



# Evolving practice in land demarcation

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## ABSTRACT

This paper analyzes social choice with respect to the demarcation of land boundaries, distinguishing between physical and legal demarcation. In contrast with the influential “land administration” literature and the World Bank’s policy guidelines, the analysis supports voluntary—instead of mandatory—demarcation as well as non-integrated services for land administration. Consistent with these theoretical arguments, the paper empirically verifies that demarcation conflicts play a lesser role in title-, land- and property-related litigation, which seems to increase in all these areas after physical demarcation is made mandatory. Relying on World Bank data, it also observes that linking and merging cadastral and land registries does not correlate with lower transaction costs.

## 1. Introduction

Efforts to plan economic development tend to apply uniform and supposedly optimal solutions, increasingly expressed in terms of targets, such as, in the area of interest here, the percentage of registered and properly mapped land.<sup>1</sup> The present paper contends that the reason why these centralized and expert-led efforts tend to fail massively is because they still fail to adapt to local circumstances (Easterly, 2014). They therefore disregard the value of “knowledge of the particular circumstances of time and place” underscored by Hayek (1982:521) which, even after the fall of Socialist economies, has widely been ignored in development.

### 1.1. Established policy

The survival of this planning misconception has affected land titling projects, which often aim at *universal* coverage in a given area, a policy often optimistically referred to as “systematic”, while the policy defended in this paper based on voluntary and, therefore, selective titling and demarcation is dismissed as “sporadic”. Thus, according to the World Bank’s good practice guidelines summarizing lessons learned since it started investing seriously in this area in the 1990s: “Systematic registration identifies, adjudicates, and registers rights to all adjacent land parcels in a selected locality and within a given period of time. Sporadic registration processes land rights on an ad hoc basis, usually when customers request registration of their

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<sup>1</sup> For instance, one of the UN’s Sustainable Development Goals for 2030 aims to “ensure that all... have... access to... ownership and control over land and other forms of property”, and then it estimates countries’ achievements in this regard with an indicator measuring the “proportion of total adult population with secure tenure rights to land” (UN Sustainable Development Knowledge Platform, <https://sustainabledevelopment.un.org/sdg1>, accessed July 15, 2017).

parcels of land” (World Bank, 2005:397).<sup>2</sup>

The extreme version of this systematic-titling argument even led part of the “land administration” literature to propose “holistic” objectives, according to which surveying each land parcel was considered a requirement for good titling.<sup>3</sup> Such land administration systems must not only provide complete information on land, including the different types of private rights and public restrictions, but ideally they must also be managed in an integrated manner to facilitate governments’ control of resources. It is claimed, for example, that “governments must proceed further and integrate the actual management processes of land use, tenure and development” (Bennett et al., 2008:127; summarizing Enemark et al., 2005).

Similarly, the World Bank advised in 2005 that “cadastre and registration functions should be connected and managed by a single institutional entity wherever possible” (World Bank, 2005:398). This single-agency policy—despite some more nuanced judgments by the evaluation unit of the Bank (IEG, 2016:28)—is still advised by the Bank’s *Doing Business 2018* report, when it considers as best practice in property transactions “to bring all agencies involved in property transfer under one roof”;<sup>4</sup> and when the “coverage” component of its “Quality of Land Administration” index also scores countries higher if their mapping agency covers the largest business city in full and even higher if it covers the whole economy.

Consistent with these recommendations, which have deserved little attention in the law and economics literature,<sup>5</sup> for decades most land titling projects and land registration reforms have been trying to implement exhaustive, even mandatory, land titling and demarcation based on delineating boundaries and representing parcels graphically, often in conjunction with attempts to integrate land registries with cadastres to reap the benefits of alleged synergies.

More recently, these policies have been more or less implicitly criticized by alternative “fit-for-purpose” proposals (Enemark et al., 2014, 2016), by internal evaluations of the performance of World Bank projects which, having been designed under the traditional paradigm, lead evaluators to defend a more contingent approach (IEG, Independent Evaluation Group, 2016), and also by the launch of some land titling projects that aim to avoid precise surveying to minimize costs.<sup>6</sup>

However, the effective degree of change in terms of policy is debatable. Both the fit-for-purpose and contingent approaches, rather than focusing on the owners’ choice whether or not to title their land and with what precision and relying on different means and providers, still focus on the planners’ choice about which geographic areas to title and what level of demarcation precision to apply (usually, for physical demarcation, a uniform level, given by a particular technique and supplied by a given provider, as well as most often a mandatory degree of legal demarcation). They are therefore bound to reach adaptation at most at a general instead of the individual level.<sup>7</sup>

<sup>2</sup> In their terminology, the guidelines seem to be assuming that there is no system in “sporadic” titling. It seems reasonable, however, to think that such “ad hoc” decisions by owners are systematically made when the value of land titling is greater than its costs, that is, they are not “occurring occasionally, singly, or in irregular or random instances” (the definition of “sporadic” by the Merriam-Webster dictionary). There is also a tendency to forget that “systematic registration is used only for initial registration, and whether initial registration is systematic or sporadic, the registration of subsequent transactions is sporadic, on application” (Bruce, 2012:50, n. 16).

<sup>3</sup> See, for instance, the initiative “Cadastre 2014” at Kaufmann and Steudler (1998).

<sup>4</sup> “Registering Property: Good Practices,” World Bank, Doing Business Website (<http://www.doingbusiness.org/data/exploretopics/registering-property/good-practices>, accessed March 28, 2018).

<sup>5</sup> An exception being the discussion between Lueck (2017); Smith (2017) and Arruñada (2017a, b).

<sup>6</sup> See, for example, Deininger et al. (2008) for the case of Ethiopia and Ali et al. (2014, 2017) for that of Rwanda, as well as references to other projects in Enemark et al. (2016:2).

<sup>7</sup> Lack of individual adaptation can be seen as an instance of a larger issue, the

More importantly, no significant change is visible as yet in terms of resource allocation. Considering a proportional allocation of administration and management costs, at least 53.45 percent of the unit costs of these land titling projects was spent on physically identifying and demarcating land parcels (my own estimation, based on Burns, 2007:94–95). Admittedly, this figure is based on old projects, but is in accordance with more recent estimates. For instance, in his study of African projects, Byamugisha (2013) concludes that “geodetic referencing, large-scale base mapping and cadastral surveying... constitute more than 50 percent of total investments in land administration projects” (2013:121). Among developed countries, the case of the Greek National Cadastre, which persists, as it has over the last three decades and despite repeated failure, in developing a functional single-agency, also reveals the resilience of this old paradigm (e.g., Taylor and Papadimas, 2015; Seeling, 2018).

## 1.2. Historical lessons

Similarly, reforms of land conveyancing and registration in developed countries still invest considerable resources to improve boundary demarcation, mandate the provision of surveys in conveyancing and try to link and merge the databases of cadastres and land registries, two institutions that had traditionally pursued different goals and consequently organized themselves differently and remained separate.

These efforts are far from new. For example, Section 7 of the Land Transfer Act enacted in England in 1862 already required an exact description of the plot to be registered, as well as its boundaries and neighbors, in order for the registrar to trigger a legal determination of the boundaries. In the same vein, when Scotland’s Land Registration Act created the new Land Register in 1979, it mandated a physical description of each plot, based on the Ordnance Survey map. Similarly, when Greece, with co-financing from the European Union, decided in 1995 to improve land registration, instead of upgrading the old mandatory recordation of deeds based on personal grantor-grantee indexes with a mere tract index (as other countries using land recordation did in the past, including France in 1955), it opted for creating a new cadastre, with entirely new registrations. These required matching the specific survey of the parcel with the general cadastral chart of the area, but without making sure that entries were in accordance with the legally valid information in the land books (Tzinieri, 2014). More recent efforts have followed the same policy, introducing changes only at organizational and legal levels but without substantially re-designing the project (Seeling, 2018).

Most of these efforts in developed countries were unmitigated failures. Surveying in developing countries is also often abruptly interrupted and the initial efforts shown to be meaningless when subsequent transactions remain unregistered (Bruce et al., 2007:42, Bruce, 2012:44, Ali et al., 2017). A common reaction has been to reduce surveying requirements in order to lower registration costs to make the system sustainable. For instance, in England, after a Royal Commission concluded that mandatory specification of boundaries triggered undesirable litigation of latent conflicts, the 1875 Act mandated applicants to identify the plots but gave them considerable leeway when demarcating boundaries: they could rely on “general”

(footnote continued)

tendency in some of these grand proposals to avoid facing tradeoffs and insist instead on absolute and contradictory objectives. For example, under fit-for-purpose, “new solutions are required that can deliver security of tenure for all, are affordable and can be quickly developed and incrementally improved over time” (Enemark et al., 2016: vii). However, in a world of scarce resources these three objectives are incompatible because (1) security for all implies affordability and in fact subsidized titling, which is often unsustainable; (2) security cannot be at the same time effective, low-cost and quick; and (3) quick solutions are hard to improve because of path dependencies. Understandably, minimizing average costs becomes a priority, distorting the choices of technology and output level (Jensen and Meckling, 1998).

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