

Wealth Transfer Laws in 153 Jurisdictions: An Empirical Comparative Law Approach

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ABSTRACT: Wealth transfer doctrines have never before been compared on a large scale. Using a unique hand-coded data set on property doctrines that I compiled over five years, this Article describes the following doctrines in 153 jurisdictions: whether the jurisdiction recognizes any future interest; whether real estate registration is absolute (public faith principle); whether in sales of real estate registration is necessary, or create opposability to third parties; whether a real agreement is conceptually separate from the sale contract and whether an invalid sale contract will always cause the invalidity of the real agreement (non-causa principle); and whether delivery or certain intentions are required to transfer ownership of personal properties or the sale contract itself is sufficient. Further using clustering analysis, this Article categorizes the wealth transfer doctrines of the 153 jurisdictions into eight groups, finding that China, Russia, and Scotland are the outliers, and English, French, and German influences on many jurisdictions are obvious.

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I. INTRODUCTION

Traditional comparative law research has been conducted on a small scale. Scholars choose their country of interest and compare it with one or a few other countries. The endeavor is usually normative—drawing on other countries' experience to justify adopting or giving up certain legal doctrines or interpretations. Comparative law is sometimes positive but seldom empirical.¹ A notable exception is the law and finance literature started by Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert Visney (collectively called LLSV), which uses data from dozens of countries to qualitatively identify patterns of the effects of laws on economic performances.² Yet LLSV's finding that the legal origins (common versus civil law) matter has been heavily criticized, partly due to its casual classification of

1. For an overview of empirical comparative law works and reflection on the methodology, see generally Holger Spamann, *Empirical Comparative Law*, 11 ANN. REV. L. & SOC. SCI. 131 (2015); Holger Spamann, *Large-Sample, Quantitative Research Designs for Comparative Law?*, 57 AM. J. COMP. L. 797 (2009).

Most empirical comparative law scholarship is about constitutional law. See, e.g., Jerg Gutmann et al., *Determinants of Constitutionally Safeguarded Judicial Review: Insights Based on a New Indicator*, in EMPIRICAL LEGAL ANALYSIS: ASSESSING THE PERFORMANCE OF LEGAL INSTITUTIONS 216, 216–54 (Yun-chien Chang ed., 2014); Tom Ginsburg et al., *When to Overthrow Your Government: The Right to Resist in the World's Constitutions*, 60 UCLA L. REV. 1184, 1217–28 (2013); Tom Ginsburg & Mila Versteeg, *Why Do Countries Adopt Constitutional Review?*, 30 J.L. ECON. & ORG. 587, 597–613 (2013); David S. Law & Mila Versteeg, *The Declining Influence of the United States Constitution*, 87 N.Y.U. L. REV. 762, 768–70 (2012); David S. Law & Mila Versteeg, *Sham Constitutions*, 101 CAL. L. REV. 863, 886–92 (2013).

2. See generally Rafael La Porta et al., *The Economic Consequences of Legal Origins*, 46 J. ECON. LITERATURE 285 (2008) [hereinafter LLSV, *Legal Origins*] (reviewing follow-up studies and responding to critiques); Rafael La Porta et al., *Law and Finance*, 106 J. POL. ECON. 1113 (1998) [hereinafter LLSV, *Law and Finance*] (using empirical data to examine how the legal origins of 49 countries impact their economic growth).

countries into common law, French civil law, German civil law, and Scandinavian civil law.³

Recognizing that detail is crucial for an effective comparison, I embarked on a five-year project to code the property law of as many jurisdictions in the world as possible—ending up with information in 153 jurisdictions. This is the first ever compilation of such a large data set on comparative property law. Since the data, including 205 variables, were hand-coded (often first by native lawyers of the region or country and triple-checked by me) and based on the statutes (often civil codes) and cases, the empirical analysis of these data are more informative to legal policymakers and legal scholars than that of cross-country economic indexes⁴ or a single dummy variable on civil versus common law.

Drawing on this unique data set, this Article will focus on several wealth transfer doctrines in the analyzed jurisdictions; including whether future interests are recognized property forms; how ownerships of movables and immovables can legally change hands; how popular is the German conceptual framework under which two types of contracts are involved in all sales and whether the validity of the first contract affects the second contract; whether real estate registration is absolute; and whether delivery is required to transfer titles to chattels.

This Article identifies the patterns for adopting certain wealth transfer doctrines in the world. Using clustering analysis, this Article categorizes coded jurisdictions into eight groups. China, Russia, and Scotland are idiosyncratic, and as a group they are quite different from all other countries. English law, French law, and German law are the three main paradigms in terms of wealth transfer doctrines. Notably, however, the statistical model does not group New

3. LLSV distinguishes the world legal system (at least the dozens of countries they studied) into only four groups (common law, French civil law, German civil law, and Scandinavian civil law). See LLSV, *Law and Finance*, *supra* note 2, at 1115. While LLSV spelled out the sources for their coding, which is a multi-volume reference handbook containing a short overview of major laws in each jurisdiction and a list of first- and second-hand materials, *id.* at 1119, they were not clear about the coding scheme—that is, what is the basis for classifying world legal systems into exactly four groups. They identified 42 common-law countries, which are more than my own prior. See LLSV, *Legal Origins*, *supra* note 2, at 288. But the LLSV data downloaded from Prof. Andrei Shleifer's webpage offers inconsistent classification of countries (In the Table 1 Worksheet of the data, 61 of the 189 countries were identified as common-law countries; in the Table 3 Worksheet of the data, 51 of the 167 countries were identified as common-law countries). Andrei Shleifer, *Publications*, HARV. U., <https://scholar.harvard.edu/shleifer/publications> (last visited Apr. 9, 2018) (using the dataset generated from the studies discussed in LLSV's article *The Economic Consequences of Legal Origins*). LLSV claimed, without offering any evidence or citing any materials, that former communist countries reverted back to French or German law after the fall of the Berlin Wall. LLSV, *Legal Origins*, *supra* note 2, at 288.

4. For pioneering works using this method, see generally Mathias M. Siems, *Varieties of Legal Systems: Towards a New Global Taxonomy*, 12 J. INSTITUTIONAL ECON. 579 (2016); MATHIAS SIEMS, *COMPARATIVE LAW* 146–87 (2014) (exploring empirical methodologies used to compare legal systems).

York and California within the English paradigm, because they are indeed different. More than 30 jurisdictions also form a separate group.

The remaining portions of this Article are structured as follows. Part II provides an overview of the unique data set. Part III then uses descriptive statistics and world-mapping to demonstrate the wealth transfer doctrines adopted by 153 jurisdictions in the world. Part IV sums up the similarities and differences in wealth transfer laws by using clustering analysis to categorize the studied jurisdictions into eight groups. Part V concludes.

II. UNIQUE DATA ON PROPERTY LAW IN 153 JURISDICTIONS

The United Nations include 193 member-states,⁵ of which 155 (80%) member-states were coded. Thirteen South Pacific countries⁶ were coded as one observation. All other countries, where information is available, were each coded as one observation. As shown in Figure 1, most countries in Asia, Europe, and South America are included in our data.

Most observations in the data are countries, but nine other jurisdictions were also coded, each as one observation, for the following reasons. Taiwan is not a member state of the United Nations yet.⁷ Its civil code was coded and included in our data base. Technically speaking, there is no U.S. property law, only property laws in states. California, a common-law state with a civil code,⁸ and New York⁹ were coded because their legal systems are important, if not also representative of other common-law states.¹⁰ Louisiana, as the most salient mixed jurisdiction among the U.S. states, cannot be missed. Quebec and Scotland were also famous mixed jurisdictions.¹¹ A few other jurisdictions with property laws distinct from fellow jurisdictions in the same country are

5. See *Member States*, UNITED NATIONS, <http://www.un.org/en/member-states> (last visited Apr. 8, 2018). We did not have sufficient information to code the property laws of the two United Nations non-state members, the Vatican and Palestine.

6. They include Cook Islands, the Federated States of Micronesia, Fiji Islands, Kiribati, Marshall Islands, Niue, Nauru, Papua New Guinea, Tonga, Samoa, Solomon Islands, Tuvalu and Vanuatu.

7. See *Member States*, *supra* note 5 (listing the current United Nations member-states).

8. More specifically, I coded the California Civil Code enacted in 1872, see generally CAL. CIV. CODE (West 2007), the California Code of Civil Procedure, and the California Commercial Code.

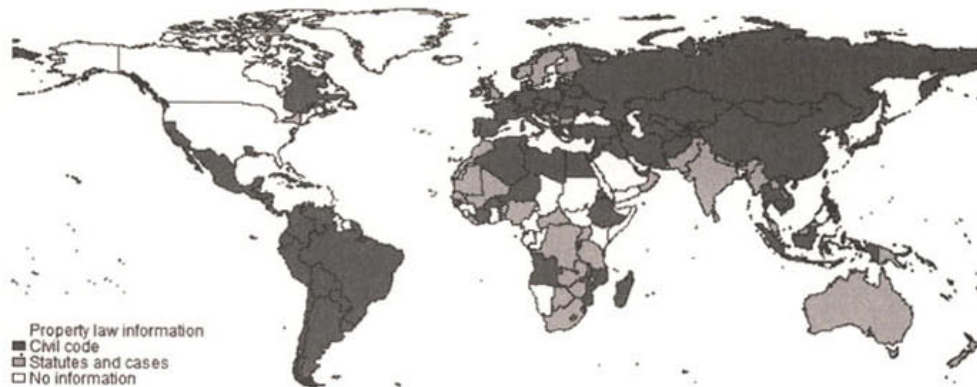
9. I coded New York property law based on statutes found on WestLaw and Lexis, rather than on the famously failed draft of New York State Civil Code, penned by David Dudley Field. See John W. Head, *Codes, Cultures, Chaos, and Champions: Common Features of Legal Codification Experiences in China, Europe, and North America*, 13 DUKE J. COMP. & INT'L L. 1, 81-85 (2003) (tracking Field's influence over 19th century civil codification). I, of course, referenced court cases. More specifically, I coded New York Personal Property Law, New York Real Property Actions and Proceedings Law, New York Real Property Law, New York Civil Practice Law and Rules, New York Lien Law, and New York Uniform Commercial Code.

10. I have informally asked several property scholars (Henry Smith, Lee Fennell, Lior Strahilevitz, and R.H. Hemholz) which state's property law is influential or typical and came away with the impression that New York may be typical.

11. Colin B. Picker, *International Law's Mixed Heritage: A Common/Civil Law Jurisdiction*, 41 VAND. J. TRANSNAT'L L. 1083, 1086 (2008). England and Wales property law was also coded.

also included. Puerto Rico, as an unincorporated territory of the United States, has its own civil code.¹² Hong Kong and Macau are now Special Administrative Regions of China, but local private laws still apply.¹³ Macau has a civil code while Hong Kong property law is based on court cases.¹⁴

Figure 1. Coded Jurisdictions¹⁵



Whenever a jurisdiction had a civil code, I almost exclusively coded its property law based on its civil code. At times, highly important complementary statutes were included if found. I relied on unofficial English translations;¹⁶ unofficial Chinese translations;¹⁷ treaties, casebooks, monographs, journal articles, and policy whitepapers in English, Chinese and German for countries without official English translations of their civil codes. The original statutory text in English, French, German, Spanish, Portuguese, and Turkish was used to understand the property laws in many countries.

12. P.R. LEYES AN. tit. 31 (2018).

13. Zhōnghuá Rénmín Gònghéguó Xiānggǎng Tèbié Xíngzhèngqū Jīběnfǎ (中華人民共和國香港特別行政區基本法) [The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China] (promulgated by Order No. 26 of the President of the People's Republic of China, Apr. 4, 1990, effective July 1, 1997), art. 8 (China); Zhōnghuá Rénmín Gònghéguó Àomng Tèbié Xíngzhèngqū Jīběnfǎ (中華人民共和國澳門特別行政區基本法) [The Basic Law of the Macao Special Administrative Region of the People's Republic of China] (promulgated by Order No. 3 of the President of the People's Republic of China, Mar. 31, 1993, effective Dec. 20, 1999), art. 8 (China).

14. See LO PUI YIN, THE JUDICIAL CONSTRUCTION OF HONG KONG'S BASIC LAW: COURTS, POLITICS AND SOCIETY AFTER 1997, at 4–5 (2014). See generally CÓDIGO CIVIL [CIVIL CODE], <http://bo.io.gov.mo/bo/i/99/31/codcivpt/codcivooo1.asp#1> (Mac.).

15. Map information from Natural Earth. See NATURAL EARTH, <http://www.naturalearthdata.com> (last visited Apr. 10, 2018).

16. For instance, Julio Romañach Jr., J.D., published his translations of several Central and South American countries' civil codes. See *infra* notes 30, 35, 145.

17. Prof. Xu Guodong and his protégés translated a dozen civil codes into Chinese.

Civil codes for 101 jurisdictions (95 countries) were acquired over five years, creating a comprehensive list. Foreign Law Guide¹⁸ was used to find civil codes. However, civil codes could not be found for some countries in the Foreign Law Guide, while codes for countries not listed in the Guide were located. When a country or jurisdiction does not have a civil code, understanding of its property law is based on any available source, starting with stand-alone statutes (such as Sale of Goods Act in commonwealth countries) and cases. I also consulted treaties, case books, monographs, journal articles, country reports, etc.¹⁹ Numerous property scholars around the world have answered my questions regarding property law in their countries.

III. DESCRIPTIONS OF AND REFLECTION ON WEALTH TRANSFER DOCTRINES AROUND THE WORLD

A. FUTURE INTERESTS

As shown in Figure 2, only 14 jurisdictions (9% of those coded) recognize any general form of future interests.²⁰ This may be shocking news to the American legal community. On top of that, very few countries outside the common-law world allow property-form trust,²¹ as civil-law countries at most recognize contract-form trust.²² Without property-form trusts and future interests, personal and family wealth has to be transferred in different ways.

To be sure, albeit without future interests, civil-law jurisdictions have property forms that are equivalent to life estates. The general property form is called personal easement (in American parlance, "easement in gross"), where real properties are encumbered for the benefit and use of a certain person, rather than a certain landowner.²³ This is recognized in 25

18. *Foreign Law Guide*, BRILL.ONLINE REFERENCE WORKS, <http://referenceworks.brillonline.com/browse/foreign-law-guide> (last visited Apr. 9, 2018).

19. Notable sources include: Wolters Kluwer published *Property and Trust Law* of more than a dozen countries in its *International Encyclopaedia of Laws* series, *National Reports on Movables* written by European scholars, *National Reports on Real Property Law and Procedure in the European Union* written by European scholars, and the first three volumes of *Sachenrecht im Europa: Systematische Einführungen und Gesetzestexte*.

20. For an explanation of future interests in American law, see generally JAMES E. KRIER, PROPERTY 103–67 (Melissa B. Vasich et al. eds., 17th ed. 2006).

21. See Yun-chien Chang & Henry E. Smith, *An Economic Analysis of Civil Versus Common Law Property*, 88 NOTRE DAME L. REV. 1, 41–42 (2012).

22. See *id.* at 13–14, 13 n.29. For surveys of trust laws in Asian civil-law jurisdictions, see generally TRUST LAW IN ASIAN CIVIL LAW JURISDICTIONS: A COMPARATIVE ANALYSIS (Lusina Ho & Rebecca Lee eds., 2013).

23. For the definition of easement in gross, see JOSEPH WILLIAM SINGER, PROPERTY 180, 221–23 (Rachel E. Barkow et al. eds., 5th ed. 2017).

jurisdictions including European countries such as Germany,²⁴ Switzerland,²⁵ and Spain;²⁶ Central Asian countries such as Azerbaijan²⁷, Georgia,²⁸ and Turkmenistan;²⁹ and Latin American countries such as Argentina³⁰ and Equatorial Guinea.³¹ A slightly more specific form of personal easement is

24. BÜRGERLICHES GESETZBUCH [BGB] [Civil Code], § 1090(1), *translation at* https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p4206 (Ger.) ("A plot of land may be encumbered in such a way that the person for whose benefit the encumbrance is made is entitled to use the plot of land in individual respects, or that he is authorised in another way that may form the subject of an easement (restricted personal easement).").

25. SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], CODE CIVIL [CC], CODICE CIVILE [CC] [CIVIL CODE] Dec. 10, 1907, SR 210, art. 781 (Switz.).

- (1) An owner may establish other servitudes on his or her property in favour of any person or group if such servitudes meet a particular need, such as rights of access for shooting practice or rights of way.
- (2) Unless otherwise agreed, such servitudes are non-transferable and their nature and scope is based on the beneficiaries' normal needs.
- (3) In other respects they are subject to the provisions governing easements.

26. CÓDIGO CIVIL [C.C.] [CIVIL CODE], art. 531, *translation at* <http://www.wipo.int/edocs/lexdocs/laws/en/es/es122en.pdf> (Spain) ("Easements may also be established for the benefit of one or several persons or a community to whom the encumbered property does not belong.").

27. CIVIL CODE OF THE AZERBAIJAN REPUBLIC [CIVIL CODE], art. 255.8, *translation at* <http://www.izvoznookno.si/Dokumenti/pravo/azrcode.pdf> (Azer.) ("Immovable property may be encumbered with servitude in favor of certain individual. Such encumbrance shall be referred to as a personal servitude, and shall mean the right of that person, together with the owner, to use building or part of it as an apartment for himself or his family. Personal servitude shall not be assigned to others.").

28. CIVIL CODE OF GEORGIA [CIVIL CODE], art. 253, *translation at* http://www.wipo.int/wipolex/en/text.jsp?file_id=209012 (Geor.) ("1. An immovable thing may be encumbered with a servitude for the benefit of a specific person according to the provisions of Article 247. Such an encumbrance may be expressed in such a manner that the entitled person, who may not be the owner, may use a building or a part of the building for the habitation of himself or together with his family. 2. A personal servitude limited in the manner defined in paragraph (1) of this Article may not be transferred to another person." (footnote omitted)).

29. TURKMENISTAN CIVIL CODE OF SAPARMURAT TURKMENBASHI [CIVIL CODE], art. 266 (Turkm.) ("1. An immovable thing may be encumbered to the benefit of a determined person by a servitude on the conditions provided for by Article 260 of the present Code. Such encumbrance may consist of the right being granted to a competent person to use a building or part of a building for residence with the vacating of the premise by the owner (limited personal servitude). 2. A limited personal servitude shall not be subject to transfer. The effectuation of a servitude may be transferred to another person only if this was authorised.").

30. CÓDIGO CIVIL [CÓD. CIV.] [CIVIL CODE] art. 2165 (Lawrence Pub. Co., Baton Rouge, 2015) (Arg.), *translated in* JULIO ROMANACH, JR., CIVIL AND COMMERCIAL CODE OF ARGENTINA: TRANSLATED INTO ENGLISH WITH AN INTRODUCTION AND INDEX 378 (2015) ("A personal servitude is one established in favor of a particular person without attachment to the dominant estate. If it is established in favor of a human person, it is presumed to be for life, unless the title provides for a shorter duration.").

31. CÓDIGO CIVIL [CIVIL CODE], art. 531, http://www.wipo.int/wipolex/en/text.jsp?file_id=242401 (Eq. Guinea) ("También pueden establecerse servidumbres en provecho de una o más personas, o de una comunidad, a quienes no pertenezca la finca gravada.").

called *usufruct* or right of use. *Usufruct* means the right of use, but countries like France differentiate between the two,³² though functionally they are complements, at least for the purpose of wealth transfers. In 123 jurisdictions (80% of those coded), either *usufruct* or the right of use, or both, can be established,³³ usually for life. But some jurisdictions, most famously China, set a maximum fixed term of 70, 50, or 30 years.³⁴ Something like life estate *pur autre vie* is rare, if ever allowed, in these jurisdictions. That is, *usufruct* or a use right can be established for a fixed term or for the life of the right holder, but not for the life of others.³⁵ The most specific form of personal easement is the right of residence.³⁶ A holder of such a right can only use the property for residential purposes.³⁷

Where civil-law countries and common-law countries part ways is not in the present interest, but in the future interest. Granted, the two legal families conceptualized the present interests differently, but it is only a matter of style, not a matter of structure or function.³⁸ Recall, most countries do not allow future interests.³⁹ When a *usufructuary* dies, the right to use automatically reverts back to the current owner of the encumbered

32. "Usufruct is the right to enjoy things owned by another in the same manner as the owner himself, but on condition that their substance be preserved." CODE CIVIL [C. CIV.] [CIVIL CODE] art. 578 (Fr.). "Rights of use and habitation are established and lost in the same manner as usufruct." *Id.* art. 625.

33. Usufruct, for example in Germany, is defined as "[a] thing can be encumbered in such a way that the person for whose benefit the encumbrance is made is entitled to take the emoluments of the thing (usufruct)." BGB, § 1030(1), translation at https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p4040 (Ger.).

34. Zhōnghuá Rénmín Gònghéguó Wùquán Fǎ (中華人民共和國物權法) [Property Law of the People's Republic of China] (promulgated by Order No. 62 of the President of the People's Republic of China, Mar. 16, 2007, effective Oct. 1, 2007), art. 126 (China).

35. Many jurisdictions set fixed terms for legal persons and prescribe that usufruct ends at the death of its natural-person holder. See, e.g., Cód. Civ. art. 2828 (Arg.) (legal persons 20 years); Código Civil [CC], art. 1040, Diario Oficial de la Federación [DOF] 14-05-1928, últimas reformas DOF 24-12-2013 (Mex.) (legal persons 20 years); CIVIL CODE OF PERÚ [CIVIL CODE], art. 1001 (Peru), translated in JULIO ROMANACH, JR., CIVIL CODE OF PERÚ: TRANSLATED INTO ENGLISH WITH AN INTRODUCTION AND INDEX 148 (2014) (legal persons 30 years); CÓDIGO CIVIL [CIVIL CODE], art. 1443, http://www.wipo.int/wipolex/en/text.jsp?file_id=200239 (Port.) (legal persons 30 years); ZBG, CC, CC Dec. 10, 1907, SR 210, art. 749(2) (Switz.) (legal persons 100 years).

36. See, e.g., BGB, § 1093(1), translation at https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p4206 (Ger.) (defining the right of residence as "[t]he right to use a building or part of a building as a residence, excluding the owner, may also be granted as a restricted personal easement").

37. See *id.*

38. For the distinction of styles and structures, see Yun-chien Chang & Henry E. Smith, *Structure and Style in Comparative Property Law*, in COMPARATIVE LAW AND ECONOMICS 131, 134-40 (Theodore Eisenberg & Giovanni B. Ramello eds., 2016).

39. See *supra* text accompanying note 20; *infra* Figure 2 (demonstrating that a minority of countries recognize future interest).

property.⁴⁰ After the reversion, the current owner can establish a new use right or sell the unencumbered ownership. In short, property right holders in most countries can only deal with the present interests.

Civil-law countries have either ignored or prohibited future interests. In France, for instance, future interests were explicitly prohibited,⁴¹ with only few exceptions in succession law, before 2006.⁴² Those exceptions are carved out to preserve certain properties in the family, not to facilitate real estate transactions. After June 2006, the revised French Civil Code Articles 896, 898, and 899 give more liberty to property owners.⁴³ The future interests thus allowed still pale in front of the Anglo-American ones.⁴⁴ Countries like Taiwan, by contrast, while not prohibiting future interests explicitly, fail to recognize any such limited property right.⁴⁵ Pursuant to the *numerus clausus* principle,⁴⁶ which is explicitly stipulated in 53 coded jurisdictions (35%), transacting parties cannot create future interests because they are not property forms recognized by statutes.⁴⁷ While civil-law courts have occasionally set aside the *numerus clausus* principle when information costs are

40. In my data set, 86 of the 121 (71%) jurisdictions recognizing *usufruct* rights stipulate that the *usufruct* ends when the *usufructuary* dies.

41. C. CIV. art. 896 (Fr.) (2006) ("Substitutions are prohibited. Any disposition by which a donee, an heir appointed or a legatee, is assigned the duty to keep and return to a third party, is void, even with regard to the donee, the heir appointed or the legatee.").

42. *Id.* art. 1048 ("Property of which the father and mother may dispose, may be donated by them, in whole or in part, to one or several of their children by inter vivos or testamentary act, with the obligation of returning that property to the children born and to be born, in the first degree only, of said donees."); *id.* art. 1049 ("Is valid, in case of death without children, a disposition which a deceased made by inter vivos or testamentary act for the benefit of one or several of his brothers or sisters, of all or part of the property which is not reserved by law in his succession, with the obligation of returning that property to the children born and to be born, in the first degree only, of said donee brothers or sisters.").

43. *Id.* art. 896 ("The disposition by which a person is bound to preserve and render to a third person is effective only in cases authorized by legislation."); *id.* art. 898 ("A disposition by which a third party is called to receive a donation, a succession, or a legacy, is not be considered a substitution, and is valid, in the case where the donee, instituted heir, or legatee would not receive it."); *id.* art. 899 ("It is the same for an inter vivos or testamentary disposition by which a usufruct is donated to one person and naked ownership to another.").

44. See CHRISTOPHER SERKIN, *THE LAW OF PROPERTY* 73–87 (Robert C. Clark et al. eds., 2d ed. 2016).

45. See generally CIVIL CODE [CIVIL CODE], translation at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=B0000001> (Taiwan) (making no mention of future interest).

46. For economic analyses of the *numerus clausus* principle, see generally Henry E. Smith, *Standardization in Property Law*, in RESEARCH HANDBOOK ON THE ECONOMICS OF PROPERTY LAW 148, 157–65 (Kenneth Ayotte & Henry E. Smith eds., 2011), and Thomas W. Merrill & Henry E. Smith, *Optimal Standardization in the Law of Property: The Numerus Clausus Principle*, 110 YALE L.J. 1 (2000).

47. See, e.g., CÓDIGO CIVIL [CIVIL CODE], art. 567, http://www.wipo.int/wipolex/en/text.jsp?file_id=339740 (El Sal.); ALLGEMEINES BÜRGERLICHES GESETZBUCH [ABGB] [CIVIL CODE], § 5, http://www.wipo.int/wipolex/en/text.jsp?file_id=234848 (Liech.); CIVIL CODE OF THE REPUBLIC OF LITHUANIA [CIVIL CODE], art. 4.20, translation at http://www.wipo.int/wipolex/en/text.jsp?file_id=202088#LinkTarget_15982 (Lith.).

B. TITLE TRANSFER RULE FOR REAL PROPERTIES

The title transfer rule for real properties can be classified into several groups.⁵¹ First, a sale contract itself transfers titles, and the role of registration is not specified. North Korea is a prime example.⁵²

Second, a sale contract itself transfers titles, but the transfer is opposable to third parties only if registered. That is, registration has only “declaratory” effect.⁵³ France,⁵⁴ Quebec,⁵⁵ Louisiana,⁵⁶ Japan,⁵⁷ United Arab Emirates,⁵⁸ Paraguay,⁵⁹ Bolivia,⁶⁰ Romania,⁶¹ Italy,⁶² and others follow this rule.⁶³

Third, registration or recording is the prerequisite to valid transfers of real property ownership. That is, registration has “constitutive” effect.⁶⁴ This

51. See *infra* Figure 3.

52. NORTH KOREAN CIVIL CODE [CIVIL CODE], art. 38 (N. Kor.) (stipulating that ownership, if based on contracts, starts with receiving the thing in question). My understanding of the North Korean Civil Code is based on a Chinese translation of the code published by the Peking University Press. See OK JIN KIM, SOUTH KOREAN CIVIL CODE AND NORTH KOREAN CIVIL LAW 201 (2009).

53. See CHRISTOPH U. SCHMID & CHRISTIAN HERTEL, REAL PROPERTY LAW AND PROCEDURE IN THE EUROPEAN UNION: GENERAL REPORT 33 (2005), <https://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/RealPropertyProject/GeneralReport.pdf>.

54. Décret 55-22 du 4 janvier 1955 portant réforme de la publicité foncière [Decree No. 55-22 of January 4, 1955 on the Reform of Land Registration], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Jan. 7, 1955, art. 30, para. 1 (France). See also SCHMID & HERTEL, *supra* note 53, at 33 (discussing declaratory registration in the context of constitutive registration systems). The opposability doctrine was introduced in France in 1955. *Id.* Many former French colonies, such as Burkina Faso (fully independent in 1960), Comoros (fully independent in 1975), Ivory Coast (fully independent in 1960), Madagascar (fully independent in 1960), Niger (fully independent in 1960), and Togo (fully independent in 1960), incorporated this doctrine at the time. I thank Pierre Crocq, an expert on this doctrine, for providing me with this information. Some countries, such as Madagascar, have adopted the Torrens system and may have moved away from the opposability doctrine. Alex & Annie, *Land Tenure in Madagascar*, ENVIROREACH (Apr. 11, 2015), <http://www.enviroreach.com/adventures/land-tenure-in-madagascar>.

55. Civil Code of Québec, C.C.Q. 1991, c 64, art 1717-19 (Can.).

56. LA. CIV. CODE ANN. art. 517-18 (2010).

57. MINPŌ [CIV. C.] 1896, art. 176 (Japan).

58. FEDERAL LAW NO. (5) OF 1985 ON THE CIVIL TRANSACTIONS LAW OF THE UNITED ARAB EMIRATES [CIVIL CODE], arts. 1275, 1277, *translation at* <https://legaladvice.com/legislation/126/uae-federal-law-5-of-1985-on-civil-transactions-law-of-united-arab-emirates> (U.A.E.).

59. CÓDIGO CIVIL DEL PARAGUAY [CIVIL CODE], art. 1968, <http://landwise.resourceequity.org/record/462> (Para.).

60. CODIGO CIVIL [CIVIL CODE], art. 1538, http://www.wipo.int/wipolex/en/text.jsp?file_id=252895 (Bol.).

61. CODUL CIVIL [CIVIL CODE], art. 1674, <https://legeaz.net/noul-cod-civil/pagina-34> (Rom.).

62. Codice civile [C.c.] [Civil Code], art. 1376 (It.).

63. In some countries, such as Italy, Poland, and Spain, registration of mortgage, but not ownership, is constitutive rather than declaratory. See SCHMID & HERTEL, *supra* note 53, at 34.

64. See *id.* at 33-34.

is the modal rule, adopted by, to name a few, Egypt,⁶⁵ Kyrgyzstan,⁶⁶ Belarus,⁶⁷ Australia,⁶⁸ New Zealand,⁶⁹ Chile,⁷⁰ Malaysia,⁷¹ South Korea,⁷² and Thailand.⁷³

Fourth, registration and valid sale contracts are both necessary, in addition to a real agreement. This third requirement distinguishes this group from others. A real agreement, a German concept known as *dingliche Einigung*, describes the meeting of minds during registration for real properties and delivery for personal properties as a separate, thing-related contract.⁷⁴ That is, it takes two contracts and registration to transfer titles to real estates. Many members of this group are countries affected by the German jurisprudence. They include, for example, Switzerland,⁷⁵ Austria,⁷⁶ Liechtenstein,⁷⁷ the

65. Law No. 131 of 1948 (Civil Code), *WIPO*, 15 Oct. 1949, arts. 932, 934 (Egypt).

66. CIVIL CODE OF THE KYRGYZ REPUBLIC [CIVIL CODE], art. 255(2), translation at <http://www.wipo.int/edocs/lexdocs/laws/en/kg/kgooogen.pdf> (Kyrg.).

67. CIVIL CODE OF THE REPUBLIC OF BELARUS [CIVIL CODE], art. 224(2), translation at <http://www.wipo.int/edocs/lexdocs/laws/en/by/byo2oen.pdf> (Belr.).

68. See SAMANTHA J. HEPBURN, PROPERTY AND TRUST LAW IN AUSTRALIA 169 (Alain Verbeke & Vincent Sagaert eds., 2002).

69. See GORDON WILLIAMS, PROPERTY AND TRUST LAW IN NEW ZEALAND 44-49 (Alain Verbeke & Vincent Sagaert eds., 2011).

70. CÓDIGO CIVIL [CÓD. CIV.] [CIVIL CODE], arts. 684, 686 (Chile).

71. See AINUL JARIA BINTI MAIDIN & ZURAIDAH HJ ALI, PROPERTY AND TRUST LAW IN MALAYSIA 157 (Alain Verbeke & Vincent Sagaert eds., 2014).

72. Minbeob [Civil Act], Act No. 471, Feb. 22, 1958, amended by Act No. 11728, Apr. 5, 2013, arts. 186-88 (S. Kor.), translated in Korea Legislation Research Institute online database, http://elaw.klri.re.kr/eng_service/lawView.do?hseq=29453&lang=ENG.

73. COMMERCIAL AND CIVIL CODE OF THAILAND [CIVIL CODE], § 1299, translation at <http://beta.thailawonline.com/images/thaicivilcode/book%204%20title%201-8%20thai%20civil%20and%20commercial%20code%20.pdf> (Thai.).

74. See, e.g., YUN-CHIEN CHANG ET AL., PROPERTY AND TRUST LAW IN TAIWAN 83-84 (Alain Verbeke & Vincent Sagaert eds., 2017); Mary-Rose McGuire, *National Report on the Transfer of Movables in Germany*, in 3 NATIONAL REPORTS ON THE TRANSFER OF MOVABLES IN EUROPE: GERMANY, GREECE, LITHUANIA, HUNGARY 1, 91-92 (Wolfgang Faber & Brigitta Lurger eds., 2011).

75. ZBG, CC, CC, Dec. 10, 1907, SR 210, art. 656 (Switz.).

76. ALLGEMEINES BÜRGERLICHES GESETZBUCH [ABGB] [CIVIL CODE] § 308, <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622> (Austria).

77. ABGB § 1045, http://www.wipo.int/wipolex/en/text.jsp?file_id=234848 (Liech.).

Netherlands,⁷⁸ Croatia,⁷⁹ Estonia,⁸⁰ Greece,⁸¹ Latvia,⁸² Slovenia,⁸³ Taiwan,⁸⁴ Turkey,⁸⁵ and Turkmenistan.⁸⁶ Scotland⁸⁷ and South Africa,⁸⁸ two mixed jurisdictions, also adopt the same conceptualization.

Among the countries in the fourth group, Germany, Taiwan, Turkey, Scotland, and South Africa adopt the non-causa principle,⁸⁹ also called the abstract principle,⁹⁰ which means that the validity of the transfer of title is judged independently of the contract. Thus, while a sale contract can be annulled by the previous owner for, say, fraud, the title does not automatically

78. Art. 3:84, 90 BW (Neth.).

79. ZAKON O VLASNIŠTVU I DRUGIM STVARNIM PRAVIMA [ACT ON OWNERSHIP AND OTHER REAL RIGHTS] [CIVIL CODE], arts. 116–21, translation at <http://pak.hr/cke/propisi,%20zakoni/en/OwnershipandOtherRealRights/EN.pdf> (Croat.).

80. Law of Property Act 1993, §§ 64–1, 120, translation at <https://www.riigiteataja.ee/en/eli/510072014007/consolide> (Est.).

81. See YIANNIA KARIBALI-TSIPTSIU, PROPERTY AND TRUST LAW IN GREECE 62 (Alain Verbeke & Vincent Sagaert eds., 2012).

82. LATVIJAS REPUBLIKAS CIVILLIKUMS [THE CIVIL LAW OF LATVIA] [CIVIL CODE], §§ 987–88, translation at <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018388.pdf> (Lat.).

83. See JERCA KRAMBERGER ŠKERL & ANA VLAHEK, PROPERTY AND TRUST LAW IN SLOVENIA 119 (Alain Verbeke & Vincent Sagaert eds., 2016).

84. See CHANG ET AL., *supra* note 74, at 27.

85. TÜRK MEDENİ KANUNU [CIVIL CODE], art. 997, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4721.pdf> (Turk.).

86. CIVIL CODE, arts. 206, 209 (Turkm.).

87. Land Registration etc. (Scotland) Act 2012, (ASP 5) § 50.

88. In an important case, *Legator McKenna Inc v. Shea*, the court in South Africa held that:

In accordance with the abstract theory the requirements for the passing of ownership are twofold, namely delivery – which in the case of immovable property, is effected by registration of transfer in the Deeds Office – coupled with a so-called real agreement or ‘saaklike ooreenkoms’. The essential elements of the real agreement are an intention on the part of the transferor to transfer ownership and the intention of the transferee to become the owner of the property. Broadly stated, the principles applicable to agreements in general also apply to real agreements. Although the abstract theory does not require a valid underlying contract, eg [sic] sale, ownership will not pass – despite registration of transfer – if there is a defect in the real agreement.

Legator McKenna Inc v. Shea 2008 (2) All SA 45 (SCA) at 11–12 para. 22 (S. Afr.) (citations omitted). See also C.G. van der Merwe, *Law of Property*, in INTRODUCTION TO THE LAW OF SOUTH AFRICA 201, 216–17 (C.G. van der Merwe & Jacques E. du Plessis eds., 2004).

89. The degree of abstractness differs in Germany, Scotland, and South Africa, as exceptions were created to different degrees and contexts. See Monika Hinteregger & Lars van Vliet, *Transfer*, in CASES, MATERIALS AND TEXT ON PROPERTY LAW 842–43 (Sjef van Erp & Bram Akkermans eds., 2012). For the non-causa principle in Turkey, see CIVIL CODE, art. 1008, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4721.pdf> (Turk.). Contracts and real agreements are not absolutely non-causa in Taiwan, but most often they are. See CHANG ET AL., *supra* note 74, at 83.

90. This is in contrast to the causa principle, under which a transfer of title is void when the sale contract is annulled. See Hinteregger & Vliet, *supra* note 89, at 830–31. Ownership automatically reverts to the previous owner, or the seller in the annulled sale contract. See *id.* The previous owner thus has an action of revindication (*rei vindicatio*). See *id.*

revert back to the previous owner.⁹¹ Instead, the previous owner can only sue the buyer in unjust enrichment.⁹² If the buyer becomes bankrupt, the previous owner cannot simply take possession of her thing; rather, she is only an ordinary creditor.⁹³ If the buyer further sells the chattel in question, the good-faith purchaser doctrine does not apply, as the buyer is still entitled to sell as the owner of the chattel in question.⁹⁴ That is, even though the second buyer is aware of the previous sale contract being annulled, the second buyer is still the legitimate new owner.⁹⁵

Fifth, China and a few countries have a mixed system, but they are mixed in different fashions. Take China as an example: In terms of real properties, in principle, property rights of real estates cannot be established or changed without registration, but the law can carve out exceptions.⁹⁶ Land *Chengbao* Right (*usufruct* right for farming land), for example, is established once a *Chengbao* contract goes into effect.⁹⁷ Local governments, though, should note the rights in their books, rather than in the ordinary land registry, to confirm the existence of such rights.⁹⁸

Finally, in Bhutan,⁹⁹ Brunei,¹⁰⁰ and Sri Lanka,¹⁰¹ transfers of real properties are not completed before the government approves the sale.

In developed economies, it would appear that a system in which all real estate sales are registered minimizes the overall transaction costs. Universal registration needs not be achieved by mandates. In opposability jurisdictions like France and Japan, anecdotal evidence suggests that most transacting parties still register.¹⁰² Nonetheless, I think that the German concept of real agreements is going too far. Theoretically and practically, the conceptual construction of a real agreement is not necessary, if ever useful. It is thus not surprising that it is a minority rule. The non-causa principle, an occasional by-product of the concept of real agreements, on the other hand, is not merely

91. See McGuire, *supra* note 74, at 72–73.

92. See Hinteregger & Vliet, *supra* note 89, at 831.

93. See *id.* at 836.

94. See McGuire, *supra* note 74, at 36, 74.

95. See Hinteregger & Vliet, *supra* note 89, at 835.

96. Property Law of the People's Republic of China (promulgated by Order No. 62 of the President of the People's Republic of China, Mar. 16, 2007, effective Oct. 1, 2007), art. 9 (China).

97. *Id.* art. 127.

98. *Id.*

99. Land Act of Bhutan 2007, arts. 159–164, translation at http://oag.gov.bt/wp-content/uploads/2010/05/Land-Act-of-Bhutan-2007_English.pdf (Bhutan).

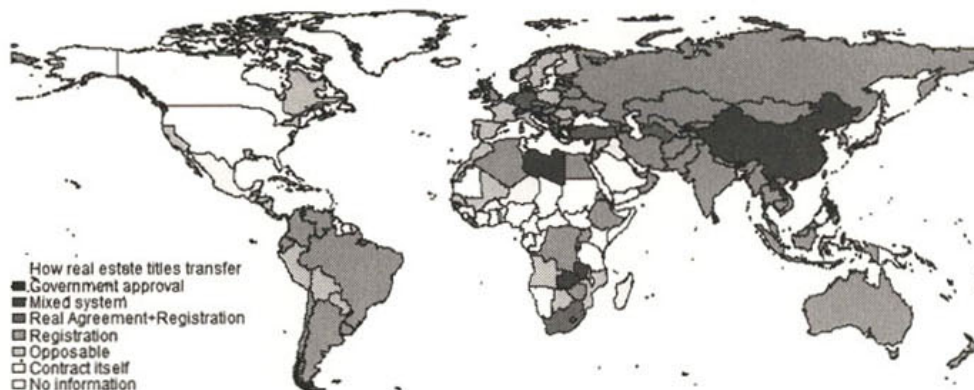
100. Laws of Brunei, Land Acquisition 1955, ch. 41, art. 23, translation at <http://extwprlegs1.fao.org/docs/pdf/bru89068.pdf> (Brunei).

101. See PUBUDINI WICKRAMARATNE RUPESINGHE & NUWAN RUPESINGHE, CENTRE ON HOUS. RIGHTS AND EVICTIONS, AN INTRODUCTION TO HOUSING AND LAND LAWS IN SRI LANKA 79–80 (Meredith Lewis ed., 2007), http://www.cepa.lk/content_images/publications/documents/213-S-COHERE-An%20intro.%20to%20housing%20and%20land%20laws%20in%20SL.pdf.

102. See SCHMID & HERTEL, *supra* note 53, at 31 (observing that in France “some 95% of land has been registered”).

a conceptual construction but a normative decision. This principle chooses to afford less protection to the original owner and more protection to third-party creditors and purchasers. The non-causa principle, however, is unlikely to incentivize transacting parties to behave more efficiently *ex ante*, if affecting behaviors at all. In addition, I have yet to find a convincing justification for its *ex post* redistributive effect. Thus, I call into question the non-causa principle as a desirable normative principle.

Figure 3. How Real Estate Titles Transfer¹⁰³



C. PUBLIC FAITH PRINCIPLE

Closely related to the issue of reducing transaction costs is whether property right information contained in the registry is “absolute.” If a buyer checks with the registrar and finds that the plot she is interested in purchasing is not encumbered by any charge, under the absolutism system she is entitled to clean ownership, even though the seller has earlier carved out a limited property right to a third party.¹⁰⁴ The absolutism is also called the public faith principle.¹⁰⁵ By contrast, if a buyer cannot take the lack of encumbrance shown in the registrar at face value, transaction costs skyrocket.¹⁰⁶ Registration information is then just a starting point for potential transacting parties. Title searches may be pointless, as encumbrances are not necessarily recorded in the registry. Title insurance, information middlemen (such as notaries in France), or guarantees from sellers or third parties may be necessary to consummate real estate deals. Granted, for the public faith principle to sustain, a jurisdiction must have serviceable land registry, which is costly both

103. Map information from Natural Earth. See NATURAL EARTH, *supra* note 15.

104. See MURRAY RAFF, PRIVATE PROPERTY AND ENVIRONMENTAL RESPONSIBILITY: A COMPARATIVE STUDY OF GERMAN REAL PROPERTY LAW 215 (2003).

105. See Hinteregger & Vliet, *supra* note 89, at 868–69.

106. See Arruñada & Garoupa, *supra* note 49. In such a case, it might be imprudent to allow future interests.

to build and to maintain. As Henry Smith and I argue, in property law fixed start-up costs may be expended for political reasons—for instance, the political-economic environments after the French Revolution¹⁰⁷ or William the Conqueror taking over England¹⁰⁸—but for another political event, the decision to expend these start-up costs is hard to reverse or divert by later generations.¹⁰⁹ The take-away point is that one should not expect to observe perfect correlation between economic-development levels and adoption of the public-faith principle.

The public-faith principle and the constitutive (or opposability) effect of registration afford protections in different scenarios. A buyer or a mortgagor of land who had registered her property rights uses the latter effect against third parties who registered their rights later. By contrast, a buyer of land uses the former principle against third parties who have acquired property rights earlier but did not register their rights. The constitutive effect of registration and the public-faith principle are theoretically a pair, and at least in the practice in Europe they are, with Greece as an exception (constitutive effect without the public-faith principle).¹¹⁰

Figure 4 shows that across-the-board absolutism is the majority, but it is not universal. Eighty-two of the 153 jurisdictions (54%) explicitly prescribe absolutism. France,¹¹¹ its former colonies, and countries that transplanted the French Civil Code¹¹² stipulate that only in priority security rights and mortgages (called hypothecs in Europe) is absolutism applied. More concretely, a purchaser will receive ownership of land without any encumbrance if she applied beforehand to the registrar for a document that shows the burdens accompanying the land and the registrar provides such a document showing no encumbrance while there had been actually a priority security right or a mortgage established and registered.

China, Russia, and Scotland apply the public-faith principle under certain conditions. Russian Civil Code Article 302 stipulates that the public

107. See Chang & Smith, *supra* note 21, at 49–50.

108. See *id.* at 36, 52.

109. See *id.* at 12–21.

110. See SCHMID & HERTEL, *supra* note 53, at 38.

111. C. CIV. art. 2451 (Fr.).

112. CODE CIVIL [CIVIL CODE], art. 885, http://www.wipo.int/wipolex/en/text.jsp?file_id=333716 (Alg.); CODE CIVIL DE 1804 [CIVIL CODE], art. 2198, <https://www.mindbank.info/item/2515> (Burk. Faso); COMORES CODE CIVIL [CIVIL CODE], art. 2198, <http://www.droit-afrique.com/upload/doc/comores/Comores-Code-civil.pdf> (Comoros); Law No. 131 of 1948 (Civil Code), *WIPO*, 15 Oct. 1949, art. 1034 (Egypt); CIVIL CODE OF THE EMPIRE OF ETHIOPIA [CIVIL CODE], art. 3051, *translation at* <http://www.wipo.int/edocs/lexdocs/laws/en/et/eto2oen.pdf> (Eth.); CODE CIVIL [CIVIL CODE], art. 2198 (Ivory Coast); CODE CIVIL [CIVIL CODE], art. 2198, <http://legilux.public.lu/eli/etat/leg/code/civil/20170401> (Lux.); MADAGASCAR CODE CIVIL [CIVIL CODE], art. 2198 (Madag.); CODE CIVIL [CIVIL CODE], art. 2198, <https://landwise.resourceequity.org/record/1799> (Niger); CIVIL CODE OF QATAR [CIVIL CODE], art. 1062, *translation at* www.qu.edu.qa/law/documents/The_Civil_Code_of_Qatar.pdf (Qatar); CODE CIVIL [CIVIL CODE], art. 2198, <https://www.mindbank.info/item/2519> (Togo).

faith principle applies only if acquirers have paid for the real properties.¹¹³ Article 106 of the Property Law of the People's Republic of China directs acquirers to pay a reasonable price to enjoy the benefit of the public faith principle.¹¹⁴ In practice, some of the 80 "yes" countries may have developed restrictions to the application of the absolutism doctrine, but the code does not explicitly stipulate so. Section 86 of Scotland's Land Registration Act of 2012 prescribes a sophisticated rule, under which the seller, together with the acquirer, must be in possession openly and peaceably for a year.¹¹⁵

113. GRAZHDANSKII KODEKS ROSSIISKOI FEDERATSII [GK RF] [Civil Code] art. 302 (Russ.), *translated in CIVIL CODE OF THE RUSSIAN FEDERATION: PARTS ONE, TWO, AND THREE* 120-21 (William E. Butler ed. trans., 2002) ("1. If property has been acquired for compensation from a person who did not have the right to alienate it, of which the acquirer did not know and could not have known (good-faith acquirer), then the owner shall have the right to demand and obtain this property from the acquirer when the property has been lost by the owner or person to whom the property was transferred by the owner in possession, or stolen from one or the other, or left the possession thereof by means other than the will thereof. 2. If property was acquired without compensation from a person who did not have the right to alienate it, the owner shall have the right to demand and obtain the property in all instances.").

114. See Property Law of the People's Republic of China (promulgated by Order No. 62 of the President of the People's Republic of China, Mar. 16, 2007, effective Oct. 1, 2007), art. 106 (China).

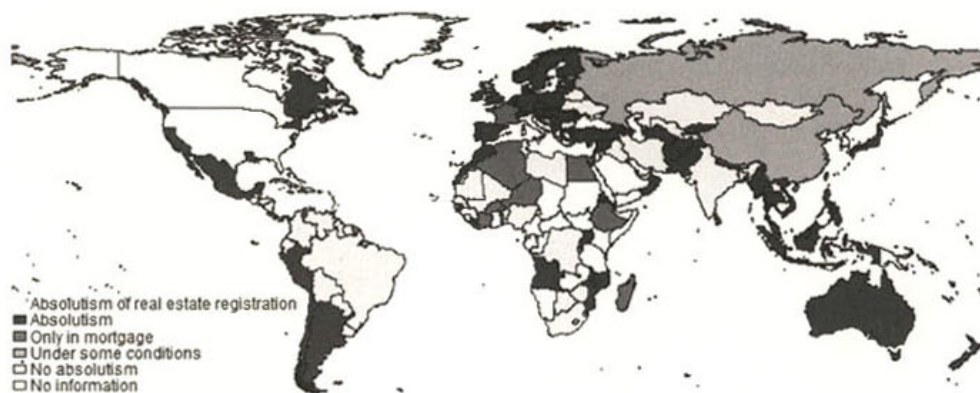
115. The statute articulates the following:

Acquisition from disponent without valid title

- (1) This section applies where a person ("A"), who is not the proprietor of a registered plot of land but—
 - (a) is entered in the proprietorship section of the title sheet as proprietor, and
 - (b) is in possession of the land, purports to dispose the land.
- (2) The disponent ("B") acquires ownership of the land provided that the conditions in subsection (3) are met.
- (3) The conditions are that—
 - (a) the land has been in the possession, openly, peaceably and without judicial interruption—
 - (i) of A for a continuous period of at least 1 year, or
 - (ii) of A and then of B for periods which together constitute such a period,
 - (b) at no time during that period did the Keeper become aware that the register was inaccurate as a result of A (or B) not being the proprietor,
 - (c) B is in good faith,
 - (d) the disposition would have conferred ownership on B had A been proprietor when the land was disposed,
 - (e) at no time during the period mentioned in paragraph (a)—
 - (i) was the title sheet subject, by virtue of section 67, to a caveat relevant to the acquisition by B,
 - (ii) did the title sheet contain a statement under section 30(5), and
 - (f) the Keeper warrants (or is to be taken to warrant) A's title.

Fifty-eight jurisdictions (38%) do not explicitly stipulate absolutism. It could be that absolutism is prescribed in registry-related statutes, not in civil codes, or courts in practice may recognize absolutism. However, it is worth emphasizing that it may very well be the case that some of these countries simply do not enable absolutism, as it makes sense only if the registration information is relatively complete and reliable.

Figure 4. Absolutism in Real Estate Registration¹¹⁶



D. TITLE TRANSFER RULES FOR PERSONAL PROPERTIES

Several paradigms exist regarding how titles to personal properties can be transferred (Figure 5).¹¹⁷ First, the French group, with 67 countries

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- (4) The date on which ownership is acquired by virtue of subsection (2) is—
 - (a) where subsection (5) applies, the date on which the disposition is registered,
 - (b) where subsection (6) applies, the date on which the period of possession mentioned in that subsection expires.
 - (5) This subsection applies where, as at the date of registration, the land has been in the possession, openly, peaceably and without judicial interruption—
 - (a) of A for a continuous period of at least 1 year, or
 - (b) of A and then of B for periods which together constitute such a period.
 - (6) This subsection applies where there is a continuous period of possession such as is mentioned in subsection (5) but that period, though it commences before registration on the application of B, does not expire until a date later than the date of registration.

Land Registration etc. (Scotland) Act 2012, (ASP 5) § 86 (Scot.).

¹¹⁶ Map information from Natural Earth. See NATURAL EARTH, *supra* note 15.

¹¹⁷ Some countries require registration to transfer titles to certain movable properties. (I do not systematically code whether registration is necessary.) One notable example is China, in which registration of sales of vessels, aircraft, and automobiles is the prerequisite for the title transfer to be opposable to third parties. Property Law of the People's Republic of China (promulgated by Order No. 62 of the President of the People's Republic of China, Mar. 16, 2007, effective Oct. 1,

directly or indirectly influenced by French Civil Code Article 1138, adopts a consensual system under which consummation of a sale contract itself transfers titles to chattels.¹¹⁸ Members in this group include, for instance, Algeria,¹¹⁹ Cambodia,¹²⁰ Kuwait,¹²¹ Afghanistan,¹²² Qatar,¹²³ Libya,¹²⁴ Seychelles,¹²⁵ Cuba,¹²⁶ the Dominican Republic,¹²⁷ Tunisia,¹²⁸ Azerbaijan,¹²⁹ Poland,¹³⁰ and Belgium.¹³¹

Second, commonwealth jurisdictions adopt an intention-based system, under which when titles to chattels are transferred depends on transacting parties' intention. England's Sale of Goods Act of 1979, article 18, provides a prime example for this approach, laying out five complicated rules to ascertain intentions of buyers and sellers.¹³² Adopters of this rule also include,

2007), art. 24 (China). In addition, the Dutch Civil Code Book 3 Articles 21–31 are famous for drawing the line between registrable and non-registrable things. Art. 3:21–31 BW (Neth.).

118. See Hinteregger & Vliet, *supra* note 89, at 788.

119. CIVIL CODE, art. 165, http://www.wipo.int/wipolex/en/text.jsp?file_id=333716 (Alg.).

120. CIVIL CODE OF CAMBODIA [CIVIL CODE], art. 133–134, *translation at* http://www.cambodiaip.gov.kh/DocResources/8e68a867-097f-4768-90e2-59527abbe418_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Cambodia).

121. KUWAIT CIVIL CODE [CIVIL CODE], art. 88g, *translated in* THE CIVIL CODE OF KUWAIT: DECREE LAW NO. 67 OF 1980, at 197–98 (Nicolas Karam trans., 2011).

122. CIVIL LAW OF THE REPUBLIC OF AFGHANISTAN [CIVIL CODE], art. 2210, *translation at* <http://www.asianlii.org/af/legis/laws/clotroacogn353p1977010513551015a650> (Afg.).

123. CIVIL CODE, arts. 246–47, 919, 949–50, *translation at* www.qu.edu.qa/law/documents/The_Civil_Code_of_Qatar.pdf (Qatar).

124. LIBYAN CIVIL CODE [CIVIL CODE], arts. 207–08, 936–37 (Libya), *translated in* MEREDITH O. ANSELL & IBRAHIM MASSAUD AL-ARIF, THE LIBYAN CIVIL CODE: AN ENGLISH TRANSLATION AND A COMPARISON WITH THE EGYPTIAN CIVIL CODE 40, 146–47 (1970).

125. CIVIL CODE OF SEYCHELLES ACT [CIVIL CODE], art. 1583, *translation at* <https://www.seylli.org/sc/legislation/consolidated-act/33> (Sey.).

126. CÓDIGO CIVIL [CIVIL CODE], art. 335, http://www.wipo.int/wipolex/en/text.jsp?file_id=242552 (Cuba).

127. CODIGO CIVIL DE LA REPUBLICA DOMINICANA [CIVIL CODE], art. 1583, http://www.wipo.int/wipolex/en/text.jsp?file_id=310586 (Dom. Rep.).

128. CODE DES DROITS REELS [CIVIL CODE], art. 22, <http://www.droit-afrique.com/upload/doc/tunisie/Tunisie-Code-2011-droits-reels.pdf> (Tunis.).

129. CIVIL CODE, art. 181.4, *translation at* <http://www.izvoznookno.si/Dokumenti/pravo/azrcrcode.pdf> (Azer.).

130. POLISH CIVIL CODE [PCC] [CIVIL CODE], art. 155 (Pol.).

131. CODE CIVIL [C. CIV] art. 711 (Belg.).

132. Sale of Goods Act 1979, c. 54, §18 (Eng.).

Rules for ascertaining intention.

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1. —Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

among others, New Zealand,¹³³ Malawi,¹³⁴ Tanzania,¹³⁵ Uganda,¹³⁶ and Pakistan.¹³⁷

Rule 2. —Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until the thing is done and the buyer has notice that it has been done.

Rule 3. —Where there is a contract for the sale of specific goods in a deliverable state but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until the act or thing is done and the buyer has notice that it has been done.

Rule 4. —When goods are delivered to the buyer on approval or on sale or return or other similar terms the property in the goods passes to the buyer:—

- (a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of that time, and, if no time has been fixed, on the expiration of a reasonable time.

Rule 5. (1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods then passes to the buyer; and the assent may be express or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodian (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is to be taken to have unconditionally appropriated the goods to the contract.

133. Contract and Commercial Law Act 2017, s. 144 (N.Z.).

134. Sale of Goods Act 1967, art. 20, *translation at* https://www.malawilii.org/mw/consolidatedlegislation/4801/48_2001_20sale_20of_20goods_1_docx_12176.pdf (Malawi).

135. Sale of Goods Act 1895, art. 19, *translation at* <http://moj.gov.jm/sites/default/files/laws/Sale%20of%20Goods.pdf> (Tanz.).

136. Sale of Goods Act 1932, pt. 3, *translation at* <https://ulii.org/ug/legislation/consolidated-act/82> (Uganda).

137. The Transfer of Property Act, No. 4 of 1882, art. 8, *translation at* <http://punjablaws.gov.pk/laws/8c.html> (Pak.).

Third, 53 countries, such as Russia,¹³⁸ Colombia,¹³⁹ Venezuela,¹⁴⁰ Peru,¹⁴¹ Ecuador,¹⁴² Paraguay,¹⁴³ Uruguay,¹⁴⁴ Brazil,¹⁴⁵ Taiwan,¹⁴⁶ Moldova,¹⁴⁷ Armenia,¹⁴⁸ Czech Republic,¹⁴⁹ Vietnam,¹⁵⁰ and Indonesia,¹⁵¹ follow the Roman Law tradition in requiring *traditio* (delivery). In its simplest form, delivery is fulfilled when possession of the chattels changes hand, or when the sale contract comes into effect if the buyer already has actual control of the thing in question. These jurisdictions, however, make different policy

138. GK RF art. 223.1, *translated in* CIVIL CODE OF THE RUSSIAN FEDERATION: PARTS ONE, TWO, AND THREE 93–94 (William E. Butler ed. trans., 2002) (“The right of ownership in the acquirer of a thing under a contract shall arise from the moment of the transfer thereof unless provided otherwise by a law or by a contract.”).

139. CÓDIGO CIVIL [C.C.] [CIVIL CODE], art. 740, http://www.wipo.int/wipolex/en/text.jsp?file_id=229919 (Colom.) (“La tradición es un modo de adquirir el dominio de las cosas, y consiste en la entrega que el dueño hace de ellas a otro, habiendo por una parte la facultad e intención de transferir el dominio, y por otra la capacidad e intención de adquirirlo. Lo que se dice del dominio se extiende a todos los otros derechos reales.”).

140. CÓDIGO CIVIL [CIVIL CODE], art. 1.487, http://www.wipo.int/wipolex/en/text.jsp?file_id=130145 (Venez.) (“La tradición se verifica poniendo la cosa vendida en posesión del comprador.”).

141. See CIVIL CODE, art. 947 (Peru) (“The transfer of ownership of a determined movable thing is affected by the delivery to the obligee thereof, in the absence of a contrary provision of law.”).

142. CÓDIGO CIVIL [CIVIL CODE], art. 686, http://www.wipo.int/wipolex/en/text.jsp?file_id=251955 (Ecuador) (“La tradición es un modo de adquirir el dominio de las cosas, y consiste en la entrega que el dueño hace de ellas a otro, habiendo, por una parte, la facultad e intención de transferir el dominio, y por otra, la capacidad e intención de adquirirlo.”).

143. CIVIL CODE, art. 2062, <https://landwise.resourceequity.org/record/462> (Para.) (“La entrega hecha por el propietario de una cosa mueble, transfiere el dominio al adquirente cuando existe acuerdo entre ellos para transmitir la propiedad.”).

144. CODIGO CIVIL [CIVIL CODE], art. 775, http://www.wipo.int/wipolex/en/text.jsp?file_id=177350 (Uru.) (“Por la tradición verificada con las calidades requeridas en este Título, se transfiere al adquirente el dominio de la cosa, tal como lo tenía el tradente.”).

145. See Lei No. 10.406, de 10 de Janeiro de 2002, CÓDIGO CIVIL [C.C.] [CIVIL CODE], art. 1.267 (Braz.), *translated in* JULIO ROMANACH, JR., CIVIL CODE OF BRAZIL: TRANSLATED INTO ENGLISH, WITH AN INTRODUCTION, INDEX AND GLOSSARY OF SELECTED BRAZILIAN CIVIL LAW TERMS 231 (2011) (“The ownership of things is not transferred by juridical acts prior to the delivery.”).

146. CIVIL CODE, art. 761, *translation at* <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=B0000001> (Taiwan).

147. CODUL CIVIL AL REPUBLICII MOLDOVA [CIVIL CODE], art. 321(1), *translation at* www.ebrd.com/downloads/legal/core/moldova.pdf (Mold.) (“Ownership shall be transferred to the acquirer upon handing over of the movable, unless otherwise provided by law or contract.”).

148. CIVIL CODE OF THE REPUBLIC OF ARMENIA [CIVIL CODE], art. 176(1), *translation at* <http://www.wipo.int/edocs/lexdocs/laws/en/am/amo15en.pdf> (Arm.) (“The right of ownership for an acquirer of property by contract arises from the time of its transfer unless otherwise provided by statute or contract.”).

149. Občanský zákoník [Civil Code] Zákon č. 89/2012 Sb., art. 133 (Czech).

150. LUẬT DÂN SỰ VIỆT NAM [CIVIL CODE], arts. 168, 234 *translation at* http://moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lout/view_detail.aspx?itemid=6595 (Viet.).

151. KITAB UNDANG-UNDANG HUKUM PERDATA [CIVIL CODE], art. 1475, *translation at* <http://www.kuhper.com/Trilingual%20Indonesian%20Civil%20Code.pdf> (Indon.) (“Delivery is a transfer of the assets sold into the control and ownership of the buyer.”).

decisions regarding whether to count certain “constructive delivery” as the delivery for sale purposes. The two most common forms of constructive delivery are *constitutum possessorium* (in which the original owner turns himself into a mere possessor for the acquirer of the chattel in question)¹⁵² and attornment (in which the seller agrees to assign her right to re-claim the thing in question from a third party to the buyer). Table 1 lists the jurisdictions that allow one or two types of such constructive deliveries.

Finally, three jurisdictions required delivery only in certain contexts: Albania,¹⁵³ Laos,¹⁵⁴ and New York.¹⁵⁵

Lawmakers should reconsider how to re-structure delivery as a default rule or a menu. A default rule is applied when transacting parties remain silent on the issue.¹⁵⁶ A menu is a legislature- or court-provided rule that is clear enough for transacting parties to opt in easily.¹⁵⁷ An altering rule is a procedural protocol that stipulates how default rules can be opted out and

152. See Hinteregger & Vliet, *supra* note 89, at 817.

153. KODI CIVIL [CIVIL CODE], art. 164, translation at <http://www.cclaw.al/wp-content/uploads/law/The-Albanian-Civil-Code.pdf> (Alb.) (“Property is acquired by contract, without being necessary to release the object. For the objects which are defined by number, weight or by mass, a release is required.”).

154. Property Law 1990, art. 28, translation at <http://www.wipo.int/edocs/lexdocs/laws/en/la/la004en.pdf> (Laos) (“The acquisition of a property [right] takes place when the asset is granted or received in accordance with the laws. Property [rights in an asset] may be acquired under contracts concluded before the act of granting or receiving such asset.” (footnote omitted)). There is a footnote, added perhaps by the English translator, to this section, explaining that “[t]he reader should refer to Article 29 for the sense in which ‘grant’ is used, which appears to include physical handover and simple giving.” *Id.* at 9 n.15.

155. N.Y. U.C.C. LAW § 2-401(2) (McKinney Supp. 2018) (“Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading (a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but (b) if the contract requires delivery at destination, title passes on tender there.”) The New York Uniform Commercial Code § 2-401(3) allows some exceptions. *Id.* § 2-401(3) (“Unless otherwise explicitly agreed where delivery is to be made without moving the goods, (a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or (b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.”).

156. For seminal theoretical treatment of default rules, see generally Ian Ayres & Robert Gertner, *Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 YALE L.J. 87 (1989).

157. For seminal discussions of menus and its theory, see generally Ian Ayres, *Menus Matter*, 73 U. CHI. L. REV. 3 (2006). For empirical studies of whether statutory menus in corporate law are effective, see generally Yair Listokin, *What Do Corporate Default Rules and Menus Do? An Empirical Examination*, 6 J. EMPIRICAL LEGAL STUD. 279 (2009); Yu-Hsin Lin & Yun-chien Chang, *An Empirical Study of Corporate Default Rules and Menus in China, Hong Kong and Taiwan* (2017) (unpublished manuscript) (on file with author).

menus can be opted in.¹⁵⁸ The jurisdictions that recognized either attornment or *constitutum possessorium* (listed in Table 1) as a way of delivery in sales all use these constructive deliveries as default rules. That is, if contracts are silent on what counts as delivery, constructive delivery can be used.

At least in jurisdictions that value possession for its public notice function and emphasize actual control by purchasers as a key element in title transfer, constructive delivery is simply a different animal. In attornment, the purchaser receives a claim that may never be practically fulfilled, and yet the seller's duty is considered observed.¹⁵⁹ In *constitutum possessorium*, the purchaser becomes the owner while perhaps never lays her hand on the object.¹⁶⁰ The continuous possession of the original owner poses a threat of double sales. Of course, *constitutum possessorium* and attornment are common in some transactions, perhaps standard in certain industries. But it does not mean that these constructive deliveries should be default rules for everyone. As a general case, it seems that *constitutum possessorium* and attornment should be menus, rather than default rules. A civil code can define them clearly and allow transacting parties to opt in. This prevents the informationally superior sellers from tricking the informationally inferior buyers. To use *constitutum possessorium* and attornment to replace *traditio* (meaning actual delivery) or *traditio brevi manu* (meaning things in question already in the hand of buyers), sellers have to explicitly acquire the consent of buyers, and buyers thus are more likely to be aware of the pitfalls behind constructive delivery. In certain transactions where stakes are high and information asymmetry is grave, a civil code may impose an altering rule, such as "the agreement to use constructive delivery must be in writing."

To consider the issue more broadly, we can adopt either intention or actual delivery as default rules or menus. That is, a statute can stipulate actual delivery as the default rule, while laying out ways in which transacting parties can easily opt into an intention-based method of transferring titles. Conversely, the title transfer rule regarding chattels can be in default intention-based where parties can easily opt into an agreement that prescribes either actual or constructive delivery. Lawmakers around the world, however, so far only use one set of default rules, without considering menus. While it is hard to make a case for the superiority of any chattel-transferring default rule, it is likely sub-optimal not to provide any menu option that prevails in many other jurisdictions.

158. For seminal theoretical treatment of altering rules, see generally Ian Ayres, *Regulating Opt-Out: An Economic Theory of Altering Rules*, 121 YALE L.J. 2032 (2012).

159. See, e.g., CIVIL CODE, art. 761, para. 3, translation at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=B0000001> (Taiwan).

160. *Id.* art. 761, para. 2.

How chattel titles transfer

- Delivery
- Delivery sometimes
- When intended
- Contract
- No information

The map shows that countries like Brazil, India, and Australia are shaded dark grey, indicating 'Delivery'. Most of Europe, Africa, and Asia are white, indicating 'No information'. Some countries in Africa and Asia are shaded light grey, indicating 'When intended'.

161. Map information from Natural Earth. See NATURAL EARTH, *supra* note 15.

Table 1. Constructive Delivery in Chattel Sales

Jurisdictions	Article Numbers of the Civil Code, unless otherwise identified	<i>Constitutum Possessorium</i>	Attornment
Argentina	1892	Yes	No
Austria	428	Yes	No
Bahrain	887	Yes	No
Brazil	1267 Sole Paragraph	Yes	Yes
China	26–27 (Property Act of 2007)	Yes	Yes
Columbia	754	Yes	No
Croatia	15 (Act on Ownership and Other Real Rights)	Yes	Yes
Eritrea	973	Yes	Yes
Estonia	93–94 (Law of Property Act)	Yes	Yes
Georgia	186	Yes	Yes
Germany	930–931	Yes	Yes
Greece	977 and 1035	Yes	Yes
Hungary	Book 5, Article 3	Yes	Yes
Latvia	n/a	Debated ¹⁶²	No
Liechtenstein	503 (<i>Sachenrecht</i>)	Yes	Yes
Macedonia	145 (Law on Ownership and Other Real Rights)	Yes	Yes
Malta	1380–1381	Yes	Yes
Netherlands	Book 3, Articles 90, 107, and 115	Yes	Yes

162. Scholars in Latvia debated whether *constitutum possessorium* is recognized. See Theis Klauberg & Julija Kolomijceva, *National Report on the Transfer of Movables in Latvia*, in 6 NATIONAL REPORTS ON THE TRANSFER OF MOVABLES IN EUROPE: THE NETHERLANDS, SWITZERLAND, CZECH REPUBLIC, SLOVAKIA, MALTA, LATVIA 547, 567–68 (Wolfgang Faber & Brigitta Lurger eds., 2011).

Jurisdictions	Article Numbers of the Civil Code, unless otherwise identified	<i>Constitutum Possessorium</i>	Attornment
Serbia	34 (The Law on Basis of Ownership and Proprietary Relations)	No	Yes
Slovakia	590	No	Yes
Slovenia	60 (Code of Property Law ¹⁶³)	Yes	Yes
South Africa	<i>Cooper v. Dabbs</i> ¹⁶⁴ <i>Page Automotive (Pty) Ltd. v. Profusa Properties CC t/a Homenet O.R. Tambo and Others</i> ¹⁶⁵	Yes	Yes
South Korea	189-190	Yes	Yes
Switzerland	717 and 924	Yes	Yes
Taiwan	761	Yes	Yes
Turkey	764 and 979	Yes	Yes
Turkmenistan	209	Yes	Yes
Uruguay	767	Yes	No

Note. All other coded jurisdictions (see Figure 1) have neither attornment nor *constitutum possessorium*.

163. ŠKERL & VLAHEK, *supra* note 83, at 60.

164. *Cooper v. Dabbs* 2004 ZANWHC 1 (High Ct.) at 6-7, para. 10 (S. Afr.).

Delivery of the contract goods need not necessarily be physical, it may also be constructive or fictitious. Therefore, the mere fact that the purchaser did not come into physical possession of the contract goods is no bar the passing of ownership therein if there had been a fictitious delivery of the contract goods in one of the recognised modes by our law (See *Universal Group Ltd t/a Island View Shipping Co v The Fund Created by the Sale of the MV Maharani, Ex MN Claire Tsaviris, & Another* 1990 (2) SA 480 (N) at 490E-F). One of the modes of fictitious delivery recognised by our law, which is relevant for a determination of this appeal, is delivery by way of *constitutum possessorium*.

Id.

165. *Page Automation (Pty) Ltd v. Profusa Props. CC t/a Homenet O.R. Tambo* 2012 ZAGPJHC 1 (GSJ) at 9, para. 20.

The English law concept of attornment has been adopted into our law. This is a method of constructive delivery where C holding an article for A begins to hold it for B instead. From then onwards C will hold the article for B and no longer on behalf of A, constructive delivery of rights having been made to B. An example of this is where an owner of a motor vehicle (A) left it with a panel beater (C). A wished to transfer ownership of the motor vehicle to B. Attornment was effected when A instructed C to hold the motor vehicle on behalf of B, and C and B agreed that C will hold on behalf of B and no longer on behalf of A. This form of delivery presupposes a tripartite agreement between the three interested parties and requires that actual control be exercised by the party who consents to hold it in future on behalf of the transferee.

Id. (citations omitted).

IV. LEGAL FAMILIES REGARDING WEALTH TRANSFER LAWS

Summing up the seven wealth transfer doctrines around the world, this Part uses clustering analysis to provide a big picture of how jurisdictions are similar to one another. Figure 6 is a dendrogram that graphically presents the results. The lower the connecting horizontal line, the more similar the connected groups are as compared to other groups. For instance, if I required fewer groups to be shown, G1, G2, and G3 would be first to be combined into a bigger group. G7 and G8 are very different from other groups (G1–G6). G7 is China and Russia, the two big (former) communist countries, whereas G8 is Scotland, a famous mixed system jurisdiction. These three are alone on the same side, partly due to their peculiar treatment of the public faith doctrine. China, as described above, adopted other idiosyncratic doctrines as well.

Figure 7 puts the results in Figure 6 into a world map but combines G7 and G8 together as well as merging G6 (Libya) into G5, for better presentation. As Figure 7 shows, several groups reflect strong influences of English, French, and German law. The French group (G2) has 42 jurisdictions, whereas the German group (G5) contains 24 jurisdictions. There are 33 other jurisdictions (G1), 32 of which have a civil code (the sole exception is the Democratic Republic of Congo), are very close to the French law. The English group (G4) includes England and Wales as well as other jurisdictions influenced by the English law, including India, Pakistan, Singapore, Hong Kong, Ireland, New Zealand, Australia, and Uganda.

The interesting case is the remaining group (G3) that contains California, New York, Israel, Italy, Malaysia, Paraguay, Peru, and Spain. This appears to be a hodge-podge of jurisdictions from different legal origins. They are closer to the French group than the English group. The potential puzzle lies in why California and New York are grouped here. In fact, the English wealth transfer law is indeed different from that in the two studied American states. In terms of transfers of titles to real estates, English law requires registration,¹⁶⁶ while in California¹⁶⁷ and New York¹⁶⁸ recording creates

166. Land Registration Act 2002, c. 9, § 27 (Eng. & Wales). The HM Land Registry in England states that “[a]nyone buying or selling land or property, or taking out a mortgage, must apply to us to register.” *Compare HM Land Registry: About Us*, GOV.UK, <https://www.gov.uk/government/organisations/land-registry/about> (last visited Apr. 8, 2018), with DAVID HAYTON & PAUL MATTHEWS, *PROPERTY AND TRUST LAW IN ENGLAND AND WALES* 31–33 (Alain Verbeke & Vincent Sagaert eds., 2007) (describing the complicated rules regarding registered and unregistered estate in England).

167. CAL. CIV. CODE § 1214 (West 2007) (“Every conveyance of real property or an estate for years therein, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded, and as against any judgment affecting the title, unless the conveyance shall have been duly recorded prior to the record of notice of action.”). *Id.* § 1217 (“An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.”).

168. N.Y. REAL PROP. LAW § 291 (McKinney 2006).

opposability to third parties. In addition, regarding transfers of ownership of chattels, as described above, English law is intention-based, while New York sometimes requires delivery,¹⁶⁹ and California always requires delivery.¹⁷⁰

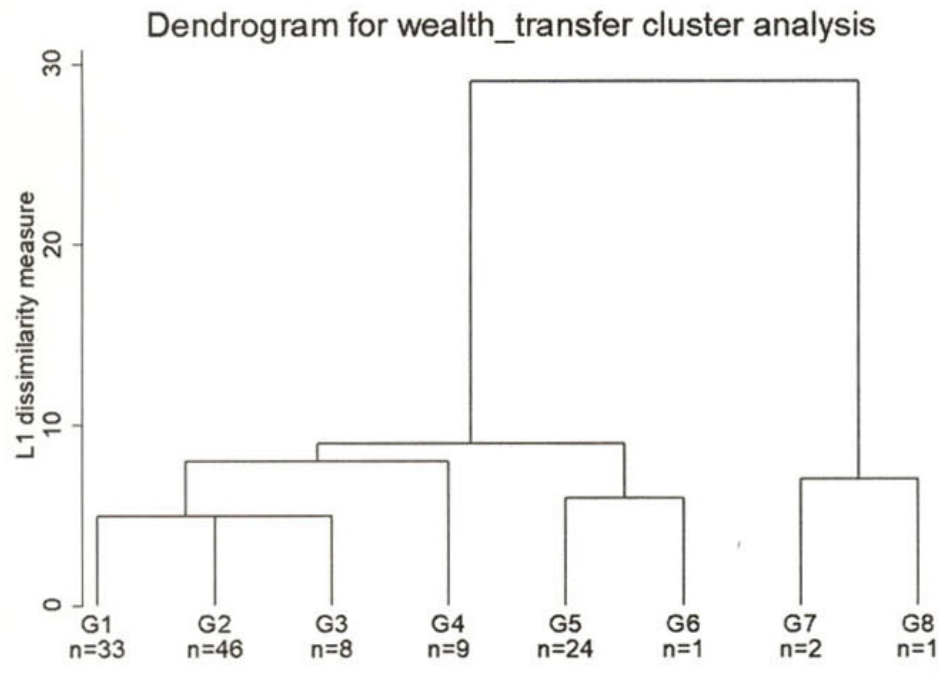
A conveyance of real property, within the state, on being duly acknowledged by the person executing the same, or proved as required by this chapter, and such acknowledgment or proof duly certified when required by this chapter, may be recorded in the office of the clerk of the county where such real property is situated, and such county clerk shall, upon the request of any party, on tender of the lawful fees therefor, record the same in his said office. *Every such conveyance not so recorded is void as against any person who subsequently purchases or acquires by exchange or contracts to purchase or acquire by exchange, the same real property or any portion thereof, or acquires by assignment the rent to accrue therefrom as provided in section two hundred ninety-four-a of the real property law, in good faith and for a valuable consideration, from the same vendor or assignor, his distributees or devisees, and whose conveyance, contract or assignment is first duly recorded, and is void as against the lien upon the same real property or any portion thereof arising from payments made upon the execution of or pursuant to the terms of a contract with the same vendor, his distributees or devisees, if such contract is made in good faith and is first duly recorded. Notwithstanding the foregoing, any increase in the principal balance of a mortgage lien by virtue of the addition thereto of unpaid interest in accordance with the terms of the mortgage shall retain the priority of the original mortgage lien as so increased provided that any such mortgage instrument sets forth its terms of repayment.*

Id. (emphasis added).

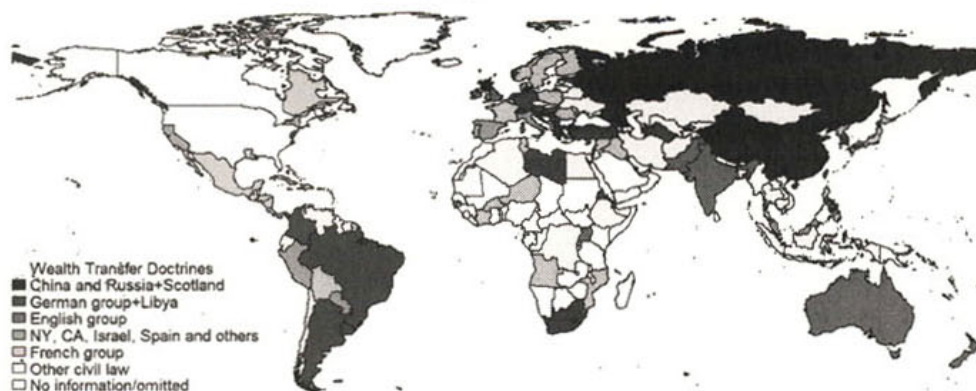
169. N.Y. U.C.C. LAW § 2-401(2) (McKinney Supp. 2018).

170. CAL. CIV. CODE § 1054 ("A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor.").

Figure 6. Cluster Analysis of Wealth Transfer Doctrines in 124 Jurisdictions



Note. The following countries are omitted from this particular graph because of oft missing information: Benin, Bhutan, Bosnia and Herzegovina, Botswana, Brunei, Bulgaria, Central African Republic, Cyprus, Laos, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Morocco, Myanmar, Nepal, Oman, Rwanda, Senegal, South Pacific countries, Sri Lanka, Swaziland, Tanzania, Zambia, and Zimbabwe. Malta and Nigeria are omitted from this particular graph because their peculiarity will make other parts of this graph unreadable. Unreported dendrogram would show that Malta and Nigeria are outlier countries that are very different from other jurisdictions.

Figure 7. Grouping of 124 Jurisdictions Based on Wealth Transfer Doctrines¹⁷¹

¹⁷¹ Map information from Natural Earth. See NATURAL EARTH, *supra* note 15.

V. CONCLUSION

This Article uses a unique data set on property doctrines to describe the wealth transfer laws in the world. The lack of certain wealth transfer doctrines, such as the hostility toward any form of future interests outside the common-law world, is puzzling. It perhaps shows that the political costs of overcoming an antiquated doctrinal decision are high; and therefore, outdated wealth transfer laws persist. In some instances, such as when and how ownership of chattels change hand, the lawmaking decisions may not matter that much in practice. In these scenarios, it is not surprising that path-dependence is a major factor in determining what kind of doctrines is applied. In other issues, such as the requirements and effects of real estate registration, it largely depends on the legal infrastructure of a particular country. While it is easy to copy-paste the civil code of France or Germany, it is hard to import the notary tradition in France, and, needless to say, building up and maintaining a title registry like that in Germany takes an enormous amount of resources. Therefore, in wealth transfer laws, we should not always expect to observe divergence or convergence. Rather, convergence and divergence depend on the economic conditions.