

What Separates the Rich from the Poor?

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Friday, 11 March 2011

"The rights of persons, and the rights of property, are the objects, for the protection of which Government was instituted." —James Madison

Of the 6 billion people on Earth, 2 billion try to survive on a few dollars a day. They don't build businesses, or if they do, they don't expand them. Unlike people in the United States, Europe, Japan, South Korea, Hong Kong, etc., they don't lift themselves out of poverty. Why not? When I was working as a contractor for the World Bank in Sri Lanka I was introduced to the writings of Hernando De Soto, a Peruvian economist, through his book *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*.

In 1999 *Time* magazine chose de Soto as one of the five leading Latin American innovators of the century. *Forbes* magazine highlighted him as one of 15 innovators "who will re-invent your future." The *New York Times Magazine* wrote, "To the leaders of poor countries, de Soto's economic gospel is one of the most hopeful things they have heard in years." *The Economist* magazine identified his Institute for Liberty and Democracy as one of the top two think tanks in the world.

It has become clear by now that the fall of the Berlin Wall and the collapse of communism in most places around the globe hasn't ushered in an unequivocal flowering of capitalism in the developing and post-communist world. Western thinkers have blamed this on everything from these countries' lack of sellable assets to their inherently non-entrepreneurial "mindset." In his book de Soto proposes and argues another reason: it's not that poor, post-communist countries don't have the assets to make capitalism flourish, rather it's the lack of a legal structure that guarantees the right of clear title in real property.

The real problem is that such countries have yet to establish and normalize the invisible network of laws that turns assets from "dead" into "liquid" capital. In the West, standardized laws allow us to mortgage a house to raise money for a new venture, permit the worth of a company to be

broken up into so many publicly tradable stocks, and make it possible to govern and appraise property with agreed-upon rules that hold across neighborhoods, towns, or regions. This invisible infrastructure of "asset management"--so taken for granted in the West--is the missing ingredient to success with capitalism, insists de Soto. But even though that link is primarily a legal one, he argues that the process of making it a normalized component of a society is more a political or attitude-changing challenge than anything else.

De Soto states that roughly 4 billion people in the world actually build their homes and own their businesses outside the legal system. But due to the lack of rule of law and the definition of who owns what, and because they don't have addresses, they can't get credit for investment loans nor pass their ownership on to their heirs or assignees.

To get an address, somebody has to recognize that that's where you live. When you make a deal with someone, you can be identified. But until property is defined by law and on the ground, people can't specialize and create wealth. The day they get title is the day that the businesses in their homes--the sewing machines, the cotton gins, and the car repair shop--finally gets recognized. They can start expanding.

That's the road to prosperity. But first they need to be recognized by someone in local authority who says, "This is yours." They need the rule of law. But many places in the developing world barely have law, so enterprising people take risks. They work a deal with the guy on the first floor, and they build their house on the second floor, and when they die someone else moves in. I have seen this in Turkey where it is estimated that 40-50% of houses are illegally built without any title to ownership.

De Soto claims that these poor citizens are lacking formal legal title to their property and are unable to use their assets as collateral. They cannot get bank loans to expand their businesses or improve their properties. He and his colleagues calculate the amount of "dead capital" in untitled assets held by the world's poor as "at least \$9.3 trillion"--a sum that dwarfs the amount of foreign aid given to the developing world since 1945.

As a practicing professional land surveyor for over 50 years I learned this simple fact at an early age. I learned not only how to identify, measure and mark the land; I also learned the meaning, value and uses of secure title to land, especially in the form of fee simple. Probably the most useful and under-recognized document in the United States is the deed to one's property. This document is the golden key to wealth. It allows the property owner to use the land as collateral to borrow money to build his home, use his built-up equity for his children's education or business investments. It also allows him to pass on to his heirs his rights in the land with secure title to the land.

Just consider the industries that have sprung up due to this fundamental concept in our body of laws. First we have farming. A private individual can own and cultivate his own farm and sell the produce on the open market. He is no longer a sharecropper dependent on the "master" to earn a meager living. The farmer can divide his land and sell off parcels, if he so desires, and when he dies, the land and all of its value passes to his heirs.

Second is the home building industry. About 67% of Americans own their own homes. This has created hundreds of supporting businesses such as title companies, building contractors, architects, civil engineers, land surveyors, mortgage companies, underwriters, home loan banks, appraisers, law firms, and title insurance companies, to name a few. It has created gainful employment for millions of Americans, who in turn have purchased their own homes. All of this because of a simple document backed by the force of law--a deed based on secure title.

On May 20, 1785 the United States Congress passed The Land Ordinance of 1785. This simple act of a new nation was, in my opinion, the single most important piece of legislation ever passed by the Congress. Under the Articles of Confederation, Congress did not have the power to raise revenue by direct taxation of the inhabitants of the United States. Therefore, the immediate goal of the ordinance was to raise money through the sale of land in the largely unmapped territory west of the original states acquired at the 1783 Treaty of Paris after the end of the Revolutionary War. More than three-fourths of the area of the continental United States ultimately came under Jefferson's rectangular survey scheme. This was important because it provided easily recognized land descriptions, which in turn contributed enormously to the orderly and largely peaceful occupation of the land. The rectangular survey also provided the units within which economic, political, and social development took place. No other nation on this earth has a like history of private ownership of land.

No wonder the United States became the economic giant of the world. It was not due to race, gender, temperate climate zones, government stimulus, or foreign aid. It was due to the concept that a property owner would be secure in his rights of ownership under the force of law. All that was needed was a strong military to protect this right and an honest and consistent court system to insure these rights were upheld. As a land surveyor charged with defining and marking the location and limits of private ownership of land, I had to be confident that my decisions as to these limits were based on an unchanging body of laws and court decisions. If these decisions changed due to political or financial interests, then the integrity of our system of land ownership would collapse. The next time you walk your property, look for that little surveyor's marker (iron pin, iron pipe, lead and tack or mark on the curb or sidewalk) and give some thought to its value and the brilliance of the system.

After the fall of communism the World Bank began to finance land registration programs for nations that had been under the communist system of communal land ownership. They were also financing land registration systems in Africa and Latin America. No doubt the impetus for these programs was being driven by de Soto's influence. The problem with these programs is that most of them never got off the ground or failed. The three examples below, to which I can address from personal involvement, are Romania and Guatemala and Sri Lanka.

Romania

After the fall of the Ceausescu communist government, the Romanian government decided that it needed a permanent system of land registration. They went to the World Bank and were able to secure a \$130 million dollar loan to accomplish this. They wanted to identify, mark and register, with secure title, the lands people were occupying. Once the money was on the table, large international corporations like Siemens were knocking on the door for a piece of the action. They believed the path to land registration led through large computer systems and geographic

information systems. While these are modern tools that can be helpful in such a program, they are not the total answer.

The Romanian government was in the midst of an internal bureaucratic battle over who should control the program and the money. This battle raged between the Ministry of Agriculture and the Ministry of Justice. The MOA believed they should run the program because it had to do with land and its value, while the MOJ believed it came under their jurisdiction because it fell within the auspices of the legal system. Both were partially right. Also, the Army Map Service wanted a piece of the pie to map the country and correct all of the erroneous maps that had been prepared by the Soviet Army. None of these agencies were addressing the issue of sustainability of the system. They were only concerned with the power and money they could derive from the money and the government jobs it would enhance and create. To sustain such a system they would need companies that could search and guarantee land titles, along with a cadre of private survey firms that would maintain the physical system on the ground. They had no historical experience with these issues.

Guatemala

As Hernando De Soto states, most of Latin America has little or no history in registering or securing title to the private ownership of land. Guatemala, one of the poorest of countries in Central America, wanted to institute a system of land registration so the "peasants" could climb out of poverty. They went to the International Development Bank to secure a loan to implement a land registration program. One of the required items by the bank was a comprehensive feasibility study and implementation plan. The person the bank selected to manage this process was Jimmy Carter--the man with the hammer and saw who might know quite a bit about building homes, but seemed to know very little about land registration. Carter's team wrote a report filled with bureaucratic gobbledygook, which did not address the "how to" question at all. He talked in great deal about poverty, human rights, and how the government could help, but did not address how the nuts and bolts would go together to bring about a sustainable system of secure private ownership. Suffice it to say the program never got off the ground and the poverty is so widespread that Guatemalans immigrate to Mexico for a better deal. You can read the full 1997 report at: <http://www.c-r.org/our-work/accord/guatemala/promised-earth.php>

Sri Lanka

As a part of my World Bank contract to support the Urban Development Authority in Sri Lanka, I was involved in some aspects of the issues surrounding land registration. Sri Lanka, once under British rule and known as Ceylon, had one advantage over the other two examples cited. They had some basis of law based on British common law. They knew what the problem was and how to solve it. The major problem they had was the lack of a private land survey community experienced in locating and delineating land ownership, or firms that could register and issue secure titles. They did have a government survey and mapping department employing some 5,000 people, but it was focused on topographic mapping.

These three examples are a mere drop in the bucket compared with the issues of worldwide land registration. Without a system of issuing secure titles, locating and delineating the land by private surveyors, no land registration program will be successful. Therefore, as de Soto states, 4 billion people will remain in poverty or near poverty. All of the foreign aid in the world will not

help these people climb out of poverty. The aid is not sustainable and is merely a "feel good" for the nations providing the aid. The only way for these people to attain wealth is through the secure ownership of private property.

Fred Henstridge recently retired after more than 55 years of professional experience in geomatics engineering, surveying, mapping, transportation engineering, municipal engineering, and GIS management. He now focuses on traveling, photography and writing. His photographs can be viewed at <http://www.henstridgephotography.com>, his blog is at <http://fredhenstridge.blogspot.com>. His book, Footsteps on the Land, can be found at <http://outskirtspress.com/webpage.php?ISBN=9781432752583>.

