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The Legal Insecurity of Landed Property in Venezuela: A Case Study of the Registry System

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REAL ESTATE REGISTRATION SYSTEMS

Introduction

It is well to start this study by describing the state of the art of the registry institution. The purposes of the registration system, as well as the legal efficacy and protection of the act of registration will be examined first. Secondly, the principles that govern the institution will be considered so as to provide fundamental orientations to the technical and scientific synthetization of the legal order governing landed property. Additionally, different registration systems will be examined in order to classify the Venezuelan system. This is important because the Venezuelan experience cannot be separated from the institutional evolution which is taking place in this field.

Legal institutions are not static; if so, they become obsolete and do not fulfill the legal ordering of society which is their purpose. Legal institutions must contribute to achieve the goals of society. Thus information on the state of the art in our specific field of investigation is therefore our first concern.

Purposes of the Registration System

The registration system is that set of doctrines, principles and legal provisions which governs the functioning of the registry institution in a particular country. The institution is the framework under which legal instruments relating to property are recorded in official books kept in public offices called Registers. The real estate registry contains the

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inscription, in the pertinent books, of acts and contracts (in many countries notarial) relating to a change or limitation in the rights of property ownership.

The basic purposes of the registry institution are to provide: 1) security—to protect against interference by third parties; 2) publicity—to legally inform the people about present real estate ownership, and 3) mobility, to facilitate transfers, changes in and/or limitations in the rights in real estate.

1. **Security** is afforded by inscription or inmatriculation (first inscription) of real estate titles in the registry. If the inscription is limited to the recording of the legal instruments which accomplish the transfer, it is called “transcription.” On the other hand, if other acts and contracts are recorded in order that the parties may have confidence (trust) and rely on the registry entry (reliability), then the inscription is called “true inscription” or simply “inscription.”

If registry inscription (recording) is compulsory to effect the transfer of rights in real property, or to give actual possession of the property, it is said that the recording is constitutive of property rights; otherwise the operation is simply declarative in nature.

If registry inscription (true inscription) is compulsory for all acts or contracts relating to real estate, and for changes in and/or limitations in the rights of ownership, it is also said that registry inscription is constitutive of property rights; otherwise the operation is again declarative in nature. Mortgaging is an example. If a mortgage contract is not registered (inscribed), a real estate property right does not exist. The contract provides a right of credit or a personal right (*ius in persona*); not a right tied to real estate (*ius in rem*), a real estate right.

2. **Publicity** provides information that a particular title deed relating to real estate ownership is recorded or inscribed. It has no relation to security in the sense that publicity does not provide freedom from interference of third parties, nor does it protect real property acquirers, or validate real estate acts or contracts in most systems. Publicity facilitates real estate transactions, particularly their mobility and market-ability, through the confidence generated by public information and by uncovering inaccuracies or violation of rights.

3. **Mobility** flows from the security and the publicity provided by the real estate registration system. If the inscription provides security, and the information is publicly available, then the titles may have many uses and applications (credit, transfers, etc.). Thus, the safeguards of
security and publicity provided by the system lead to a versatile institution capable of promoting and furthering its goals.

Principles of Real Estate Registration

Registration principles are the rules, fundamentals or basic orientations underlying the functioning of the real estate registry institution resulting from the technical and scientific synthetization or condensation of the legal ordering of property. These principles serve as a guide to the legislator at the time of enacting legal provisions concerning property, to the judge when he adjudicates, and to the lawyer whose interpretations help the judge in the resolution of legal conflicts. They also serve to guide the scholar to classify a country's system, or to improve a non-functional or obsolete institution. The main registration principles are:

1. The principle of inscription.
2. The principle of presumption of registral accuracy in its two versions: legitimation and public good faith (*bona fides*).
3. The principle of legality.
4. The principle of specialization.
5. The principle of priority or rank.

Registry *inscription* is the act by which creation, transfer, modification or cancellation of rights on real property originates. If in a particular system the inscription is compulsory, registry recording is constitutive of rights. If the entry is not in the books, the parties have no rights.

The principle of presumption of registral accuracy (in its two versions) stems from the need to include in the registry something more than real estate information. It assumes agreement between contents of the entry and the extra-registral reality; the entry has therefore a *prima facie* value. In legal terms it is said to be a *iuris tantum* presumption, i.e., the entry is true and valid as long as the opposite is not proved.

Registration purports *legitimation* because it conforms to accepted rules and standards, and is made by means of lawful acts. Nevertheless, as stated above, full protection of the entry is not available unless in the subsequent acquisition of rights by third parties—those who took no part in prior registered acts or contracts—there is consideration, good faith and new recording of the act or contract. Then, and only
then, it is said that the principle of *public good faith* operates. The previous presumption *iuris tantum* becomes *iures et de iure*, i.e., no right prevails against the new entry.

The principle of *legality* purports a different meaning. If the provisions of the law, i.e., of the registry statutes are fulfilled, the capacity of the intervening parties recognized, and the validity of the legal instruments acknowledged, the Registrars decree that the deeds be inscribed in the registry books. In systems where this procedure is not followed, all other principles lose major legal effects, the process being that of filing and not recording.

Under the principle of *specialization*, the juridical status of real property is individualized. Specialization thus means individualization of property. For every piece of real estate an entry is made, inmatriculation being the first entry and the first inscription. Acts and contracts relating to individual parcels of real estate will be recorded following the initial entry, thus establishing a clear chain of title. If the particular parcel of land is “individualized” in the registry books, information is also provided regarding grantor, grantee and rights of ownership attached to the real estate. Publicity is thus attained and security therefore, improved. No registration system can claim modernity if the parcels of land are not “individualized” in the recording books.

Finally, the principle of *priority or rank*. This provides that although many similar transactions may have been conducted and recorded in connection with the same property, only that transaction which is first recorded is fully protected by the registry. First come; first served (*prior in tempore, potior in iure*). In conformance with the principle of priority, together with the public good faith provided by the registry, no subsequent acts or contracts prevail against those recorded. Whoever records first and is without notice has prior rights in the land as opposed to one who does not record, or records with knowledge of facts which destroy his priority. The first instrument recorded, therefore, excludes any rights other parties may have, even prior rights, if these are not recorded.

These are the basic registry principles or fundamental rules underlying modern registration systems. They exist and are applied in most developed countries. However, special attention has not been given them in most Latin American countries, for example, Venezuela and Colombia. This will be analyzed subsequently.
Types of Registration Systems

Registration systems may be classified according to the juridical nature attaching to the act of recording and/or the particular protection provided against third parties.

If registry recording is constitutive of property rights, and rights in real estate can only be acquired by an entry in the record books, registration is said to be within an inscription system. Germany, Switzerland, Australia, Malaysia and the Dominican Republic are typical examples of countries where registry recording is constitutive of property rights.

When rights of ownership in real estate are transferred merely by a lawful contract between the parties, and registration takes place subsequently in order to gain protection, registration is then said to be within a transcription system. France, Italy, the United States, and most Latin American countries, including Venezuela and Colombia, fall into this classification, and registry recording is only declarative of property rights.

In many countries registries are declarative of property rights, but in certain cases property transactions should be recorded (e.g., mortgaging) to constitute legal rights. Switzerland, Spain, Mexico and Peru are examples of this mixed juridical nature of registration.

The degree of legal protection provided by the system is obviously far-reaching particularly in countries which observe the inscription system. The internal organization of the system, the orderliness followed in the registry process, the time and cost required to make the entries in the books (regardless of the existence of plat and grantor-grantee indexing), and the technical qualifications of the registry officials also contribute to the reliability or lack thereof of the system.

As to the legal protection provided by the system to the registered legal act or contract, recording may or may not be conclusive. If the equitable concept of bona fide purchaser (acquirer for value without notice) has been adopted by statute, then the bona fide party prevails over prior unrecorded deeds, mortgages, leases, etc. Thus, the system provides the entire recorded evidence. Spain, the United States, Mexico and Peru, for example, provide this legal protection for the bona fide purchaser. On the other hand, when registry inscription may be challenged by an array of claims (e.g., formal imperfections, untruths), or the registration entry does not provide more rights than the unrecorded title deed, a filing system supersedes the recording system, with registration having no particular legal value.
Finally, if the system provides more than information and a requirement to pay fees and real estate taxes (two side effects of the recording act), and the title deed recorded gets formal protection as long as it is not challenged, recording being subject to legal claims, protection is not conclusive but security may be acquired by prescription or adverse possession.

The degree of application of the registry principles defined above is correlative to the degree of legal protection provided by the system.

Registral Organization

To achieve its objectives, a registry system requires the existence of an organized structure in which registry officials, books, and internal administrative procedures play an important role.

Appointment of officials, the types and number of books used, and administrative procedures vary from one country to another. The system is established by civil law in all Latin American countries, and is staffed by individuals appointed officially. The books are provided by the administrative branch of the government, and the administrative procedures are established by regulatory acts, decrees and other legal enactments.

Personnel vacancies are filled by political appointment and governmental decree, or by requiring applicants to take competitive examinations and to furnish other proofs of qualification. In this manner, the high professional standards of the personnel selected are ensured. This is not the case in most Latin American countries, including Venezuela and Colombia. In many instances, registrars need not have the technical qualifications inherent in a law degree, tenure is restricted to a few years, and appointments are made according to political influence. Salaries may be drawn from either the government's payroll (Venezuela) or from registry tariffs set by law (Colombia). Selection and promotion according to the norms of a recognized registry career, high technical qualifications, full life tenure and economic compensation by registry tariffs are, however, the standards of most European countries.

The books which comprise the system are also important. In progressive systems books are few; main, supplementary, and optional books may run from four to eight. Grantor-grantee, plat and index books—with the latter accessory to the former—have proven quite necessary. However, even though basic, some may not be used (the plat book in Venezuela). On the other hand, there may be an excess of books (in Colombia 31 books are kept in the Registry of Bogotá, including 12 index books). Where and how the books are kept is also important. In many developing countries
not enough attention is paid to safeguarding the books, offices are inadequate and the filing system disorganized.

The internal administrative procedures (closely related to a clear definition of registry objectives), including the implementation of principles, the type of registration system, and the bookkeeping process, among others, should be carefully formulated in order to prevent waste of time and payment of high tariffs.

Conclusions

In this part of the study, the purposes of the registry institution, the working principles which result in the attainment of its objectives, the types of registration systems, and a few organizational points have been covered.

Security, publicity and mobility of real estate were considered as the three main objectives or purposes of the institution. The safeguard of the system rests upon high standards of security and publicity. Mobility — the third objective — is directly attributable to the first two.

The five working principles of inscription, presumption of registral accuracy, legality, specialization and priority or rank were defined and held to be fundamental for a modern and rational functioning of the registry institution. Lagunae and difficulties may soon appear if a system lacks any one of them.

Different registration systems were discussed in order to throw some light and furnish information on their institutional evolution in developed — mostly European — and developing Latin American countries. Security, publicity and mobility of real estate transactions result from the application of the five working principles which underly the functioning of the registry, and of a modern and rational organization.

Appointment and tenure of registrars, and internal administrative procedures are basic issues relating to a well ordered system. Registry as a career, and life tenure, plus adequate bookkeeping and a speedy process for recording and certifying documents have likewise been discussed.

Most Latin American countries fail to comply with the concepts herein set forth. Venezuela and Colombia, however, are countries with an institutional lag demanding more urgent action for modernization than, for example, Mexico or Peru. In view of the above, the Venezuelan registry will be described and analyzed next.
THE REGISTRATION SYSTEM IN VENEZUELA

Introduction

The purposes of any modern registration system have been pointed out. Also noted were the main principles governing the institution, particularly as they relate to fundamental rules underlying the legal ordering of property.

Next, the objectives and organization of the Venezuelan system will be compared with those previously described. The Venezuelan institution will be covered, including its subject matter, structure, functions, books and their use, mode of recording or internal process of transcription, time and cost of registration, and the personnel of the registry. Its purposes, principles and organization will be analyzed, reform projects briefly described, and preliminary policy recommendations suggested based on questions such as: What needs is the institution designed to meet? What have been the tempo and direction of change in Venezuela, if any? How adequately has the institution served the national community during periods of rapid economic and social development? How amenable to change and transformation has it been? Does it really provide security, publicity and mobility? Other related questions are: What are the main legal difficulties faced by the institution? What channels does it offer for the attainment of satisfactory solutions? What sanctions and penalties does the institution under study impose? What are the relationships and conflicts that arise with other established legal institutions? What are the ramifications of such conflicts? How and by whom are such conflicts dealt with? What is the result? Should the Venezuelan registry institution be redefined?

Adequate and reasonable replies to these questions are required in order to facilitate real estate transfer and disposal, provide security of tenure, and obtain the willing participation of parties concerned. Replies or solutions are also necessary for enhancing the dynamic role of property and land contracts, further release of energy and promoting economic and social development.

Purpose of the Registry

Though the Venezuelan registration system was established in 1836 and its essential characteristics have been preserved, a legal definition of what the registry is or what it stands for has never been given, nor have its purposes been clearly enumerated in the two regulatory statutes: the Public Register Act of 1940 as amended in 1943, and the Civil Code of 1942 (arts. 1913-1928).
The Venezuelan system grew out of the Spanish Pragmatic Decree of 1768 which established Offices for the Annotation of Mortgages. These were intended to offer protection to purchasers and parties interested in mortgaged real property, against possible liens and encumbrances. Its main goals at present are to give publicity and authenticity to the inscription of real estate acts and contracts which create, change, limit or cancel property rights. The degree of security offered by this system is limited by the extent to which these goals are achieved.

Publicity is provided either by allowing personal access to entries in the registry books, or by issuing simple or certified copies of the book entries or of the documents filed in the offices. Authenticity is accomplished by the intervention of the Registrar as a public official, in all registry acts and documents certified or authorized by him.

The registry also serves to provide proof of a right which, only by registration, can be either created (e.g., mortgage rights) or recognized (e.g., professional degrees, appointments of public employees, naturalization documents).

Finally, the institution serves as a filing service for duplicates of registry books kept in branch Registry Offices, and for official books, records and papers no longer in use in the administrative departments of the government, judicial courts, and the like.

In summary, the present aims of the Venezuelan registry institution are to provide publicity concerning real estate and other legal transactions, to confirm the authenticity of inscribed documents, to provide evidence of rights, and to serve as a filing service for public records, books and papers.

Subject Matter of the Registry

I. Private and public (official) documents, acts and contracts are subject to registration. For example:

a. acts relating to the transfer of real estate, its limitation or mortgaging;

b. acts which create or modify praedial easements, rights of use or habitation, or which transfer the right of usufruct;

c. acts which renounce the above mentioned rights;

d. acts of judicial adjudication of immovables or of other goods
LANDED PROPERTY IN VENEZUELA

and of rights subject to mortgaging; lease contracts of immovable property for periods longer than six years;

e. corporation contracts including usufruct of immovable property for periods longer than six years;

f. acts and court decisions relating to cancellation or transfer of unexpired rents for periods longer than one year, and

g. court decisions recognizing oral agreements on matters mentioned in the preceding ordinals.

Also subject to registration are official documents relating to:

a. decrees of attachment of real property;

b. claims seeking revocation, declaration of simulation, rescission and resolution of acts or contracts regarding property, and

c. court decisions canceling acts and contracts already registered.

Also included in the Venezuelan registration system are those documents voluntarily recorded in the four Record Books (Protocolos) which all Subordinate or Branch Registry Offices (one in every state district) keep for registration purposes. These books are next described.

The First Record Book (Protocolo Primero) is devoted to documents including acts and contracts relating to the creation, transfer, limitation and liens of rights in real estate; the creation of family patrimony; court decisions on rights of use, habitation and easements; inheritance property, antichresis, mortgaging, leasing contracts and agricultural pledges, plus documents which limit the free use of immovables of business enterprises in any way, and all types of bonds, promissory notes or other obligations regarding credits involving national revenues. Documents relating to mining and oil rights such as denouncements, exploration permits, mining land grants, and the like, should also be recorded in the First Record Book.

The Second Record Book (Protocolo Segundo) is devoted to documents relating mostly to family law, such as arrangements for marriage, guardianship, curatorship, dowry, divorce court decisions, adoption and emancipation of children, recognition of illegitimate children, declarations of absence and judicial decisions on absentee property rights.

The Third Record Book (Protocolo Tercero) encompasses documents relating mostly to commercial law, such as agency agreements, and acts and contracts for which the Commercial Code requires registration; documents in which creation, modification, transfer and cancellation of
rights on real estate property belonging to commercial associations or corporations is made; and documents presented for authentication only.

Proxies for betrothals and marriage contracts, and all other contracts, transactions, arbitration agreements, judicial verdicts and acts which are not provided for in special record books, such as copyright contracts, are also recorded in this Third Record Book.

The Fourth Record Book (Protocolo Cuarto) covers wills, codicils, and tax documents on inheritance, testate or intestate succession, and those which due to their particularity do not belong in the First Record Book.

Recording of all professional degrees, patents of navigation, appointments of public officials and documents for acquiring Venezuelan citizenship, shall be made in the only Record Book (Protocolo) which is kept in the Principal Registry Offices located in all state capitals.

2. Compulsory Recording

While some recording is done voluntarily, inscriptions relating to ownership and rights in real and personal property recognized or transferred by the state are compulsory. This type of compulsory inscription, required by statute, is becoming more and more common in Venezuela. Examples are the decisions which decree the compulsory expropriation of immovables in behalf of the Nation, States, Municipalities or other public entities; the transfer of title and ownership resulting from the sale of public lands, and administrative decisions establishing hydrocarbon concessions. Further examples relate to documents concerning rights of ownership in merchant ships; copyrights; sales of buildings by individual apartments, and of rural holdings by lots, and of land parcels granted by the Agrarian National Institute (IAN) to agrarian reform beneficiaries. Legal rights are not recognized if recording has not been carried out in the cases mentioned above.

3. Prohibitions

Recording of the following documents is forbidden:

a. those slandering or offending government officials, corporations or private individuals, or denying the validity of the laws in force;

b. title deeds and documents in which the value of the rights, when ascertainable, is not stated;

c. documents where the legal incapacity, temporary or permanent, of one or both intervening parties is evident to the registrars;
d. documents where evidence of payment of taxes on acts and contracts subject to taxation, is not furnished;

e. documents authenticated by a judge or notary public if altered or modified by an intervening or third party, or when an addition, not ratified by the same public official, has been made after authentication;

f. documents specifically forbidden by judicial decision and notice of which has been given to the Registrar.

Documents recorded in violation of one of the six provisions mentioned above are considered as unrecorded, and the entries have no legal value.

/Organization of the Registry/

1. Structure

The public registry service is organized by districts (counties) and states. Each district registry office, designated Subordinate or Branch Office (Oficina Subalterna), constitutes one registry into which several municipalities are integrated. There are 166 district registries, and 21 state registries called Principal Offices (Oficinas Principales). In Caracas there is a Principal and five Subordinate Offices.

The registry office is either rented or owned by the government. Most of these offices are located in colonial, one-story buildings in which the books and other registry materials are frequently endangered.

Registrars have an eight-hour work schedule of which no less than four hours should be devoted to the authorization of documents.

In 1967 a total of 233,457 transactions were handled by the registry offices. Of these, 165,765 were of relevant registral importance (e.g., sales, mortgages), 57,400 of the latter were handled by the Principal Offices and 108,365 by the Subordinate Offices. Of the total of 233,457 registry transactions, 48,875 or 21 per cent were carried out in the Federal District of Caracas.

Control and supervision of Registrars and registry activities is carried out by National Inspectors who are dispatched several times during the year to check the functioning of the registries, bookkeeping, collection of fees, etc. Tax Inspectors also check the Registrar's activities with regard to the collection of taxes and fees. This operation is carried out by affixing fiscal stamps on the appropriate books. Registrars of principal offices act as inspectors for subordinate office registrars.
2. Services

The services furnished are not clearly set forth in any statute, but are scattered throughout the legal provisions regulating the system. A list follows:

a. Authentication of documents and of the signatures of public officials.

b. Checking of legal formalities.

c. Liquidation of taxes and fees (impuestos y derechos) on sales contracts, pledges, mortgages, wills, etc.

d. Recording (transcription) of the documents in the appropriate books.

e. Filing of other documents and records.

f. Issuance of copies and certifications.

g. Cancellation of rights.

Authentication is performed by the Registrar on all documents accepted for recording, he also verifies the signatures of public officials in his jurisdiction. Authentication of the acts of intervening parties not present at the registry office at the time of recording is also performed by a notary public (resident of Caracas, Maracaibo and a few other cities) and by judges in any other part of the country.

Rights in real estate are created, transferred, limited and cancelled without the intervention of a notary public. Unlike Colombia, France and Spain, Venezuela lacks a notarial system charged with the drafting of legal instruments required in real estate transactions. Documents, therefore, are drafted by practicing lawyers—a type of first authentication regarding matter content for all legal transactions amounting to more than 2,000 bolívares—and accepted for registration once all other requirements have been fulfilled.

Checking of legal formalities relates to documents as well as to the parties concerned in order to determine if the deed may or may not be recorded. These legal formalities comprise: 1) use of official stamped paper; 2) use of decorous Spanish language (no slanders, insults or corrections); 3) stipulation of contract price; 4) presentation of evidence attesting to the absence of fiscal debts; 5) proof of absence of limitations and encumbrances as per the registry books; 6) prior inscription in the case of real estate transactions, of full references in the recording document of dates and intervening parties on which the property transfer is
based; 7) satisfactory identification of the parties by means of personal identification cards, military cards, voting cards, passports, or other major documentation produced at the time of recording.

Liquidation of taxes and fees on recorded documents is the next item checked by the registry official. Taxes and fees are paid by affixing fiscal stamps for the amount specified in the registry receipt on the Stamp Book kept by the Registrar.

The recording of documents in the appropriate books is the final step in the registry operation which enables the institution to fulfill its mandate. This operation is carried out by transcribing the documents in full. Transcriptions are handwritten by registry employees and signed by the Registrar who hands over to the parties concerned the recorded, signed and sealed documents.

The Principal Offices are also charged with the filing of official documents, government records and closed court cases, and the keeping of birth, marriage and death inscription books, duplicate notarial books, and the like.

Another registry function is the issuance of copies and certifications relating to entries on the registry books or of documents filed in the office. The copies, verified and signed by the Registrar, may be handwritten, typed, photocopied or xeroxed, and are available to the general public. When required by judicial authority, certification follows a judicial decree. As regards rights in real estate, the certifications may cover all relevant data available at the registry, including judicial restrictions, attachments and other judicial liens. Entries of all certified transactions are made in the Daily Work Book. Certifications are issued from the duplicate books kept at all Principal Offices whenever the registry books of the Subordinate Offices are lost because of fire, flood, war, theft or similar occurrences. There have been cases in which both the Subordinate and Principal Registry Books have been lost, particularly in the case of records of the 19th century.

Cancellation of rights is carried out by marginal notes (notas marginales) inserted next to the appropriate entry after the cancelling instrument has been recorded.

3. Personnel

In Venezuela the registry is a national institution. Registrars and registry officials are civil servants appointed and paid by the government. However, there are no administrative regulations concerning this particular
career. Vacancies in the ranks of the registrars are filled by applicants who meet the following requirements.

a. Venezuelan by birth.
b. Over 25 years of age.
c. Of recognized integrity.
d. Experienced on registry matters.
e. Write correctly the Spanish language.
f. In full enjoyment of their civil rights.
g. Not subject to deprivation of their civil rights or to a penal court decision involving political disqualification.
h. Not in active military service.
i. Not suffering from permanent physical defects which may prevent them from carrying out their duties.
j. Successfully pass an examination on matters dealing with the public registry.
k. Have a guarantor or post a bond for an amount for which they may be liable in connection with their duties.
l. Take an oath regarding the faithful and honorable discharge of their duties.

The applicants' knowledge of the registry institution is proven by passing an examination furnished by the Ministry of Justice. Those with a law degree, and former inspectors or registrars are exempt; very few registrars are lawyers. With the exception of the registries in the principal capital cities, there is not too much rush to fill the vacancies because of low salaries. The basic salary of most registrars runs from Bs 11,316 a year, paid to each 98 subordinate registrars, to Bs 37,200 a year, paid to four principal registrars. The Ministry is trying to classify the registrars in four categories according to salaries. It should be noted that there are few professionals with a law degree willing to fill the position of registrar in places other than large capital cities.

Registry officials are appointed and paid by the government, but they may be nominated by the registrars. Their salaries are far too low considering the cost of living in Venezuela, especially in the larger towns. Their income is therefore supplemented by charging registry customers extra-legal fees. Political backing plays a part, to some extent, in the
selection and appointment of registrars and registry personnel. Appointments are not made for any definite period of time. Registrars and other personnel may be fired, as they have been, by orders of the Minister of Justice resulting from political pressures or personal disfavor.

Registrars are required to reside, under penalty of dismissal, in the town in which the office functions. However, when required, they may move to a place designated by the parties in order to record a document.

The Recording Process

1. Registration Books

Principal registrars keep nine books and subordinate registrars fourteen; the majority of these books are kept in duplicate. All books are furnished by the Ministry of Justice, have hard-bound covers with their titles printed or written thereon along with a seal showing the name of the office (location), year, quarter, and Record (Protocolo) number in the case of Record Books (Protocolos). Whenever there is more than one book for each Protocolo, an ordinal is added.

Most of the books used are the same in each registry office, principal or subordinate. Therefore, the books common to both shall be described first, leaving the special books for subsequent discussion.

a. Books in Principal and Subordinate Registry Offices.

i) Presentation Book. This book is used, once the taxes and fees have been paid, to record the following data: type of document presented for inscription, date, hour and minute of presentation of the document, names of grantors and grantees, and of intervening parties. Every entry in this book is signed by the Registrar and the party presenting the document.

ii) Daily Work Book. All acts and documents recorded in the registry office are entered in this book daily.

iii) Index Book. This book, kept in duplicate, shows the names of the grantors and grantees, and of the other intervening parties; the type of document or transaction; and the names of those recording other documents required by Venezuelan law.

The Index Book of the Subordinate Office contains the following data: names and surnames, arranged in alphabetical order, of grantors and grantees, and of the
other intervening parties (mortgagor, mortgagee, complainant, defendant, testator, etc.); type of document or transaction; location (parish, municipality and district) of the property being registered; entry folio (page) and volume number in the Protocolo; and the value of the transaction. These entries are recorded once the transaction has been completed and appropriate entries in the Protocolo and other books have been made. The Index Book of the Subordinate Offices is kept in duplicate. The second copy is sent to the Principal Office at the end of the year.

iv) **Inventory Book.** This book is also kept in duplicate, and is used to record all books, records, circulars and documents received during the year for filing and maintenance of the registry standards. The duplicate is sent to the Ministry of Justice, Division of Justice and Public Registers, during the first fortnight of January every year.

v) **Outgoing Correspondence Book.** This book contains, in numerical order copies of all official communications and letters sent to public officials on problems regarding the recording of documents.

Cases in which there is doubt concerning registration are decided by the Supreme Court (*Sala Político-Administrativa*), the only body authorized to decide cases concerning the Registrar’s authority to record or to reject a document. Most registry criteria have been established through the precedents set by the Supreme Court in reaching these administrative decisions.

vi) **Incoming Correspondence Book.** This book contains all official correspondence received by the Registrar. Letters and other information are gathered together every three months to make a small book whose pages are numbered and signed by the Registrar.

vii) **Book of Complementary Documents.** This quarterly book contains the documents accompanying those documents subject to recording, and evidence the acts and contracts the intervening parties have registered. The complementary documents follow a numerical series. Notations are made in the previously recorded instru-
ments and in the corresponding entries of the Protocolos of the assigned complementary document number and number of pages.

viii) Stamp Book. Tax stamps which must be purchased by interested parties in order to have the documents recorded are kept in this book. The Registrar then issues a receipt to the party concerned indicating payment of the fee corresponding to the type and value of the transaction. Registrars are required to indicate the page and number of the Protocolo on the receipt. This is not always done.

The registries' main recording books in which all documents, acts and contracts are recorded in full will be described next.

b. Book kept at Principal Registry Offices only.

In every Principal Office, one Record Book (Protocolo) is kept in duplicate for the registration of all professional degrees (law, medical, pharmaceutical, dental, midwifery, engineering, agronomy), as well as citizenship and naturalization documents, and others required by law.

Folios and pages of these books follow a numerical and alphabetical order. The Registrar and the Chief Justice of each state sign a notation appearing on the first and last pages of the book. These acknowledge the total number of folios and the total number of folios used respectively. This procedure is repeated every three months. The duplicates of the Protocolo kept at the state capital registries are forwarded to the Principal Office in Caracas within the first six days following the end of a quarter. The duplicate of the book kept in the capital of the nation is forwarded to the Ministry of Justice.

c. Books kept at the Subordinate Registry Offices.

Besides the eight books previously described, six other books are kept in these offices, namely: The Book of Writs of Prohibition and Attachment, the Book of Voluntary Encumbrances and Prohibitions of Transfer, and four Record Books (Protocolos), in duplicate.

i) Book of Writs of Prohibition and Attachment. The pages of this book are divided into seven sections containing the following data: Section one — names and surnames, in alphabetical order, of persons to whom writs of prohibition to transfer and pledge property, or writs of attachment on property have been issued; Section
two — type of writ; Section three — type of property and location; Section four — day and hour the writ is received and number assigned to it in the Book of Complementary Documents; Section five — day and hour of receipt of a writ canceling the prohibition or attachment and number assigned to it in the Book of Complementary Documents; Section six — type and number of tribunal which rendered the decision, and Section Seven — identification of the tribunal which canceled the entry.

ii) *Book of Voluntary Encumbrances and Prohibitions of Transfer.* This book, kept in duplicate, carries entries of establishment, modification or cancellation of voluntary transactions privately agreed upon by intervening parties regarding encumbrances and prohibitions to transfer property. The book is in four sections, namely: First, — mortgages and antichresis; Second, — emphytesis and census; Third, — limitations of property for cases relating to usufruct, use, habitation, family patrimony and easements, and Fourth, — sales with clause of reversion, and voluntary prohibitions to transfer and encumber. Every section contains the following data: names and surnames, in alphabetical order, of intervening parties who establish, modify, or cancel the real right; type of property and location, including municipality or parish; folio, number, volume and Record Book in which the entry is made; date of registration; value of the transaction in figures; signatures of the Registrar, and under the Registrar's signature, a notation concerning the modification or cancellation of the original entry and the date.

Very little use is made of this book because its information can be acquired faster and more accurately by reading the appropriate entry in the corresponding *Protocolo.*

iii) *First Record Book,* iv) *Second Record Book,* v) *Third Record Book,* and vi) *Fourth Record Book.*

The use of these books has been previously described. These are the principal books which keep the institution functioning administratively. All the other books are auxiliary books.
Recording is made by leaving side margins allowing enough space for marginal notes relating to other entries in the books relating to the property.

During the first working days of January, April, July and October, the District Judge and the Registrar meet in order to close the Record Books of the past quarter. This is done by means of a notation written immediately after the last entry in each book. The notation certifies the number of the Record Book, the number of pages; name of the office, and the day, month and year of initial use. Every quarter, duplicates are forwarded to the State Principal Registry Office. In Caracas, they are sent to the Principal Registry Office.

2. Recording Procedure

a. The recording process begins with the presentation of the documents to be recorded, duly drafted and signed by a lawyer. Documents must be drafted and signed by a lawyer in the following instances: when the fee for the transaction exceeds two thousand bolivares and there are at least two registered practicing lawyers in the district, and whenever the value of the transaction exceeds twenty thousand bolivares.

Documents shall be recorded, and the entries signed by the Registrar and the parties concerned in accordance with the order established in the Presentation Book within three working days. Any violation of this provision shall be penalized with a fine ranging from 50 to 400 bolivares. However, as far as can be ascertained, neither the rule nor the fine are complied with, at least in the registry offices of the larger towns.

The order established in the Presentation Book may be altered only in the recordation of wills, guardianships or curatorships, family patrimony, recognition of illegitimate children and documents for which urgent recording is required.

b. Recording in the only Book kept in the Principal Offices is carried out through a literal transcription of the documents subject to registration. A numerical sequence, on a quarterly basis, is followed in both books. Entries in the book are signed by both the Registrar and the party concerned. The document recorded bears a notation signed by the Registrar,
stating the book entry number, folio and the appropriate quarter.

c. Recording in the Subordinate Offices is conducted on the basis of the personal appearance or non-appearance of the parties, and the type of document presented for registration.

The following factors affect the recording procedure: presence or absence of the intervening parties at the recording proceeding; whether the document presented for recording is a legal instrument authenticated by a judicial or administrative authority, or whether the document is a will.

i) Registration of documents when the intervening parties are present.

1) Literal transcription is carried out in the appropriate original and duplicate books following a quarterly numerical sequence; 2) before signing the entry, the Registrar informs the parties regarding any encumbrances which may be recorded in the registration books affecting their property. A written notation to that effect, if appropriate, is made in the books and in the instrument deed as well. However, should the interested party be absent, the document will not be recorded; 3) the document is read by the Registrar, the intervening parties or by any of the two witnesses present, and the entry is checked for possible errors, against the original; 4) the contracting parties are identified, evidence that they have no fiscal debts is produced, and their signatures are entered at the bottom of the corresponding entries; 5) the entry and the instrument are signed by the Registrar and the witnesses, testifying as to compliance with all legal provisions described above, including date, marital status, citizenship, and any other pertinent details regarding the right recorded; 6) the names of the grantor and the grantee are entered in the Index Book, and, if necessary, a notation is made in the Book of Voluntary Encumbrances and Prohibitions of Transfer.

ii) Registration of documents when the intervening parties are not present.
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1) If a party is ill, the procedure does not vary, but the Registrar and the witnesses go to the domicile of the other party or parties; 2) if the signature of a party has been authenticated by legal authority (judge or notary public), the procedure is still the same for the party who is present. However, recording cannot proceed if there is any encumbrance which may affect adversely the absent party unless proof to the contrary is presented either by his participation in the procedure or by proxy; 3) in case there is no encumbrance on the right being established, transferred or limited, the party whose signature has not been authenticated, may present the document, but he must be present at the recording proceedings. The rest of the procedure remains the same.

iii) Registration of documents authenticated by judicial or other legal authority. The process is the same as in i) above. However, instead of identifying the parties, the document issued by a judicial, administrative official or notary is recorded, on the assumption that the official signature is correct. Recording cannot proceed, however, if there exists any encumbrance or lien on the property which does not appear in the document presented for recording if the party affected is not present and there is no other proof that he is aware of such encumbrance or lien. Once the document is recorded, marginal notes are incorporated in the entries in the appropriate book and the proper annotation is made in the Index Book and in the Book for Voluntary Encumbrances and Prohibitions of Transfer. The official letter enclosing the document is kept in the Book of Complementary Documents and the one recorded is sent back to the public official who forwarded it.

3. Time and Cost

Once the document to be recorded is filed and the taxes and fees are paid, registration should be accomplished in three days.

In rural Subordinate Offices where few registrations are performed, recording is normally accomplished within the stated period of time. However, in some Subordinate Offices located in state capitals, and in
all offices in the federal district of Caracas, the registration cannot be usually accomplished within the three-day period and at least eight to ten days for registration are required, due to the heavy work-load. In 1967, there existed 187 registry offices and a total of 233,457 registrations were performed. Of these 48,875 or 21% were carried out at the four registry offices (the Principal and three Subordinate) located in Caracas. These figures show the overload in certain places.

In the larger towns, registry employees carry out, in many instances, the final steps of the registrations process such as document reading, identification of the parties and signing of the registry entry in premises other than the registry offices, e.g., bank offices. Whenever the registrars are not present, and the employees are required to carry out the final steps they charge additional fees not covered in any of the legal provisions. Examples are excessive transportation costs and overtime charges.

Recording costs are set forth in Articles 113 and 114 of the Law of Public Registry. These two provisions set forth under 23 ordinals stipulate the amounts that shall be paid as taxes and fees. No clear differentiation is provided between taxes and fees, but fees are the amounts paid at the Principal Offices in compliance with the provisions of Article 113. Payments made at Subordinate Offices in compliance with the provisions of Article 114 represent taxes and fees.

Documents relating to the acquisition, modification, transfer and cancellation of real estate rights are recorded at the Subordinate Offices. The tax is assessed on the value of the transaction. The instruments subject to taxation include all types of civil law contracts (leases, easements, emphytheusis, etc.); business transactions for the transfer of goods or real property to limited partnerships, corporations or individual proprietorships; transfer of property in company dissolutions or through other legal acts such as judicial auction, inheritance distributions, and the like.

The tax is calculated in accordance with the following table:

<table>
<thead>
<tr>
<th>Price Value</th>
<th>Rate per Bs. 100</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than Bs 100</td>
<td>Bs 0.25</td>
</tr>
<tr>
<td>From 100 to 10,000</td>
<td>Bs 0.25</td>
</tr>
<tr>
<td>10,000 to 50,000</td>
<td>Bs 0.40</td>
</tr>
<tr>
<td>50,000 to 100,000</td>
<td>Bs 0.60</td>
</tr>
<tr>
<td>100,000 to 200,000</td>
<td>Bs 0.70</td>
</tr>
<tr>
<td>More than 200,000</td>
<td>Bs 0.75</td>
</tr>
</tbody>
</table>
For recording mortgage contracts on real property and pledges, the tax is only a fourth of the rate mentioned above. No tax has been established for the recording of instruments cancelling mortgage contracts or pledges, for the judicial acquisition of mortgaged property by the creditor, nor for the creation of a family patrimony.

Other payments made before recording the above mentioned documents are: Bs. 5 for each signature authenticated; Bs. 4 for the first 20 lines of the document plus 0.05 Bs for each extra line; B. 1. for each folio (two pages) of the document.

In the case of acts and contracts for which no estimated value has been determined, the fee is Bs. 20. For documents which according to the Mining and Hydrocarbons Laws require registration, a fee of Bs. 100 each is charged; in case the title is a concession for exploration and exploitation, the fee is Bs. 300.

Proceedings carried out in town but outside the registry office pay an extra fee of Bs. 10; outside town limits, Bs. 20, and at night double the amount. Cost of transportation is extra.

Complaints regarding the computation of taxes and fees paid may be filed at the Ministry of Justice. The decision of the Ministry may be appealed to the Supreme Court of Justice, but this is rarely done.

Responsibility for the payment of taxes and fees may be agreed upon by the intervening parties. If there is no agreement, in a real estate transaction the purchaser is required to pay. Whoever acquires a right of ownership in cases of usufruct, use, habitation, easement and emphyteusis by inheritance or judicial decision is required to pay the taxes and fees; otherwise, taxes and fees are paid by all the contracting parties. In mortgages and pledges, taxes and fees are paid by the debtor, in contracts with the government, they are paid by the other intervening party.

Analysis of the System

1. Purposes and Principles

Doctrines, principles and provisions which govern the registration system in Venezuela are scattered throughout the principal regulating statutes which have been interpreted by the Ministry of Justice and the Supreme Court of Justice. However, the specific goals of the system — security, publicity and mobility — have never been defined even though they also are found implicitly in certain legal provisions and interpretations.
The registry institution as such should meet the goals of the system. However, as subsequently indicated, the institution in Venezuela does not offer security, nor is publicity readily available or prompt.

In a well ordered registry system, security is provided by the proper combination and interaction of the basic registry principles, but this does not occur in Venezuela. The principle of inscription, for example, is not applied to the fullest and the procedure is limited to recording the documents in the appropriate books. This is a simple operation of transcription which sets forth and publicizes the content of a deed without additional effect, except in the case of mortgages in which the inscription is constitutive of the right. The Venezuelan approach may be due to the fact that reciprocal obligations are created among the contracting parties by their mutual consent and agreement (C. C. art 796 and 1171), and there is no urgency or compulsion to record the transaction in a public office to add greater security. In fact, many real estate transactions and property conveyances are not recorded in the rural areas to avoid payment of taxes and fees. Thus, the system does not provide reasonable protection from judgments against persons with similar names, nor against fraudulent signatures and adverse claims. Likewise, inscription in Venezuela does not provide conclusiveness as to title, nor for purging of old defects, continuing judicial protection, or a continuing guarantee. Further, in many cases, size boundaries and plot identification are described so poorly that legal conflicts constantly arise. Dual inscriptions are frequent, and become another source of conflict.

Unfortunately, this situation has been encouraged by Supreme Court precedents, such as the following:

"Registrars must record documents of real estate transfers even though the stated size of the plots is larger than the ones on record (1928).

"Once a document is recorded the entry remains valid until the court renders its decision, even though one of the parties has no legal capacity (1914).

"Lack of boundaries in the description of the real property does not constitute a legal reason for rejecting the recording of the document (1944).

"Lack of judicial authorization to record a document in which the party acts in the name of minors does not constitute a legal reason for rejecting registration (1945).

"The seller simply has to present proof of the immediate title of acquisition. Insofar as security is concerned, this does not mean that he
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is the true title holder of the property sold (Gaceta Forense No. 9).

"Neither a document in which a proxy sells property in the name of the person he represents (even though the latter has already sold the property); nor a document in which the remarried mother of a minor sells an immovable belonging to said minor, are included among the prohibitions set forth in the law to record documents (1928)." This lack of definiteness often makes interpretation of the legal provisions governing the institution very confusing.

Authentication of documents is a function which should not be performed by the registry institution. In most countries, the modern practice is for authentication of documents to be performed by public notaries. The registry institution has other objectives: security to protect the recorded rights from third party claims, adverse possession, dual transfers, nullity, formal imperfections and others; publicity, to give adequate notice, and mobility, to facilitate real property transactions, credit and investments. In Venezuela, however, the principles of legality and specialization which permit the accomplishment of the objectives mentioned above, are far from being understood and applied correctly. Accordingly, the Supreme Court has often misinterpreted the specific aims of the institution, thus hampering the institutional evolution of the system. Among the interpretations contrary to the principle of legality are the following:

"Although the legal act may have substantive defects, such defects do not constitute legal reason for refraining from recording the instruments (1948).

"Registrars should and must record all documents presented with the sole exception of those specified in the law. On the other hand, they may not reject the documents because of legal defects, errors, or possible legal consequences (Gaceta Forense No. 8).

"Registrars should not analyze or pass legal judgment on the possible legal effects of the instruments presented for recording (Idem.).

"Registrars are not authorized to evaluate the validity or legality of the document to be recorded (Gaceta Forense No. 15, Segunda Etapa).

"The possibility of substantive defects in a legal document does not authorize the registrars to refuse recording unless the case falls within the prohibitions of the law (Idem).

"Decisions on the legality or illegality of the recording act are made only by those who render justice. (Idem.)."

The principle of specialization, that is, the principle through which
real estate is individualized does not exist. All entries relating to the parcel recorded appear in sequence thus making it possible to inspect entries of all the documents affecting the ownership of the recorded parcel, dated back to the original conveyance.

The institution should permit the tracing of the title chain, link by link, through successive ownerships and thus allow the identification of each interest in the property as it was created by conveyance or contract. In this manner, an interested party can determine the validity of the instruments and their effect.

The Venezuelan registry also serves as a vehicle to furnish evidence of rights created only by registration (e.g., mortgage rights), or acknowledged (e.g., professional degrees, appointments of public employees, and naturalization documents). However, registration has an important side effect. Unless recorded, a conveyance is void as against a subsequent buyer who has no notice that the document exists (C. C. art. 1924). Thus, a priority right is established by registration and the right remains valid as long as it is not challenged. However, to use the registry institution as a vehicle to furnish proof of right deriving from professional degrees, patents of navigation, appointments of public employees, ecclesiastic titles, military appointments, documents of citizenship and the like is to distort the true aims of an institution whose sole purpose should be to record acts and contracts on real estate.

It has been indicated that it is well to record family law instruments relating to divorce, emancipation of children, guardianship, curatorships, recognition of illegitimates, wills, codicils, proxies, and so on. To include these functions in the land register is to miss the basic requirement of homogeneity required by any specialization of functions.

2. Personnel

Lack of technical qualifications, lack of a fully developed administrative career, and lack of incentives together with low salaries are some of the common obstacles which hinder the improvement in the skills and motivations of registry personnel.

The majority of the registrars are not lawyers, nor do they have legal training. Even lawyers are not acquainted with the registry institution until they start practicing because no law courses on the subject are offered. Training courses are not offered to improve skills nor the understanding of the functions of the registrars.

There is no registry career as such. Thus, registrars have no rights of tenure, no rights in the selection and filling of vacancies, nor rights
to higher salaries. Though dismissal is infrequent, it is possible to remove people at will according to the political "malaise" of the country. The possibility of deterioration in the administrative conduct of the Justice Department may also be a factor in triggering off dismissals.

Appointments are at will, and to obtain an official appointment the only requirements are backing through personal relationships, political identification, and some basic knowledge of grammar, arithmetic and in the social sciences.

Not all registry employees are on the payroll. Some of them work without pay in the hope of being selected to fill vacancies as they occur, but many do not succeed. In the meantime they earn a poor living by subcontracting for extra work from time to time through other employees.

It is submitted that the system requires a fully implemented administrative registry career, with rights, incentives and promotions clearly defined. Among these are the rights to tenure, the classification of registries according to the work load and type of city, and training courses at every level.

3. The Recording Process

The process of recording involves registration of all types of instruments. The recordation of instruments relating to real estate, family law, commercial law and wills follow a very similar procedure.

In Venezuela every instrument originates an entry in the Record Book. The entries follow a time, and not a link by link sequence. Most marginal notes are made next to previous entries relating to the same property and reference is made to the books in which the new instruments have been recorded. The procedure thus rests on the diligent or non-diligent behavior of registry personnel and this frequently involves serious danger and risk.

As far as landed property recording is concerned, it has been found that size, boundaries and identification of the plots are never required. Moreover, no cadastral certificate is issued, nor cadastral reference made to conform private interests (security in the transfer of landed property rights) to the public interest (government registration of land surveys or land inventories).

The recording procedure is designed to achieve the aims (security, publicity and mobility) of the registry system. It requires an organized structure in which the registry books also play an important role by publicizing the owners' names and offering additional information regard-
ing the titleholders (such as in the grantor-grantee books of the American Registers of Deeds) and the plots of land or farming units (tract books). Since there are no plot or tract books, the procedure is inadequate to help achieve the objectives of the registry system.

Indexing is very inefficient. It does not result in giving the rural customer prompt information. In order to consult the books, the interested party must know the full name of the party, the type of document, the number of the Record Book, the year, and the quarter of the year. Supplied with this information, he can then find the folio number and the page of the recorded entry; otherwise, the Index Book does not supply the required information. Indexing is only by family names and not by plot names. With this type of indexing, in which the customer must know beforehand most of the data he requires, mobility, another of the registry's objectives, is greatly hampered.

Another practice which seems very outdated is that requiring presentation and recordation of all documents by hand. The procedure may insure safety against forgery, but this factor is better considered at the time of establishing or improving a registration system. Safety results from the combination of those factors and the application of those legal principles which enable the institution to offer a reasonable degree of security in real estate transactions. If in order to avoid forgery all the work has to be done by hand, one of the main objectives of the registration system is lost.

The handwriting requirement may be a means of increasing the number of employees in registry offices at a time when outside employment opportunities are scarce. Under this reasoning, however, one should consider the vicious circle of underdevelopment. There are no jobs because there is no money for investment; there is no money for investment because there is institutional obsolescence since no one wishes to break the circle to modernize the system, and so on. Typing, photocopying and xerocopying are common practices in developed and leading developing countries.

4. Cost and Time

The cost of getting a title deed recorded varies according to the type of document, and the antecedent commercial and legal steps which must be taken before the deed is ready for recording. Therefore, the cost varies with the particular case and is dependent upon the specific operations in and outside the registry. In cases not involving the payment of taxes, nor transportation charges for the Registrar's participation in premises other than his own, the cost seldom exceeds 50 bolivares. But, in the usual cases
of purchase, sale and mortgage, the total payment may fluctuate between 1 and 1.5 per cent of the contract price.

Recording time may vary from a few hours in urgent cases (serious sickness of a contracting party, and cases described as urgent by the participants and accepted by the Registrar) to 20-25 days for other cases. Time violations are more frequent in the principal city registries than in the rural areas due to the large number of transactions carried out by fewer registries serving more people. In addition, most of the commercial activity in real estate is concentrated on the purchase and sale of land for urbanization. Transfers of rural land, though subject to the same requirements and ruled by the same legal provisions, are not frequently made outside the agrarian reform program.

Reform Projects

About six years ago, a few law professors realized the need to let the government know the urgency of revising the Venezuelan registry system and of redefining the aims of this institution. Also of the need to modernize and extend the present notarial system throughout the country. In 1960, with the enactment of the Agrarian Reform Act, an entire set of legal provisions was devoted to the creation and regulation of an appropriate cadastral system and the establishment of a National Office for the Cadaster of Land and Waters. Thus, the public awareness of this issue and of title registration.

In 1965, a registry reform project was sent to Congress for approval and enactment. After six years, discussion of the bill is still pending, along with the notary reform project. The project is articulated in 142 provisions, divided into three parts, namely: Part I, includes the first 38 articles and covers the organization of the registry; Part II, includes articles 39 to 86, and is devoted to acts, title deeds, and other legal instruments on real estate subject to registration plus the application and scope of registry principles; Part III, covers the recording process in art. 87-141.

Part I, after defining the purposes of institution, devotes four chapters to the appointment of registry personnel, qualifications of applicants, bonding provisions and so on. In addition, registrars' responsibilities, legal wrongs and sanctions, and registry inspection are covered in this part. Part II includes all substantive legal provisions related to acts, title deeds and legal instruments subject to registration, minimum content requirement of the documents, procedures and requisites for initial inscription, chain of title, proceedings to clear up cloudy registry entries, temporary inscription and marginal notes, and finally, the scope and effect of
the registry entry. Part III devotes two chapters to the recording, procedure, presentation of documents, recognition by the registrars of compliance with all legal requirements, available remedies if the documents are rejected; books and their uses including the Presentation Book, Inscription Book, Book for registering names of persons without capacity to intervene, Books of Complementary Documents, and Index Books (for persons and for real estate property). A third chapter covers the means to correct mistakes made at registration, and a fourth deals with the type and content of registry certifications.

In some aspects the project is a partial transcription of various legal provisions of the Spanish law of real estate registration; in others, several legal provisions of the Venezuelan public registry law have been maintained. The principal failures observed in this reform project are the generalized absence of any major legislation dealing with the Cadaster; the need for a closer relationship between acts and contracts affecting real estate and the National Cadaster of Lands and Waters, and lack of a clear understanding of the fact that no registry law can function unless the notarial and cadastral statutes are modernized and coordinated.

The notarial institution— with offices in Caracas and Maracaibo only until 1969— was established in 1956 in compliance with Article 146 of the Organic Law of the Judicial Power (Ley Orgánica del Poder Judicial). In compliance with the legal provision enabling the Executive to create, finance, regulate, and determine the notarial jurisdiction for the authentication of all types of documents, recording powers of attorney, protests of dishonored negotiable instruments, opening of sealed wills and issuance of certified copies of documents and acts, regulations were enacted by the Executive on September 28, 1956. Thus, the notarial institution came into being through the back door of an Executive regulation. No law has ever been enacted, nor the matter followed up in the Congress. This abnormal way of creating the notarial institution has indirectly strengthened the opposition to reform or to redefine the registry institution. Additionally, an almost total lack of publications on the subject has permitted the present legal framework relating to registries and notary publics to continue in force. However, the establishment of this rudimentary notarial system led to a lessening of critical inquiries regarding the functions of the registrars. But, while the establishment of the present notarial system satisfied a long felt need, its functioning and true objectives were not, and still are not, well understood in Venezuela.

Conclusions

The present goals, structure and organization of the Venezuelan
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Registry system are incomplete, inadequate and at times, irrelevant to real estate registers. The purposes of an effective system of registration of rights in land are to provide 1) a true description of said rights, 2) an immediate means of identifying, with certainty and accuracy, the entries in the books relating to any particular tract, and 3) validity of recorded acts and contracts affecting real estate. Security to protect against interference by third parties, and publicity to legally inform the people regarding present real estate ownership are the basic aims, these are achieved through a faithful description of the rights, the accuracy of the entries, and the validity of the statutes.

As the population increases, questions of land titles and registration, which previously may have been relatively unimportant, are certain to become crucial issues. Continuous progress in this field depends on maintaining a vigorous institution, able to create a growing interest in its use and in the protection it affords. That is, an institution that will bring to the citizens just rewards for their entrepreneurship, and within which parties concerned will be able to make daily decisions in ways consistent with the long-term goals of a developing country.

To accomplish the registry objectives to provide a solid juridical basis for a land market, the following are required: 1) a cadastral map and records, 2) a register which serves as an index to the maps and records, 3) plat books and tract indexes, and 4) a register of entries covering as many of the following subjects as possible: names, basic tenure, description and identification of holders and holdings, description of permanent rights (e.g., easements, rights of way, water rights) and temporary rights (e.g., mortgages, liens). A large part of these are not provided by the Venezuelan registration system. Titles are frequently obscure; cadastral maps and records, when available, have no relationship to the pieces of land being titled, transferred and registered; plat books and tract indexes do not exist; description and identification of holdings is inadequate and insufficient; and property rights are not guaranteed to a reasonable extent since the registration entry does not provide any more security than the unrecorded title deed. In summary, the title deed recorded has formal protection as long as it is not challenged.

On the other hand, too many books are kept for the limited title protection they afford. Offices are inadequate in the services they provide and in protecting books against fire and other risks. Lastly, registry personnel—appointed without administrative guidelines and with no legal background or training—being compelled to register all types of documents whose validity can be seriously challenged on legal grounds are committed to performing mechanical functions. Accordingly, real estate
transactions in rural properties are relatively few in number; more than half of the total amount of mortgages are registered in the two major cities of Caracas and Maracaibo.

Two authoritative opinions will add to the position taken, i.e., that the implementation of sound principles encourages economic development, and that economic growth demands a reorganization of the registry and an extension of the provisional warranties available to immovable property in Venezuela. The first such opinion states:

"The advantages which greater publicity to real estate property transactions bring to the economic development of a country are not debatable if one considers that a good registration system keeps the inventory of the immovable wealth of the nation-state up to date; insures territorial credit; facilitates the circulation of capital, making possible cultivation of land for its own worth; increases and makes viable the collection of taxes; determines or reenforces the results flowing from agrarian reform and urban planning laws, and, in general, gives vitality to the urban and rural economy by providing security, speed and economy to transactions involving immovable property (José R. Villavicencio)."

The other opinion states:

"At a time of economic growth such as that through which Venezuela, and, in general, all Latin American countries are experiencing, if the objective pursued is investment in capital goods, promotion of territorial credit and flow of money into the market, it is necessary to reorganize and guarantee the immovable property (Angel Cristóbal-Montes)."

Summing up the description and analysis made in this study, it is submitted that the outstanding problems in the present Venezuelan registry system are: an inadequate definition of purposes, resulting in a confusion of functions and the pursuit of heterogeneous objectives; too many books for too little security; lack of specialization in property registration; low standards in the application of the registry principles of inscription, legality, public good faith and legitimation; obsolete practices in the process of recording and certification; high recording costs and time wasted in large cities; lack of technical qualifications and poor salaries for most registry personnel.

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