

COMPARATIVE LAW: PROPERTY RIGHTS IN DEVELOPMENT
(LAW-LW.11767.001)

Frank K. Upham
Fall 2014
Monday 4-5:50 (Block S2)
Furman Hall 110

OUTLINE OF TOPICS AND INITIAL SYLLABUS

This syllabus will give you an idea of what topics we will cover and in what order. This is also posted on NYU Classes an Introduction to the Course, which will give you the administrative details about exams, office hours, etc. The readings are subject to change as I find more current or appropriate material, or I decide to bring in a guest speaker or student presentation. For example, I hope to bring in at least two guest lecturers, one on Israeli-Palestinian land issues and one on Indonesian-E. Timor land issues. If I am successful in getting these speakers, they will displace or compress one or two listed topics. As changes are made, a revised syllabus will be posted so that by the end of the course, the posted syllabus will be an accurate record of what we have covered.

I have listed below and will post on NYU Classes more material than I will assign. In most cases, I have posted the entire text of articles even though we will discuss only the assigned portion. Some listed (and posted) reading materials may not be assigned at all, so please be attentive to the periodic specific assignments that I will provide by email well in advance of class. These assignments will also be posted on NYU Classes.

I hope that this seminar will provide an opportunity for students to present their own research and ideas, so I have set aside the last few meetings for your presentations. Presentations need not be based on papers, although they should be related to the themes of the seminar. Please let me know if you want to make a presentation as soon as possible.

THEORETICAL FRAMEWORK (CLASSES ONE TO THREE)

The emphasis here will be on Demsetz and North readings with *Sanderson* acting as an example of what they claim for property rights. The North and Weingast reading is an illustration of one instance of property rights change. The Tortensson and Blaug readings should provide background on the methodologies used by economists to conceptualize and analyze property rights. Banner gives an overview of how property rights change. We will apply all of these to *Sanderson* to see if they explain the case and vice versa.

Classes One through Three, September (Wednesday/Legislative Monday) 3, 8, and 15

Demsetz, *Toward a Theory of Property Rights*, pp. 1-15

Excerpts from Douglass North, *Structure and Change in Economic History*, 1981, W.

W. Norton (pp. 3-8, 16-19, 24-25, 28-29, 34-37, 48-56, 114-116, 146-152

(Decline of Spain and France and the trading of property rights for taxes), 180-184 (destruction of consensus ideology by Second Economic Revolution).

Svetozar Pejovich, *Introduction* in Pejovich, ed., *The Economics of Property Rights*, (Edward Elgar, 2001) vol.1, pp. xiii-xxii.

Douglass North and Barry R. Weingast, *Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England*, The Journal of Economic History, vol. XLIX, December 1989, reprinted in Pejovich, ed., The Economics of Property Rights, (Edward Elgar, 2001) vol.1, pp. 236-265.

Johan Torstensson, *Property Rights and Economic Growth: An Empirical Study* in Pejovich, ed., The Economics of Property Rights, (Edward Elgar, 2001) vol.2, pp.183-189. [Originally published in 1994]

Mark Blaug, *The Disease of Formalism in Economics, or Bad Games That Economists Play*, Jena Lectures, 16, reprinted in Pejovich, ed., The Economics of Property Rights, (Edward Elgar, 2001) vol.1, pp.22-24 and 27-31. [Originally published in 1998]

Stuart Banner, *The Evolution of Property Rights*, 31 The Journal of Legal Studies 359 (2002), pp. 359-373.

Sanderson v. Pennsylvania Coal

THE ENGLISH ENCLOSURE MOVEMENT

Classes Four and Five, September 22 and 29

Moore, Social Origins of Dictatorship and Democracy pp. 3, 6-14, and 20-24.

Overton, Agricultural Revolution in England: The Transformation of the Agrarian Economy 1500-1850, pp. 147-192.

Lefevre, Origin and History of Commons, English Commons and Forests, pp. 1-26.

Polanyi, The Great Transformation, pp. 33-43 and 151-62.

Thompson, Whigs and Hunters, 245-70.

19TH CENTURY AMERICAN INDUSTRIALIZATION

Class Six, October 6

Morton J. Horwitz, The Transformation of American Law, pp. 31-53.

Palmer v. Mulligan

Parker & Edgarton v. Foote

John C. Coffee, "The Rise of Dispersed Ownership: The Roles and Law and the State in the Separation of Ownership and Control," 111 YLJ 1 (2001), pp. 1-7 and 24-39.

TRANSITION TO MARKETS/CHINA

Classes Seven to Nine, October 13, 20, and 27

1. Urbanization and Property Law

Eva Pils, "Land disputes, rights assertion and social unrest: a case from Sichuan," 19 *Columbia Journal of Asian Law* (2006) 235. Please read pp. 235-259.

Zigong land dispute chronology.

Materials on Small property rights (*Planting Houses* and *Adverse Possession*)

2. The property law reform debate

News reports on Chinese property law reform debate: Joseph Kahn, "Sharp Debate Erupts in China over Inequality and Ideology," *The New York Times* 12 March 2006

3. Privatization of SOEs

Gang de Chin

Wang Hui, *Restructuring and the Historical Fate of the Working Class*

4. Recent Scholarship on Chinese Property Rights

Qiao Shitong, *Small Property, Big Market: A Focal Point Explanation*

Chen Weitseng, *Arbitrage for Property Rights: How Do Foreign Investors Create Substitutes for Land Property Institutions in China?*

FORMALITY/INFORMALITY AND LAND LAW: BRAZILIAN LAND RIGHTS AND BEYOND

Classes Ten and Eleven, November 3 and 10

Lanjouw, Jean O. A Difficult Question In Deed: A Cost-Benefit Framework for Titling Programs. 45 *Wm and Mary L. Rev.* 889, pp. 1-7.

Mitchell, Kristen. Market-Assisted Land Reform in Brazil: A New Approach to Address an Old Problem. 22 *N.Y.L. Sch. J. Int'l & Comp. L.* 557, pp. 1-11.

Rosenn, Keith S. The Jeito: Brazil's Institutional Bypass of the Formal Legal System and Its Developmental Implications. *The American Journal of Comparative Law*, Volume 19 (Summer, 1971), pp. 514-549.

Holston, James. The Misrule of Law: Land and Usurpation in Brazil, *Comparative Studies in Society and History*, vol. 33, No. 4 (1991), pp. 695-725, pp. 695-702.

Millikan, Brent H. Tropical Deforestation, Land Degradation, and Society: Lessons from Rondonia, Brazil. *Latin American Perspectives*, Volume 19, Issue 1, The Ecological Crisis of Latin America (Winter, 1992), pp. 45-56 and 62-66.

Ankersen, Thomas T., and Thomas Ruppert. Tierra y Libertad: The Social Function Doctrine and Land Reform in Latin America. 19 *Tul. Envtl. L.J.* 69, pp. 7-16.

The Brazilian Constitution, Articles 184-186, Chapter III (Agricultural and Land Policy and Agrarian Reform).

Meszaros, George. Taking the Land into Their Hands: The Landless Workers' Movement and the Brazilian State. *Journal of Law and Society*, Volume 27 (Dec., 2000), pp. 517-520, 528-541.

STUDENT PRESENTATIONS

Classes Twelve, Thirteen, and Fourteen, November 24, December 1, and TBA, 4-5:50 FH 110