



## Land Governance and the Legacy of 1215

Richard Grover



## The paradox

- UK and USA have poor quality systems of land registration – UK has no cadastre and no register of boundaries: USA fragmented system, state by state, county by county requiring title protection insurance
- *Doing Business* rankings on registering property 2014, UK ranked 68<sup>th</sup> and the USA 29<sup>th</sup>
- Jones Lang LaSalle 2014 Global Real Estate Transparency Index ranked 1<sup>st</sup> and 2<sup>nd</sup>
- Active property markets with foreign investors seeking to invest in their property.
- How can this disparity be explained?

## Magna Carta 1215

- Clause 40: “To no one will we sell, to no one deny or delay right or justice.”
- Clause 39 provided that no free man was to be arrested or imprisoned, exiled or destroyed “save by the lawful judgement of his peers or the law of the land”
- Clause 12: No taxes to be raised except by “common counsel of the kingdom”
- Clauses 28, 30 and 31: King’s officers not to seize corn, carts, horses or wood from any free man without consent and payment

### **The making (and survival) of Magna Carta**

- King John forced into sealed it after heavy taxes to fight French wars were lost and alienation of barons
- Magna Carta repudiated immediately by John who died in 1216 and succeeded by infant son Henry III
- Henry’s guardians rally country in his support and to defeat French invasion by re-issuing Magna Carta
- Reissued in definitive form 1225 and several times more by Henry III
- Reissued by Edward I 1297 and 1300: settlement of grievances in return for taxation
- Lots of copies and lots of witnesses
- Becomes part of the English myth of regaining lost Saxon liberties destroyed by Norman invaders in 1066.
- Ideas exported around the world, especially USA

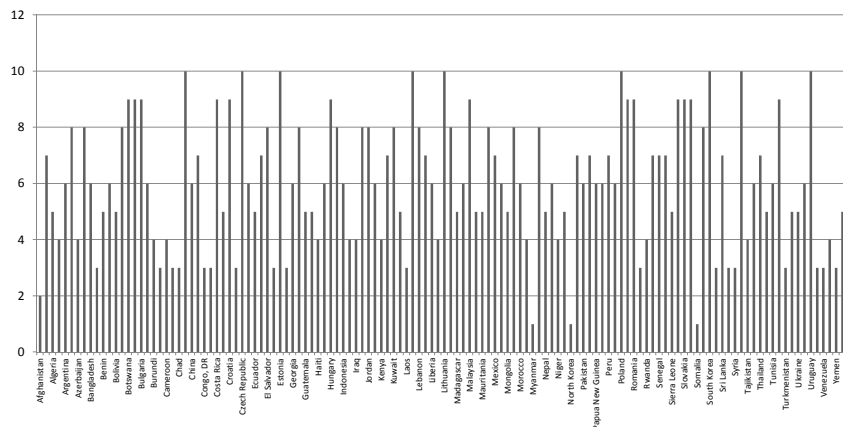
### **Bertelsmann Stiftung Transformation Index (BTI)**

- 129 countries assessed on 52 criteria
- Transition and developing countries
- Scoring by experts
- Strength of property rights:
  - “To what extent do government authorities ensure well-defined rights of private property and regulate the acquisition, benefits, use and sale of property?”
- Four elements of the rule of law:
  - separation of powers
  - independent judiciary
  - public servants and politicians are held accountable if they break the law
  - civil rights limit the exercise of state power

### **Bertelsmann Stiftung Transformation Index (BTI)**

- 129 countries assessed on 52 criteria
- Transition and developing countries
- Scoring by experts
- Strength of property rights:
  - “To what extent do government authorities ensure well-defined rights of private property and regulate the acquisition, benefits, use and sale of property?”
- Four elements of the rule of law:
  - separation of powers
  - independent judiciary
  - public servants and politicians are held accountable if they break the law
  - civil rights limit the exercise of state power
- Doing Business registration of property

**Figure 1 Strength of property rights in transition and developing countries as measured by BTI**



Source: <http://www.bti-project.org/downloads/bti-2014/>

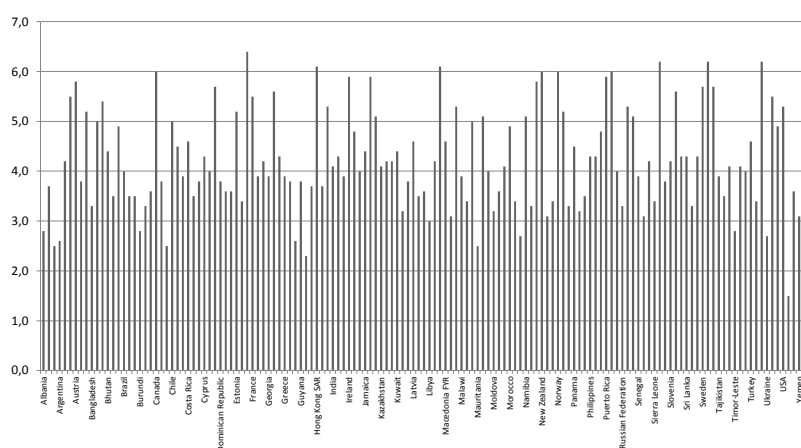
**Table 1 Correlations between strength of property rights and indicators of the rule of law and efficiency of property registration in BTI countries**

Variable	Correlation coefficient	Source of data
Rule of law	0.810	BTI
Separation of powers	0.683	BTI
Independence of judiciary	0.771	BTI
Prosecution of abuse of office	0.805	BTI
Civil rights	0.777	BTI
Procedures (numbers)	-0.102	Doing Business
Time taken (days)	-0.240	Doing Business
Cost (% of property value)	-0.313	Doing Business

## World Economic Forum

- Annual survey of 14,000 business leaders in 148 countries
- Scoring by business leaders not experts-opinion based
- Covers rich countries as well as transition and developing
- Asks about strength of property rights and judicial independence

**Figure 2 Strength of property rights reported by World Economic Forum respondents**



Source: World Economic Forum (2014)

**Table 2 Correlations between strength of property rights and indicators of judicial independence and efficiency of property registration in WEF countries**

Variable	Correlation coefficient	Source of data
Judicial Independence	0.902	WEF
Procedures (number)	-0.246	Doing Business
Time (days)	-0.313	Doing Business
Cost (% of property value)	-0.153	Doing Business

### **Jones Laing LaSalle Global Real Estate Transparency Index (GRETI)**

- 95 countries
- Composite index : investment performance measurement (25% weighting), market fundamentals (20%), governance of listed vehicles (10%), regulatory and legal matters (30%), and the transaction process (15%).
- 115 pieces of quantitative and survey data
- 1 (highly transparent) to 5 (opaque)

**Table 3 Correlations between the Global Real Estate Transparency Index and the rule of law and efficiency of property registration**

Variables	Correlation coefficient	Source of data
Rule of law	-0.815	World Bank Governance Indicators
Procedures (number)	0.273	Doing Business
Time (days)	0.343	Doing Business
Cost (% of property value)	0.105	Doing Business

## Conclusions

- Neither the strength of property rights nor property market transparency are closely associated with the efficiency of property registration but are with rule of law
- Is investment in improving property registration systems a waste of money? No as one of the factors that improves efficiency of property market
- Secure property rights require the protection of the rule of law. No-one and no institution is above the law.



John Carmichael Haynes 1831 - 1888



Osoyoos First Nation, British Columbia

Haynes as county court judge and tax collector. In 1860s and 1870s used his influence to acquire 5,000 acres of reserve land, mainly with river frontages. Osoyoos settled claim in 1997 for \$11 million.

The result

Proximity to US border means ability to exploit fusion between wine, aboriginal and eco tourism



Main activities:

- Renting out land
- Renting out business space
- Resorts and campsites
- Construction
- Diversification through investment in winter sports

Bonds secured on businesses as reserve land cannot be mortgaged.  
Revenue \$26 million pa

