

2011

## Introduction: Comparative Property Rights

Lynda L. Butler

*William & Mary Law School*, llbutl@wm.edu

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### Repository Citation

Butler, Lynda L., "Introduction: Comparative Property Rights" (2011). *Faculty Publications*. Paper 1426.  
<http://scholarship.law.wm.edu/facpubs/1426>

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## INTRODUCTION

LYNDA L. BUTLER\*

Property matters—whenever and wherever complex societies are involved. It may not exist in the same form or in the same situation or provide the same rights and powers, but wherever complex societies exist, their members have found a way to have property rights. Sometimes that way is formal and deliberate and sanctioned. Other times it is informal, arising from customs, cultural norms, or even outlaw behavior. Property matters because of the human desire to control resources for the protection of self and family and because, as complex societies develop, their emergent economic systems create wealth, enhancing a society's well-being. Property rights are essential to that process, providing the framework for creating, trading, and managing this wealth and for maximizing the benefit of invested labor and capital for individual participants and their society.

A society's political system, of course, must secure property rights to enable peaceful transfers to occur in the marketplace and to encourage investment. The degree to which property rights are secure will determine, in large part, how much wealth is created and how accepted the society's political, economic, and property systems are. Cultural norms will affect the structure, the meaning, and the nature of property rights. As long as political and cultural values share enough common meaning, property rights can coalesce around those shared meanings and provide a fundamental set of rules to govern allocation and use of resources. Property systems, in other words, are a common characteristic of complex human societies worldwide.

In recent years property has come to the fore as a topic of international debate as developing countries join the world's economy and as developed nations consider how to improve and fine-tune their economic and property systems. Aspects of this debate include the divide between public and private property, the extent of government's power to regulate and expropriate private property, the normative foundations of property rights—especially their economic

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\* Chancellor Professor of Law, Director, William & Mary Property Rights Project, and Editor, *Brigham-Kanner Property Rights Conference Journal*, William & Mary Law School. Special thanks to Jan Abbott and Heather DiAngelis for their excellent work on the *Journal*. Without their tireless efforts and dedication, this project would not have happened.

vision and political role—the role of culture and social institutions in the evolution of property systems, and the distribution of wealth among a society’s members. Though nations disagree about their approach to these matters, the international debate reveals a common set of attributes of property systems.

The 8th Annual Brigham-Kanner Property Rights Conference focused on Comparative Property Rights, continuing the international debate by highlighting the commonalities of property systems that have emerged from complex societies having different cultures and political histories. More specifically, the Conference explored the nature of property rights under different legal systems, the role that property plays in promoting social policy, and the impact of culture on the definition, interpretation, and protection of property rights. The Conference also considered how property systems promote, drive, and shape the economies of different nations, as well as the relationship between property rights and the environment. Other Conference topics included a panel on the impact of a leading jurist, retired Supreme Court Justice Sandra Day O’Connor, on the jurisprudence of constitutionally protected property, a panel on the role of practitioners in property systems, and a roundtable on the future of property rights. Panelists included American and Chinese academics, judges, and practitioners. The overriding goal of the Conference was to promote understanding of the property rights systems of different nations. Without a doubt, the Conference provided that understanding and much more, highlighting the common attributes of property systems across complex societies and cultures.

In furtherance of the Conference’s goals, the Property Rights Project at William & Mary Law School will publish papers written for this and successive conferences in the *Brigham-Kanner Property Rights Conference Journal*. The purpose of this *Conference Journal* is not only to provide a forum for scholarly debate on property rights issues but also to extend that debate to a wider audience. The contributions of American and Chinese scholars and practitioners included in this inaugural volume are quite impressive and demonstrate how important property rights are in modern societies.