

Land Administration and Land Management – An Institutional Approach

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Key words:

ABSTRACT

Land administration and land management are both interdisciplinary professional activities, and the practitioner has to be a so called “reflective practitioner”. This requires both basic understanding of the phenomenon with which he is working, as well as practical skills in handling problems in their given context, at the same time. Land administration and management, as professional activities in society, but even more as academic subjects, i.e. as themes for research, and as elements in educational programmes, need a comprehensive theoretical framework, allowing the teacher, the student and the researcher to draw on theoretical contributions in law and economics, as well as various social sciences. In the paper institutional theory is discussed and proposed as a most promising candidate for such a role. This body of theories seem able to contribute significantly to insight and understanding of transaction costs, role and function of land registration systems, common versus individual property rights, collective action and behaviour in negotiations and mediation practices. It may also serve as a base for competence in handling practical problems within the field of the profession.

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1. INTRODUCTION AND CONCEPTUAL FRAMEWORK

1.1 The Aim of the Paper

The surveying profession is, by and large, mainly concerned with practical issues, oriented towards "do how" rather than "know how". We seldom study something without some kind of intention to do something about it. The practical work is highly based upon science and technology, but as the activity in for example land use planning, land administration and land registration also involve solving conflicts concerning land use, ownership, boundaries etc, training in law and legal procedures are to be found in our kit bag. Training in social sciences is however, normally relatively poorly developed in the surveying study programs at our universities. This is a problem, in the sense that useful insight and knowledge from various social sciences to a large extent becomes inaccessible, both for the student and for the practitioner. In the paper I intend to show that there is a bundle of potentially very useful contributions from social sciences. Secondly I will argue that making these insights accessible and useful in land administration and land management, may be also in other aspects of our profession, should have high priority in the study programmes at our universities. The problem is, of course, that the job has to be done by our profession, the surveyors, or in cooperation between social scientist and surveyors, as social scientists are seldom by themselves interested in developing their theories and making them applicable for solving practical problems in our profession.

1.2 Land Administration and Land Management

Let us start with the some definitions, cited from "Draft Glossary for UN-FIG Declaration", FIG (1999):

"Land administration: the processes of determining, recording and disseminating information about the ownership, value and use of land when implementing land management policies."

Included in land administration is land registration, which according to the same source is "the process of recording rights in land either in the form of registration of deeds or the registration of title to land"

"Land management: the activities associated with the management of land as a resource from both an environmental and an economic perspective towards sustainable development."

From a professional point of view "land consolidation", or "land readjustment" as it is often called when applied in urban areas, traditionally are important components of land management.

So far so good - for formal definitions. Let us then take a more practical view; what do the surveyors actually do when performing land administration and land management, expressed in active, verbal terms?

Such a list could be made almost endless, but let it for our purpose comprise of the following keywords:

- Observing, classifying, recording and disseminating information.
- Clairifying obscure titles, rights, boundaries etc.
- Analysing situations concerning land, rights, values, constraints, opportunities etc, with the purpose, and often duty, of coming up with practical solutions for improvements.
- Solving conflicts by negotiations, mediation and by passing of formal judgements with legal power.
- Valuation of land, rights and resources in a wide variety of situations; ordinary transactions, pooling and redistribution of land (land consolidation), readjustment, expropriation (eminent domain) of private property, taxation etc.
- Creating new property units, both in a physical and a legal sense.

The point is not to make the list complete, just to pinpoint the nature of the work. It should also be noted that taking part in shaping infrastructure and policies for carrying out these activities, like development of technical solutions and systems, organisations, legislation and so on, all are parts of the professional duties. It is the profession, understood as an more or less international kind of entity, that to a large extent is the agent of change, even some times the driving force in the development, progress (or regress!) in the field.

Several additional important characteristics should also be noted:

Firstly - all these activities are related to land and resources more or less permanently fixed to land, so called "immovable" property.

Secondly - we deal with human behaviour towards land, but above all with human relationships and human behaviour towards each other, with regard to land and land based resources.

Thirdly - the role of the surveyor - in land administration and land management - is that of the agent, consultant or civil servant. The implication is that we are working with other peoples land, property, welfare and so on, and also with other peoples relationship with each other.

Finally - the practitioner is working in a real life context - with real human beings and with real problems - not abstractions. This might seem obvious and a rather trivial and self evident statement, shared with most other professions, just think of a teacher performing his profession, versus pedagogy as a science. Its importance however, lies in the requirement it poses to theoretical framework and analytical models; generalisations with regard to human behaviour are of limited value for the practitioner. He is dealing with a (usually) small number of persons, all with individual characteristics; age, sex, professions, goals, values and behavioural patterns. This will cause conflicting interests, and consequently he needs

theoretical insight and analytical tools - models - to help understanding and to find solutions in such a setting.

2. AN INSTITUTIONAL APPROACH – APPLYING A BUNDLE OF THEORIES

2.1 Institutions

An institutional approach to land administration and land management simply means applying insight and concepts from a bundle of theories, derived from various social sciences, which all somehow make use of a common key concept; "institutions". So let us start out with a couple of the most commonly used definitions of this concept.

Douglas C. North, an economist, gives the following definition, North (1990) p.3:

"Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction."

This is a very broad definition, but to my mind the simple metaphor - that the institutions are "the rules of the game" - is a very good one. It grasps the very fact that we are dealing with a multitude of "rules"; the clearly stated and visible ones, just as well as the more invisible and sophisticated ones that make up the social web and shape human interaction.

In a more concrete sense, the institutions consist of formal law, either in the written form or derived from jurisprudence, basic principles, court practices or otherwise. In modern societies the most common are laws and regulations formally passed by parliaments, local governments etc, and regulations made by administrative authorities based upon formal law. At least it is what we tend to think. But informal law, in the form of traditions, customs and convention also play a very important role, even in modern societies.

A third group of institutions are not so easy to recognise as such; they consist of values and norms of behaviour embedded in the very culture of the society in question, often in rather sophisticated ways. This comes more clearly to the fore by the way institutions are defined by W.R Scott, a sociologist, Scott (1995) p.5:

"Institutions consist of cognitive, normative, and regulative structures and activities that provide stability and meaning to social behaviour."

The meaning and importance of normative and regulative aspects are relatively easily understood, they fit the metaphor "rules of the game" quite nicely. The concept "cognitive" points to knowledge, perception and understanding. The meaning is that somehow the rules must be acknowledged and perceived as such, either intellectually or instinctively or otherwise.

Let us start our discussion with the regulative element. Complying with the rules and following them up has mainly to do with regulative structures and activities, even if there are cognitive aspects here as well. Let us take a football (soccer) game as an example. An individual player

might deliberately brake a rule, for instance tackle down an opponent before the open goal of his own team. He knows he is violating the rules, and he accepts the consequences. The point is of course that he acknowledges the right of the soccer referee to decide in the matter, and he complies to the punishment, even if he might question its fairness some times! Another point is that he can calculate the risk, and he is (normally) not morally condemned by anybody; calculating the risks, braking the rules and accepting the consequences have become parts of the rules of the game!

The example can also be used for another purpose; to distinguish between and highlight the difference between institutions and organisations. Let us assume that the football team has outlined a strategy for winning the mach, and each individual player is supposed to behave accordingly. This fact do not make the strategy, the tactics and the behavioural requirements for the individual actors (players) into institutions. We will (conventionally) say that the teams are actors in the form of organisations, whose purpose it is to win the game, and the institutions are the rules for the contest between the two organisations. The individual player is an actor within his team.

If our aim should happen to be to study, not a mach between two teams, but some internal power struggle between the coach and the captain of one of the team, then we would perhaps recognise internal rules and regulations for that particular football club as institutions.

Scott talks about the "regulating pillar" of institutions, and sums up the regulating aspect p.35:

"Scholars supporting this pillar are distinguished by the prominence they give to explicit regulating processes - rule-setting, monitoring, and sanctioning activities. In this conception, regulative process involve the capacity to establish rules, inspect or review others' conformity to them, and as necessary, manipulate sanctions - rewards or punishments - in an attempt to influence future behaviour. These processes may operate through diffuse, informal mechanisms, involving folkways such as shaming or shunning activities, or they be may highly formalised and assigned to specific actors, such as police or the courts."

The normative aspects of institutions consist, according to Scott, of both of values and norms.

"Normative systems include both values and norms. Values are conceptions of the preferred or the desirable together with the construction of standards to which existing structures or behaviour can be compared and assessed. Norms specify how things should be done; they define legitimate means to pursue valued ends."

According to this terminology "values" are closely linked to "goals", while "norms" have to do with acceptable means. The institutions are still identified as rules, one stress that these rules regulate social behaviour, and that they are based upon notions of 1) what ends are good and bad, and 2) acceptable versus unacceptable behaviour to obtain the ends.

One important aspect (for the surveyor profession) is that standards for professional conduct can be derived from the norms and values, and converted into professional codes and ethics.

Such codes based upon general accepted values and norms might be of immense benefit to the practitioner, especially when taking controversial decisions, for example in a typical "unpopular" scheme of expropriation or enforcement of land reallocation plan. One may say that accepted values and norms protect the practitioner, and makes it easier (less expensive in terms of personal discomfort) to make right, but unpopular, even painful decisions. I use to teach my students that land management, especially in cases of land consolidation and expropriation, quite often include "doing evil things in a decent way". At least some of the parties, maybe rightfully, are often inclined to feel that evils have befallen them, when enforced to give up their land for a highway or a conservation scheme. But at least they should feel confident of fair and decent proceedings, and this confidence makes the whole process far less painful, for all parties.

The cognitive aspect has to do with how we recognise and perceive the "real" world around us - our environment. As we all know - from everyday experience - the "reality" might be highly subjective and individual. It is also standard everyday knowledge that a person tends to behave, act and react according to his interpretations of the realities in the world around him. The important point is now that the institutions somehow do shape the reality in this relative sense. Scott p. 40 points out that the institutions are

"the rules that constitute the nature of reality and the frames through which meaning is made"

How this comes about is a complicate problem, which I will not discuss here. I will however, point out that this aspect of the institutions is immensely important for framing our common conception, understanding and interpretation of the realities. It does it possible for me to perceive and react in a rational way, and feel reasonable secure that me and my adversary - the person with whom I have dealings - share the same reality.

Institutions are humanly made social arrangements, consequently they change - they are not fixed structures. How, when and by whom institutional change come about do not bother us her, suffice to say that institutional change occurs in many forms; intentionally by political processes (legislation), unintentional by obscure "developments", incremental as small steps etc, etc.

Property right is an institution, or may be a bundle of institutions. It is in fact the single most important group of institutions governing the control of land and distribution of land resources and the benefits accruing from land. In most societies there are laws, traditions, moral codex, courts, enforcement mechanisms, etc. etc. as parts of, or enhancing property right. There are also specific institutional arrangements like land administration (registration) and land management (land consolidation), supporting and activating the institution of property right.

So what? So far I have presented concepts and names (terminology) that may be of some use for sorting out various phenomenon in our profession. But it is hardly surprising for a surveyor that rules and regulations, as well as traditional norms and values are important, and play a major role in land management and land administration. One would rather say it has been a well established fact for centuries. Applying new concepts and corresponding new

terminology to phenomenon that have been well known for centuries might be useful of course, but hardly not that incredibly important.

The importance of course, lay in all the work that is done within the various social sciences from this conceptual basis. It is the insight and analytical tools produced by institutionalists within economy, law, sociology, social anthropology, political science, history, psychology and so on, that really matters. And it is these contributions that, in my opinion, add up to something like a treasure chest for our profession. In the following I will indicate some few examples, and in a concluding paragraph discuss our profession in this picture.

2.2 Institutions in Social Sciences.

Over the last ten or twenty years an immense body of works and corresponding literature with an institutional approach have been produced in various branches of social sciences. There are also produced overview articles and books. My intention here is but to give some few rough ideas, bent towards land administration and land management, i.e. land registration and land consolidation. Let me start out with institutional economy, not bothering too much about which academic branches should be classified as "social sciences" or not.

Institutional economics, or "new institutional economics" as it is also named, has become a well established branch of economy, with a corresponding enormous amount of books and articles. Among this multitude of books, "Institutions, institutional change and economic performance", by Douglass D. North (1990) has become a classic, which I personally have found to be an excellent, and not least, inspiring introduction, very well suited for our purpose.

The fundamental point is that institutions are important in the economy, they influence and affect the economic performance. North (1990) p.5 points out that:

"Institutions affect the performance of the economy by their effect on the costs of exchange and production. Together with the technology employed, they determine the transaction and transformation (production) costs that make up total costs".

The concept of "transaction cost" is commonly understood as all kind of costs involved in a transaction as such; they "consist of measuring the valuable attributes of what is being exchanged and the costs of protecting rights and policing and enforcing agreements." North (1990) p.27.

It should, especially in our case, be stressed that transaction costs also involve social costs. It could for instance be grievances and stress related to disagreements and difficult negotiations between for example neighbours concerning a boundary dispute.

One of our main concerns here are the relationships between institutions and transaction costs; how the institutions frame the conditions within which transactions take place. The reason is quite simple; dealings and transactions in land are at the very core of our profession. It might be in the form of conveying land and various types of rights in land like buying,

selling, renting, mutual exchange in a land consolidation scheme, land pooling and redistribution, etc. It might also be in more sophisticated forms like expropriation and enforcement of land use plans and regulations and zoning, which in the essence transfer rights and restrictions in land between owners and the public.

In the case of land registration our interest is somewhat different; one of the main justification for land registration is precisely to ease transactions by reducing transaction costs. The issue of reducing transaction cost play a similar role in land consolidation. The reasoning is as follows:

Almost all of the actions, transactions and decisions enforced by the authorities in a land consolidation scheme, could in principle have been performed, without any interference by decision makers from outside, by the landowners themselves, if they all were in agreement. In fact a lot of land reallocations, at least small scale ones, have come about voluntarily in this way. So why do we have land consolidation, as part of the public administration and/or judicial court system? The answer is of course that the transaction costs for bringing about a negotiated solution by the parties themselves are too high, they need somebody from outside with the authority and skills to carry out the scheme and enforce and protect its results. Further reasoning leads of course to the logical conclusion that if the public efforts are too costly for the parties (and for the public for that matter) and/or do not reduce the transaction cost substantially, they are not justified.

So there are god reasons for taking very serious a theory that have something to contribute to our understanding of the nature of the transaction costs, and the relationships between transaction costs and laws, traditions, procedures etc. It would take far to long to outline the substance of this relationships here, suffice to say that the theory provide the analytical tools; concepts and framework, for understanding the basic economic rationale for many aspects of our profession, and for analysing specific problems, like for instance efficiency. Personally I have found it very useful for framing teaching in this field.

To my knowledge, not many scientific contributions in land administration and land management have been carried out with an institutional approach. A few could be mentioned, but I will especially point to a PhD-thesis at The Royal Institute of Technology, Stockholm, by Peter Ekbäck, Ekbäck (2000). This study is an excellent example of how beneficial an institutional approach could be, in analysing the efficiency of different procedures for land use planning and property acquisition.

Hernando de Sotos' well known book, "The Mystery of Capita", with the subtitle "Why capitalism triumphs in the West and fails everywhere else", de Soto (2000), may also be mentioned as an extremely successful study of the economic effect of land registration, with an institutional perspective.

Summing up one my say that "institutional economics", even if it have roots at least hundred years back, see Stinchombe (1997), during the last generation has become a well established branch of economics, characterized by the integration, use and application of institutional theory in the study of economics.

There is a closely related branch of academics called "*Law and economics*". It is not easy to outline the practical difference between whose, but by and large it may be that in law and economics the main focus lies in law and legislation, while in institutional economics focus is on economic problems. The theoretical approach is however to a large extent if not identical, so at least very similar. In the Nordic countries for instance, the term "Rettsøkonomi", literally meaning "legal economy", seems to be used indiscriminately for both aspects. Under this name institutional theory is becoming an integrated part of law studies, just as institutional economy has been integrated in studies of economy, see for instance Eide og Stavang (2001), Raaschou-Nilsen og Juul Foss (1997).

There is however, some specific phenomenon, or we should probably say academic problems or fields of study, closely related to, or even part of institutional theory, which are of greatest interest for the surveying profession. The key words are "Common property", "Collective action", "Negotiations and Mediation" and "Justice as Fairness". I shall briefly indicate why these fields of study are such a potentially rich source of insight, as well as analytical tools for our profession.

In different parts of the world a wide variety of land and land related resources are held jointly; by co-owners, by households and extended families, by villages etc. Handling this multitude of tenure systems, register them, rearrange them, subdivide them etc, as well as promote joint undertakings like drainage and water supply and so on, are important issues in land administration and land management. Academic studies of such tenure systems, and joint undertakings under widely different jurisdictions and natural social habitats, have become a huge body of scholarship around the world, within various social sciences; sociology, political science, social anthropology, law etc. The key words have become "Collective Action" and "Common Property". Two names and two publications could serve as an entrance to this body of knowledge; Mancur Olson 1965: "The Logic of Collective Action", and Elinor Ostrom 1990: "Governing the Commons. The evolution of institutions for collective action." These books (and others) have triggered off an extensive academic activity, and there even is an academic organisation called "The International Association for the Study for Common Property" (IASCP - hss@indiana.edu). I still have the feeling that most of these studies and intellectual efforts so far has remained largely an "academic" activity; "academic" in the sense that there is a huge deficit in practical application; the insight produced within academia has not been transformed to practical tools for the professions, at least not for the surveying profession.

Negotiations and mediations are of course familiar activities for surveyors. My intention here is to point out two aspects: Firstly that negotiation and mediation - on the level where the surveyors work with land and boundary disputes etc - have become issues within social sciences and law. Secondly that the institutional framework, within which negotiations and mediation takes place, is of outmost importance for the conduct and outcome of negotiations. There are institutional arrangements that may promote negotiations, there are arrangements that provide obstacles to negotiated solutions, and mediation activities in general have to be performed in accordance with the existing institutional framework. The possibilities for changes of insufficient and unsuitable institutions are of course part of this issue.

At my university department we have made some very promising attempts to integrate negotiations in the study programme, and to study and develop negotiations and mediations in land consolidation, see for example Rognes and Sky (1998), and the contribution from Falkgård and Sky (2002) at this very congress.

Anybody who has been involved in land administration and land management is keenly aware of the importance of the concepts of fairness and justice. It is manifest in valuation of property for taxation purposes, redistribution of land in a land consolidation scheme, expropriation of land for public infrastructure, conservation of private land for protecting natural resources and the like. The parties involved - private owners especially - tend to emphasise again and again this aspect. And they will very often behave accordingly in the process - if they have the feeling of being treated fairly - whatever that may be - they may comply with even substantial inconveniences. The slogan (mentioned above) about part of our profession is (also) "to do evil things in a decent way" comes to mind. On the other hand, obviously beneficial solutions might be rejected on the grounds of unfair procedures. This moral aspect is, as far as I know, only (normally) poorly developed, even neglected in professional training and education. It is more or less regarded as part of the "common sense", "proper behaviour" or an art that comes with the experience. That might be so to a certain extent, but my feeling is that this aspect should somehow be better understood - and studied at our universities. One reason for being more explicit about this is that we cannot disregard the development of more diversified notions of what "fairness" might be among our "clients", as societies are becoming more multicultural.

The concept of "fairness" is closely related to the broader concepts in ethics and moral philosophy. What I want stress is firstly that fair procedures are - of course again - highly dependent on the institutions. The procedures are being framed by the institutions. Secondly I want to point out that there are moral philosophers that have worked in this direction; justice as fairness and the influence of institutions (the laws). In my opinion John Rawls' famous study, "A Theory of Justice", Rawls (1973), could be a very proper and useful starting point. Some practical applications are fact made, see for example Kalbro (1988).

3. CONCLUSIONS

The intention of my contribution has been to point out that an institutional approach to land administration and land management might be very beneficial in our study programmes, as well as being useful for the professional practitioner. I have also given some indications of why this is so, and how the potential benefits could be obtained.

I argue that an institutional approach is useful because it gives us a framework for structuring the problems in the social sense, it provides insight in an operational form from other social sciences, and it provide and models for analysing the problems in the practical context where the surveyor is actually working.

The problem of course is this: How can, a mainly technical and practical oriented surveying profession including teachers, researchers as well as practitioners, utilise this bundle of relatively sophisticated theoretical contributions from such a broad field of social sciences?

The flat fact is that these splendid theories are all largely useless (for us) in the hands of social scientists, they seldom or never bother about practical applications, and certainly not in an "obscure" profession like ours. Somehow the theories have to be, so to say "processed", by somebody for our purpose, and this "processing" has to be made by somebody familiar with our problems, i.e. surveyors.

Such work should have high priority, but I would argue that it should most preferably be undertaken, not by surveyors, researchers and teachers "going social scientists", but by surveyors understanding social sciences, or in close co-operation between surveyors and social scientists.

There are certain "pitfalls" one should avoid in the processing:

Pitfall number one: Going social scientist - becoming a sociologist, an economist, a lawyer etc. - and loosing focus on practical use to solve practical problems in land management and land administration.

Pitfall number two: Popularization instead of application. This is largely what I have done in this paper, but my aim has been to point to the possibilities, and could thus be justified.

Pitfall number three: Dilettantism. This of course is a most grave danger - and can only be avoided by hard work, co-operation and criticism.

The aim should preferably be textbooks and other pedagogical tools for making social sciences work in our applied sciences- bridging the gap between theory and application.

The actors are becoming less and less homogenous. Some years ago in Norway, we could feel reasonably confident that most participants in a land consolidation scheme were farmers - with farming interests and outlook and culture. Not so any more. We need tools to comprehend and handle the diverse interest in a diversified society.

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