I wrote a critique of Hernando’s de Soto’s book, *The Mystery of Capital*, while working in Washington DC in the last quarter of 2000 (Gilbert, 2002). I was shocked to see how much publicity the book was receiving and how the development banks, and particularly the Inter-American Development Bank where I was temporarily based, were responding to it. I could not understand, and am still bemused, why a polemical book based on so little real evidence was being given so much attention by serious professionals.

My original mixture of academic incredulity, despair and helplessness has not diminished over the years. Indeed, they have been accentuated by the fact that Hernando de Soto’s reputation and influence have gone from strength to strength. The World Bank (2003) seems to have accepted his message that: “Without legal title, property is not secure. … People do not invest in homes or communities where they are insecure. They cannot sell them or pass them on to their children. Perhaps worst of all, without property titles, homeowners cannot use their dwellings as collateral to borrow money that would help them escape poverty.” Officials of the Inter-American Development Bank echo that line when they assert that: “The absence of legal proof of ownership generates insecurity and social stigma that diminish the sense of citizenship among residents of illegal settlements” (Brakatz, J. et al., 2002: 18). That bank has now launched an enormous programme *Building Opportunity for the Majority* stimulated in part by de Soto’s arguments (Inter-American Development Bank, 2006). Governments in Egypt, Peru, Philippines and Tanzania have launched titling programmes that, some claim, have produced impressive outcomes (CLEP, 2008; Field, 2005; Panaritis, 2001; 2007; Soliman, 2004b). In 2005, the Commission for Legal Empowerment of the Poor (CLEP) was set up. This “independent global body that seeks to reduce poverty by expanding legal protection and economic opportunities for the poor” has a property rights working group chaired by Madeleine Albright and Hernando de Soto (DFID, 2007). Finally, various consultants have been busy pushing his ideas in poor countries and the UN has been particularly interested in the titling issue in the transition economies of Eastern Europe (Panaritis, 2007; ECE, 2007).

Given his influence it is important to continue seeking evidence to discover whether his recipe actually works. The empirical content of my original paper was based on research that I had been conducting in the low-income settlements of Bogotá, Colombia. My evidence showed that few of de Soto’s claims seemed to describe what happened there. Indeed, his argument could almost be reversed in that city; for example, land market transactions were more common before legal title was obtained than afterwards. The question that I am posing in this paper is whether Bogotá is atypical and if subsequent evidence suggests that de Soto’s ideas actually work better anywhere else?

Over the last ten years, quite a lot of evidence has examined the relationship between property titles, housing improvement and the provision of mortgage credit. Sometimes the case for legalisation appears to be rather strong. Panaritis (2007), for example, argues that the titling programme in Peru during the 1990s ensured that “6 million people became part of the formal economy. This translated into both economic and social returns: property values increasing more than three fold; on-property private investment increasing more than 70%; security of ownership increased by more than 90%; possibility of engaging child labor reduced by 28%, among others.” And, in a
much less positive evaluation in Buenos Aires, Galiani and Schargrodsky (2005) have come up with the somewhat surprising claim that “land titling reduced the fertility of the household heads”.

But, generally, the recent literature suggests that few studies provide real support for de Soto’s main claims. Scholar after scholar has pointed out that his work is: methodologically weak, his calculations both dubious and opaque, and his understanding of basic concepts like mercantile capitalism wholly unconvincing (Bromley, 2004; Durand-Lasserve and Royston (eds.), 2002; Krueckeberg, 2004; Marcuse, 2004; Woodruff, 2001). Worse still is that much of the evidence actually contradicts the claim that the granting of formal property rights is central to housing improvement.

First, many studies have underlined the point that households do not require a legal title in order to feel secure. Self-help housing is not under threat from governments in most countries and providing they have some savings people generally invest to improve their dwellings without a title deed (Riley, 2001; Payne, 2002; Durand-Lasserve and Royston, 2006; Home and Lim, 2004). Indeed, is this not obvious given that most of the housing in African, Asian and Latin American cities, some of it extremely solid and well built, was constructed informally? When settlements have been removed it is usually because authoritarian governments have been in power. A famous example in Rio de Janeiro in the late 1960s and early 1970s when “favelas close to Lagoa Rodrigo de Freitas and the elegant quarter of Gâvea, close to an expensive private university, were removed” (Rabello de Castro, 2002: 157; see also Perlman, 1970 and Valladares, 2006). Even if these favelas lacked title, most favelas in the city were not touched. The survivors even included one of Latin America’s largest ‘slums’, Rocinha, unmolested even though it lay across the main road from one of Rio’s most exclusive neighbourhoods. Clearly, most self-help settlements across the world survive without a legal title. In any case, giving people a title does not give them with total protection against losing their home. Titles are useless unless an accessible, affordable and fair judicial system is available. The large-scale demolition projects that have been initiated in India, Kenya and Zimbabwe over the last decade are hardly typical. And, at least some of the evicted in those countries had property titles. The problem is not the presence or absence of title deeds but that many authoritarian governments have scant regard either for the law or for people’s human rights.

Second, legal title is not a requirement for settlements to obtain services. In Bogotá, virtually every home has access to piped water, electricity and sewerage and the authorities provide services as soon as a neighbourhood is provided with street addresses (nomenclatura) (Aristizabal and Ortíz, 2002). Only in places like Rio de Janeiro, where the authorities long refused to service favelas, was illegality the reason why infrastructure was not provided (Rabello de Castro, 2002). More typically, settlements lack services because governments do not have the capacity to supply them.

Third, property titles seem to have little effect in convincing private banks to lend to the poor. Field and Torero (2003), Galiani and Schargrodsky (2005) and Solo (2008) all present evidence from Latin America which shows that the amount of formal lending changed little as a result of legalisation. It seems that private banks are reluctant to lend to the poor whether they have title or not (Gilbert, 2000; 2004). And even if microfinance facilities have grown substantially in many countries, rather little has so far been used to finance housing (Ferguson, 2004; UN-Habitat, 2005). Admittedly state institutions may increase their lending; Field and Torero (2003), for example, found that “land titling is associated with a 9-10 percentage point increase in loan approval rates from the public sector bank for housing construction materials”. However, this was not all good news insofar as they suspect that “the public bank may be characterized by greater corruption or the misuse of funds for political gain. Indeed, early reports of high default rates among borrowers suggest that loans may be distributed according to other criteria.”
There is also increasing recognition that many poor people are wary of using formal banks and even of getting into debt (Gilbert, 2000; Lemanski, 2010; Solo, 2008; Varley, 2002;). As ECOSOC (2004: 2) puts it “the risks of loss inhibit the rural and urban poor from seeking commercial credit. This is based on a sense of self-security, informed in many cases by previous family or community loss of property to debts.” As a result, in Peru, lower income families primarily use their own funds or those of social networks, both for formal and informal housing. Borrowing from formal, public or private institutions is relatively unimportant (Calderón, 2006). In the light of the sub-prime crisis in the US, the poor of Peru seem right to be wary of bankers bearing gifts.

Fourth, many home owners generate space for businesses and tenants even when they lack title deeds (UNCHS, 2003). Many of the backyard shacks of South Africa, for example, have developed in areas with questionable legal status (Bank, 2007; Crankshaw et al., 2000; Morange, 2006) and different kinds of rental accommodation have appeared despite offending local planning regulations in most cities of Southern Africa (Cadstedt, 2006; Precht, 2005; Grant, 2007; Huchzermeyer, 2007). While some writing notes that upgrading increases investment in renting, issuing a formal legal title is unnecessary (Banerjee, 2002; Aristibal and Ortiz, 2002). Poor self-help builders create rental accommodation even when government policy is unfavourable to landlords (Gilbert, 2009); it seems that the combination of a lack of title, a shortage of credit and government hostility is insufficient to deter them.

Fifth, there is little evidence that providing legal title greatly improves the rate of property transactions. In three cities in South Africa, FinMark Trust (2007) shows that settlements with the most secure form of title had the lowest rates of transactions! Similarly in Hyderabad, Banerjee (2002: 94) notes how in one settlement where non-transferable pattas had been issued, half of the inhabitants no longer live in the settlement and one-quarter of the lots had been sold illegally. Just as in Bogotá the lack of legal title does not impede sales, any more than the granting of title encourages them (Aristizabal and Ortiz, 2002; Gilbert, 1999). With respect to the law people seem to make judgements about what they can get away with; it is not title but the feeling of security that is important. What seems to determine the pace of property sales is the location of the settlement (Abramo, 2009). Well located settlements always attract investors. Elsewhere sales of well-constructed property are likely to be limited because few potential buyers cannot obtain credit to finance the purchase and because most potential buyers are too poor to buy decent used housing.

Finally, if recent writing provides only weak support for property titling, it offers no evidence to back the claim that US$40 trillion is locked up in dead capital. De Soto and his associates continue to come up with impressive estimates of how much this dead capital is worth but rarely report how the sums have been calculated. Soliman (2004a: 199-201; 2004b: 134) does reports on the methodology used to estimate the ‘hidden capital’ value for property in Cairo and Alexandria, Egypt, at US$133 million. The problem is that he calculated the value largely on the basis of the replacement cost of building each house not on its market value. This poses the critical question of whether a self-help builder would receive even the replacement cost of his house if he were able to sell the house. The essential problem here is how do you estimate a value for property in the absence of a real market for that property? Such evidence as exists suggests that formal low-income housing does not attract a good price and people cannot move because they cannot afford to buy a better house (Gilbert, 2004; Lemanski, 2010). And, even if everyone had a title where would the money come from? As Marcuse (2004: 42) puts it: “If Peru’s poor occupy $74 billion in real estate extra-legally, who will pay the legal owners $74 billion to give the poor title to it?” Maybe the hidden capital of informal builders is hidden because no one has the money to buy it.

If the legalisation of property does not do much good, does it actually do any harm?
Again I have searched and found very limited research evidence that it does. While Krueckeberg (2004: 3) is clearly correct in suggesting that titles bring costs as well as benefits, notably property taxes and utility bills, but so does upgrading without title. Of course, Laquian (2005) is correct in his concern that in places like the Philippines, “the proponents of the assets-formation campaign have grossly underestimated the difficulties and costs of surveying, titling, and registering land. They also seem to have neglected to consider the considerable effects of corruption in the legalization of land ownership.”

Market-induced displacement is more of a worry but again there is little evidence of such displacement on record (Varley, 2002). Certainly the examples Durand-Lasserve and Selod (2007) provide are unconvincing. Where, as in Cambodia, people have been evicted from central city locations such arbitrary action occurred before titles were distributed (Gravois, 2005). Powerful property interests removed the poor so that they could benefit from the newly titled land. But while the issue of titles may have been a catalyst to displacement, titling per se cannot be blamed. Rather it is an indictment of the failure of the state to protect the poor.

In my opinion, there is generally no problem if homeowners with titles are bought out by higher income groups so long as they are not cheated in the transaction. One of the virtues of titles is surely that people can make some money from what they own. If legalisation does encourage market forces to operate, then criticism is misplaced – in a capitalist economy that is precisely what should happen. The real complaint should be about the existence of poverty, the unequal distribution of income and wealth, and the misuse of power. If some people have too much money and others too little, then the fairness of market transactions is always likely to be compromised. That is the problem, not title deeds.

Of course, there is one group who may well suffer displacement as a result of titling programmes - tenants. If titling, or indeed upgrading without the issue of title, raises the cost of ownership, rents may rise (Bannerjee, 2002; Diop, 2007). Certainly Durand-Lasserve and Royston (2002a: 7) complain that tenants in South Africa, “being the poorest among the urban poor … are unable to meet the cost incurred by any improvement of their living environment. Unlike most irregular settlement occupants, they cannot apply for compensation in the case of forced removal and they are generally not eligible for resettlement.” But there is little or no firm evidence of this process actually taking place. Indeed, one of the great scandals of most upgrading programmes is that so few project managers seem to recognise that most self-help settlements contain tenants (UNCHS, 2003; Brakatz et al., 2005; Fernandes and Smolka, 2004; Gulyani and Bassett, 2007; Rojas, 2010). As such, there is little awareness of what happens to tenants as a result of these programmes. But even if market-induced evictions rise as a result of improved servicing, it will have nothing to do with titling. And, even if newly legalised and/or upgraded self-help landlords gain at the expense of existing tenants does that matter? For a start, many tenants in self-help housing areas are no poorer than the owners of self-help housing (UN-Habitat, 2003; Gilbert, 2009). As such, market-induced displacement of tenants would raise the incomes of poor landlords and landladies as more prosperous households moved in and paid them higher rents.

Where I perceive legalisation to be a real threat to owners is perversely from the temptation of borrowing too much on the basis of their upgraded collateral. For, in the light of the sub-prime crisis in the USA and the mortgage crisis in the UK, it is clear that private banks are not to be trusted in their dealings with the poor or indeed most aspirant home owners (Elliott, 2007; Inman, 2007; Mitlin, 2008). In the United Kingdom, the huge expansion in mortgage lending was based on hubris and poor banking practice; in the United States, the boom also “attracted myriad sleazy brokers to the parade. Untold numbers of Americans with marginal credit were sold mortgages with terms they didn’t understand – and could only afford if house prices kept rising or interest rates stayed low” (Hahn and Passell, 2008). RealtyTrac estimate that in the United States
foreclosure has cost 2.3 million households their homes between December 2007 and September 2010 (Veiga, 2010). Something similar may also be occurring in Thailand where Boonyabancha (2001: 14) claims that: “Professional solutions encourage people to become dependent and isolated. They encourage people to take on much bigger financial burdens than those required in conventional housing provision for the poor, and as a result, often the people cannot afford to stay.”

Property titling has its place, provided it does not come at too high a price and is supported by some kind of enforcement process. But it will not transform Third World housing for one very simple reason: too many households are too poor to afford decent shelter and are perhaps wise not to borrow much from banks. In the face of abject poverty, offering to formalise home ownership achieves little for the owners and nothing at all to help hundreds of millions of tenants.

What is really needed is some mechanism to make land available at more affordable prices. In many cities even the expansion of self-help housing has reached its limit because they are running out of land, at least in places that are both serviceable and within a reasonable commuting distance (Durand-Lasserve and Royston, 2002). With little land available prices are bound to increase. Sometimes inappropriate government regulations accentuate land price rises (Buckley and Kalarickal, 2006: 71) but surely it is market forces and associated land speculation that is the principal cause? Building companies often buy up large amounts of peripheral land and make their profit through the land conversion process. What is needed is appropriate state action either to prevent such speculation or to claw back the gains made by private developers (Maldonado, 2006).

Since I wrote my original critique little evidence has been produced that offers strong support for de Soto’s ideas. Unfortunately, this does not appear to have discouraged many governments or influential international organisations from accepting his advice. Even though CLEP (2008: 66) recognises that the relationship between granting property rights and empowerment of the poor “has in fact received very little coherent analysis to date”, it does not shirk from asserting that “legal access to property rights for various groups is clearly an over-reaching and universal issue that should be at the centre of global efforts to empower the poor” (p. 67). Further, “these rights … provide the basis for economic growth”. If there has been so little coherent analysis how can such assertions be made?

If the evidence in support of property titles is so weak why does de Soto’s argument continue to be so influential? The answer is that he has managed to bypass rigorous scientific scrutiny and gone directly to high-level decision makers. He has been helped by the fact that his message fits so well with neo-liberal economic and political logic. It combines the ideals of market forces, sensible borrowing, and individual initiative and the joys of ownership in a form that promises to bring economic growth for all. The message is that Third World nations can prosper if they replicate the supposed historical experience of the United States in land settlement and the legalisation of real property. The optimism that imbues The Mystery of Capital clearly appeals “both to US interests and to the elites of poor countries” (Bromley, 2004: 284). The lesson is particularly popular with those who will benefit most from the operation of market forces: bankers, property developers and real-estate agents in emerging markets and transition economies. The message also appeals to politicians who are despairing of the ineffectiveness of overseas aid (Bourbeau, 2001). Nor are the poor likely to oppose the offer of legal titles providing that they come at an ‘affordable’ price.

But if the message is popular and influential, its application has so far not been shown to have done much good or, fortunately, much harm. As such it is a pity that so many are taking de Soto’s advice so seriously. Ten years after my original paper I continue to think that rather than providing a panacea for poverty he is simply pushing a populist myth. Unfortunately, improving people’s housing and removing them from the ranks of the poor is a lot more difficult than simply issuing them with a piece of paper.


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