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**THE POWER, RIGOUR AND
EFECTIVENESS OF AN IDEA:
The case of the poor's legal
informality**

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Resumen

Pocas ideas y actividades han recibido elogios tan hiperbólicos como las presentadas en el mundo por Hernando de Soto sobre la informalidad. Premios Nobel en economía, presidentes de varios países, revistas muy importantes y organizaciones multilaterales han respaldado el impulso del registro de propiedad de los pobres, particularmente sus viviendas, como la clave para lanzar una revolución económica mundial desde abajo. En este trabajo presentamos el respaldo institucional de esas ideas, la sustancia analítica de los principales argumentos, la precisión descriptiva de las instituciones operando en el tercer Mundo y los resultados de la aplicación de los programas de titulación promovidos. De esta manera, evaluamos la relación entre la difusión y el poder de una idea con su contenido formal y su efectividad para cambiar el mundo de los pobres.

Abstract

Few ideas and activities have received as hyperbolic praise as those presented by Hernando de Soto on informality. Nobel prizes in economics, presidents of various countries, important magazines, and multilateral organizations have endorsed this author's impulse to the official registration of the poor's property, particularly, their homes, as the key to launch a worldwide economic revolution from below. In this paper we present the institutional backing of those ideas, the analytic substance of the main arguments involved, the descriptive accuracy of the institutions operating in the Third World, and the results of their application. In this way, we evaluate the relation between the spread and power of an idea with its formal content, and its effectiveness to change the world of the poor.

THE POWER, RIGOUR AND EFFECTIVENESS OF AN IDEA: The case of the poor's legal informality

Javier M. Iguíñiz Echeverría*

I. THE BACKING OF AN IDEA

The outstanding trajectory of Hernando de Soto is, no doubt, the result of exceptional capabilities,¹ but also of some work leading to such place in the world of ideas and policy. In a paper that concentrates on methodology, on how economists prepare “natural experiments,” Mitchell illustrates such exercise with, among other things, a historical account about how the work and influence of De Soto was built. I will quote extensively and summarize his narrative in the next paragraphs. According to him, “The Peruvian property titling experiment was the outcome of political forces at work in Peru, but also of the efforts of a small but well organized political movement in the West, neoliberalism.” (2005: 304) The antecedents presented go back to the Free Market Project at the University of Chicago Law School in 1946, around the time when the Chicago School of Economics was created. He also finds them in the Mont Pelerin Society created the following year in Switzerland, a country particularly important in the life of De Soto since he lived, studied and worked there several years. The Free Market project “provided a prototype for the distinctive organizational basis of this effectiveness, the think tank –the combination of core ideas and practical proposals for legislation, supported by ‘research’ and backed with corporate funds channeled through foundations.” (2005: 305)²

Friedrich Hayek, a key figure in the launching and development of both the Project and the Society, met in Lima with De Soto in the late 70s, and after the meeting, the account goes, the first introduced the latter to Antony

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¹ By those capabilities I mean, as in Sen's concept, the wide spectrum of opportunities he has enjoyed and his great autonomy to decide.

² Many institutions copied this pattern: Heritage Foundation, American Enterprise Institute, Hudson Institute are mentioned by the author.

Fisher, a close collaborator of Hayek and the founder of the Atlas Foundation for Economic Research that helped to create De Soto's Institute for Liberty and Democracy (Instituto Libertad y Democracia, ILD). De Soto is quoted saying about him that "It was on the basis of his vision that we designed the structure of the ILD. He then came to Lima and told us how to structure the statutes, how to plan our goals, how to build the foundation, what to expect in the short and long term." (Mitchell 2005: 305)

Among his supporters later on was the billionaire Swiss Stephan Schmidheiny who funded the German translation and edition of *The Other Path*, and also the Center for International Private Enterprise (CIPE) that developed the tools to "create an advocacy team, identify key issues relevant to the target audience, research the issues, establish a goal, create a message and an advertising campaign, form grassroots advocates, work with the media, and become part of the governmental process (Center for International Private Enterprise, 2003)." (Mitchell 2005: 307) In 1984, CIPE gave the first grant to the ILD. At the end of 1986 De Soto with his collaborators published *The Other Path* in Spanish, and received the first Sir Antony Fisher Award followed by several other prizes, reviews and endorsements mostly from European and American neoliberal think tanks, soon becoming a best seller. The endorsements came from academics (Milton Friedman, Ronald Coase) as well as from politicians (Bill Bradley, David Owen, Bill Clinton, Collin L. Powell, and Vicente Fox).

ILD grew quite fast, and participated very actively under García and Fujimori governments in the titling program designed by the institute. After three years of preparation, in 1998, the World Bank loaned US\$38 million to help finance ILD's work. The total budget was US\$66 million. (Morris 2004: 62) The support ended in 2004. The result as stated in the reports of the office in charge of titling: 7 million Peruvians benefited (25% of the population) and 1'393,096 titles were given (August 1996-June 2004)³. Today, there is a consensus around the need to move into another quite different stage, that of post-formalization. (Morris 2004: 158)

³ COFOPRI *al día*. Año 2, Núm. 1, Lima, junio 2004.

That De Soto has been part of this neoliberal world is no secret.⁴ Understanding his own, and we think, significant intellectual peculiarities vis a vis his academic mentors and other perspectives on informality requires a different study.⁵ One of them, perhaps, is that he always insisted in his desire to link his proposals to different persuasions, including that of the political or ideological left.⁶

Mitchell attributes a political goal to neoliberals, and also to De Soto, suggesting that when he uses a property rights approach to analyze, not the mining sector or the corporations in general but that of the informal housing he is looking for political power.⁷ It would be interesting to study the effect of De Soto's thesis on the building of popular support for neoliberalism in the countries ILD operates. A partly different thing is the support built for himself or the political mentors of his proposals. The social and political backing of formalization in Peru is unclear. The candidate for mayor of the city of Lima, Jaime Yoshiyama, explicitly supported by Fujimori, presented entitlement as one of his main campaign platforms but lost the elections.⁸ Fujimori as president, also promoted mass entitlement during his 2000 reelection campaign and won. Later on, after some well-published inroads as a potential candidate for the presidency of Peru De Soto himself reached the conclusion that it was not in his best interests to pursue that effort.

⁴ Although not all the prizes and recipients De Soto has shared with can be classified as part or close to the neoliberal perspective, many of the most important ones can be seen as members of such political and academic current. Examples are the Prizes by the Goldwater Award (Past recipients: Margaret Thatcher, Ronald Reagan, Milton Friedman, Barry Goldwater, and Friedrich Hayek); the Adam Smith Award (Past recipients: James Buchanan, Douglas North, Harold Demsetz, Armen Alchian, Allan Metzler, Robert Barro, and Alan Greenspan); the Freedom Prize by The Max Schmidheiny Foundation, the Milton Friedman Prize for Advancing Liberty add to that list.

⁵ Informality as a topic had already wide circulation before De Soto's books were published. (McNeill 2004)

⁶ For example, the dedication in *The Other Path* includes the following expression: "And of course, to my left-wing friends, whose ideals I share, in the hope that we might also agree on ways to achieve them." See also (1990: 256-7)

⁷ He himself considers his 1990 publication "a political political book which is based on evidence and will doubtless need to be rewritten some years from now." (De Soto 1990: 14-5)

⁸ Calderon (2006: 189, 191) Resistance against the political use by Fujimori of the formalization campaign also had its effects, and the new decentralization process in Peru does not allow the old centralized, and we would add, unavoidable top-down method of titling. (Morris 2004: 158).

A question that we will not answer become obvious asking. Being so massive the lack of property registration in the world, to the point of explaining nothing less that “why capitalism triumphs in the West and fails everywhere else;” so easy the remedy, property registration already implemented by ILD in so many countries; and so powerful the informals’ “invisible revolution in the Third World” already in place why is that this proposal has not resulted in a massive social mobilizations around the world, and some politically organized form of, for instance, “people’s capitalism”?

In the following two parts we will try to explain some of the limitation in the power of De Soto’s ideas by summarizing the economic, and a few historical elements of his thesis and proposals. Today, there is a growing skepticism concerning the benefits of the programs that were implemented in the last two decades; we have to find why. Keefer, of the World Bank, manifested his concern some years ago about the “great existing skepticism” on the results of property registration programs. (2004: 7) Are there reasons for this? In the following pages we will establish that there are grounds for such thinking.

II. ECONOMIC ASPECTS OF THE CALLING

On what theoretical and moral base and on what evidence of efficacy is De Soto’s proposal sustained? In this following section we deal with aspects relative to the conceptual rigour and moral mandate that the author conveys in his two books.⁹

II.1. The grand view

The two books already indicated, and the property legalizing job around the world are the matter of compliments gathered in the first section. The first of the two books, *The Other Path* (1990), made De Soto a pioneer on the issue of formalization through property registration programs. With De Soto’s most recent book, *the Mystery of Capital* (2000) we are before a proposal that

⁹ A general view of the last book on Iguñiz (2001a).

reaffirms the essential argument. Part of the proposal's appeal is its ambition and the potential social amplitude of its calling. For example, he will say: "With its victory over communism, capitalism's old agenda for economic progress is exhausted and requires a new set of commitments. It makes no sense continuing to call for open economies without facing the fact that the economic reforms underway open the doors only for small and globalized elites and leave out most of humanity. At present, capitalist globalization is concerned with interconnecting only the elites that live inside the bell jars." (2000, 227)¹⁰

One can appreciate that the calling is for the redemption of the excluded and that the flag is libertarian. De Soto's objective is to instill capitalism with "good laws"; in his own words improve: "...an economic system which is exceptionally sensitive to the opportunities for development." (1990, 184) ¹¹ There is, besides, a look at capitalism: "I am as aware as any anticapitalist of how representational systems, particular those of capitalism, have been used to exploit and conquer, how they have left the many at the mercy of the few." (2000, 247) The answer is some sort of "popular capitalism", and the attack to what the author considers is the presence of "mercantilism" in the Third World. We will come back to this point later on.

Both books have the courage and the limitation of presenting, on the one hand, a long term proposal that points to systemic-worldwide issues and, on the other, to accelerate a revolution already happening "everywhere else" starting a massive program of registration of informal property that is simple, cheap and of immediate implementation. It is about registering under the current legal norms the property that the poor have accumulated in the cities, fostering household mortgages, obtaining credits and amplifying the scale of production of the small and microbusinessmen. That is the immediate path that is proposed for the world's poor to escape their present poverty. This

¹⁰ In a few pages I will explain a crucial image of the argument: The bell jar.

¹¹ "I am not a die-hard capitalist. I do not view capitalism as a credo. Much more important to me are freedom, compassion for the poor, respect for the social contract, and equal opportunity. But for the moment to achieve this goal, capitalism is the only game in town. It is the only system we know that provides us with the tools required to create a massive surplus value." (2000, 228)

would trigger a process where new businessmen would emerge, although this time they would not be mercantilists, which is the base of De Soto's overflowing optimism with respect to the possibility of changing the workings of world capitalism starting a transformation in each country.¹²

In what follows we present a very succinct vision of the conceptual proposal emphasizing the economic aspects in what is, to a great extent, a juridical proposal. We feel that a journey through the economic, historical, legal and moral dimensions in those two books will help us understand to a great degree the difficulties to include the poor and even the rich in a movement that seeks the affirmation of the rights of private property.

II.2. The question and the answer

As we annotated above, the question that looms over the latest book is certainly ambitious and it is presented in the cover as a sub heading in *The Mystery of Capital: "Why Capitalism Triumphs in the West and Fails Everywhere Else."* The answer is directly sought in the world of the urban poor in underdeveloped countries. In his own words, a redistribution of power is necessary: "The fundamental problem that the latter face is not that people are invading and clogging the cities, that public services are inadequate, that garbage is piling up, that ragged children beg in the streets, or even that the benefits of macroeconomic reform programs are not reaching the majority. Many of these difficulties existed in Europe (and also in the United States) and were eventually overcome. The real problem is that we have still not recognized that all these difficulties constitute a sea change in expectation: As the poor flow into cities and create extralegal social contracts, they are forcing a major redistribution of power." (2000, 102-103)¹³

¹² Such optimism does not take into consideration the extremely different competitive power of the informal industrialists in the mercantilist period and of the current micro-entrepreneurs in the Third World.

¹³ The argument on the possibilities of the redistribution of world power should consider the economic power of currently informal producers to compete not only with the mercantilist businessmen in their own countries of the Third World, but also with world sized firms. We will not deal with this crucial point.

What is needed for poor proprietors of poor countries to have a response capacity to globalization? The answer: a legal system that allows them to convert their properties into capital. We will return to this matter later on for it makes up the base of De Soto's proposal. The answer that the author puts forward is repeated several times throughout the book. One of them is the following: "The reason capitalism has triumphed in the West and sputtered in the rest of the world is because most of the assets in western nations have been integrated into one formal representational system." (2000, 52) Hence, the goal is to generate a legal system in each country that integrates the norms of the informal world with those of the formal into one where the properties of the poor are represented. It is where 'dead' capital becomes 'living' capital. As De Soto points out: "The poor inhabitants of these nations —five-sixths of humanity— do have things, but they lack the process to represent their property and create capital. They have houses but not titles; crops but not deeds; businesses but not statues of incorporation. It is the unavailability of these essential representations that explains why people who have adapted very other Western invention, from the paper clip to the nuclear reactor, have not been able to produce sufficient capital to make their domestic capitalism work.

This is the mystery of capital. Solving it requires an understanding of why Westerners, by representing assets with titles, are able to see and draw out capital from them." (2000, 6-7)

II.3. The economic assumptions of the argument

Why does informality exist? To answer this question, we will focus on the economic aspects of both the problem and the answer.¹⁴ On this matter, De Soto keeps a certain ambiguity when it comes to costs but he ends up assuming a diagnostic of the situation that is essential to justify the activities of ILD, those of adequately registering the property of homes and micro-enterprises of the poor.

¹⁴ We leave aside, on purpose, the important subject of the relation between property rights and development. On this matter see Barzel (1997), Chang (2006), Rodrik, et. al. (2002).

After making a list of some of the diverse types of costs of informality, he points out the following: "Therefore, contrary to what one might believe, invaders pay a very high price for the land they occupy. Since they have no money, they pay for it with their own human capital. We are living in a costly society, one which forces its members to assume countless burdens, not only if they want to enjoy the benefits of formality but also if they prefer informality." (1990, 26) The existence of three costs is presented: the cost of staying informal, the cost of staying formal and the cost of transiting from informality to formality. In De Soto's work the latter is the most important to explain the existence of informality for it is the only one in which costs are estimated. That implies that one supposes, without doing comparative calculations, that the first cost is greater than the second.

a. Legal barriers to legalization?

The barriers to the legalization of property end up being the central aspect of the impediments to fully legalize property. The legal barrier is of an economic nature; it is expensive to go legal especially to those that are trying to keep their very small business alive. Our point is not whether it is convenient or not to reduce the cost of the procedures in terms of time and money. It is obvious that it is convenient to do so, that it is better for the poor to have all the possible safeties; that they should be freer, and that such freedom should include the power of alienating their property. Our argument revolves around the importance of this aspect in the life of citizens, and that of the informal poor in particular. What follows is a summary of a number of arguments in De Soto's books that show that together with undeniable but ever lesser barriers to formalization there are reasons to think that formalization is not an objective that is very anxiously sought by the majority of the informal poor. In the case of most micro-entrepreneurs it is because it is not economically convenient for them at the moment. In the case of homeowners because, as we will show below, they already have most of the security of property they need to live. This may explain why the proposal for formalization has not been taken up as a social cause as important as the world transforming ambitions that the author expresses might suggest.

To sustain this we may set out from two points, one analytical and one historical. On the conditions for the existence of informality the author points out: "We can say that informal activities burgeon when the legal system imposes rules which exceed the socially accepted legal framework —does not honor the expectations, choices, and preferences of those whom it does not admit within its framework— and when the state does not have sufficient coercive authority." (1990, 12) From this, we can highlight that we are before norms that cannot be complied by existing very small business or by those who want to create them. We could say that the state's coercive capacity therefore finds itself useless, for if exercised the subject of coercion would disappear. The legalist bias is evident when the reasons that lie beneath that impossibility of compliance are not highlighted, for example, the difficulties to compete economically in conditions of legal equality.

In historical terms, to De Soto, informals have been attacking with great courage that great barrier that blocks the road to formality; so epic is the battle waged by the poor of Peru and of the world that it is extensively narrated in the first of the books. "The first part of this book describes how *e/ Peru profundo*, 'the unknown Peru,' began a long and sustained battle to integrate itself into formal life, a battle so gradual that its effects are only just beginning to be seen. We appear to be witnessing the most important rebellion against the status quo ever waged in the history of independent Peru." (1990, 13)

But compliance of the existing law, which according to De Soto, is the frustrated aspiration, particularly of informal producers, has its costs; that is why breaking the law is economically convenient. "As we shall see later, it is more than likely that, economically speaking, the people directly involved in these activities (as well as society in general) are better off when they violate the laws than when they respect them." (1990, 11-12) As a matter of fact, we shall see that this hypothesis is rejected when the time comes to elaborate the argument, the 'narrative' of the popular epic. If it is cheaper to break the law, why would informals want to formalize? If informality is "...a grey area which has a long frontier with the legal world and in which individuals take

refuge when the cost of obeying the law outweighs the benefit" (1990, 12) why would they want to register their firms and acquire the visibility that would allow the state to monitor them?

De Soto's response is strictly economic and it is rather odd on two fronts. It is based on two affirmations that we consider empirically questionable. On the one hand, he has to point out that evading the laws of the formal system is more expensive than complying with them. For the author "...the life of the extralegal entrepreneur turns out to be far more costly and full of daily hassles than that of the legal businessman." (2000, 83) This affirmation is fundamental to his whole argument and, in consequence, to his main recommendation of policy: the registering of property. Without it there is no sense in affirming that informals evade the law because *they are not allowed*, because *they are prevented*, to operate under the law. That is the "bell jar" which is mentioned by the author throughout the book and against which, like flies before windows, the informals crash in their sacrificed attempt to enter it.

De Soto's general proposal consists on 'lifting and withdrawing' the bell jar in which formal and developed capitalism resides so that formals and informals may mix. It is a legal jar since "Braudel's bell jar is made not of taxes, maps, and computers but of laws." (2000, 156)

That is, the bell jar does not allow informals to enter but that also expels some who are inside, those who cannot live with the costs of legality. If some cannot live with such costs, why some would like to assume them? This contradictory way of seeing things is everywhere in the book. For example, "...Two-thirds of the world's population...have no alternative but live outside the law." (2000, 74) De Soto's book is full of expressions that show that bell jar as a symbol of the hostility of the formal world towards the informal. "Blocked from entering the bell jar, the poor could never get close to the legal property mechanisms necessary to generate capital." (2000, 113) More than once, the author uses a term that is very expressive of his vision when it comes to the problem: "apartheid." This way, informals are "...

marked off as sharply from its westernized elite as black and white South Africans were once separated by apartheid.” (2000, 15) The consequences of this socio-legal regime are presented in the following way by De Soto: “The disastrous economic effects of this legal apartheid are most strikingly visible in the lack of the formal property rights over real estate.” (2000, 83) The great problem to face then is the registering of property in the case of households. We will evaluate below the conceptual and empirical support behind such decisive statement.

But, how are they prevented from operating under the law? Here a reasoning that has been well known since *The Other Path* intervenes. It is the cost of procedures that stands between informals and legality. To sustain this one finds the famous calculations on the steps that one has to inevitably follow to legalize property and the cost in terms of time and money that it all encompasses. The proposal that has helped his fame the most around the world is probably the one dealing with state bureaucratization when it comes to registering property. One of the multiple expressions of that supposed fact is the following: “...many countries make the obstacles to entering the legal property systems so daunting and expensive that few migrants could ever make their way through the red tape – as many as fourteen years and seventy-seven bureaucratic procedures at thirty-one public and private agencies...” (2000, 82-83)

In the afore mentioned book the conclusion that is reached is that “Each of the 159 bureaucratic steps which residents must complete in order to legalize their settlement, receive title to their lots, and incorporate the neighbourhood to the city —a process which takes an average of twenty years — enhance the security and stability of the rights acquired.” (1990, 24)

If becoming formal is difficult, so is staying formal once the property of the company has been registered. For De Soto, “...it is very nearly as difficult to *stay* legal as it is to *become* legal.” (2000, 21) Such affirmation is only valid if the costs of staying legal are higher than those if one were to stay

informal, as common sense indicates in the world of micro-enterprises. He does not provide precise calculations.

If, in effect, it were to be more expensive to comply with tax and labour laws than to evade them, as common sense would indicate, informals would not be so interested in becoming legal and De Soto's whole argument concerning informals being forced to and having no option other than operate illegally would fall apart. The policy of the legalization of businesses would consist in forcing them to do so, except for some few informals that are already in a position of sufficient competitiveness to insert themselves in the formal market, that had in mind businesses of the scale and characteristics that such formality demands and that had a reasonable fear to the application of fines or expropriation of goods.

b. The image of the state in underdeveloped countries

For us, another fault in De Soto's argument seems to reside in his view of the state and of the corporations in underdeveloped countries. In our judgment, always within economic reasoning, it is not adequate to consider that there is no other method of legalizing property other than having to go through the *via crucis* that De Soto and his team experienced when legalizing the business that they created for experimental reasons. If the procedures were as long and costly in time and money as he points out there wouldn't be so many new stores and small and medium formal businesses each year. Even had the author not exaggerated about these steps if one were to strictly follow the bureaucratic instructions of property registration we find it doubtful that someone else in the world, apart from ILD and De Soto, has followed them. In our view, these steps concerning the registering of business property have as an objective to show the existence of a type of state that prevents the legalization of property more than to put into evidence an every day reality in the epic struggle of the informals. De Soto's state is defined as mercantilist and exceedingly strict when it comes to the fulfilment of regulations. "Mercantilism was a politically administered economy in which economic agents were subject to specific, detailed regulation." (1990, 202) It is hard to imagine in Latin America the existence of a state where political

power is above economic power and if the latter were to subject itself to strict regulations. The author's viewpoint results from what for him is a fact: "The parallel between twentieth century Peru and the European mercantilism of earlier centuries is a valid one." (1990, 201) This subject should take us to an analysis of the historic vision that the author has of Latin America, and other underdeveloped countries, something which escapes our purpose.

If this vision on the status of large companies in underdeveloped countries is difficult to accept, so is the one according to which informals are also subjected to this administrative strictness. Everyone knows that when it comes to state bureaucratic procedures there are informal middlemen, known in Peru as *tramitadores*, that may be lawyers and that have as an invaluable asset the knowledge of bureaucracy. There are also a set of informal practices, like paying bribes to speed up the process, that people normally turn to facilitate such procedures. On this point, De Soto has forgotten about the ingenuity of the informals as well as of the bureaucrats and government bodies even though throughout *The Other Path* he describes this state flexibility quite well.¹⁵ The author has forgotten to study empirically the workings of the state that really do exist in underdeveloped countries and neither did he ask the hundreds of thousands of small formal businesses how they had attained such formality if they had it. The calculations concerning the procedures could well show the inaction of a state drowning in its own incoherencies which De Soto often puts into evidence and not the existence of an exceedingly strict entity when it comes to complying with procedures; maybe of a Prussian style, which the informals battle against forcing it to incur in those same incoherencies.

Two wrongs don't make a right. The consequence of what we consider two mistakes of awareness concerning the reality of underdeveloped countries, the relative cost of behaving according to law and the procedural strictness of the state, is that the more common sense explanation about the

¹⁵ Given the anti-state character of the author that flexibility and informality of the state are presented as retreats and defeats of a state that, supposedly, at some point was very strict when it came the compliance of laws but that was forced by migrants to be more flexible. (1990) On this, (Iguñíz (2001b).

existence of informality gains ground without resistance. Obeying the law is more expensive for micro-enterprises than evading it. On that same line, informal businessmen exist simply because it is cheaper to evade the law, including the cost of 'bribes', than to obey it and because of it, it is not convenient for the majority of them to become legalized. This does not necessarily hold for homes, since they already pay for most of the taxes before becoming registered. Then, this is no great mystery and therefore specific efforts, but not excessive ones, are required, like the ones made by the ILD, to get poor people to want to legalize their home. There are, indeed, two registration moments, and types. One is home registration, where there is no great economic difficulty, only an administrative one however costly. Staying formal as a homeowner is not a big issue, unless one is hiding something at home. The second is small firms registration where the relative cost of such business activity, and not mainly that of registration, count when deciding to stay informal or not.

II.4. The legitimacy of evading the law and the moral mandate

An additional reason concerning what we consider the limited social appeal of De Soto's proposal can be that it affirms the value of the rights of property to those who have prospered breaking them. The many stories in *The Other Path* are tales of land invasions, institutional ruptures. As Chang recalls "there are many examples in history where the preservation of certain property rights proved harmful for economic development while violation of certain existing property rights (and the creation of new property rights) was actually beneficial for economic development." (2006, 7)

a. The legitimacy of evading the law

De Soto's proposal assumes the acceptance of property rights obtained through invasions and his books can also be seen as great justifications for breaking the rights of property, as celebrations of 'original accumulation'. His argument is once again that informals had no option but to invade someone else's lands, they were forced to do so because of the resistance of the existing legal order to make housing accessible. "Inevitably, migrants do not

so much break the law as the law breaks them —and they opt out of the system.” (2000, 21)

Hence, it appears as if there is some sort of moral base for going against the law. If so, we have yet another reason to explain why being officially legal cannot be an aspiration for informals. As a matter of fact, their history is one of progress based on evasion if not on breaking the law. Why would compliance be invariably beneficial? Besides, the evasion of the law by those who remain informal today is legitimized by the one carried out when the lands were invaded. Compliance with the law and existing norms does not have the moral sustenance that would be necessary. As such, the issue of economic incentives dealt with above becomes crucial. Even more so if, as we will later see, the supposed objectives of informals analyzed by De Soto are strictly economic. Actually, a great pragmatism seems to dominate the lives of informals when it comes to legality, and the economic reasons for assuming codes of conduct, norms and laws gain great importance.¹⁶

Part of that historic reason is the relatively ineffectiveness of entitlement programs, at least in Peru, where they have been implemented for a longer time. In the third part we show that the dynamic envisioned by De Soto so far is not taking place.

b. A moral mandate to take risks

De Soto's proposal is no mere ideological program, like all far reaching proposals; it is a call for action, a political one, and, therefore, a moral demand. First of all, let's look at the juridical focus concerning the rights of people. The core of the juridical argument is, in accordance with the focus of the author, one of meta-rights. Hence, "...the real task in developing and former communist countries is not so much to perfect existing rights as to give everyone a right to property rights —"meta rights", if you will." (2000, 158) This way, for the author, the right to a certain property is not what is important, but the right to property itself is. This tongue twister is crucial for

¹⁶ His critique of the culturalist approaches to underdevelopment, valid as they may be; don't allow him to have a more complex and complete view of the objectives of the informals.

the author's argument and to us it seems important in order to understand its limited social appeal. To him, it is not that important whether people have a place to sleep or not, but those who do have, should have the right to carry out transactions with their residences. This is important.

De Soto's political call is for a greater entrepreneurial initiative from property owners through mortgaging. For this, the first and, according to the author, unavoidable step is to register property. For the author, this call would correspond with the deepest, or at least the most immediate, wishes of the poor. "What Peruvians want, first and foremost, is firm property rights, reliable transactions, and secure activities. They want facilitative legal instruments, which they do not now have." (1990, 247) Hence we are before juridical ends that are at the same time instruments for material progress based on entrepreneurial initiative. Other ends, such as acquiring social recognition in the neighbourhood, or before provincial relatives, or others, do not appear as reasons to register property. De Soto's call in shanty towns is to convert assets into capital. And to turn them into capital in the best economic terms possible supposes placing oneself in a legal situation that will allow losing the house: "A great part of the potential value of legal property is derived from the possibility of forfeiture." (2000, 55) This demand clashes with a known vindication of the majority of residents: not having to let go of their houses. The history of their struggle will be much better explained by remembering this than by imagining other objectives.

Actually, the author calls for a commitment of the people with the progress of society. Not only are informals unnecessarily poor but they are accomplices of upholding an obsolete social order. "People with nothing to lose are trapped in the grubby basement of the precapitalist world." (2000, 56) But those called on by De Soto are precisely those who have something to lose. "It is the property system that draws out the abstract potential from buildings and fixes it in representations that allow us to go beyond passively using the buildings only as shelters." (2000, 60) According to him, they insist in having houses... to live in! De Soto seems scandalized. The dimension of human family development is lost before the pre-eminence of a social upper

objective. Housing is seen with disdain as mere refuge. The commitment to which De Soto calls for "...is better understood when backed up by a pledge of property, whether it be a mortgage, a lien, or any other form of security that protects the other contracting party." (2000, 56) The moneylender's security is essential for progress. But what about that of the home-owner's? It is clear that the one who has lent the money must be protected. If the house is not mortgaged then one is not collaborating with social change because "Assets themselves have no effect on social behaviour: They do not produce incentives; they make no person accountable, no contract enforceable." (2000, 157) The eventuality of losing the family home is not that strange for countries that are ahead of us. Hence the homeless. "Thus the formal property systems of the West have bestowed mixed blessings. Although they provided hundred of millions of citizens with a stake in the capitalist game, what made this stake meaningful was that it could be lost." (2000, 55) The frankness of the author is quite clear.

The juridical system that De Soto proposes, which is the same as the one that presently regulates us from the constitution, has the objective of favouring the alienability of property. "Although they are established to protect both the security of ownership and that of transactions, it is obvious that Western system emphasize the latter." (2000, 62) The author goes on to say: "In most developing countries by contrast, the law and official agencies are trapped by early colonial and Roman law, which tilt toward protecting ownership. They have become custodians of the wishes of the dead." (2000, 62) For the author, the matter is to challenge the legal system that will not allow them so easily to sell their homes. After all, "Formal property's contribution to mankind is not the protection of ownership; squatters, housing organizations, mafias, and even primitive tribes manage to protect their assets quite efficiently." (2000, 59) Hence we are before a right that is given with a certain duty. The duty of mortgaging. That is the mandate, capitalize!, even if it costs the family home. The question de Soto asks is not: Where will the poor sleep?

This disconnection between the ends, to live well, safely, without cold and without having to depend on others when it comes to where to spend the night, and the means, carrying out transactions and risking it weakens the appeal of De Soto's proposal because the dimensions of human development which are in good part a basis for legitimize a social order are absent or too implicit.

But is it true that the registration of property is a condition to buy and sell homes? What difference in terms of access to credit, tax behaviour or human development does it make registering home property under a uniform law? We will answer this in the following part.

III. EFFECTIVENESS OF TITLING

In this part we are going to present a review of some of the recent empirical studies analyzing the effects of titling concerning the home property of the poor, with a special focus on what is probably the oldest program implemented by De Soto's ILD in the world. This program, COFOPRI, started in Lima in March 1996.¹⁷ Its objectives stressed the access to credit as the main road to progress. In 1998 the World Bank enters the project with basically the same view of the problem. The program has had significant advances, partly supported on previous programs, and to this day, the process of massive property registration, is approaching its end.¹⁸

In what follows we will take into consideration a certain view of the process by which the right to property is constructed. As it has been pointed out: "The right to property is not absolute, nor is it created in a single act or by the actions of a single institution." (Webb. et. al. 2006: 13). From this perspective, the process of formalizing household property has been described by recurring to three important moments or steps, even though there are

¹⁷ Comisión de Formalización de la Propiedad Informal. For a very brief historical summary of the origins, see Calderón (2006: 181-2).

¹⁸ Calderón (2006: 180) considers that the period of extralegal property rights has ended after 1'300,000 titles have been provided and registered. Keefer from the World Bank recognizes that what is left are pockets of informal property, just the remains. (2004: 9)

others of lesser importance but that also have influence in the path towards obtaining the maximum possible security. The three moments are invasion, title procurement and the registering of the title.

Invasion (43% for the year 2004) and the publicly non-registered, in that sense illegal buying (42.4%) are the main sources of informal ownership and rights, and also the first step in the achievement and deepening of an "expectative property right" (*derecho expectatio*).¹⁹ This right is consented and recognized at least by a sector of society and gives the power, to a certain point, of using the property terrain and which has expressed itself in huge investments in construction, in massive real estate informal transactions, and in the whole process of urbanization. Also, this right has been enough to establish in households hundreds of thousands if not millions of micro businesses most of which disappear in briefs periods of time, but reappear constantly. From the mere right not to be evicted they went to having their investment and purchases respected. In his pioneering work, De Soto has described the legal aspect of such phenomenon in great detail (1990). The "legal right" comes later from the granting of titles by some office of the state. With that document, the security that one may feel relative to, for example, buying and selling informally, is greater. A third stage in the construction of property rights consists in registering the title. By registering, property becomes more easily tradable for example, "mortgageable." The prolonged and bothersome aspect of the registering process justifies the existence of COFOPRI, and not so much the granting of property titles by itself since already in 1990 98% of properties benefited from the first two rights and only 2% had their property registered. By 2000, the proportion of those registered reached 21% (Webb, et.al. 2006: 45)

The three levels are important in terms of the security that proprietors may feel, but the differences in security are marginal. In fact, in 2004, those who felt "secure" or "very secure" were: 92.6% of those titled *and* registered

¹⁹ That right it is backed by the great social legitimacy of these processes of illegal acquisition. We should remember that the 60s and 70s in Latin America were times when the legitimacy of private property, and particularly of land was very low. Agrarian reforms by the state and private invasions of urban lands were common.

by COFOPRI, but 89% of those who held a title handed out by the municipality, 85.5% of those who obtained the home purchasing it, and 69.5% of those who had some other “probatory” document. Even 43.8% of those who as yet had no document felt their ownership was secure. (Webb. et. al. 2006: 15)

The evolution of the titling-and-registering process by COFOPRI in the last 11years is presented in Table 1.

TABLE 1

COFOPRI: Titling 1996-2006		
Years	Yearly	Cumulative
1,996	33,742	33,742
1,997	129,392	163,134
1,998	149,574	312,708
1,999	322,053	634,761
2,000	419,846	1,054,607
2,001	115,599	1,170,206
2,002	123,827	1,294,033
2,003	70,401	1,364,434
2,004	65,598	1,430,032
2,005	71,300	1,501,332
2,006	83,617	1,584,949
<i>Source: COFOPRI</i>		

The figures indicate the relatively slow initial process, the acceleration at the end of the last decade, and the deceleration in the last period. This one, seems the beginning of a new phase in which the growth of titling will practically be vegetative. Even more, the marginal cost of doing so rises according to the informal proprietor population becoming geographically more dispersed. In 2003, the proportion with registered titles only reached 32%.²⁰

²⁰ There are reasons to think that there was both a pile up and an electoral objective by Fujimori that pushed the entitlement process forward. In the two

The work of COFOPRI consisted in putting back on a sound footing and registering titles that already existed and also registering those who had no previous title. In 1990, before COFOPRI's program, it is estimated that already half the properties had a legal property title and a 48% had an expectative title, but it is estimated that only 2% of the properties had the title inscribed in the public register. The difficulty to register due to the complexity and the expensiveness of the procedures is an explanation for that delay.²¹

In the following, we will show some of the effects of entitlement in general, and then, compare them to other previous and parallel forms of property in Peru. First, we will show the effect on the access to credit; second, on other economic variables, and finally on some proxy indicators of human development.

III.1. Effect on access to credit

The proposal that has been presented by De Soto most insistently in his books is that of titling in order to mortgage homes and to obtain capital. A great number of pages relate to this issue. The motto of *The Mystery of Capital* is clear: go and mortgage! For this, the titling of property is necessary.²² His books, especially his latest, deal with all matters related to mortgaging, such as guarantees, the value of homes, residences verifiable addresses, security for those who lend money, etc. The asset that De Soto studies the most in this second book, and where he places most of his expectations is therefore, homes. His efforts have left aside, at least for a while, the problem of the informality of micro businesses. To deliver property titles to the inhabitants of homes in the cities of underdeveloped countries is, as we have seen above, as the starting point of a true world revolution. With the use of homes as

most electoral important years, 1999 and 2000, almost half of the total registered titles were produced.

²¹ One should not lose sight that the argument about the convenience of registering that we have presented in the previous section of the paper refers to the registering of small and micro businesses, not households.

²² "The placing of real estate property as a guarantee of a loan is a clearly defined objective of the policy of formalization that, also, has publicized this use as one of the principal benefits, if not the principal." (Calderón 2006: 223).

guarantees for obtaining credit and for the poor to set up businesses, after also being legalized of course, they could increase the scale of their production; they could sell more in places that are farther away. In general, they could accumulate. "Extralegal assets owners are thus denied access to the credit that would allow them to expand their operations – an essential step toward starting or growing a business in advanced countries. In the United States for example, up to 70 percent of the credit new businesses receive comes from using formal titles as collateral for mortgages." (2000, 84)

The results in this respect of his registering effort have not been impressive. The official figures concerning the evolution of credit given to registered owners are those shown by Table 2.

TABLE 2
Perú 2000-2004 Titling, Credit and Mortgages

Year	Titles otorgates (Cumulative)	Credit to titled by COFOPRI (millions US \$ per year)	Personal credits (thousands per year)	Registered mortgages (millions US \$ per year)	Owners with mortgaged property (per year)	Average mortgage per owner (US \$)	Titled/ mortgaged (%)
2000	1,054,607	249	154	66	10,000	6,600.00	0.95%
2001	1,170,206	275	174	73	15,000	4,866.67	1.28%
2002	1,294,003	314	197	106	20,000	5,300.00	1.55%
2003	1,364,434	372	237	136	20,000	6,800.00	1.47%
2004	1,430,032	459	266	160	16,000	10,000.00	1.12%

Source: COFOPRI, COFOPRI al día (boletín).

The figures show the expansion of registered titles and the number and amount of credits. The proportion of homeowners with registered titles that have mortgages has reached its peak, 1.55% in 2002, only to decrease afterwards.²³

²³ Calderón (2006: 212) confirms in his studies the fear of having to recur to mortgaging.

The economic context has to be considered in the evaluation. The program has been implemented during two different but similarly prolonged periods, one of economic stagnation and banking crises, and other of relatively prolonged growth. We can say that the resumption of growth since 2003, the largest growth period in several decades, allows a first evaluation of the program under more favorable conditions than previous studies.

The two principal sources of statistical information to compare the situation and the progress of those who have registered their properties from those who have not are the surveys called *Línea de Base* of the PDPU (Urban Property Rights Project) of the year 2000 and the *Línea de Base* of 2004, applied to 2,726 and 2,744 owners respectively.²⁴ This way, one can analyze the diverse initial effects of the massive registering of titles by COFOPRI, already carried out to a great extent up to the year 2000, but continuing on a smaller scale in the following years, in Peru's main cities. The figures we will collect are no more than an initial explorations into the subject. The introduction of other factors should shed more light on the reasons of the similarities and differences.

a) As far as *access to credit* is concerned: do owners of registered households have a greater tendency to apply for credit? There doesn't seem to be any difference, and if there is it isn't significant. The households that applied for credit in the year 2004 made up 25% of those who had COFOPRI titles and the same percentage was found in the case of those who had just municipal and buying and selling titles. Curiously, the percentage of those who had other types of property documents or none at all is greater, 30% and 29% respectively. (Webb, et.al. 2006: 63)

Does having a registered title increase the probability that credit is approved by formal lenders? The rate of approval for solicited credits is similar in the case of COFOPRI titles and in those *who have no title at all* (58%), greater in the case of those who have acquired property through buy and sell (70%) and also in those who have another type of document (72%).

²⁴ For more on this see Calderón 2006, Webb, et. al. (2006).

The lowest approval figure is that for municipal titles (54%). (Webb. et.al. 2006: 63) The deepening of the property rights has not been making any difference.

b) As far as *other economic aspects* are concerned did the registering of property correlates with a greater increase in family income? The figures suggest that this hasn't been the case. The percentage of increase is the following: COFOPRI, 9.6%; Municipal, 6.3%; buy and sell, 13.5%, other documents, 5.7% and, surprisingly, those who have no property document at all experienced the highest increase 24.7%.

Did the fully formal title increase the probability that a household will pay taxes? Everything seems to point in the opposite direction. The proportion of households that pay land taxes is 59% in the case of COFOPRI. In the case of titled but unregistered households it is 64% for Municipal, 73.8%, for "buy and sell" and 66% for another document. There is in this case, a difference against those who have no document, 28.9%.

¿Was registering an incentive to start paying taxes? The figures gathered seem to show the opposite: 17.5% of COFOPRI owners started after officializing their property title, 37.7% (Municipal), 40,0% (Buy and sell), 41% (Other document). That is, those entitled but not registered, began paying land taxes after their entitlement.

c) In the field of *human development*, the contrasts are clear. ¿Does having a registered title boosts the improvement of households? This doesn't seem to be the case, since 88% of households with COFOPRI titles had expanded or improved; in the case of those who had only a title granted by municipalities the percentage is the same and those who had acquired through buy and sell or had other documents have a practically similar percentage of 82%. Even the difference with those who had no document at all, just an expectative right is not so great for the figure for this case is 74%

Did those who registered property have faster access to public services? The answer is once again negative. Until the year 2004, those who hadn't registered had faster access to drinking water, sewers, electricity and telephone than those who did have. Is there a relation between the type of property right and the ownership of health insurance? If there is, it turns out negative for those who have registered rights. Do those who have their property registered go more to school and are less held back? The answer is that there is no difference worthy of consideration with those who do not have it registered or even with those who have no title. (Webb, et.al. 2006; 65-66)

Actually, the conclusion of the authors of the study from which we have taken the figures points toward a conceptual criticism which deals with looking at the reality of rights in dichotomic terms. "The evidence...strongly contrasts with what one could expect in a dichotomic world, where the right of property is or isn't, and where security is only possessed by the beneficiaries of property formalization programs, especially through COFOPRI, and where that same security is the key to a set of benefits." (Webb, et.al. 2006: 66) One could say that if by "extra legality" we understand norms previous to the registering of property, then such extra legality seems to show, to this point in time, to be as efficient as the legality proposed by De Soto.

In any case, we may conclude that the registering of titles hasn't been too important until now. But it can also be that the legal dimension of the problem and, in particular, the holding of titles, even unregistered ones, isn't that significant a factor of economic progress, at least immediately, when faced with other factors such as the process of urban city planning or the geographical location of those entitled, the economic cycle and many others. Even in the development of access to credit and the possibility of offering collateral to obtain it the title doesn't seem to be that important. Indeed, the figures suggest that the great dynamism of micro credit in today's Peru is due to different factors than the possibility of presenting property titles. "Presently Peru has one the most dynamic and developed microfinance markets of the world, where not only do credits for micro businesses grow at a steady rate, it has also given way to some innovations at the global scale. In the last five

years, it is one of the most important structural changes of our economy with notable indicators: 44 institutions give credit to 820,000 businessmen; credits approach US\$1,500 millions, with a yearly growth of 25% and almost two thirds placed outside of Lima; the development of technology makes credit individual and guarantee free, overcoming the necessity of property titles; products adapted to the characteristics of the local market have been developed, such as the "self-building" (*autoconstrucción*) of houses by parts." (Quijandría 2006)

d) Other studies confirm in different ways many of these results. In a very widespread study it is pointed out that "Over the past decade, the Peruvian government issued property titles to over 1.2 million urban households, the largest government titling program targeted to urban squatters in the developing world...My estimates suggest that titling results in a substantial increase in labor hours, a shift in labor supply away from work at home to work in the outside market and substitution of adult for child labor. For the average squatter family, granting of a property title is associated with a 17% increase in total household work hours, a 47% decrease in the probability of working inside the home, and a 28% reduction in the probability of child labor" (Field 2003, 1). Field's hypothesis has been widely commented. (Mathews 2005; Webb, et.al. 2006), Morris 2004, among many others). Indeed, the problem of the lack of security of property that she presents as the factor explaining the fact that having the full title offers security and promotes work outside the household has no empirical sustenance since owners without registered titles have expressed in similar numbers that they have no problems with the security of their property and they behave consistently with that appreciation. (Webb, et.al. 2006: 15, 78-9)

In another analysis the conclusion was reached that formalized owners have more access to credit for housing from the public sector but that "there is no evidence that titles increase the likelihood of receiving credit from private sector banks, although interest rates are significantly lower for titled

applicants regardless of whether collateral was requested" (Field and Torero 2006, 1).²⁵

In a study dealing with this experience in Buenos Aires, Argentina, the following conclusion is reached: "More than twenty years ago, a group of squatters occupied a piece of land in a poor suburban area of Buenos Aires..... We find that entitled families increased housing investment, reduced household size, and improved the education of their children relative to the control group. However, effects on credit access are modest and there are no effects on labor income" (Galiani & Schargrotsky; 2005, 2)

For a long standing scholar of the urbanization process in Peru, the conclusion is that "few steps have taken towards the formalization of society. The financial market continues to be segmented...Unlike what it was thought, the extended formalization of property has not affected the recourse to informal credit nor has it increased proclivity to use formal credits. Only a handful of risk-taking micro businessmen, with a level of accumulation that is superior to simple reproduction, have been able to make good use of the advantages mortgaging." (Calderón 2006: 229-230)

Maybe it is true that "the socio economic objectives of the PDPU are achieved gradually. Hence, it is not reasonable to expect, in the short term, dramatic changes in the living conditions of formalized residents." (Morris 2004: 151) But that the value of traditional local institutions is not unimportant, as it is evidenced when comparing the results on the access to credit and other services, also applies.²⁶

²⁵ The scarce effect of the De Soto's program concerning credit access is especially serious if, as he pointed out: "Unfortunately the titling program has only touched a small part of the population that happens to be least poor, because we started in the relatively richest places." (De Soto 2005) A contrary opinion concerning this point comes from Calderón (2006: 201)

²⁶ Feder and Feeny (1993) acknowledge it in their summary of the theory of land tenure and property rights. More recently in, Easterly (2006)

IV. CONCLUSIONS

In this section we shall extract some conclusions by referring to what has been pointed out above, but also presenting some reflections.

The experience of registering private property, and specifically homes in Peru shows that De Soto's pretensions expressed in the much announced leap in the economic progress of poor countries and people, to the point of becoming nothing short of a world revolution, are obviously much exaggerated. As one of the first evaluations published by the World Bank and by the very same institution that is in charge of the registering, COFOPRI, point out: "an important conclusion of the study is that the formalization and the titling of lands are by themselves not sufficient to bring about the economic and social benefits that scholars like Hernando De Soto attribute to it." (Morris 2004, 30)²⁷ It is not easy to find what kind of policies and programs could do the gigantic revolutionary intellectual and practical job De Soto assigned to himself. We, therefore, do not have a better alternative to do it. All we can do is to summarize and add some elements that could help understand the power and limits of his ideas, and one of the limits is that the scope of the challenge, and the simplicity of means ends up making the argument politically unconvincing.

The impressive international media and, mostly libertarian think-tank support, as well as the amount of official, national and multilateral resources received, contributed to the spread of his ideas, and of the ILLD's work in several countries. Some research has to be done on the methods, strengths and limits of this type of backing, but as the CV presented above suggests, it is at the level of the promoters where most of the influence concentrates. As far as we know, there is not, for instance, some "pro-small business property legalization" social mobilization, or some international network of civil society organizations pushing in that same direction.

²⁷ In the same line Webb, et.al. (2006), Woodruff (2001), Calderón 2006, 237.

On the influence of the theoretical dimension of De Soto's work we will not insist on the difficulties we presented above. The difficulty to legally register micro enterprises resides in the higher cost of behaving according to the law, and not as the author insists in the cost of becoming formal. We think that this is why the author concentrates in his second book on a previous step: getting credit through the mortgaging of their homes. We want to add to that one aspect of his general approach. In times like these, faced with the persistence of poverty and economic inequality in the world, there is a wider consciousness about the complexity of the social reality and the multidimensionality of poverty,²⁸ yet De Soto chooses some sort of accumulated reductionism that helps to spread ideas but makes his proposals quite risky in terms of the achievement of practical end results; in his case, economic progress. Let us illustrate this point. First, the author defines progress in strictly economic terms. No other dimensions of life are considered equivalent when establishing the most important goals.²⁹ Second, to the reductionism on the side of the goals he adds another on the side of the means since he insists in that the key to economic progress is legal, leaving aside a set of aspects such as economic (for example, the competitiveness of micro businesses, types of land markets), political (democracy and dictatorship) and cultural (the significance of housing for its owner), etc. that are not simple corollaries at the moment of explaining reality.³⁰ Third, within the legal field his proposals fit in the category of "property rights reductionism".³¹ But, and fourth, the property rights needed are understood as private property rights. Other types of property rights tend to be categorised by default as part of the 'extra-legal' world. The problem is that the reductionism in the approach proposed by De Soto does not help when it comes to incorporate other significant, substitute or complementary elements.³² Fifth, the vision he has of these private rights is also narrow; he

²⁸ On the complexity of human motivations and in the world of business see Sen (2003).

²⁹ For example, access to basic services such as hygiene, electricity, health care. Morris (2004), Keefer (2004), Webb, et.al. (2006), Calderón (2006).

³⁰ See an attempt of presenting that complexity, including that cultural dimension in Calderón (2005 and 2006)

³¹ Rodrik (2004) as stated by Chang (2006).

³² Essays to widen the range of intervening elements are, for example, Loayza (1997), Loayza, et.al.,(2006)

concentrates on the right to alienate goods to obtain credit, and this makes it difficult to comprehend the set of human relations that are established around property.³³ What's more, and in sixth place, in the field of credit the author's focus on the existence, or not, of mortgage guarantees disregards the actual reality of the impressive expansion of microcredit not based on such guarantees not only in the case of informal credit, but also of NGO's and national and regional public and private banks. Who knows, maybe in the future the similarities with the actual reality of the United States, on which De Soto relies, will be greater, but at the moment the centrality of this vision of the functioning of the small scale credit system constitutes a transposition of foreign and rich-country working methods. Reductionism is dangerous when one seeks to avoid top-down approaches in institutional reforms.³⁴

From the economic development side of the problem, we consider that important connections are generally left aside, such as the relation between productivity and competitiveness in the market on the one hand, and the will to formalize on the other. That is what happens when one insists unilaterally, like De Soto, that legality is the requirement for the increase of productivity, something that is, for all intents and purposes, his main point.³⁵ The reasoning is therefore guilty of being unidirectional. The relation between economics and legality is sufficiently complex and both also dependent on factors from other spheres of human activity so as to, at least, think about a bidirectional relation between the two.

On the policy side, the lengthiest experience of home's registration promoted by ILD, the one carried out in Peru through COFOPRI, has shown

³³ See Grey (2000).

³⁴ While reading the narrative of experiences in *The Other Path*, we get the impression that De Soto considers that all forms of property and organization that have been the base for settling in the city and for operating in the market have expired and should give way to registered private property as the true legal property. Hence, the many forms of formal legality should not be considered simply as 'extra legal.' That simplification contributes to a dichotomic vision of the reality of property regimes that is highlighted by Webb, et.al. (2006: 66-7)

³⁵ If productivity and the resulting competitiveness is a condition for productive assets to acquire a value in the market, then the value of legality depends on both. "Legal title is not worthwhile when the assets are not valuable." (Easterly 2006: 81)

that its effects on the access to credit are small and not, at the moment, significantly different from other methods of recognizing property rights. Previous to the ILD's campaign and more ad-hoc methods of social and state recognition of property rights seem to offer similar security and to have equal, and sometimes better economic and human development consequences than the ones promoted by De Soto. We do not believe that ILD's public registration work in Peru has been redundant but, until now, it hasn't produced a significant change. That is the main result of the empirical work. One reason may have been the "top-down" approach implemented.³⁶

Another reason why registration programs do not lead to the expected increase in home mortgages and the creation of business by the poor is that the assumption of the predominance of a propensity of migrants to take on commercial risks with their housing goes against the poor's main objectives. The agonizing struggle to settle with their families is only recent history as De Soto himself illustrates in his most historical narrations.

Maybe the legal registration of home property ends up being beneficiary further ahead and will widen the field of action of the poor at the moment of deciding what risks to take.³⁷ Meanwhile, the desire to have a home in which to live in with the whole family for an indefinite period of time will by far dominate over the desire to take risks by mortgaging it; particularly the risk of landing in a situation that is highly rejected in Peru and elsewhere, that of being homeless.

That De Soto's himself didn't even seek a minimum of formal analytical rigor, that the power of his ideas have been the result of campaigns orchestrated by a powerful group of institutions that betted for them with great enthusiasm, pedagogical skill and resources, and that the effects of the public registering of property promoted by him have not even come close to what was expected by its promoters does not imply ignoring an unquestionable contribution by De Soto: the recognition of the poor as agents

³⁶ On the top-down and bottom-up distinction in property regimes see Easterly (2006: 79-89)

³⁷ Calderón (2005, 2006: 224)

of their own development in a world, like Peru, in which they were seen, and still are, as patients and not agents.

Appendix: Power and influence of the idea

There is no better way to complement this paper on the power and influence of ideas than reproducing most of the World Bank's web page on Hernando De Soto's Curriculum Vitae.

De Soto's CV starts as follows: "Hernando de Soto is President of the Institute for Liberty and Democracy (ILD) —headquartered in Lima, Peru— considered by *The Economist* as one of the two most important think tanks in the world. *Time* magazine chose him as one of the five leading Latin American innovators of the century in its special May 1999 issue "Leaders for the New Millennium", and included him among the 100 most influential people in the world in 2004. Mr. De Soto was also listed as one of 15 innovators "who will reinvent your future" according to *Forbes* magazine' 85th anniversary edition. In January 2000, *Entwicklung und Zusammenarbeit*, the German development magazine, described Mr. De Soto as one of the most important development theoreticians of the last millennium. In 2005, *Prospect* magazine of the UK and *Foreign Policy* of the US have included him in their joint list of the world's top 100 'public intellectuals'".³⁸

The next two paragraphs show some personal biographical data, he is Peruvian, and summarize the "deeds." Let us quote the second of these two: "Currently, Mr. de Soto together with his colleagues at the ILD, is focused on designing and implementing capital formation programs to empower the poor in Africa, Asia, Latin America, the Middle East, and former Soviet Union Nations. Some 30 heads of state have invited de Soto to carry out these ILD programs in their countries." Second, where he is coming from and his main practical activity. That is his, we could call it, product.

³⁸ http://www.ifc.org/ifcext/economics.ns/Content/competition_judge_soto
Probably there are many more of these praises but we add the most recent designation as one of the twelve most important economists in the world ever by the Swiss-German publishing house Orell Füssli that published *The Other Path* in German in 1992. *El Comercio*, Lima: July 11, 2007, p. b5.

Then the titles of his two books are mentioned. The first is *The Other Path. The Invisible Revolution in the Third World*.³⁹ The second is entitled *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*.⁴⁰ He correctly annotates that both books have been international bestsellers, and translated into some 20 languages. The message seems to be that the theoretical component of his ideas has spread widely, and is accessible to everybody.

For our purposes it is important to transcribe the paragraph on prizes and awards selected. "Among the prizes he has received are **The Freedom Prize** (Switzerland), **The Fisher Prize** (United Kingdom). In 2002, he received **The Goldwater Award** (USA), **The Adam Smith Award** from the Association of Private Enterprise Education (USA), and **The CARE Canada Award** for Outstanding Development Thinking (Canada). In 2003, he received the **Downey Fellowship at Yale University** and the **Democracy Hall of Fame International Award** from the National Graduate University (USA). In 2004, he was given **The Templeton Freedom Prize** (USA) and **The Milton Friedman Prize** (USA), as well as the Royal Decoration of the **Most Admirable Order of the Direkgunabhorn**, 5th Class, (Thailand)."

And the last paragraph of this brief summary refers to the academic honors. The University of Buckingham (Honorary Degree of Doctor in Letters, UK) and Dartmouth College (Fellow of the Class of 1930) are among the institutions mentioned. Also the America's Award (USA), the Prize of Deutsche Stiftung Eigentum, Golden Plate Award (USA, Forbes, and the Peruvian National Assembly of Rectors. It is well known that he has not attempted a more important presence in academic circles.⁴¹

³⁹ New York: Harper & Row, Publishers. We will refer here to the First Perennial Library Edition, 2000. The original was published in Spanish in November 1986.

⁴⁰ Published originally in English by Basic Books, New York, 2000. The Spanish translation is published also in 2000.

⁴¹ The autor is not mentioned in Desmond McNeil (2004) "The informal sector. Biography of an idea". In: *Global Institutions and Development. Framing the world?* by Boas, M. and McNeil, D. London: Routledge, pp. 41-55.

This quite impressive summary has an order of self-presentation that shows, seem so to us, some order of importance to elaborate a profile. His CV includes, personal prestige and influence in the world-class media, then where he comes from, what he is doing and offering, and finally the prizes and awards reflecting the worldwide appreciation for his activity and ideas.

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