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Re: A Property Law Comparison – Non-Western Approaches to Real Property Registration Law

ABSTRACT

This paper attempts to find solutions to the high costs of living associated with life in urban spaces. This paper attributes some of these high costs to the rent caused by the power of western landowners over the land attached to a building. Therefore, this paper attempts to better understand the Japanese, Saudi Arabian, and Bhutanese legal views of building ownership in relation to the building's attached land. Each of the historical, social, and cultural backgrounds of each country provides important insight into the justifications for each system's rule regarding the relationship between building ownership and land ownership. In Japan, the modern rule separating the registration of the land and the building is justified by neo-Confucian notions of the ruler-subject relationship that ensure the control of land by the central government during the Kamakura, Tokugawa, and Meiji eras. In Saudi Arabia, the modern rule of linking the land with the attached building in real estate registration is justified by the Hanbali doctrine of revival. In Bhutan, the provisions of the Land Act appear to lean closer to the Saudi Arabian rule, but with the justification by a Buddhist legal tradition, independent of the Hindu and Asian legal traditions, that prioritizes the preservation of natural land and recognizes the transitory nature of property. Through a careful examination of each system, one may be able to reach a solution on a new rule for the ownership of land and building or even argue for the adoption or justification of one of these rules to improve the quality of life for urban residents.

INTRODUCTION

The law of immovable property is important to modern economies because of its implications for economic inputs and outputs. One could argue that the law permits the development of land, labor, and capital. Land represents the physical space where labor and capital can exist.¹ Labor is cultivated when people raise children.² Capital is cultivated when firms or individuals can extract non-human resources to feed themselves or conduct business.³ This combination of labor and capital should enable people to reach a higher level of utility and provide the State with higher tax revenue.⁴ Higher tax revenue better enables the State to maintain social order by distributing material resources for the purpose of preventing the less disadvantaged members of society from suffering excessively low utility levels.⁵

Furthermore, the law of immovable property can provide effective solutions for problems in urban establishments such as cities. Urban cities can help people live lives of higher utility for several reasons. First, people in cities generally have closer geographical proximity to necessities.⁶ Second, people in cities live closer to public transport which allows people to move farther without using an automobile.⁷ Automobiles present great economic costs either because of mandatory insurance laws⁸ or the out-of-pocket costs associated with maintenance.⁹ Third, cities can even offer people freedom to live in anonymity outside of others' judgments and permit families to live more fulfilling lives in the cities.¹⁰

¹ Geoffrey D. Korff, *Reviving the Forgotten American Dream*, 113 PENN. ST. L. REV. 417, 426 (2008).

² *Id.*

³ *Id.*

⁴ *Id.* at 427.

⁵ *Id.* at 428.

⁶ Hannah Weinstein, *Fighting for a Place Called Home: Litigation Strategies for Challenging Gentrification*, 62 UCLA L. REV. 794, 805 (2015).

⁷ Stefanos Chen, *He Says His Landlord Is Harassing Him to Leave a \$450-a-Month Apartment*, N.Y. TIMES (Nov. 27, 2022), <https://www.nytimes.com/2022/11/27/realestate/apartment-landlord-harassment.html?searchResultPosition=4>.

⁸ N.Y. VEH. & TRAF. LAW § 343 (McKinney 2011).

⁹ Penny Gusner, *2023 Outlook For Car Insurance Buyers: Here's The Bill*, FORBES ADVISOR (Dec. 1, 2022), <https://www.forbes.com/advisor/car-insurance/state-of-car-insurance-2023/>.

¹⁰ D.W. Gibson, *On the Second Try, a Family Is Welcomed in Queens*, N.Y. TIMES (Oct. 24, 2022), <https://www.nytimes.com/2022/10/24/realestate/family-renters-queens-relocation.html?searchResultPosition=19>.

However, cost-of-living problems persist in certain urban population centers.¹¹ In recent years, rent prices have spiraled out of control in cities where public transportation is relatively adequate.¹² Legal solutions to urban quality-of-life problems must start by finding solutions to land and building registration systems that reduce living costs. One contributing factor to the cost-of-living problems perhaps lies within the relationship between land and its attached building.

In common law jurisdictions, such as New York, both statutory definitions and general usage of “land” includes the “naked earth” and the building.¹³ However, in New York, “incorporeal real property” is “a right issuing out of or annexed to a thing corporeal, and consists of the right to have some part only of the produce or benefit of the corporeal property.”¹⁴ Furthermore, New York law stipulates that each of these rights “may, . . . , be held and enjoyed by an individual or party, distinct from any ownership of any lands or dominant tenement and is then regarded as held and enjoyed in gross.”¹⁵ However, it does not appear that this right explicitly permits ownership of a building separate from the ownership in land.

In civil law jurisdictions, the roman law concept of *superficies solo cedit* has defined this relationship.¹⁶ Under this principle, “the ownership of a tract of land is unsusceptible of horizontal division.”¹⁷ In a civil law jurisdiction, such as Louisiana, buildings are presumed to belong to the owner of the attached ground “unless separate ownership is evidence by an instrument filed for registry in the conveyance records”¹⁸ However, if someone other than the landowner constructs a building on the landowner’s land, then the Louisiana Civil Code provides that “consent of the landowner is determinative.”¹⁹ In other words, it appears that the landowner has great power over improvements to his

¹¹ Stefanos Chen, *More of Your Paycheck Is Going to Pay Rent. Which Cities Are Keeping Pace?*, N.Y. Times (Dec. 1, 2022), <https://www.nytimes.com/2022/12/01/realestate/rising-rent-us-cities.html>.

¹² *Id.*

¹³ 87 N.Y. JUR. 2D Property § 8, Westlaw (database updated Nov. 2022).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 2 LA. CIV. TREATISE, Property § 7:9 (5th ed.), Westlaw (database updated Sept. 2022).

¹⁷ *Id.*

¹⁸ 2 LA. CIV. TREATISE, Property § 7:11 (5th ed.), Westlaw (database updated Sept. 2022).

¹⁹ *Id.*; LA. STAT. ANN. § 2:2 (2003).

land because the landowner may stop the urgent development of housing to increase housing supply and decrease the rent.²⁰

Considering the power of the western landlord, it may be time to reconsider the purpose of laws concerning building ownership and its relationship with the attached land. Historically, western legal systems have been tolerant and accommodating of other legal systems.²¹ Common law systems have accommodated Talmudic, Civil, and Islamic views on commercial law as well as chthonic views on certain other matters.²² Likewise, even though civil law codes were exported to the rest of the world via colonial empires, they adapted to non-western aspects of the law in those jurisdictions.²³ Therefore, it is possible to find pathways towards crafting laws, inspired by other systems, for urban areas that will lower rents and help more people enjoy the freedom of urban dwellings.

First this paper will explore the Japanese neo-Confucian-inspired legal rule on building and land registration that separates land registration from building registration. This tradition may provide an answer to the urbanization question because the presumed legal separation of building registration and land registration may enable urban citizens, through the State, to limit the control of landlords over land and limit their control over activities outside the building. Second, this paper will examine the Islamic legal tradition's approach to this question through the Hanbali school popular in Saudi Arabia. This tradition will offer an apparently opposite view that justifies maintaining the link between land and the attached building as a single entity because of the Hanbali doctrine of revival that encourages development on the land. Third, this paper will explore a Buddhist (not Hindu nor Asian) legal alternative in the Bhutanese legal system that prioritizes preservation of the land and recognizes the transitory nature of property as the bases of promulgating such a rule. Finally, by comparing these three systems,

²⁰ See *supra* text accompanying note 19.

²¹ H. PATRICK GLENN, *LEGAL TRADITIONS OF THE WORLD* 272—279 (5th ed. 2014).

²² *Id.* at 269—73.

²³ *Id.* at 272—279.

lawmakers and legal professionals may be able to find realistic and effective solutions to reduce the power of the western landlord and provide the possibility of reduced incentives for higher rent.

JAPAN: A NEO-CONFUCIAN RULE FOR A JAPANESE TRADITION (EAST ASIAN LAW)

THE JAPANESE LEGAL RULE²⁴

Japanese substantive legal rights may provide an answer to the problem of high rent by separating land and buildings from each other as registered legal entities.²⁵ By separating the registration of the building from the land, the State may have the opportunity to register the building or the land in its name to provide low-cost housing without triggering a fight with landowners for the rights to the land.²⁶

According to the Japanese rule on building and land registration, “a building is regarded as an independent and separate property from a land on which the building is constructed.”²⁷ Japanese law therefore allows “separate ownership of buildings from the land on which they are erected.”²⁸ Japan has a uniquely Japanese view of the building in that people could move a wooden building from a physical space to another space.²⁹ This rule harkens back to laws promulgated during the Tokugawa Era and is one of the few modern Japanese rules of law that survived the Meiji Era civil-code onslaught.³⁰ However, the mere fact that a building is movable may not be the only reason for the rule and such a terse explanation may not be satisfactory considering the rich history of intrastate power struggles in Japan.³¹ Perhaps the movability of wooden buildings permitted the Tokugawa regime to rule in a Confucian way that

²⁴ *Field Listing – Legal System*, THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/field/legal-system/>.

²⁵ *See infra* pp. 5—13.

²⁶ *See infra* text accompanying note 71; Stefanos Chen, *He Says His Landlord Is Harassing Him to Leave a \$450-a-Month Apartment*, N.Y. Times (Nov. 27, 2022), <https://www.nytimes.com/2022/11/27/realestate/apartment-landlord-harassment.html?searchResultPosition=4>.

²⁷ Hiroshi Matsuo, *Japan*, in INTERNATIONAL ENCYCLOPAEDIA OF LAWS: PROPERTY AND TRUST LAW 61 (Alain Verbeke and Vincent Sagaert eds., 2021).

²⁸ TSUYOSHI KINOSHITA, 3 DOING BUSINESS IN JAPAN § 4.01 [3][B], LexisNexis (databased updated 2018).

²⁹ Hiroshi Matsuo, *Japan*, in INTERNATIONAL ENCYCLOPAEDIA OF LAWS: PROPERTY AND TRUST LAW 61 (Alain Verbeke and Vincent Sagaert eds., 2021).

³⁰ TSUYOSHI KINOSHITA, 3 DOING BUSINESS IN JAPAN § 4.01 [3][B], LexisNexis (databased updated 2018).

³¹ *See infra* pp. 6—12.

maintained control over its people, and the Meiji regime used existing power dynamics to justify the maintenance of the rule.³²

THE PRE-TOKUGAWA BASIS FOR THE RULE

Three of the foundations that would justify the Tokugawa-era rule were born before the rise of the Tokugawa regime, and merely provided the regime the pretext to justify its neo-Confucian rule over Japanese society.³³ First was the importation of Confucian ideas from China.³⁴ Due to political instability in Korea and China, many people migrated to Japan and brought their belief systems and ideas with them.³⁵ When Confucian ideas reached Japan, the Japanese state was able to craft a mythology with the 712 CE completion of *Kojiki* and the 720 CE completion of *Nihongi* (*Nihon Shoki*) that would justify the rule of the Tenno over its subjects.³⁶ The myths about kinship were originally justified by the original Yamato rule of Japan by the supposed existence of the the Yamato clan's relationship with the divine.³⁷ Amaterasu, the sun goddess, sent her grandson, Ninigi, to the Japanese archipelago and after a few generations, his great-grandson, Jimmu, asserted Yamato rule over Japan.³⁸

A second major development would follow in the imposition of the Taika reforms on the Japanese population. According to a document dated from 604 CE, the constitution of *Shotoku Taishi* (Crown Prince) aimed to “strengthen central authority against centrifugal forces” such as the Japanese politics of the time.³⁹ In particular, article one stipulated that peace and harmony were paramount because both created group solidarity, and article three emphasized obedience to the ruler.⁴⁰ Following the

³² See *infra* pp. 6—12.

³³ CARL F. GOODMAN, *THE RULE OF LAW IN JAPAN: A COMPARATIVE ANALYSIS* 15 (4th ed. 2017).

³⁴ 80 IUS GENTIUM 375 *Chapter 12 Japanese Law* ch. 12.1, Westlaw (database updated 2020).

³⁵ Masaji Chiba, *Japan*, in *ASIAN LEGAL SYSTEMS: LAW, SOCIETY AND PLURALISM IN EAST ASIA* 90 (Poh-Ling Tan ed., 1997).

³⁶ *Id.* at 94; CARL F. GOODMAN, *THE RULE OF LAW IN JAPAN: A COMPARATIVE ANALYSIS* 15 (4th ed. 2017).

³⁷ CARL F. GOODMAN, *THE RULE OF LAW IN JAPAN: A COMPARATIVE ANALYSIS* 15 (4th ed. 2017).

³⁸ *Id.*

³⁹ 80 IUS GENTIUM 375 *Chapter 12 Japanese Law* ch. 12.1, Westlaw (database updated 2020).

⁴⁰ *Id.*

adoption of this “constitution,” the Prince Shotoku continued to formulate Japanese law based on Chinese law resulting in political tensions between Confucian professionals and the traditional Japanese elite.⁴¹

This tension eventually led to the adoption of the Taika reforms in 645 CE which eliminated the traditional Japanese ministers, distributed arable land, and introduced uniform taxation by eliminating various local taxes.⁴² At the local level, governors collected taxes on behalf of the central government, and a different aristocracy managed the local districts.⁴³ The Taika reforms would introduce a written code, along the Chinese pattern, known as the *ritsuryo* system that categorized law by topics including criminal law (*ritsu*), the law of public administration (*ryo*), and particular orders (*shiki*).⁴⁴ The indigenous Japanese law on land continued to develop in 702 and 757 CE where the *Taiho Code* and the *Yoro Code* built upon the foundations settled by the Taika reforms.⁴⁵ Every time that these new laws were adopted, the central government maintain their control over the rest of the country through communication and expertise to provinces and districts in the countryside.⁴⁶ As one will soon understand, the penchant of centralized authority to maintain control over the countryside and its land will repeat with the Tokugawa and Meiji regimes leading to the creation and maintenance of the Japanese rule on land and building registration.⁴⁷

A third major development leading to the formation of the Japanese rule was the fall of the Kamakura shogunate followed by a period of constant intrastate fighting between various daimyo.⁴⁸ Previously, the Kamakura shogunate united the three main southern islands of Japan through military rule based on Confucian conceptions of loyalty.⁴⁹ By ruling through instruction to widely dispersed local

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 80 IUS GENTIUM 375 *Chapter 12 Japanese Law* ch. 12.1, Westlaw (database updated 2020).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *See infra* pp. 8—12.

⁴⁸ CARL F. GOODMAN, *THE RULE OF LAW IN JAPAN: A COMPARATIVE ANALYSIS* 13 (4th ed. 2017).

⁴⁹ *Id.*

officials, the Kamakura shogunate maintained control over the country.⁵⁰ Once the shogunate fell, the futility of the Emperor's rule over the country led to constant warfare.⁵¹ Unfortunately, war ravaged on because no side could reach a decisive victory over the other.⁵² After many attempts to unite Japan, Oda Nobunaga and Toyotomi Hideoshi unified the country.⁵³ Their triumphs would be fleeting as Tokugawa Ieyasu was able to vanquish his enemies.⁵⁴ Once Toyotomi Hideoshi passed away, Tokugawa Ieyasu won the Battle of Sekigahara in 1600 CE and became shogun in 1603 CE.⁵⁵

EMERGENCE OF THE TRADITIONAL RULE IN TOKUGAWA JAPAN

Emerging victorious from Sekigahara, and without any major enemies, the new Tokugawa shogunate had the opportunity to unify the country and enhance the shogunate's power.⁵⁶ Therefore, the law of the Tokugawa shogunate would craft Japanese law around the maintenance of political unity and domestic peace.⁵⁷ This process would be pushed by the convenient pretext of Confucian kinship systems first promoted by unifying myths of Yamato rule over Japan.⁵⁸ Tokugawa Ieyasu asserted his dominance over Japanese society by modeling his feudal system for the one established under the Kamakura shogunate.⁵⁹ Unlike western feudalism, the Tokugawa Japanese property system was not held together by contract, but by neo-Confucian conceptions of status.⁶⁰ According to these conceptions, subordinates owed obligations to superiors.⁶¹ Based on this fundamental rule, subjects owed obligations to the ruler.⁶² Therefore, the daimyo owed obligations to the shogunate.⁶³

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² 80 IUS GENTIUM 375 *Chapter 12 Japanese Law* ch. 12.2, Westlaw (database updated 2020).

⁵³ CARL F. GOODMAN, *THE RULE OF LAW IN JAPAN: A COMPARATIVE ANALYSIS* 14 (4th ed. 2017).

⁵⁴ 80 IUS GENTIUM 375 *Chapter 12 Japanese Law* ch. 12.2, Westlaw (database updated 2020)..

⁵⁵ CARL F. GOODMAN, *THE RULE OF LAW IN JAPAN: A COMPARATIVE ANALYSIS* 14 (4th ed. 2017).

⁵⁶ 80 IUS GENTIUM 375 *Chapter 12 Japanese Law* ch. 12.2, Westlaw (database updated 2020).

⁵⁷ *Id.*

⁵⁸ CARL F. GOODMAN, *THE RULE OF LAW IN JAPAN: A COMPARATIVE ANALYSIS* 15 (4th ed. 2017).

⁵⁹ *Id.* at 14.

⁶⁰ *Id.* at 14—15.

⁶¹ *Id.* at 15.

⁶² *Id.* at 16.

⁶³ CARL F. GOODMAN, *THE RULE OF LAW IN JAPAN: A COMPARATIVE ANALYSIS* 16 (4th ed. 2017).

This order was reflected in the shogunate's partial devolution of some administrative power to local daimyo and family members that supported the Tokugawa Clan during the Battle of Sekigahara.⁶⁴ The Tokugawa shogunate was only able to rule over one-third of the entire country; therefore, the shogunate awarded rule of the remaining lands to vassals of 250 families by confiscating the lands of their extinguished enemies.⁶⁵ Considering that some of these families were rivals to the Tokugawa shogunate, the government devised some property rules to mitigate the potential political threats from these families.⁶⁶ One way that the shogunate's property rules went about asserting its power over the daimyo was through the *sankin kotai* system.⁶⁷ This system required that the noblemen maintain a residence in Edo, home of the shogunate headquarters, and live in said residence for six months of the year.⁶⁸ Once they lived in their Edo residence for six months, the noblemen were free to travel back to their land, but they had to leave their family members in Edo.⁶⁹ On the land itself, the shogunate prohibited the construction of castles and rival armies.⁷⁰ In addition, the shogunate monitored its subjects by prohibiting land sales.⁷¹

It appears that the maintenance of political power was the main objective of the relationship between building and land ownership in Tokugawa Japan. Land was treated as a tool by which the Tokugawa shogunate could maintain power over the country since the shogunate could not directly rule over every part of the country.⁷² While the shogunate appointed rival families to rule over land, the families were kept in check by their semi-permanent residence near the shogunate headquarters in Edo.⁷³ Considering that one needed land to raise armies and rebel against the shogunate, the shogunate needed a mechanism by which it could assert that all the land in the country belonged to the shogunate and no one

⁶⁴ *Id.* at 15—16.

⁶⁵ 80 IUS GENTIUM 375 *Chapter 12 Japanese Law* ch. 12.2, Westlaw (database updated 2020).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ 80 IUS GENTIUM 375 *Chapter 12 Japanese Law* ch. 12.2, Westlaw (database updated 2020).

⁷¹ CARL F. GOODMAN, *THE RULE OF LAW IN JAPAN: A COMPARATIVE ANALYSIS* 15 (4th ed. 2017).

⁷² *See supra* text accompanying notes 61—62.

⁷³ *See supra* text accompanying notes 63—65.

else.⁷⁴ Furthermore, to prevent any family from thinking about rebelling against the shogunate, the shogunate prohibited the construction of castles where rival families could raise armies.⁷⁵ This explicit prohibition on castle construction seems to suggest that because the land may have been owned by the shogunate, the new castles attached to the land would have not belonged to the shogunate. By banning the construction of new castles, the shogunate could stop a potential rebellion from spreading and endangering the control built by the shogunate.⁷⁶

CODIFICATION OF THE TRADITIONAL JAPANESE RULE

However, the Tokugawa shogunate began to experience a terminal decline in the nineteenth century.⁷⁷ Tokugawa law had led to an insufficient lack of progress in technology and economics which rendered the nation vulnerable to western domination.⁷⁸ After U.S. President Millard Fillmore forced the Tokugawa shogunate to sign the first of a series of “uneven treaties,” the opposition to Tokugawa charged that the shogunate committed treason.⁷⁹ Consequently, the Emperor Meiji began to side with the opposition, and the shogunate peacefully transferred power to the new imperial governing elite.⁸⁰

With the restoration of imperial rule over the nation, Japanese authorities began to transplant western law with the *Roppo* (six codes) including the Civil Code.⁸¹ In particular, the Civil Code pertaining to real estate was drafted by Boissonade, a Frenchman.⁸² Despite the new code, the imperial government surveyed indigenous law throughout the country, and decided to permit limited uses for customary law.⁸³ These permitted limitations appear to have applied to the rule separating the

⁷⁴ See *supra* text accompanying note 65.

⁷⁵ See *supra* text accompanying notes 66—67.

⁷⁶ See *supra* text accompanying note 65.

⁷⁷ 80 IUS GENTIUM 375 *Chapter 12 Japanese Law* ch. 12.3, Westlaw (database updated 2020).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Masaji Chiba, *Japan*, in *ASIAN LEGAL SYSTEMS: LAW, SOCIETY AND PLURALISM IN EAST ASIA* 99 (Pho-Ling Tan ed., 1997).

⁸² *Id.* at 103.

⁸³ *Id.*

registrations of the land and the attached buildings.⁸⁴ In European and Roman law, the principle controlling the relationship between the land and the building is known as *superficies solo cedit*.⁸⁵ This principle stipulates that the land and its attached building are treated as parts of an “integrated immovable property” in contrast to the independent existences of the building and land.⁸⁶

Instead, the Meiji regime opted to codify the separate nature of the building and the land.⁸⁷ However, this decision may not be surprising considering the penchant of the emperor to retain power for himself.⁸⁸ In 1868, the governing elite published *Seitaisho* which was a document on the system of governance that granted significant power for the executive and merely considered the legislative and judicial branches to be tools of the executive branch.⁸⁹ In 1889, the emperor issued a constitution as “his donation to his people.”⁹⁰ In said constitution, there was no mention of the sovereignty of the people, and the emperor was the body that held the true legislative and executive power.⁹¹ Considering the importance that land had to the power of previous Japanese regimes and the reluctance of the Meiji government to grant more political power to the people, the unique history of Japanese intrastate fighting likely prevented the adoption of the western civil rule on land and building registration.⁹² Even after the extinction of the imperial government after World War II, U.S. legal influence permeated in public law, labor law, and commercial law, but it did not appear to touch property law.⁹³

It was against this backdrop that the Civil Code was drafted and adopted.⁹⁴ The translation of article eighty-six, paragraph one of the Japanese Civil Code states that “[l]and and any fixtures thereto are

⁸⁴ See *infra* pp. 11—12.

⁸⁵ Hiroshi Matsuo, *Japan*, in INTERNATIONAL ENCYCLOPAEDIA OF LAWS: PROPERTY AND TRUST LAW 61 (Alain Verbeke and Vincent Sagaert eds., 2021).

⁸⁶ *Id.*

⁸⁷ MINPŌ [MINPŌ] [CIV. C.] art. 86 (Japan); Fudōsan tōki hō [Real Property Registration Act], Act No. 132 of 2007 (Japan), <http://www.asianlii.org/jp/legis/laws/rpraan132o2007388/>.

⁸⁸ 80 IUS GENTIUM 375 Chapter 12 *Japanese Law* ch. 12.3, Westlaw (database updated 2020).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² See *supra* text accompanying notes 55—75.

⁹³ *Id.*

⁹⁴ MINPŌ [MINPŌ] [CIV. C.] art. 86 (Japan).

regarded as real estate.”⁹⁵ However, the Law on the Registration of Immovable Property provides in article two, paragraph one that real property is defined by the land or the building.⁹⁶ Articles thirty-four through forty-three of the Law provide for registration rules specific to parcels of land.⁹⁷ Articles forty-four through fifty-eight of the Law provide specific registration rules for buildings.⁹⁸ For legal scholars, such as Hiroshi Matsuo of Keio University, Japan, the existence of a separate chapter for land and another chapter dedicated to buildings registration suggests that the Law “presupposes that building registry shall be compiled independently from the land registry.”⁹⁹ Therefore, the codification of real property registration has preserved the Tokugawa-era rule.

CONCLUSION

In Japan, the presumption of separate ownership of land and building seems to reflect an idea that law is the expression of Confucian relationships. Considering the circumstances of the constant intrastate warfare and the victory of Tokugawa Ieyasu, this rule appears to have emerged from the political expediency of reuniting Japan after the collapse of the Kamakura shogunate. With the opportunity to unify Japan and solidify greater power, the Tokugawa shogunate did not want to risk more civil wars that could endanger its hold on Japan. Therefore, the shogunate conveniently used the fundamental Confucian rule that places the ruler above the ruled. After great internal strife, the Tokugawa shogunate reunited Japan and used the Confucian relationship between the ruler and his subject to prevent political

⁹⁵ MINPŌ [MINPŌ] [CIV. C.] art. 86, para. 1 (Japan); Hiroshi Matsuo, *Japan*, in INTERNATIONAL ENCYCLOPAEDIA OF LAWS: PROPERTY AND TRUST LAW 61 (Alain Verbeke and Vincent Sagaert eds., 2021).

⁹⁶ Fudōsan tōki hō [Real Property Registration Act], Act No. 132 of 2007, art. 2, para. 1 (Japan), <http://www.asianlii.org/jp/legis/laws/rpraan132o2007388/>; Hiroshi Matsuo, *Japan*, in INTERNATIONAL ENCYCLOPAEDIA OF LAWS: PROPERTY AND TRUST LAW 61 (Alain Verbeke and Vincent Sagaert eds., 2021).

⁹⁷ Fudōsan tōki hō [Real Property Registration Act], Act No. 132 of 2007, arts. 37—43 (Japan), <http://www.asianlii.org/jp/legis/laws/rpraan132o2007388/>; Hiroshi Matsuo, *Japan*, in INTERNATIONAL ENCYCLOPAEDIA OF LAWS: PROPERTY AND TRUST LAW 61 (Alain Verbeke and Vincent Sagaert eds., 2021).

⁹⁸ Fudōsan tōki hō [Real Property Registration Act], Act No. 132 of 2007, arts. 44—58 (Japan), <http://www.asianlii.org/jp/legis/laws/rpraan132o2007388/>; Hiroshi Matsuo, *Japan*, in INTERNATIONAL ENCYCLOPAEDIA OF LAWS: PROPERTY AND TRUST LAW 61 (Alain Verbeke and Vincent Sagaert eds., 2021).

⁹⁹ Hiroshi Matsuo, *Japan*, in INTERNATIONAL ENCYCLOPAEDIA OF LAWS: PROPERTY AND TRUST LAW, 61 n.182 (Alain Verbeke and Vincent Sagaert eds., 2021).

fragmentation and maintain power including neo-Confucian principles justified by the mythical creation of the Japanese nation.

Even after the collapse of the Tokugawa shogunate, the Japanese rule separating land and building registration has survived despite the Meiji-era onslaught of westernization. Emanating from the neo-Confucian conceptions of property and preserved by the Tokugawa Shogunate, land remained separate from the building. Despite the intensity of western codification, the rule of separate land and building registration was preserved by its codification in the Civil Code and subsequent laws on real property registration. Perhaps this resistance to the Sirens of the West will contribute to property law reform that benefits more people outside of Japan.

SAUDI ARABIA: THE ISLAMIC HANBALI ANSWER (ISLAMIC LAW)

THE SAUDI ARABIAN LEGAL RULE¹⁰⁰

Islamic law, and more specifically, Saudi Arabia's application of the Hanbali School provides the opposite solution to the Japanese rule. Rather than advocating for separate registrations, Saudi Islamic law reinforces the legal link between the right to the land and the right to the building attached to the land.¹⁰¹ In Saudi Arabia, real estate includes the land and “any buildings, structure, or improvements on, under and above the land.”¹⁰² While relatively little appears to have been made in terms of commentary towards the relationship between land and the building, one may make the argument that the concept of revival is the primary driver behind the intact relationship between the land and the building attached to the land.¹⁰³

The law of the Hanbali school is more literalist than other schools in that it attempts to go “back to the sources again.”¹⁰⁴ Therefore, a better understanding of the law of Saudi Arabia requires an

¹⁰⁰ *Field Listing – Legal System*, THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/field/legal-system/>.

¹⁰¹ *Real Estate Law*, BAKER MCKENZIE, <https://resourcehub.bakermckenzie.com/en/resources/global-corporate-real-estate-guide/europe-middle-east-and-africa/saudi-arabia/topics/real-estate-law> (last visited Oct. 11, 2022).

¹⁰² *Id.*.

¹⁰³ See *infra* text accompanying notes 103—04.

¹⁰⁴ H. PATRICK GLENN, *LEGAL TRADITIONS OF THE WORLD* 206 (5th ed. 2014).

especially strong understanding of the Hanbali interpretations of the holiest sources of Islamic law including the Qur'an and the Sunnah.¹⁰⁵ In particular, modern Saudi Arabian property law is influenced by the idea that private ownership of land is intertwined with the revival principle, as interpreted by the fiqh of a leading Hanbali scholar known as ibn Qudama.¹⁰⁶ According to the revival principle, “[w]hoever revives a dead land is entitled to it.”¹⁰⁷ This concept, found in al-Mughni, may help one better understand the rule that links the land and its attached building as part of one real estate unit.¹⁰⁸

FOUNDATIONS OF ISLAMIC LAW FOR REVIVAL IN THE QUR'AN AND THE SUNNAH

Revival is a concept of al-Mughni which is a work of fiqh that represents the idea that Allah is the “ultimate fulfiller of needs” because he is naturally “fully satisfied and abundant.”¹⁰⁹ Therefore, Allah is “the one needed and whose riches all others depend on.”¹¹⁰ However, to fully understand the principle promoted by the fiqh of ibn Qudama, one must find backing of al-Mughni fiqh by the Qur'an at the top level and then the Sunnah at the next level. Starting at the Qur'anic apex, the term al-Mughni is not mentioned but this idea is complemented by the idea of al-Ghani as it is mentioned eighteen times in the Qur'an.¹¹¹ Allah has proclaimed that “[a]nd when My servants ask you, [O Muhammad], concerning Me – indeed I am near. I respond to the invocation of the supplicant when he calls upon Me. So let them respond to me [by obedience] and believe in Me that they may be [rightly] guided.”¹¹² Those who obey the will of Allah, such as the Prophet Zakariya affirm the need for Allah by proclaiming, “My Lord, grant me from Yourself a good offspring. Indeed, You are the Hearer of supplication.”¹¹³ The Prophet

¹⁰⁵ Abdullah F. Ansary, *UPDATE: An Overview of the Saudi Arabian Legal System*, GLOBALEX (July/Aug. 2020), https://www.nyulawglobal.org/globalex/Saudi_Arabia.html#_Law_Sources.

¹⁰⁶ Chibli Mallat, *Property Law in Saudi Arabia: A Reconstruction*, 19 Y.B. Islamic & MIDDLE E. L. 300, 301 (2016—2017).

¹⁰⁷ *Id.* See *Mughni*, 8, 145—83 (*'kitab ihya' al-mawat*, Book on revival of dead land): *'man ahya ardan maytatan fa-hiya lahu'*, with variations on the hadith at 145.

¹⁰⁸ *Ibn Qudamah*, SUNNAH ONLINE.COM, <https://sunnahonline.com/library/biographies/372-ibn-qudamah>.

¹⁰⁹ *Al-Mughni*, MY ISLAM, <https://myislam.org/99-names-of-allah/al-mughni/>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Qur'an 2:186 (Sahih International), <https://myislam.org/surah-baqarah/ayat-186/>. See *Al-Mughni*, MY ISLAM, <https://myislam.org/99-names-of-allah/al-mughni/>.

¹¹³ Qur'an 3:38 (Sahih International), <https://myislam.org/surah-imran/ayat-38/>. See *Al-Mughni*, MY ISLAM, <https://myislam.org/99-names-of-allah/al-mughni/>.

Zakariya then begged, “My Lord, do not leave me alone [with no heir], while you are the best of inheritors.”¹¹⁴ These qur’anic verses appear to promote the idea that Allah can provide his believers with anything because he is “free from wants, independent, and self-sufficient.”¹¹⁵

In the Sunnah, there are two hadiths that then promote the idea of al-mughni where because Allah has everything (al-Ghani), people go to Allah for assistance because Allah is all-providing (al-Mughni).¹¹⁶ According to one hadith, “[i]t never happened that Allah’s Messenger (peace be upon him) was asked for anything and he said: No. . . .”¹¹⁷ In another hadith, a different witness stated, “I served the Messenger of Allah [(PBUH)] for ten years, and, by Allah, he never said to me any harsh word, and he never said to me about a thing as to why I had done that and to why I had not done that.”¹¹⁸ These hadith appear to provide the support for the idea that Allah is all plentiful which therefore provides stronger evidence that the concept of al-mughni exists provides followers with the riches of Allah’s blessing.

However, merely understanding the qur’anic and sunnah-centric foundations of al-mughni is not sufficient to grasp the justification for the Saudi Arabian rule on real estate registration.¹¹⁹ Instead, one must examine the medieval interpretations of the qur’an and sunnah (*fiqh*) by the scholars (*ulama*) to more accurately gauge the mechanisms by which judges in Saudi Arabia make their rulings over matters regarding the ownership of land and building.¹²⁰ Considering that Saudi ulama generally follow the Hanbali school of interpretation, Hanbali scholar Ibn Qyyim al-Jawziyya wrote in 1350 CE that fatwas were based on five roots (*usul*).¹²¹ First came the Qur’an and the Sunnah, and if the ulama found text

¹¹⁴ Qur’an 21:89 (Sahih International), <https://myislam.org/surah-al-anbiya/ayat-89/>. See *Al-Mughni*, MY ISLAM, <https://myislam.org/99-names-of-allah/al-mughni/>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Sahih Muslim 2311a, <https://sunnah.com/muslim:2311a>. See <https://myislam.org/99-names-of-allah/al-mughni/>.

¹¹⁸ Hasan (Darussalam) Jami` at-Tirmidhi 3563, <https://sunnah.com/tirmidhi:3563>. See <https://myislam.org/99-names-of-allah/al-mughni/>.

¹¹⁹ Abdullah F. Ansary, *UPDATE: An Overview of the Saudi Arabian Legal System*, GLOBALEX (July/Aug. 2020), https://www.nyulawglobal.org/globalex/Saudi_Arabial.html#_Sources_of_Law.

¹²⁰ *Id.*

¹²¹ FRANK E. VOGEL, *ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA* 33 (2000); I’lam, 1:29—30.

addressing the issue, the ulama would issue his fatwa according to the revealed text and nothing else.¹²² This ulama would not bother to check for valid hadith concerning practice ('amal – second root), opinion (ra'y – third root), analogy (qiyas – fourth root), or consensus (ijma).¹²³ The ulama would also disregard anything and anyone that contradicted the revealed texts.¹²⁴

Without any qur'anic texts or hadiths indicating a rule for property registration, the Hanbali doctrine of revival filled the gap through a fiqh. In al-Mughni, Hanbali scholar ibn Qudama wrote that “Whoever revives a dead land is entitled to it.”¹²⁵ Considering the Hanbali scholars professed to strictly follow Qur'an and the Sunnah, this statement appears to be consistent with the verses and hadith that promote Allah as all possessing and all providing.¹²⁶ In the example of the Prophet Zakariya, the non-divine being strove to ask for help from Allah because he exalted him as the one who could bless him with children.¹²⁷ If Zakariya believes that Allah will provide for him, then Allah will provide for him.¹²⁸ This concept could potentially be analogized to suggest that if a prospective property owner strives to use the land that was once abandoned, then the Allah, being the only source of giving, will provide the new landowner with the blessing to own and use the land. If the principle laid down by ibn Qudama is inconsistent with the revealed word and the Prophet's actions, then the Hanbali should be the most inclined to deem the principle invalid.¹²⁹

It is with profound sadness that one must admit that it is very difficult to analogize the Hanbali scholarship with the qur'anic verses and the hadith without great scholarly or judicial authority. However, scholars such as Chibli Mallat have admitted in the late 2010s that “[c]lassification [of land law] on the

¹²² FRANK E. VOGEL, ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA 33 (2000); I'lam, 1:29—30.

¹²³ FRANK E. VOGEL, ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA 33 (2000); I'lam, 1:29—30.

¹²⁴ FRANK E. VOGEL, ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA 33 (2000); I'lam, 1:29—30.

¹²⁵ Chibli Mallat, *Property Law in Saudi Arabia: A Reconstruction*, 19 Y.B. ISLAMIC & MIDDLE E. L. 300, 301 (2016—2017). See *Mughni*, 8, 145—83 ('*kitab ihya' al-mawat*, Book on revival of dead land'): '*man ahya ardan maytatan fa-hiya lahu*', with variations on the hadith at 145.

¹²⁶ See *supra* text accompanying note 119.

¹²⁷ See *supra* note 109.

¹²⁸ See *supra* note 110.

¹²⁹ See *supra* text accompanying note 119.

basis of fiqh books is elusive a full generation may pass before we can venture a general sense of land tenure and the law of real property in the Middle East through the ages.”¹³⁰ Therefore, the field of property law in Saudi Arabia is likely open for future legal scholars to study the Qur’an, the Sunnah, and the revival doctrine fiqh. Perhaps more scholars will provide new answers to the nature of land ownership and its relationship with the building attached to the land and at least reach consensus (*ijma*).¹³¹

THE RISE AND IMPOSITION OF THE HANBALI SCHOOL IN SAUDI ARABIAN ISLAMIC LAW

The triumph of Hanbali law begins with the rise of Wahhabism which was a version of Sunni Islamic thought derived from the teachings of Ibn Taymiyya and Muhammad bin ‘Abd al-Wahhab.¹³² ‘Abd al-Wahhab began to spread this movement in 1745 CE through holy war on the Arabian Peninsula (the Peninsula) with a prince named Ibn Sa’ud.¹³³ While the dynamic duo conquered most of the Peninsula, the Ottoman Empire dealt a death blow to their ambitions at al-Dir’iyya in 1819.¹³⁴ According to the Wahhabi movement, inspired by the work of Ibn Taymiyya and student Ibn al-Qayyim, the Hanbalis were vehemently opposed to the "blind adherence to the views of men, rather than fresh resort to the well-springs of God-given truth" as "vital error" which meant that adherence to one scholar’s taqlid should be prohibited.¹³⁵ In the view of Ibn Taymiyya, "not even the unlearned should be placed under that restriction."¹³⁶ According to Ibn Taymiyya, "[t]he mufti, the soldier, and the common man, if they speak of a thing according to their ijtihad, . . . ,intending to follow the Messenger to the extent of their knowledge, [they] do not deserve punishment."¹³⁷ In fact, Ibn Taymiyya even suggested that "all human

¹³⁰ Chibli Mallat, *Property Law in Saudi Arabia: A Reconstruction*, 19 Y.B. ISLAMIC & MIDDLE E. L. 300, 301 (2016—2017).

¹³¹ See *supra* text accompanying note 120.

¹³² FRANK E. VOGEL, ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA xv (2000).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ FRANK E. VOGEL, ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA 67 (2000).

¹³⁶ *Id.*

¹³⁷ FRANK E. VOGEL, ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA 68 (2000) (quoting Ibn Taymiyya, *Maju’at*, 35:379).

beings are under an obligation, to the measure of their individual capacity, to choose among the differing opinions offered.”¹³⁸

Eighty-three years later, another Saudi prince named ‘Abd al-‘Aziz began a campaign from Kuwait and reunited the Peninsula under his rule by 1926.¹³⁹ With the Peninsula under his grip, the Saudi project of imposing Wahhabism on the people of the Peninsula began in earnest.¹⁴⁰ This movement promised to return to pure practice and reject cultural derivations that accumulated over the previous centuries.¹⁴¹ To accomplish this mission, the new Saudi regime would take a “rigorous legalist approach” to interpreting the scriptures and a “puritanical adherence” to Islamic law.¹⁴² After struggling with the diversity of interpretations within Islamic law, the King then confirmed a resolution passed by the Judicial Board of Saudi Arabia to proclaim that ruling would follow the Hanbali School because of the “simplicity and clarity of its references and books.”¹⁴³

The latest version of Saudi Arabian Basic Law of Governance codified the Islamic law over all laws.¹⁴⁴ Article one states that “[i]ts constitution is Almighty God’s Book, The Holy Qur’an, and the Sunna (Traditions) of the Prophet (PBUH).”¹⁴⁵ Article seven stipulates that the Saudi government “derives its authority from the Book of God and the Sunna of the Prophet (PBUH), which are the ultimate sources of reference for this Law and the other laws of the State.”¹⁴⁶ In addition, article forty-eight states that “[t]he Courts shall apply rules of the Islamic Sharia in cases that are brought before them, according to the Holy Qur’an and the Sunna, and According to laws which are decreed by the ruler in agreement

¹³⁸ FRANK E. VOGEL, *ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA* 68 (2000).

¹³⁹ FRANK E. VOGEL, *ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA* xvi (2000).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Abdullah F. Ansary, *UPDATE: An Overview of the Saudi Arabian Legal System*, GLOBALEX (July/Aug. 2020), https://www.nyulawglobal.org/globalex/Saudi_Arabia1.html#_Sources_of_Law.

¹⁴⁴ Basic Law of Governance (Saudi Arabia), <https://www.saudiembassy.net/basic-law-governance>.

¹⁴⁵ Basic Law of Governance art. 1 (Saudi Arabia), <https://www.saudiembassy.net/basic-law-governance>; FRANK E. VOGEL, *ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA* 3 (vol. 8, 2000).

¹⁴⁶ Basic Law of Governance art. 7 (Saudi Arabia), <https://www.saudiembassy.net/basic-law-governance>; FRANK E. VOGEL, *ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA* 3 (vol. 8, 2000).

with the Holy Qur'an and the Sunna.”¹⁴⁷ Furthermore, article sixty-seven states provides the Regulatory Authority with the power to adopt “laws and regulations which will safeguard all interests, and remove evil from the State’s affairs, according to Sharia.”¹⁴⁸

In particular to property law, the Law of Real Property Registration 1423 H by Royal Decree No. M/6 dated 11/2/1423 and Cabinet Resolution No. 42 dated 9/1/1423 provides the modern specific laws for property registration.¹⁴⁹ Article four of the decree suggests that a real estate area is the land that includes the building on the land.¹⁵⁰ Article fifty-four of the decree also stipulates that if the real estate unit owners intend to construct, add, modify, or remove buildings from the attached land, they must inform the real estate registration authorities of such changes within ninety days of the change.¹⁵¹

Saudi Arabian courts now apply Islamic law as applied by the Hanbali School.¹⁵² Unfortunately, the Wahhabi vision of fiqh has not appeared to have produced a coherent law on real property registration.¹⁵³ In 1979, Farhat J. Ziadeh wrote that “accurate information as to the extent of [land] registration is lacking.”¹⁵⁴ Well into the 2010s, Chibli Mallat wrote that this remark was still accurate.¹⁵⁵ Under real-property-related disputes, Saudi courts formed the legal action of *istihkam*, which established individual title to land, out of three common characteristics in Saudi rulings.¹⁵⁶ First, Saudi courts made occasional reference to a work of ibn Qudama, a leading classical Hanbali scholar who tied private ownership of land to the revival principle by stating that “[w]hoever revives a dead land is entitled to

¹⁴⁷ Basic Law of Governance art. 48 (Saudi Arabia), <https://www.saudiembassy.net/basic-law-governance>; FRANK E. VOGEL, *ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA* 3 (vol. 8, 2000).

¹⁴⁸ Basic Law of Governance art. 67 (Saudi Arabia), <https://www.saudiembassy.net/basic-law-governance>; Abdullah F. Ansary, *UPDATE: An Overview of the Saudi Arabian Legal System*, GLOBALEX (July/Aug. 2020), https://www.nyulawglobal.org/globalex/Saudi_Arabia1.html#_Sources_of_Law.

¹⁴⁹ Law of Real Estate Registration, Royal Decree No. M/6, Apr. 24, 2002 (Saudi Arabia).

¹⁵⁰ Law of Real Estate Registration, Royal Decree No. M/6, Apr. 24, 2002, art. 4 (Saudi Arabia).

¹⁵¹ Law of Real Estate Registration, Royal Decree No. M/6, Apr. 24, 2022, art. 54 (Saudi Arabia).

¹⁵² Abdullah F. Ansary, *UPDATE: An Overview of the Saudi Arabian Legal System*, GLOBALEX (July/Aug. 2020), https://www.nyulawglobal.org/globalex/Saudi_Arabia1.html#_Sources_of_Law.

¹⁵³ Chibli Mallat, *Property Law in Saudi Arabia: A Reconstruction*, 19 Y.B. ISLAMIC & MIDDLE E. L. 300, 301 (2016—2017).

¹⁵⁴ FARHAT J. ZIADEH, *PROPERTY LAW IN THE ARAB WORLD* 98 (1979).

¹⁵⁵ Chibli Mallat, *Property Law in Saudi Arabia: A Reconstruction*, 19 Y.B. ISLAMIC & MIDDLE E. L. 300, 302 (2016—2017).

¹⁵⁶ *Id.* at 302.

it.”¹⁵⁷ Second, Saudi courts have considered the dominance of state ownership of the land.¹⁵⁸ Third, Saudi courts considered that titles were constantly subjected to “a tension between individual possession and reversion to the state.”¹⁵⁹ Most pertinent to this inquiry is the first characteristic of Saudi rulings backed by ibn Qudama which is demonstrated by the practice of notaries to list any sales and any change to the property.¹⁶⁰

This practice is best illustrated by a conveyance case that was ruled in 1993 and affirmed by cassation in 1993.¹⁶¹ The buyer of a house attempted to prove his ownership in court, but he did not have a contract written between him and the seller before a notary, but the buyer was able to call in two witnesses to confirm the sale and the price.¹⁶² Since the seller disappeared after the contract, and the court could not locate the seller, the court permitted the buyer’s registration of the property sale, but the seller had the right reserved for when he reappeared.¹⁶³ This case is important to the Saudi rule on registration because it best demonstrates the justification behind linking the registration of land and the attached building into one real estate unit. Here, the buyer had reason to buy the house from the seller, and once agreement was reached and witnessed by two people, the seller disappeared.¹⁶⁴ Rather than prevent the buyer from having rights to the house, the Saudi Arabian legal system was more concerned with the striving towards asking for Allah’s bounty than protecting whatever rights the seller may or may not have had.¹⁶⁵

¹⁵⁷ *Id.* at 301. See Mughni, 8, 145—83 (‘*kitab ihya’ al-mawat*, Book on revival of dead land’): ‘*man ahyā ardan maytatan fa-hiya lahu*’, with variations on the hadith at 145.

¹⁵⁸ Chibli Mallat, *Property Law in Saudi Arabia: A Reconstruction*, 19 Y.B. ISLAMIC & MIDDLE E. L. 300, 302 (2016—2017).

¹⁵⁹ Chibli Mallat, *Property Law in Saudi Arabia: A Reconstruction*, 19 Y.B. ISLAMIC & MIDDLE E. L. 300, 302 (2016—2017).

¹⁶⁰ *Id.* at 319.

¹⁶¹ *Id.* at 319, note 76. See M.2.248-52. Grand court of Dammam, Judge Saleh ibn ‘Abdallah al-Zahrani, decided 14.1.1414/3,8.1993. Confirmed in cassation on 19.3.1414/6.9.1993.

¹⁶² Chibli Mallat, *Property Law in Saudi Arabia: A Reconstruction*, 19 Y.B. ISLAMIC & MIDDLE E. L. 300, 319 (2016—2017).

¹⁶³ *Id.* at 319—20, note 76. See M.2.248-52. Grand court of Dammam, Judge Saleh ibn ‘Abdallah al-Zahrani, decided 14.1.1414/3,8.1993. Confirmed in cassation on 19.3.1414/6.9.1993.

¹⁶⁴ See *supra* text accompanying notes 158—60.

¹⁶⁵ See *supra* text accompanying note 154.

CONCLUSION

In stark contrast to the Japanese rule, the Saudi Arabian rule of land and property registration binds both to each other as a single real estate unit. Unlike the unique Japanese relationship between ruler and ruled that guides real property registration, the Saudi rule is guided by the relationship between Allah and those who profess their faith to him. Rather than focusing on the imposition of the ruler over the ruled, the Saudi Arabian Islamic law emphasizes the striving that adherents of the faith make towards a strong relationship with the all-satisfied and all-giving Allah through the concepts of al-Ghani and al-Mughni. These concepts permitted the Hanbali school, and in particular its scholar ibn Qudama, to formulate the revival principle that would entitle those who strove to take advantage of Allah's land-based blessing.

As part of a project to revive a more "pure" Islam, the Wahhabi movement, with the force of the House of Saud asserted their might over the Arabian Peninsula to form the Kingdom of Saudi Arabia and choose Hanbali law as the basis of Saudi property law. Sadly, the literature of real property registration appears to be very limited, but the Saudi courts have confirmed that buyers who strive to buy a house with witnesses are entitled to the rights pertaining to the house. For the Saudi system, it was preferable that Allah's blessings were taken rather than wasted. Perhaps the answer to property law reform lies within the incentive-based nature of the Islamic legal system as applied in Saudi Arabia.

BHUTAN: A BUDDHIST LEGAL ALTERNATIVE? (BUDDHIST LAW)

THE BHUTANESE LEGAL RULE¹⁶⁶

The Bhutanese legal rule for real property appears to trend closer to the Saudi Arabian rule in that the land and the building are a more integrated unit.¹⁶⁷ Several hints in the Land Act of Bhutan 2007 (the

¹⁶⁶ *Field Listing – Legal System*, THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/field/legal-system/>.

¹⁶⁷ The Land Act of Bhutan 2007.

Act) suggest that the rule is that the attached building is integrated with the land.¹⁶⁸ Article ninety-two of the Act states that “[a] landowner without a house and having only inherited Chhuzhing [(a specialized piece of agricultural land)] in his Thram [(only legitimate title document)] may apply for one plot of 50 decimals in rural area for residential land.”¹⁶⁹ In addition, article 171 of the Act mandates a noncompliance report against the landowner if the house is not built on the residential land set aside from the chhuzhing land.¹⁷⁰

Certain articles regarding land transactions also appear to signal the lack of a separate registration for buildings from land.¹⁷¹ For instance, article 106 of the Act stipulates that “the immovable properties on the transacted land shall be deemed as belonging to the new landowner.”¹⁷² Furthermore, article 151 of the Act includes “immovable property” in the “valuation of the land and property.”¹⁷³ These provisions suggest that the law treats the house as part of a single unit of real estate along with the land.

Another hint of the Bhutanese rule’s closer proximity to the Saudi Arabian rule is that unlike the Japanese Real Property Registration Act, the Land Act lacks a chapter dedicated to building registration.¹⁷⁴ Instead, buildings appear to be treated as an attachment depending on the land for its existence.¹⁷⁵ If the Act is valuing the land based on the inclusion of immovable property, and no explicit exception is made for houses or buildings, then it becomes far more difficult to argue that the house or building exists as a separate entity from the attached land.

THE EXISTENCE OF A BUDDHIST LEGAL TRADITION

¹⁶⁸ The Land Act of Bhutan 2007.

¹⁶⁹ Dzongkhag Administration, Tongsa, *Agriculture*, CHHOETSE-DZONG: TRONGSA, <http://www.trongsa.gov.bt/en/sector/agriculture>; The Land Act of Bhutan 2007, arts. 16, 92.

¹⁷⁰ The Land Act of Bhutan 2007, art. 171.

¹⁷¹ The Land Act of Bhutan 2007, art. 106.

¹⁷² The Land Act of Bhutan 2007, art. 106.

¹⁷³ The Land Act of Bhutan 2007, art. 151.

¹⁷⁴ The Land Act of Bhutan 2007. *See* Fudōsan tōki hō [Real Property Registration Act], Act No. 132 of 2007, arts. 44—58 (Japan), <http://www.asianlii.org/jp/legis/laws/rpraan132o2007388/>; Hiroshi Matsuo, *Japan*, in INTERNATIONAL ENCYCLOPAEDIA OF LAWS: PROPERTY AND TRUST LAW 61 (Alain Verbeke and Vincent Sagaert eds., 2021).

¹⁷⁵ The Land Act of Bhutan 2007.

Before a discussion on any Buddhist legal alternative, it is imperative to find whether there is a distinct Buddhist legal system that is unique from the Hindu and East Asian traditions. In his commentary on Buddhism, H. Patrick Glenn expresses a great deal of skepticism about the idea that Buddhism could have implications for law because of its relative “emptiness” to more political ideologies.¹⁷⁶ However, while it would likely take years, or even decades, to gather the requisite research to advocate for the Buddhist legal tradition as a major tradition, there are abstract tenets that would distinguish a Buddhist legal tradition from the East Asian tradition.¹⁷⁷ Unlike an East Asian system, such as Japan, the sources of a Buddhist legal tradition would likely come from the Buddha’s teachings and rules in the Vanayas and the monks in monasteries.¹⁷⁸ Rather than promoting harmony, as with Japan¹⁷⁹, the goal of a Buddhist legal system would likely aim to reduce human suffering by creating a legal system that promotes the achievement of enlightenment.¹⁸⁰ Such a Buddhist legal tradition would likely have values based on the Buddhist version of dharma, and potentially other rules derived from it, which provides the teachings from which by which one could create laws that encourage the detachment from the material world and a greater understanding of the impermanence of the world.¹⁸¹

One could also argue that Bhutanese substantive law is grounded by unique Buddhist institutions.¹⁸² As Rebecca Redwood French and Mark A. Nathan have argued, there have been two trends that have changed the western perception of Buddhist law as a viable legal tradition.¹⁸³ First, there is greater awareness that the rules of Buddhism that guided monasteries (*sangha*) were not restrained to the monasteries.¹⁸⁴ Throughout Asia, monasteries operated like corporate institutions that could own

¹⁷⁶ H. PATRICK GLENN, *LEGAL TRADITIONS OF THE WORLD* 330, 332 (5th ed. 2014).

¹⁷⁷ *See infra* pp. 23—24.

¹⁷⁸ Rebecca Redwood French and Mark A. Nathan, *Introducing Buddhism and Law*, in *BUDDHISM AND LAW: AN INTRODUCTION* 2—13 (Rebecca Redwood French and Mark A. Nathan eds., 2014).

¹⁷⁹ *See supra* pp. 5—13.

¹⁸⁰ Rebecca Redwood French and Mark A. Nathan, *Introducing Buddhism and Law*, in *BUDDHISM AND LAW: AN INTRODUCTION* 2—3 (Rebecca Redwood French and Mark A. Nathan eds., 2014).

¹⁸¹ *Id.* at 3—5.

¹⁸² *See infra* text accompanying notes 160—65.

¹⁸³ Rebecca Redwood French and Mark A. Nathan, *Introducing Buddhism and Law*, in *BUDDHISM AND LAW: AN INTRODUCTION* 6 (Rebecca Redwood French and Mark A. Nathan eds., 2014).

¹⁸⁴ *Id.* at 6—7.

property and engage in financial and commercial matters.¹⁸⁵ Consequently, there was some legal mechanisms that guided interactions between the monks and the laity.¹⁸⁶ Second is the greater attention being given to the vinaya which is the first third of Buddhist canon with rules, examples, and punishments for those in the monasteries.¹⁸⁷ According to tradition, the Buddha created these rules on a case-by-case basis which is a concept that is arguably not radically different from the Prophet's examples in the Sunnah.¹⁸⁸ At the very least, due to the greater existence of the rules that emanated from the Buddha to the monasteries to the greater community, a Buddhist legal tradition arguably exists.

More specifically to Bhutan, during the reign of Deb Umzed Tenzin Drugyel, Zhabdring Ngawang Namgyal wrote the first Bhutanese code which was closely based on Buddhist principles.¹⁸⁹ Furthermore, article three of the modern Bhutanese constitution suggests the existence of a heavy influence of Buddhism in Bhutanese law.¹⁹⁰ This explicit assertion of Buddhism appears to suggest that Buddhism serves as the basis for which Bhutanese society would maintain order.¹⁹¹ If Bhutanese law were to contravene Buddhist principles, then its inclusion into the national constitution would be null and void.¹⁹² Therefore, one may argue that there is in fact a Buddhist legal system that exists in Bhutan.¹⁹³

THE ENVIRONMENTAL BASIS OF THE BHUTANESE RULE

¹⁸⁵ *Id.* at 6.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 8—9.

¹⁸⁸ Rebecca Redwood French and Mark A. Nathan, Introducing Buddhism and Law, in *Buddhism and Law: An Introduction* 9 (Rebecca Redwood French and Mark A. Nathan eds., 2014). *See supra* text accompanying notes 114—15.

¹⁸⁹ Ershadul Karim, Chhime Tshoke Dorjee, and Pema Needup, *UPDATE: Research Guide to the Legal System of the Kingdom of Bhutan*, GLOBALEX (Mar. 2018), <https://www.nyulawglobal.org/globalex/Bhutan1.html#bhutaneselegalsystem>.

¹⁹⁰ Richard W. Whitecross, *Buddhism and Constitutions in Bhutan*, in *BUDDHISM AND LAW: AN INTRODUCTION* 363 (Rebecca Redwood French and Mark A. Nathan eds., 2014). CONST. of the Kingdom of Bhutan, art. 3.

¹⁹¹ *See supra* text accompanying note 185.

¹⁹² *See* CONST. of the Kingdom of Bhutan, art. 1, cl. 9—10.

¹⁹³ *Field Listing – Legal System*, THE WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/field/legal-system/>.

The first pillar of a Buddhist legal tradition of Bhutan that contributes to the Bhutanese rule revolves around the concern for nature above economic interests.¹⁹⁴ The priority given to the preservation of nature is the first basis for Buddhist law and is perhaps a contributing factor in the creation of the modern Bhutanese rule.¹⁹⁵ When the Buddha began to teach at Ishipatana, he taught the Four Noble Truths which stipulated that “(1) life is suffering; (2) suffering has a cause; (3) suffering can cease; and (4) there are means to eliminate suffering.”¹⁹⁶ This suffering included “birth, old age, sickness, and death.”¹⁹⁷ Therefore, to follow Buddhist law, one must stop the causing of suffering to others “to root out human suffering.”¹⁹⁸ Under the Buddhist law of karma, “[o]ne reaps the fruit of the seed that one sows; a person cannot earn good merit from evil deeds, nor expect to bear sweet fruits from a bitter seed.”¹⁹⁹ This law has affected practitioners in various settings such as religious retreats with a prohibition (*sojong*) on plucking a blade of grass or killing a bug or in criminal contexts where judgment would be rendered depending on the results of the accused’s actions.²⁰⁰ Therefore, the Buddhist focus on environmental preservation would reinforce the rule against causing the suffering for animals or even for plants.

At some point before 1616 CE, Buddhist missionaries began to succeed in converting the Bhutanese people to Buddhism by incorporating ancient Bhutanese deities into a unique Bhutanese pantheon.²⁰¹ However, in 1616, the deity Mahakala appeared before Zhabdrung Ngawang Namgyel and predicted that his future would be in the Southern Valleys of Medicinal Herbs, and Zhabdrung promptly mounted his horse and left for Bhutan.²⁰² Once he arrived in Bhutan, protected by the spirit of Mahakala, he began to promulgate laws based on fundamental Buddhist teachings and appoint law lords

¹⁹⁴ Shera Lhundup, Note, *The Genesis of Environmental Ethics and Sustaining its Heritage in the Kingdom of Bhutan*, 14 GEO. INT’L ENVTL. L. REV. 693, 698 (2002).

¹⁹⁵ See *infra* text accompanying notes 170—86.

¹⁹⁶ Shera Lhundup, Note, *The Genesis of Environmental Ethics and Sustaining its Heritage in the Kingdom of Bhutan*, 14 GEO. INT’L ENVTL. L. REV. 693, 701 (2002).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 708.

²⁰⁰ *Id.*

²⁰¹ Shera Lhundup, Note, *The Genesis of Environmental Ethics and Sustaining its Heritage in the Kingdom of Bhutan*, 14 GEO. INT’L ENVTL. L. REV. 693, 706 (2002).

²⁰² *Id.* 707—08.

(drangpoens) to draft and codify laws.²⁰³ By 1652, a code of living, consisting of the ten pious acts and the sixteen virtuous acts of Social piety, was adopted along with natural and positive law and justice systems based on various Buddhist legal principles.²⁰⁴

The Buddhist foundations of Bhutanese law set the foundation for the modern day law. Upon the death of Zhabdrung in 1652, the Kingdom fell into divided factions until they elected Gongsar Ugyen Wangchuck as the king of Bhutan in 1907.²⁰⁵ It would not be until the time of the third modern king (Jigme Dorji Wangchuck) that Bhutan would begin to develop a modern economy in 1961.²⁰⁶ Unlike other developing Asian countries, however, the kingdom adopted a more “gradual and careful” development program by adopting concepts such as “‘human happiness’ and ‘middle path’” as guiding principles for laws pertaining to these areas.²⁰⁷ This policy, in addition to the Buddhist law developed throughout the centuries would culminate in the stringent protection of natural land in the modern Bhutanese constitution.²⁰⁸

According to article one of the 2008 Bhutanese constitution, “[t]he right over mineral resources, rivers, lakes and forests shall vest in the State and are the properties of the State, which shall be regulated by law.”²⁰⁹ Furthermore, article five of the 2008 Bhutanese Constitution, “a minimum of sixty percent of Bhutan’s total land shall be maintained under forest cover for all time.”²¹⁰ The Kingdom has also reflected this concern for nature through its relative success in its natural conservation programs.²¹¹ Programs such as the Bhutan Trust Fund for the Environment Conservation have helped the Kingdom

²⁰³ *Id.* at 707, 711.

²⁰⁴ *Id.* at 711.

²⁰⁵ *Id.*

²⁰⁶ Shera Lhundup, Note, *The Genesis of Environmental Ethics and Sustaining its Heritage in the Kingdom of Bhutan*, 14 GEO. INT’L ENVTL. L. REV. 693, 695, 698 (2002).

²⁰⁷ *Id.* at 698.

²⁰⁸ See *infra* text accompanying notes 205—06.

²⁰⁹ CONST. of the Kingdom of Bhutan, art. 1, cl. 12.

²¹⁰ CONST. of the Kingdom of Bhutan, art. 5, cl. 3.

²¹¹ Shera Lhundup, Note, *The Genesis of Environmental Ethics and Sustaining its Heritage in the Kingdom of Bhutan*, 14 GEO. INT’L ENVTL. L. REV. 693, 698 (2002).

ensure that its forests have become refuge for endangered species.²¹² Considering that the 2008 Constitution is “the Supreme Law of the State,” any law pertaining to the registration of land and the building attached to the land would have to conform with the Constitution or become “null and void.”²¹³

THE TRANSITORY NATURE OF PROPERTY

The Bhutanese rule has also perhaps been driven by the Buddhist views on the nature of property.²¹⁴ Buddhists believe that the world is transitory.²¹⁵ This belief in the transitory nature of the world is best understood through the model set by the Buddha’s life.²¹⁶ Siddhartha Gautama was born to a ruler in modern-day southern Nepal who was foretold that his son would either become a great ruler or a great religious teacher.²¹⁷ More keen on raising a king, the father raised Siddhartha in a life of luxury and tried to prevent him from witnessing anything that could push him down the teacher path.²¹⁸ Unfortunately for the father, Siddhartha’s burning curiosity lured him to leave his family behind and explore the world.²¹⁹ According to Buddhist canon, Siddhartha, in one evening, achieved “a perfect understanding of the way things truly are, . . . , an understanding of causality and karma, impermanence and the absence of self, suffering and liberation.”²²⁰

Property may be acquired, but property is not real because property is an illusion.²²¹ The quantity or quality of property itself is neither “good” nor “bad.”²²² Buddhist principle appears to be more concerned with one’s relationship to property. According to Buddhist doctrine, it is problematic when one

²¹² *Id.* at 699.

²¹³ CONST. of the Kingdom of Bhutan, art. 1, cl. 9—10.

²¹⁴ *See infra* text accompanying notes 188—202.

²¹⁵ Richard W. Whitecross, *Buddhism and Constitutions in Bhutan*, in *BUDDHISM AND LAW: AN INTRODUCTION* 365 (Rebecca Redwood French and Mark A. Nathan eds., 2014).

²¹⁶ Jacob N. Kinnard, *Proper Possessions: Buddhist Attitudes towards Material Property*, in *BUDDHISM AND LAW: AN INTRODUCTION* 78 (Rebecca Redwood French and Mark A. Nathan eds., 2014).

²¹⁷ Rebecca Redwood French and Mark A. Nathan, *Introducing Buddhism and Law*, in *BUDDHISM AND LAW: AN INTRODUCTION* 2 (Rebecca Redwood French and Mark A. Nathan eds., 2014).

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* at 2—3.

²²¹ Jacob N. Kinnard, *Proper Possessions: Buddhist Attitudes towards Material Property*, in *BUDDHISM AND LAW: AN INTRODUCTION* 80 (Rebecca Redwood French and Mark A. Nathan eds., 2014).

²²² *Id.*

attaches too much emotional attachment to property whether through greed, want or even rejection in certain instances.²²³ For instance, it is problematic when one possesses too much property and becomes too attached to the property.²²⁴ On the other hand, problems also arise when one has too little property which leads one to crave more property.²²⁵ Therefore, a middle-way indifference to property is the proper attitude.²²⁶ Buddhist doctrine also only permits the attainment of property through “ethical and moral” means.²²⁷ By this, the doctrine means that the property must be “acquired by energetic striving, amassed by strength of arm, won by sweat, lawful and lawfully gotten, both enjoys his wealth and does good deeds therewith.”²²⁸ In addition, the “ethical and moral” Buddhist acquisition of property is done when no living beings are harmed because of the property acquisition.²²⁹

THE LINK BETWEEN THE BHUTANESE RULE AND BUDDHIST LAW

At first glance, the link between the Bhutanese rule and the Buddhist foundations of Bhutanese law may appear to be tenuous. However, economic modernization developments raised concerns that “distinct Bhutanese values, traditions, and identity” would dissipate in the face of modernization.²³⁰ When the direct royal rule ended in 1998, an appointed Cabinet of Ministers would begin work on a written constitution by 2001.²³¹ Over the next few years, the Cabinet of Ministers drafted a constitution that “balanced the transformation of governance in Bhutan with its Buddhist heritage.”²³² After rounds of revisions, on July 18, 2008, the fifth king, Jigme Khesar Namgyel Wangchuck signed the 2008 Constitution.²³³ Whilst the final version did not designate Buddhism to be the official religion of Bhutan,

²²³ *Id.* at 80—81.

²²⁴ *Id.* at 80.

²²⁵ *Id.*

²²⁶ Jacob N. Kinnard, *Proper Possessions: Buddhist Attitudes towards Material Property*, in *BUDDHISM AND LAW: AN INTRODUCTION* 80—81 (Rebecca Redwood French and Mark A. Nathan eds., 2014).

²²⁷ *Id.* at 80.

²²⁸ *Id.* Anguttara Nikāya II.68.

²²⁹ Jacob N. Kinnard, *Proper Possessions: Buddhist Attitudes towards Material Property*, in *BUDDHISM AND LAW: AN INTRODUCTION* 80 (Rebecca Redwood French and Mark A. Nathan eds., 2014).

²³⁰ Richard W. Whitecross, *Buddhism and Constitutions in Bhutan*, in *BUDDHISM AND LAW: AN INTRODUCTION* 359 (Rebecca Redwood French and Mark A. Nathan eds., 2014).

²³¹ *Id.* at 360.

²³² *Id.* at 361.

²³³ *Id.*

the constitution proclaimed that “Buddhism is the spiritual heritage of Bhutan, which promotes the principles and values of peace, non-violence, compassion and tolerance.”²³⁴

Both the Buddhist commitment to protection of the natural world and the concept of the transitory nature of property provide the major foundations for the law of real property in Bhutan and the Bhutanese rule by promoting compassion for nature.²³⁵ On one hand, any laws relating to land and the building on top of the land must stay in conformity with environmentalist principles enshrined by the Bhutanese Constitution to ensure that a minimum level of land remains free of potentially dangerous human development.²³⁶ To construct a building on top of certain land, government approval is required and noncompliance with the construction results in penalties reflective of the suffering inflicted on Bhutanese society and the natural world.²³⁷

On the other hand, there is a recognition that the transitory nature of property, and the world at large, may disincentivize members of Bhutanese society from pursuing building construction that will not ultimately matter when they leave this world.²³⁸ Others may be more keen on constructing modest housing that only serves their immediate needs and does not excessively damage the natural world.²³⁹ Consequently, the Bhutanese rule on the registration of land and the building attached to the land reflects the Bhutanese adherence the Buddhist doctrine of compassion for nature and awareness of the transitory nature of property.

CONCLUSION

The Bhutanese law on land and buildings has proven the viability of an independent, albeit minor, legal tradition. At the very least, considering that the Land Act was passed after the passage of the modern

²³⁴ CONST. of the Kingdom of Bhutan, art. 1, cl. 9—10; Richard W. Whitecross, *Buddhism and Constitutions in Bhutan*, in *BUDDHISM AND LAW: AN INTRODUCTION* 363 (Rebecca Redwood French and Mark A. Nathan eds., 2014).

²³⁵ *See supra* pp. 24—28.

²³⁶ *See supra* text accompanying notes 182—86.

²³⁷ *See supra* pp. 24—28.

²³⁸ *See supra* text accompanying note 211.

²³⁹ *See supra* text accompanying note 196.

Bhutanese Constitution, even if the Bhutanese rule is not actively following the tenets of Buddhism, by virtue of its continued validity, the rule does not violate the Buddhist nature of the Bhutanese Constitution.

On one side, the Bhutanese law on real property is concerned about the effect of the law of karma on the environment. By binding the relationship between the land and its attached building, it becomes easier for the law to control the construction of buildings on land that may excessively hurt the natural world. On the other hand, the Bhutanese rule also serves to reinforce the doctrine of transitory nature of property by placing Buddhist limitations on the demand for material things by imposing a limit on the size of the building on the land. Perhaps urban reformists could look towards the unique Buddhist legal ideals of Bhutan as inspiration for addressing land and building registration laws.

IMPLICATIONS FOR URBANIZATION

The examination of the Japanese, Saudi Arabian, and Bhutanese rules on real property registration should have real-world implications for urbanization in the greater world. In particular, western countries are suffering from the worst of high rents that may be partially caused by the immense power of the landlord over the land and the building attached to the land.²⁴⁰ Whilst all three systems could potentially provide valid answers to the question of land and building registration in urban spaces, the Buddhist tradition found in Bhutan may find the most support in its implementation.

Japan's Tokugawa-era answer, masked by neo-Confucian principles, provides a top-down-solution to reformists that may provide the State with an answer backed by political expediency to undermine the overwhelming power of landlords by separating the land from the buildings.²⁴¹ In a

²⁴⁰ See Stefanos Chen, *He Says His Landlord Is Harassing Him to Leave a \$450-a-Month Apartment*, N.Y. Times (Nov. 27, 2022), <https://www.nytimes.com/2022/11/27/realestate/apartment-landlord-harassment.html?searchResultPosition=4>.

²⁴¹ See *supra* pp. 5—13.

democracy, if the landowners represent a constituency to be pleased, then they are rivals to other interests of the State the political power over ownership of the land.²⁴²

From the Japanese view, the landlords' presence would present a threat to the domestic political unity and harmony of greater society.²⁴³ People from outside of the landlord constituency may become more politically active and vote against the interests of landlords. However, if landlords continue to win elections, the more pro-landlord law may give rise to greater discontent threatening societal harmony.²⁴⁴ Therefore, separating registration of the building from the land may allow for greater ownership by the State or less advantaged members of the public because the law deprive landlords of political power in the hope of restoring some societal harmony.²⁴⁵ Since the landlords are part of the people, then the landlords owe obligations to the State as the other people owe obligations to the State.²⁴⁶

Saudi Arabia's answer, inspired by the all-satisfied and all-giving nature of Allah, may provide an improvement-related reason to maintain the integration between the land and the building as a singular real estate unit.²⁴⁷ Unlike the Japanese focus on power imposition, the Islamic tradition of the Hanbali school emphasizes the incentives for landowners to improve the land.²⁴⁸ Instead of concerning oneself with the competition between landlords, non-landlords, and the State, the link between building and land registration should be focused on incentivizing improvement on the land by making revival a religious obligation considering that the Hanbali school has permitted the Saudi courts to promote the doctrine of revival.²⁴⁹

²⁴² See *supra* text accompanying note 65.

²⁴³ See *supra* text accompanying note 39.

²⁴⁴ See Stefanos Chen, *He Says His Landlord Is Harassing Him to Leave a \$450-a-Month Apartment*, N.Y. Times (Nov. 27, 2022), <https://www.nytimes.com/2022/11/27/realestate/apartment-landlord-harassment.html?searchResultPosition=4>.

²⁴⁵ See *supra* text accompanying notes 71—76.

²⁴⁶ See *supra* text accompanying notes 60—62.

²⁴⁷ See *supra* pp. 13—21.

²⁴⁸ See *supra* pp. 13—21.

²⁴⁹ See *supra* text accompanying note 160.

If the value of the property is between the building and the land together as a single unit, then the State could encourage improvements to the land by allowing the homeowner to privately own the land and the attached building.²⁵⁰ However, the authorities would only permit ownership on the condition that the landlord continued to make improvements to the land to improve the value of the rental.²⁵¹ On the other hand, if the integrated property unit was not being used, then the State could legally justify seizing the land and more quickly permit ownership by someone who strove to take advantage of the divine blessings.²⁵² As to whether the Saudi Arabian legal conception of land and building registration will reduce the rent or improve the lives of the less fortunate in the cities, there may be an answer in the coming years.²⁵³ According to a recent news story, the Deputy Governor of Operations at the Real Estate General Authority (REGA) said that the authority intended to implement the real estate registration law in cities.²⁵⁴ Starting with Riyadh, the Saudi Arabian government will implement the program in individual phases that target certain cities in each phase and provide the registration service for free.²⁵⁵

Finally, the Bhutanese answer, although closer to the Saudi integration rule rather than the Japanese separation rule, may provide reformists with answers that are more closely linked with legal systems that do not receive the same attention as Asian or Islamic legal systems.²⁵⁶ Rather than concerning the law with an obligation to a ruler-ruled relationship or a divine being's will, the Buddhist legal tradition present in Bhutan would shape law according to the preservation of the natural world and the recognition of the transitory nature of property.²⁵⁷ Modern-day environmentalists may be looking for a source of law that could justify real estate registration laws that are more sensitive to the problems that

²⁵⁰ Chibli Mallat, *Property Law in Saudi Arabia: A Reconstruction*, 19 Y.B. ISLAMIC & MIDDLE E. L. 300, 319—20 (2016—2017). See M.2.248-52. Grand court of Dammam, Judge Saleh ibn 'Abdallah al-Zahrani, decided 14.1.1414/3.8.1993. Confirmed in cassation on 19.3.1414/6.9.1993.

²⁵¹ See *supra* text accompanying notes 153—59.

²⁵² See *supra* text accompanying notes 153—59.

²⁵³ *REGA plans to implement law of real estate registration gradually: Official*, ARGAM (June 9, 2022), <https://www.argaam.com/en/article/articledetail/id/1586192>.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ See *supra* text accompanying note 174.

²⁵⁷ See *supra* pp. 21—30.

some perceive to be posed by climate change and environmental degradation.²⁵⁸ Even if the landlords gain utility from favorable laws, the lives of the landlords are temporary because everyone eventually passes onto another world.²⁵⁹ After the memory of those landlords has long passed into the sands of time, the environmental degradation may remain to leave less utility for subsequent generations.²⁶⁰

On a more cynical note, westerners may find the Japanese and Saudi Arabian rules or solutions to be oppressive because of either their substantive content or their origins. In a western political culture that values rights rather than obligations, imposing a Confucian relationship between ordinary people and the ruler may contravene the western notions of life, liberty, and the pursuit of happiness.²⁶¹ In addition, a large contingent of westerners may find offense to the idea of importing ideas of the Islamic world considering the popularity of secularism for some westerners and the fear of Islam for other westerners.²⁶² Therefore, a relatively unknown²⁶³ legal framework may be easier to introduce.

CONCLUSION

Ultimately, the future of our cities is at a cross roads. Western landlords have gained enormous power in urban spaces around the world, especially through common law and civil law systems. Those who deplore the current western systems should perhaps look to other legal traditions for answers or inspirations to answers. The real property regime that each society chooses may benefit, detract, or not affect the well-being of those who call the cities their home. The Japanese answer, based on Tokugawa neo-Confucianism, offers a rule that separates land registration from building registration. The Saudi Arabian answer, based on Hanbali Islamic law, binds the land and building into one real estate unit. The

²⁵⁸ Julia Rosen, *The Science of Climate Change Explained: Facts, Evidence and Proof*, N.Y. TIMES (Nov. 6, 2021), <https://www.nytimes.com/article/climate-change-global-warming-faq.html>.

²⁵⁹ See *supra* text accompanying note 211.

²⁶⁰ See *supra* text accompanying notes 203—204.

²⁶¹ U.S. CONST. pmb., <https://www.archives.gov/founding-docs/constitution-transcript>.

²⁶² Rachel Donadio, *Why Is France So Afraid of God?*, THE ATLANTIC (Nov. 22, 2021), <https://www.theatlantic.com/magazine/archive/2021/12/france-god-religion-secularism/620528/>.

²⁶³ See *supra* text accompanying note 174.

Bhutanese answer, based on Buddhist principles, stresses an adherence to the Buddhist doctrines of protection of the natural world and the transitory nature of property.

Despite the validity of the answers provided by the systems, the Buddhist tradition present in Bhutan could be the most well-received answer to undermine the power of landlords over the land. Stronger state control over the land the building on the land may limit the use of land and preserve the land so that people only use what they need. If life, according to Buddhist doctrine, is temporary, then it is paramount to consider the future of the land for subsequent generations. This idea may become more popular with younger generations of a more environmentally aware polity.

Regardless of which tradition provides the best path towards real property registration, the younger western generations need to prioritize the types of laws that they want to implement in their community. Western systems have survived because of their adaptability to ideas from all the corners of the world. If the younger generations of westerners continue to absorb ideas from around the world, better solutions to the high costs of urban life may emerge and improve the lives of many people.