



Informal land registration under unclear property rights: witnessing contracts, redevelopment, and conferring property rights



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ABSTRACT

The significance of informal land registration in property transactions and development has been discussed at length, but there are few examples of in-depth case studies of how this information accessing and collection institution relates to them and how it may create property rights. This paper examines the nature and operation of *non-governmental* and voluntary land transaction registration practices in Kowloon Walled City, an ideal example of a privately-planned and developed habitat under unclear property rights due to jurisdictional disputes between China and Britain and no state protection of property rights or intervention in building control existed. Based on documentary evidence interpreted from a Coasian and Hayekian stance, it advances the proposition that the contracts the Kowloon Walled City Kaifong Welfare Promotion Association (hereafter the Kaifong Association) sought to represent as a witness built up its political credibility as a representative body. Such a role not only reduced transaction costs of contract enforcement and, hence, facilitated redevelopment, but also became that of a *quasi-government land registrar* due to the popularity of its witnessing service, which, under specific circumstances, served as the basis for the assignment of *de jure* private property rights by the state.

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1. Introduction

How a body emerges as a political representative for a group of individuals, protects them from collective threats, and enables them to capture collective benefits is a key question for the political economist. As a contribution to this question from a property rights angle, this paper demonstrates that the competence of a squatter association in protecting the interests of its members squatting in a *de facto* un-governed area within a powerful state could be derived from its transaction cost reduction service in witnessing land transactions not recognized by that state. As a witness, the association became a quasi-government land registrar due to its popularity, and this, under specific historical circumstances, served as the basis for the assignment of *de jure* private property rights by the state.

Based on information in confidential government files that were released after 1997, denied to (or withheld by) researchers in the

past,³ and have hitherto been ignored by scholars, and samples of land transaction records of property units kept by the Kaifong Association and revealed to the authors, this interdisciplinary study, informed by Coasian transaction cost concepts and land surveying techniques, illustrates a theoretical conjecture that *information generates rights* when the economic significance of the market shifts from individual transactions to the information witnessed, if not also to the witnessing body itself. This conjecture was developed on the thesis of Cheung (1974, 2014), who argued that rent dissipation is a transaction cost that would be institutionally constrained by rational individuals seeking protection. Evidence of a minimization of rent dissipation based on an analysis of the *physical conditions and boundaries of redevelopment* within the Kowloon Walled City (KWC) was adduced to support this conjecture.

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³ Jones (2011), for instance, did not disclose what confidential materials he got in touch as a District Officer due to conflict of interest. Bristow's (1984) classic work on local land-use planning covered pre-war planning for the KWC, but was constrained by data access to post-war confidential files. When Wesley-Smith (1973) researched for his 1973 paper and approached government, he was not given confidential or secret information.

2. Theoretical background

The significance of informal land registration in property transactions and development has been discussed at length (see, for instance, [Wanjohi, 2007](#); [Benjaminsen et al., 2009](#); [Meinzen-Dick et al., 2008](#); [Greiber, 2011](#); [Manirakiza, 2014](#)) but there are few examples of in-depth case studies of how this information accessing and collection institution relates to them and how it may create property rights. There is also a huge and looming amount of literature on the significance of witnesses in informal land transactions, i.e. transactions not according to formal law or state rules. From early times, legal systems, formal or otherwise, required witnesses to properly carry out title transactions ([Arruñada, 2003](#)). Evidence for this is present in the Holy Scriptures ([Chianu, 1992](#)). Bearing witness was often made in writing or through other forms of monument like stones ([Strathern and Stewart, 1998](#)).

The significance of witnesses in customary or non-governmental land transactions has been well-documented in many African and Asian countries such as Nigeria ([Nwogugu, 1968](#); [Chianu, 1992](#)); Kenya ([Mackenzie, 1996](#); [Musembi, 2007](#)); Rwanda ([André and Platteau, 1998](#)); Ghana ([Gough and Yankson, 2000](#); [Blocher, 2006](#); [Abdulai and Hammond, 2010](#); [Abdulai and Owusu-Ansah, 2014](#)); Francophone Rural Africa ([Delville, 2002](#)); Uganda ([Nkurunziza, 2007](#)); Sub-Saharan Africa ([Toulmin, 2009](#)); Tanzania ([Parsa et al., 2011](#)); Ethiopia ([Bezu and Holden, 2014](#)); South East Asia ([Fandl, 2005](#)); the Philippines ([Innes, 1918](#)); Imperial China ([Rawski, 1972](#); [Hase, 2013](#); [Fung and Lee, 2014](#); [Lai, 2015](#)); Indonesia ([Brown, 2003](#)); Papua New Guinea ([Strathern and Stewart, 1998](#); [Koczberski et al., 2012](#)); Sri Lanka ([Perera, 2011](#)); Benin ([Yemadje et al., 2012](#)); Nepal ([Chhetri, 2014](#)).

Often witnesses are considered more significant than the content of any written document ([Delville, 2002](#)) and invariably trusted individuals, notably community leaders ([Zevenbergen et al., 2013](#)). In economic theory, the significance of witnesses in enforcing contracts in the absence of state involvement ([Caplan, 1997](#); [Rubin, 1994](#)) can be articulated in terms of what [Friedman \(2005\)](#) called “reputational enforcement”.

However, witnessing as a part of an *informal* institutional process not only to reduce transaction costs, but also to obtain property rights, is an unexplored line of inquiry this paper attempts to explore.

3. Historical context

All land in Hong Kong is government land and treated as British Crown land before 1 July 1997. The state has always enjoyed enormous power in its ability to dictate private land use and built forms by means of government leases and various ordinances that can modify these leases ([Lai, 1996, 1998](#); [Lai et al., 2010](#)). The case of the KWC, which was called “The City of Darkness” by [Popham \(1993\)](#) and seconded by [Girard et al. \(1999\)](#), was an embarrassing exception. The KWC was a post-war high-density, high-rise urban jungle with a maximum population of about 30,000 people.⁴ It was built up by Hong Kong Chinese builders and occupied by Hong Kong citizens, whom the British Colonial Hong Kong Government categorized as squatters, within the perimeters of the *proper*⁵ of an Imperial Chinese fort with an area of approximately 2.6 ha

⁴ [Jones \(2011, p. 275\)](#) gave a 1987 figure of 33,000 persons.

⁵ Though mentioned in Chinese documents of the mid-19th Century and shown in a Hong Kong Government Demarcation District map, most scholars and government authorities have ignored the outer perimeters. See [Lai \(2015\)](#). This was called “Area D” in the so-called Nunery Scheme. See Minute 6 in [Colonial Secretary \(1976\)](#). “Kowloon Walled City: Implementation of Ad Hoc Committee Reports,” Confidential File CR5/3371/60 Part VII. [HKRS 163-9-233 Part I]. This document could only be released on or after 2 February 2003 under the thirty-year rule.

built since the mid-19th Century, after which successive Chinese Governments claimed complete sovereignty.

The dispute over sovereignty arose because in the Peking Convention of June 1898 regarding the lease of the New Territories to Britain,⁶ China had the right to station officials in the fort insofar as they posed no military threat to Hong Kong. But all Imperial Chinese officials were expelled for questionable reasons by the Hong Kong Government in May 1899 soon after the lease took effect in July 1898.

The international treaty was interesting. The term, “leasing,” was used, but no rent was spelled out and Britain paid no rent. Furthermore, it was not accompanied by a plan of the fort, which was simply roughly positioned as a square on a very small-scaled map.

After the Chinese officials were expelled, the Hong Kong Government conducted a cadastral survey (called “Indian survey” as surveyors and technicians were from British India) of the fort as part of a comprehensive land survey of the New Territories to produce a set of Demarcation District maps to accompany the “Block Crown Leases”.

It took the colonial government over 40 years until the eve of the Battle of Hong Kong to completely clear the Chinese civilians inside the fort, which it regarded as squatters after short terms leases to original inhabitants expired, in the hope of turning it into a public garden. The boundaries of the lots under leases were based on actual possession as at the date of the Indian survey and can be found on a 1909 Demarcation District map or a “SD sheet”. The Japanese, who captured Hong Kong on Christmas Day 1941, demolished all of the KWC’s defensive stone walls to expand the Kai Tak Airport. Chinese residents began to build houses in the KWC once more during the Japanese occupation and 1945 RAF aerial photos of Hong Kong clearly showed that the whole City and its vicinity were inhabited.

Since then until 1963, sporadic attempts by the colonial administration to enter the fort area to clear its ever-increasing number of residents in order to transform it from a slum into a park failed under diplomatic pressure by China. The 1963 attempt fostered the emergence of a new institution, the Kaifong Association. “Kaifong” means “residents in a neighbourhood”. Like all developers who built and sold properties in the KWC, the Kaifong Association always held that its land was “Chinese territory” and, thus, free from the control of the colonial administration. The latter was alerted by the high-rise transformation of the KWC, but resolved to turn a “close eye”⁷ towards development and redevelopment within the confines of the original walls of the proper of the fort unless the buildings exceeded the height limit, which would interfere with the air traffic of Kai Tak Airport ([City District Officer \(Kowloon City\), 1975b](#); [Lai, 2015](#)).

A Kaifong Association is a club with leaders elected by residents, but it is not a statutory body or political party seeking to appoint leaders to participate in any form of local government, which did not exist in Hong Kong up to the 1970s. Before popularly-elected district Boards (District Councils after 1997) were introduced in 1981 as a formal channel of public consultation,

⁶ [Jones \(2011: pp. 272–275\)](#). Surely this decision could not be unilaterally made by the Colonial regime or Britain and the blessing China was essential ([Liu, 2005: p. 44](#)).

⁷ A serious “short study” was made in 1972, after Britain fully recognized the Chinese Communist Government as legitimate in 1971. It listed ten active developers and their backgrounds. See [City District Officer \(Kowloon City\) \(1972\)](#). “A Short Study on Multi Storey Buildings in and Around the Walled City.” Confidential report dated 7.11.1972 in [Colonial Secretary \(1976\)](#). Minute 6 in file, “Kowloon Walled City: Implementation of Ad Hoc Committee Reports.” Confidential File CR5/3371/60 Part VII. Part II. [HKRS 163-9-233 Part II] Refers to this close-eyed policy. This document could only be released on or after 2 February 2003 under the thirty-year rule.

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