitive strength, and then we entered the global market. Now we got our comfortable position, we insist that 'the Rest' obey the global market conditions, we kick away the ladder that we used. This simplified summary is made only to indicate some positions in the development discourse.

Now, de Soto asks, how we in the West did get our formal property rights. He asks in the book, because he has asked the question in vain (cf p. 8: That history must be recovered; p. 56 never been properly analyzed Note 13; p. 57 how it came into being lost its urgency). I have responded to that request by presenting: The Institutionalization of Real Property Rights: The Case of Denmark, at a DeSoto/Searle Workshop in Buffalo, NY, April 2003, see e.g.

<http://www.geog.buffalo.edu/ncgia/workshop/Agenda304.pdf>. My description and attempt at an explanation did indeed not fit the mainstream economist view of the lavish fruits of open markets.

What I learned included that the Danish 'development policy' of the 1600s and 1700s was part of a Continental European effort to coop with the economic strength of countries like the Netherlands and England. The policy itself was developed under the heading of *Cameralism* of scholars like Seckendorff (1626-1692), Christian Wolff (1697-1754), and J.H.G. von Justi (1720-1771). This body of heterodox economy is explored at the *Heilbronn Symposia*:

It is the mission of the Heilbronn meetings to unearth a body of literature that is tied to the German language, and no longer available to the international community of scholars. In keeping with the threefold mission of the Heilbronn symposia, we shall first try to achieve an identification and critical reconstruction of the body of literature surveyed, secondly provide a critical discussion and rendition in terms of contemporary social science modelling and discourse, and thirdly address the importance and usefulness of this body of literature for contemporary theory and policy.

[http://www.uni-erfurt.de/finanzwissenschaft/konf/19heilbronn\\_call\\_2006.pdf](http://www.uni-erfurt.de/finanzwissenschaft/konf/19heilbronn_call_2006.pdf)

My hypothesis is that the Continental *institutional environment* of property rights, referred to by Williamson, was molded through the 1600s..1800s, probably mainly due to the policies set out by the cameralist way of thinking and teaching. Cameralist teaching was primarily provided at German speaking universities. It is premature to state, what spread from here to there, but it seems to be a researchable task to establish such mapping of 'the diffusion of innovations' (Rogers, 1962).

Why could that be not only feasible, but also relevant? I think so: Through a better understanding of the logic of, how the reign of individual property rights came into being, we are in a better position to inform the development discourse of, what works and why. Of course, some will listen, and some will not. Development efforts may be 'big science', the spending substantial amounts of money under a benevolent standard by countries wishing to have a role in international politics. But at least we can do what has been the contribution of European universities through the centuries: Reflect on the games of the powerful.

### Methodology

I am probably not the one to detail this section. Only I would like to mention to scholars of economic history, that among (geodetic) surveyors you can find a handful in most countries, who can assist in identifying the organisations and practices, which frame the use of property rights. Recently, an international project was launched by the International Federation of Surveyors to provide descriptions, including a short account of cadastral history. An example is included (not to indicate level of detail, etc, just to indicate a starting point):

The creation of the Belgian Cadastre comes from France. During the French Revolution, the "constituante" (the Constituante Assembly) decided in 1790-1791, the creation of the general cadastre and the land tax. The "Constituante Assembly" gave rules of conduct for:

- the preliminary operation;
- the overall view;
- the survey of the parcels of land;
- the fixation of the borders town (communes);
- and the triangulation of the communes.

With the Napoleonic conquests, the Belgian areas became a part of France and a French cadastre was created for the Belgian areas. Napoleon said "A good cadastre of the parcels will be the complement of my civil code".

After Waterloo (1815) and during the period with the Netherlands, the cadastral works continued. The cadastral work was finished (with the Luxembourg district), after the creation of the independent Belgium, in 1843. During the 19th and 20th century, the Belgian Cadastre was constantly improved, especially the last 25 years:

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<http://www2.swisstopo.ch/cadastraltemplate2003/countrydata/be.htm>

Do note the phrase 'identifying the organisations and practices, which frame the use of property rights'. Probably the most crucial choice in the *Modelling Real Property Transaction*-project was, that we looked for 'the material base': the procedures, the transaction officers, the documents, archives and information systems, rather than the elaborations of jurisprudence. Not that law does not matter. Indeed it does! But you can hardly interfere from a legal text to economic reality. And economic reality is the name of the game, when we look for transaction costs and the components of institutional environment.

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