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Formalising property relations in the developing world: The wrong prescription for the wrong malady

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ABSTRACT

Formalisation of property relations through the registration of land and the issuance of titles is but the latest in a long history of optimistic policy prescriptions imposed on the poor nations of the world. As with the discredited Washington Consensus, the imperative of formalisation flows from the flawed inductive logic that says "rich countries have formalised tenure, therefore formalisation of tenure will help make you rich." Unfortunately, empirical research on formalisation of tenure as a stimulus to agricultural investment is unable to establish any robust and reliable connection between "more secure" tenure and enhanced agricultural productivity. Urban slum dwellers who get titles but who are without work cannot possibly leverage credit from the banking sector. Formalisation erodes and displaces existing social networks and arrangements that do offer security. Formalisation offers little assurance that beneficial outcomes are inevitable. As with a long list of previous simple solutions to complex problems, this too shall pass.

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Introduction

Interest in formalising tenure in housing and other land-based assets emerges from a set of presumptions and implied predictions suggesting that titles entail an essential building block in efforts to eradicate poverty and bring about development in the poorer regions of the world. Formalisation entails official registration and issuance of titles to individuals (or families) now holding (possessing) housing and other land-based assets in an allegedly tenuous and quite insecure state. This claimed insecurity of tenure is blamed for stifling investment in the assets now possessed rather than owned (*de Soto, 2000*). Formalisation would, it is claimed, convert mere possession into ownership. Titles are claimed to allow individuals to gain access to official sources of credit – banks, credit unions, lending societies – using their new title as collateral for loans to accomplish several desirable outcomes: (1) start a business; (2) upgrade a dwelling; or (3) undertake investments to augment meagre agricultural production. Eradicating poverty is the goal, new agricultural investments, new businesses, and upgraded dwellings are the means whereby this will happen, tenure security is the necessary condition, and formal titles offer security of tenure.¹

I will discuss three aspects of this commitment to formalisation of tenure in the developing world, with particular reference to

sub-Saharan Africa. I will first explore the conceptual issues underlying formalisation. I will then turn to a discussion of the economic arguments advanced on behalf of formalisation. I will, in the final section, briefly discuss the social aspects of formalisation.

The conceptual dimension of formalisation

If we are to understand the meaning of formalisation it requires that we first understand the crucial differences between possession (or use) of an asset and ownership of that asset. This is necessary because titles are symbols of ownership. If the legal foundations of an economy are tenuous then titles are meaningless and will lack the necessary force to do the work they are claimed to do. That is, formalisation will do little good if it is not backed up by a coherent legal system and authority structure that promises effective enforcement of the rights inherent in, and implied by, the granting of titles.

The difference between possession and ownership starts with the recognition that possession of an object such as a house or agricultural land is an empirical phenomenon. Continued presence on, or use of an object is intuitive (readily apprehensible) evidence that this object belongs to the person now using it. The evidence is intuitive because little extra work is required for an observer to make a plausible connection between the possession or use of the object (asset) and its belonging to the user. However, possession or regular use is no assurance of ownership. Observed possession is a phenomenon limited to those who happen to observe regular use of the object in question. Beyond those who see a person in pos-

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session of certain objects, and who therefore presume that person to be the legitimate “owner,” there is nothing that establishes that association – that belonging – among the larger community. There is no shared and legitimate acknowledgment and so there can be no authoritative source to whom others might turn for clarification on this matter. Under these circumstances, the complete nature of an individual’s relation to the objects being used (or possessed) is not an acknowledged social fact.

Ownership is a social fact. Ownership is not an individualized and intuitive apprehension of some empirical phenomena. Ownership is both a social fact and a social idea (Becker, 1977; Bromley, 1991, 2006; Christman, 1994). As a social idea, ownership must be agreed upon as a concept, and that general understanding must be widely shared. The intuitive concept is that of possession. The reasoned concept is that of ownership. To Immanuel Kant, ownership is captured by “intelligible possession” as opposed to “empirical possession” (Williams, 1977). Ownership is reasoned, of necessity, because it cannot be intuited. The mere fact of me living for a period of time in a friend’s home cannot establish me as the owner of that home. My use of a rental car for 3 days is not sufficient for my neighbour to conclude that I have just purchased a new car and that I am now the owner. Possession begs questions; ownership settles questions.

Since ownership is a reasoned – as opposed to an apprehended – circumstance, there must be tangible empirical evidence that distinguishes the fact of ownership from the fact of possession. One possible piece of evidence is a title. An owner of an automobile can show a title (or a registration certificate predicated on a title) to a suspicious policeman. An owner can show a title to a banker. And an owner can show a title to a government official at tax time. A title is a low-cost legal instrument when superficial evidence of ownership is both required and sufficient.

A title stands on the same footing as currency. Currency, to have any value in exchange, must be backed by the government that issued that currency. Counterfeit laws exist for the precise purpose of assuring market participants that the currency in circulation is in fact legitimate. If the legitimacy of a nation’s currency is undermined, market processes cannot possibly work.

As with currency, a title is meaningless without the full backing of the entity that issued the title. If I have a title to some object, it means that the full force of government stands ready to protect my interest in the situation defined by that title. A title is nothing but a sign (a signal) promising the full backing of various levels of government to protect my interest in the thing (the setting, the object, the circumstance) of which the title is a mere symbolic abstraction. Like counterfeit money, a title without the full acquiescence of the issuing authority is worthless. A title is a “promissory note” issued by a government indicating that it stands ready to protect the title holder (the owner) against the predatory actions of others.

This flows necessarily from the legal meaning of a “right.” To have a right – a civil right, a contractual right, or a property right – is to have the capacity to compel some authority system to come to the defence of the specific interest associated with that right. To have a right is to have the ability to command the agents of government (or a similar authority structure) to come to your aid (Bromley, 1991). A right holder can command agents of government to act in certain ways with respect to the settings and circumstances covered by the right. A civil right means that the coercive power of the state is at the disposal of those who wish to speak, to vote, or to carry out other activities protected by government. Should one’s civil rights be violated, it is the state that stands ready to assure those rights. To have a right means that you do not need to enforce your own interests in particular situations—the authority system does that for you. All you need to do is to ask for the aid of the state. In that sense, democracy bestows citizens certain capacities

over their own government. That is, one does not merely ask for protection from the state. One can demand protection. There is a sense that the push for titles has the quite modest purpose of merely formalising the “rights already existing on the ground.” But this is problematic—what is meant by “rights already existing?” At a conceptual level, if there are “rights on the ground” then they do not need “formalisation.” They may need protection and support from the coercive power of the state, but if they are in fact rights then they are already formally recognized or they cannot be called “rights” (Bromley, 1991).

This brief discussion suggests caution regarding the optimistic claims that “formalising tenure” (which requires the issuing of titles) to those who are now mere possessors – squatters, slum dwellers, members of village common property regimes – will automatically bring forth salutary effects. For dysfunctional governments to issue titles to slum dwellers or rural squatters is similar to governments issuing counterfeit currency. A mere title is no assurance at all that the issuing entity will act on the promissory note. In the absence of that assurance, a title can be a symbol of wilful deceit.

The economic dimension of formalisation

Formalisation of tenure through the issuance of titles finds its primary justification in the beneficent economic results alleged to emanate from the issuance of titles. Those who write about development – and who speak for the donor community – seem to harbour little doubt about this. For example, the authoritative World Development Report produced by the World Bank recently asserted: “Despite potentially large benefits from titling, there are challenges in urban and rural contexts (WDR, 2006, p. 165).” Notice that the benefits are alleged to be “potentially large.” Given such blanket statements one would expect the empirical record to be widespread and robust. While this is not the place for an exhaustive review of the literature, there is a plausible empirical record, much of it emanating from the research staff of the World Bank that does *not* support this sweeping assertion. Is the World Bank advocating policy prescriptions that its own research staff cannot support? Given that the World Development Report is distributed to governments throughout the world, and that it is done so because the World Bank regards it as the carrier of the latest policy truths, one might be surprised to see such confidence in the face of ambiguous empirical support.

Notice the contingent nature of this confident assertion. A policy prescription offers “potentially large benefits.” But of course there are “challenges” that must first be overcome. However, these problematic challenges are only problematic if the policy prescription is defensible on conceptual and empirical grounds. If the policy prescription is wrong, (titles may not provide “security”), or if the prescription is not supported by the empirical record (the empirical evidence is ambiguous), then the challenges that must be overcome are falsely implicated in the bogus development prescription. Unfortunately, if the flawed prescription is somehow believed and acted upon – perhaps because the WDR declares it to be so – the urgent need to address the “challenges” becomes yet another imperative in the development agenda. A focus on alleged “challenges” cannot, therefore, produce anything useful and may well divert scarce development resources and time away from more promising program ideas.

The claim that formalisation promises large benefits has a demand side and a supply side component. On the supply side, the argument is that formalisation will cause units of government to grant political and economic legitimacy to those it now regards as squatters and occupiers. On the demand side, the argument is

that formalisation will induce newly titled “owners” to alter their behaviour and begin to act like good improving landlords rather than as mere temporary residents. The arguments often come down to clichés such as “governments pay more attention to owners” and “owners take better care of their possessions (than do renters and squatters).” I will consider three aspects of this economic dimension.

Urban housing

In urban settings, one popular justification for formal titles is that a title will give those who now live in slum dwellings an incentive to invest in those dwellings—to upgrade them. The motivating idea here is that if governments are indeed honest with slum dwellers when they issue titles then something important has occurred. Specifically, governments have legitimized the presence of individuals (and their meagre dwellings) and is now prepared to take such individuals seriously. Notice, however, that this account of new-found political legitimacy misses the central point. Specifically, any borrower – slum dweller or otherwise – must have a secure income stream before it will be possible to leverage credit out of a banking system. Banks have little interest in becoming owners of housing in slum neighbourhoods – in fact, banks have little interest in becoming owners of housing in promising neighbourhoods. Banks take titles for much the same reason that kidnappers take hostages – titles mean a great deal to the party from whom payment is desired (the hostage giver), while having little value to the hostage taker (Kronman, 1985). Titles in credit markets play the role of hostages – they concentrate the mind of the individual from whom payment is desired. Titles in credit markets do something else as well. Titles lock in the borrower to a long-term contractual relationship with the lender, thereby making it impossible for the borrower to use collateral associated with the title in another credit transaction without the permission of the superior claimant on that title (the lending firm). The taking of collateral assures the mortgage lender of a monopoly position with respect to borrowers. Holding collateral gives lenders profound control over borrowers.

It warrants notice that if slum dwellers should be fortunate enough to obtain permanent employment and thus gain control of a reliable income stream sufficient to meet normal living expense plus to service collateralized debt, there are important reasons for those individuals to escape from the slums for a more promising investment climate elsewhere. The general rule is: buy the worst house possible in the best neighbourhood you can afford. This follows from the realization that it is difficult indeed for individuals to recover investments in home improvements in neighbourhoods that are themselves blighted and unpromising. Housing values are dominated by location, and a newly refurbished house in a blighted area will be regarded as a bad investment by a potential buyer. Few smart buyers seek the best house in a very bad neighbourhood. The logic is clear. Incremental improvements in the bad house in a promising neighbourhood will quickly bring it up to the standards of the other homes there. On the other hand, the best house in a bad neighbourhood is continually burdened by its surrounding.

There is nothing automatic or assured about titles leading to home improvements. Some newly titled “owners” will find good reasons to spend discretionary income on other things and leave their houses in various states of disrepair. Many cities in the industrialized world have laws to prevent owners allowing their dwelling to fall into disrepair. Ownership is not in doubt, yet immaculate homes are not assured or such laws would be unnecessary. If new owners should undertake investments in their dwellings, it is usually the case that owners in bad neighbourhoods who invest in home improvements will be punished in the market by other

neighbours who do nothing and therefore condemn the general neighbourhood to perpetual decay. If governments wish to solve problems of urban slums and poor housing it requires a comprehensive program by municipalities in which all houses are upgraded at the same time. That is, “neighbourhood effects” always trump individual effects. The upgrading or elimination of slums requires collective action on the part of the municipality. In the absence of a municipal (collective) effort to upgrade slum neighbourhoods, the logical pathway is for those with discretionary income to begin the slow process of moving out of that particular neighbourhood so that they might move up the housing ladder. The quality of the housing stock is dynamic and endogenous.

The way to help families out of poverty is for governments to pursue policies that will create jobs. With new and presumed reliable income streams, slum dwellers can start the migration up the housing ladder. Titles in the absence of other initiatives are but a hollow gift that cynical governments can hand out as it happens to suit their urgent political needs.

Agricultural investments and productivity

Shifting the focus from housing to agriculture, the literature is both abundant and ambiguous. Persistent poverty in sub-Saharan Africa has brought increased attention to the nature of tenure in the sub-continent. In particular, the prevalence of communal (and multiple) tenures has produced confusion in the development community. On the one hand, those who work in development wish to be respectful of indigenous customs and formal institutions. At the same time, there is a lingering uneasiness that Africa will never “develop” as long as it hangs on to its “quaint” tenure regimes. By “quaint” we may understand this to encompass communal land tenure, multiple claimants to the fruits of a particular parcel of land, and the absence of “formal” (codified) laws as we know them in the West. Hence the push for “formalisation.” Formalisation would make it clear, at last, exactly who owns what. That this question is not pertinent in much of sub-Saharan Africa has never quite taken hold in the mind of many development experts.

The interest in tenure security emerged with respect to forest squatters in Southeast Asia. Once the empirical evidence was apparently established there, the interest in “unclear” tenure spread to sub-Saharan Africa. It seemed as if the development community had finally found the empirical certitude it had always wished for. To put the issue of formalisation in conceptual and empirical perspective, it will be necessary to devote attention to that early work in Asia. In their seminal work in Thailand, Feder and Onchan (1987) declared that the: “. . . purpose of this article is to confirm empirically that ownership security induces higher farm investment and land improvements and to estimate the magnitude of the effects (Feder and Onchan, 1987, pp. 311–312)” (emphasis added).² Despite what these authors claim, they offered no evidence of the relation between “ownership security” and agricultural investment.

First, notice that the term “ownership security” is redundant. More to the point, the idea of ownership “insecurity” is a contradiction in terms (Bromley, 1991). Occupancy of land can indeed be quite insecure, but “ownership” cannot be insecure (Becker, 1977). If it is insecure it cannot be ownership.³ Second, we must pay close attention to what Feder and Onchan actually measured. For this, an extensive quote is required:

² One should perhaps not make too much of their alleged purpose being to “confirm” a particular empirical relationship. Usually, empirical research has the purpose of testing relationships, not confirming them.

³ Enforcement problems may render an owner insecure against the predations of others, but the fact of ownership cannot be insecure, by definition.

Historically, all land in Thailand belonged, . . . , to the king. However, widespread forest clearing, settlement and cultivation were tolerated with few restrictions and little government control until recent times. Legislation formalizing land ownership was first introduced in the second half of the nineteenth century, and several successive legislations addressed aspects of legal ownership. The comprehensive Land Code of 1954. . . identified two types of secure documents: N.S.-4 and N.S.-3, or N.S.-3K. These documents contain a demarcation of land boundaries and allow the owner to sell, transfer, and legally mortgage the land. While N.S.-4 is a full title deed, the N.S.-3 documents (“certificates of utilization”) serve almost the same function. . . the banks will lend equally, irrespective of whether the land has a title or a certificate of utilization (Williamson, 1983, p. 10). Because full title deeds are rare in our study areas, the N.S.-3 and N.S.-3K documents are classified as ‘titled land’ for purposes here.

About half of Thailand’s area is classified as forest reserve land; it belongs to the state. However, about a quarter of this land is actually under cultivation by squatters who occupy it illegally. Many of the squatters have been settled for more than fifteen years; in some instances land has been officially declared as public forest land after it was settled and cleared. Irrespective of the length of the de facto possession, squatters in public forest lands cannot obtain titles or certificates of utilization. . . . Because these areas often are adjacent to legally held private lands, the situation in Thailand is well suited to study the link between ownership security and investment using cross-sectional farm-level data. . . About 200 farmers were interviewed in each province, and the sample was split about equally between residents of forest reserve areas (squatters) and legal owners.

Squatters on public lands lack security of ownership and are subject to possible eviction. However, eviction is infrequent in Thailand because of social and political constraints. Data from the study area indicate a relatively low lifetime eviction probability of 7.5% for squatters. It is still higher than the probability of eviction for legal owners, which is close to zero. Indeed, when farmers were asked to indicate the major benefit of having a secured title, “protection from eviction” was suggested by a minority of farmers. According to these farmers, the dominant advantage of having secure ownership is improved access to credit [Feder and Onchan, 1987, p. 312].”

Notice that the Feder–Onchan study is a cross-sectional comparison of farmers who have “formal title” to their (private) parcels and farmers who are squatters on government land. We have here a snapshot of two groups of farmers, some of whom are farming their “own” land and others who are farming someone else’s land (the government’s). This is not even a study of the relationship between “secure ownership” and “insecure occupancy” since everyone (local farmers, the authors of this study) admits that evictions are minimal and undertaken at great political cost to the government. Hence, even without certificates of utilization, evictions are rare.

Despite how this research has been portrayed in the literature, it is not about security of tenure. Rather, it is a study of the lending behaviour of the formal banking system in rural Thailand. This is not a study of how farmers work out their investment behaviour, but a study of how bankers treat two classes of farmers. Indeed, in an earlier study Feder and several others “confirmed” that formal credit appears to be rationed in a way that only holders of “formal titles” can obtain such credit. Unfortunately for farmers who lack this symbol of ownership, local bankers have discovered a low-cost means to ration credit—no title, no credit. And thus for the wrong reasons, the idea gained currency that titles imply security which then induces investment. The results of the Feder–Onchan study have

been misinterpreted, perhaps because a hasty reading fit nicely into the predilections of the donor community. That is, impose western-style institutional conditions into agrarian societies so that they too can become “developed.”

Perhaps the subtlety here warrants elaboration. The research question worth asking is the following: given equal access to credit on the part of farmers with and without “tenure security” (proper title), can we detect a difference in their investment behaviour with respect to agricultural productivity? If we can detect a difference in their behaviour unconstrained by the vagaries of the agricultural credit market then formalisation of tenure (the issuance of proper titles) will have a salutary effect on farmer behaviour. If we cannot detect a difference in investment behaviour when credit is not rationed on the basis of titles, then formalisation and titles are of little moment. It seems that the pertinent issue here is not formal titles but rather the behaviour of agricultural credit markets. Policy initiatives to induce investment and improvements in agricultural productivity would focus on barriers to credit among farmers whose tenure is not at all insecure, despite their lack of a piece of paper that bankers find compelling.

With the Feder–Onchan study as a backdrop, the question then became: “if it works in Thailand, perhaps it works in sub-Saharan Africa.” But of course it does not “work” in Thailand and there is gathering evidence that it does not “work” in sub-Saharan Africa. On a conceptual level, the recent studies in sub-Saharan Africa have been better crafted, but these refinements merely reinforce the indifferent empirical support for titling and “tenure security.” In Kenya and Ghana, researchers claim that: “We found no relationship between land rights and plot yields in Kenya and Ghana. . . we also found that the mode of acquisition had no effect on plot yields (Migot-Adholla et al., 1993, p. 282).” In Ghana, Timothy Besley writes that: “Developing land rights is often offered as a feasible intervention, especially in Africa. It would be premature to say that this does not work. However, the analysis of this paper warns against viewing it as a panacea for problems of low growth and investment before the process determining the evolution of rights is properly understood (Besley, 1995, p. 936).” In Burkina Faso, differences in land productivity are said to depend on factors “other than property rights, mainly the natural fertility and climate conditions (Ouedraogo et al., 1996, p. 232).” In Rwanda, Migot-Adholla et al., found that: “‘short-term use rights’ parcels were more productive than parcels in all other land rights categories. . . farmers who rent land may generally be in dire need of land resources and apply greater amounts of labour in order to provide subsistence for their families (Migot-Adholla et al., 1993, p. 281).” In a detailed study in Ghana, Kenya, and Rwanda, Frank Place and Peter Hazell find that: “Rights which farmers hold over individual parcels of land vary widely, and are in many cases surprisingly privatized. Yet with few exceptions, land rights are not found to be a significant factor in determining investments in land improvements, use of inputs, access to credit, or the productivity of land. These results cast doubt on the need for ambitious land registration and titling programs at this time (Place and Hazell, 1993, p. 10).” And David Atwood finds that: “if potential purchasers tend to see land as an investment with a high potential for appreciation or as a hedge against inflation, rather than as a factor of production, reducing their transaction costs and risks may lead to poorer land use and reduced production as land is held idle or used in a non-intensive way after its transfer (Atwood, 1990, pp. 663–64).”

There is other research making these same fundamental points. For example, Klaus Deininger of the World Bank has written that: “Increasing security of tenure does not necessarily require issuing formal individual titles and in many circumstances more simple measures to enhance tenure security can make a big difference at much lower cost than formal titles. . . formal title is not always nec-

essary or sufficient for high levels of tenure security (Deininger, 2003, p. 39).” A similar point is offered by Deininger and Feder: “. . . formal documentation (i.e. titling) is not crucial where customary tenure systems provide sufficient security to facilitate the level of investment and land transactions that are relevant for the prevailing economic environment (Deininger and Feder, 2001, p. 314).” Similar points have been made by Carter and Olinto (2003). Others have noted:

. . . intensification of land use can occur without formal property rights. . . . In many situations, titling may increase transaction costs in the circulation of land, create new sources of conflicts if formal land rights are assigned without due recognition of customary arrangements, . . . , and not add anything to efficiency in resource use [de Janvry et al., 2001, p. 13].

Fitzpatrick (2005) has written in a similar vein regarding the case for formalisation. In addition, Lund (2000) reminds us of yet another confounding influence—most African property regimes are notable in their multiplicity of interests and tenures on the same parcel of land. That is, various members of the family (and the village) will often have socially recognized claims on different attributes (and products) of the same parcel—one individual may cultivate and harvest the crops on that parcel, another individual may gather fuel wood on that parcel, and yet another individual may obtain dry-season forage or fodder from that parcel. Which use – which claimant – is to be made more secure by the issuance of “formal” titles? Who is the “primary” right holder, and who is the “secondary” right holder? On this same general theme, Platteau points out that:

in a social context dominated by huge differences in educational levels and by differential access to the state administration, there is a great risk that the adjudication/registration process will be manipulated by the elite to its advantage The fact of the matter is that, insofar as it encourages the assertion of greedy interests with powerful backing and is likely, wittingly or not, to reward cunning, titling opens *new* possibilities of conflict and insecurity that can have disastrous consequences for vulnerable sections of the population *at a time when their livelihood crucially depends on their access to land* [Platteau, 1996, pp. 43–5].

It might be claimed that the above literature is a selective sample, and that there are studies showing “potentially large benefits” of titling. There are indeed studies showing the positive effects of titling in particular settings—and in certain urban settings squatters have certainly benefited. However, my purpose here is a more modest one. Specifically, I merely wish to challenge the confident claims from the “development community” (as exemplified by the 2006 World Development Report) that there are “potential large benefits” from titling. One cannot read the extensive empirical record – a small part of which is cited above – and continue to find this confident assertion tenable. Moreover, since the empirical claims are equivocal, and some of the research efforts employ often-ambiguous concepts (ownership, security, and titles), I suggest that the empirical record, such as it is, overstates the benefits from “formalisation.”

Before leaving this matter, let us turn the question around. Concerning sub-Saharan Africa, I (with Espen Sjaastad) have argued that:

the common assertion that tenure security is necessary to promote investment may—in many cases—be reversed. That is, investment is necessary to obtain security. Investments in trees, irrigation furrows, buildings or other fixed structures may provide a litigant in a land dispute with an unassailable case.

Thus, although insecurity of tenure is a disincentive to invest, it is—paradoxically—often also an incentive because investment in itself increases security If one accepts that certain types of investment in land are a legitimate way of claiming more secure rights to land, and that investments may be recovered even when land is lost, the assertion that insecurity of land rights in indigenous tenure systems is a serious impediment to investment seems less convincing [Sjaastad and Bromley, 1997, p. 553].

I now turn to a second dimension of agricultural productivity.

The macroagricultural economy

Much of the commitment to the alleged benefits of formalisation of tenure has focused attention at the level of the individual farmer. Overlooked is the fact that there is a macro-economic aspect to agricultural production that often fails to receive the attention it deserves. I have in mind here the fact that individual agricultural producers operate in an institutional environment that regularly leads to the dissipation of economic returns quite independently of the specific institutional arrangements – property relations – associated with specific parcels of land. That is, the absence of investment and productivity increases in sub-Saharan Africa cannot so easily be blamed on the specifics of individual property relations with respect to village agricultural land. The general idea in its original form has been addressed in three earlier papers (Bromley, 1989; Bromley and Chavas, 1989; Larson and Bromley, 1990). Here I wish to extend that argument in the briefest of terms.

The essential problem arises because the general institutional climate in most poor nations is not conducive to clarity of expectations on the part of individual market participants. When secure expectations about factor and product markets are confounded by institutional incoherence in the larger macro-economy, would-be market participants are induced to withdraw into semi-autarkic economic relations that converge to small geographic domains over which plausible trust exists (Bromley and Chavas, 1989). Family and kin (and near neighbours) comprise and exhaust the set of trusted market participants and so economic relations shrink in scope and magnitude to match that space over which trust is sufficient to parameterize expectations. We might think of this as institutional isolation. In a setting of institutional isolation, scattered agricultural producers in rural villages face a situation of asymmetric transaction costs. For rural villagers who must purchase agricultural inputs and sell their marketable surplus in distant urban markets, not only will transport costs diminish net returns, but the costs of acquiring information about market opportunities, the costs of negotiating contracts with distant and unfamiliar market counterparts, and the costs of enforcing contracts with those distant individuals fall disproportionately on the rural producer. Individual farmers are forced to bear large and asymmetrically distributed transaction costs. The literature on formalising tenure makes it seem as if the only institutional problems in the developing world occur at the nexus of farmer and agricultural land (or squatter and municipal land). The more serious problem is at the nexus of the individual farmer as he/she comes in contact with sellers of inputs or buyers of product. It is here – at the “market” – that agricultural producers are seriously disadvantaged.

To illustrate this institutional problem, consider the standard von Thünen account of economic rent across space (Fig. 1).⁴ The usual rent gradient (R^*) is predicated on a functioning market and plausible mobility of factors and products across space under some

⁴ See Bromley (2008) for the full development of this model.

assumption on transport costs. Different land uses are dependent on a set of assumptions about productivity, prices, technology, and spatial preferences for work and living. There is a second rent gradient (R) in Fig. 1. Assume that people live in both urban and rural places, with the urban economy consisting of non-agricultural activities, and the rural economy containing agricultural activities. The border between the two regimes is at B .

Some agricultural production in the rural area is consumed locally (the subsistence sector), and some of it is exported out of the local economy to urban markets. These activities are embodied in the usual account of the rent gradient—here depicted by R^* . However, the economic problem in most developing countries is precisely concerned with the weak and fragile institutional arrangements whose primary purpose is to assure the low-cost movement of inputs and products among suppliers, producers, wholesalers, and final consumers. That is, the purpose of an economy's institutional architecture is to allow for low-cost exchange within the economy. When that institutional architecture is flawed, transactions costs dissipate the possible gains from trade and localized autarky is the result (Bromley and Chavas, 1989). In such instances, the standard (idealized) rent gradient overstates the economic rent accruing to assets (land) in the rural economy in consequence of institutional isolation in the larger national economy. We may think of this as a problem of induced and accelerated decay in the quality (and thus value) of land devoted to traded goods as one moves out from the urban core – not because of transportation costs (which are the central idea of the standard rent gradient) – but because of institutional isolation. More distant points in an economy suffer from greater institutional isolation.

The dashed line (R) in Fig. 1 depicts this problem of decay. Institutional isolation degrades earnings from assets devoted to traded goods from agricultural areas, and this then undermines the ability of farmers to undertake investments on those lands used for traded goods, but also on lands used for domestic (subsistence) production. The entire asset base of rural agriculture is degraded because of institutional isolation in the macro-economy. Titles cannot fix this problem because it is not a problem brought on by insecure tenure for the individual producer, but by institutional incoherence in the macro-economy.

If we let φ_k depict the degree of institutional isolation associated with a village at point k (where $0 \leq \varphi_k < 1$), then the actual rent gradient R in Fig. 1 can be written as

$$R = Q[(p_t - \varphi_k) - TC] - Qck$$

where Q is the average yield of a good produced from parcel u , p_t is the sale price of that good in the urban center, φ_k is the index of institutional isolation associated with point k , TC is the average

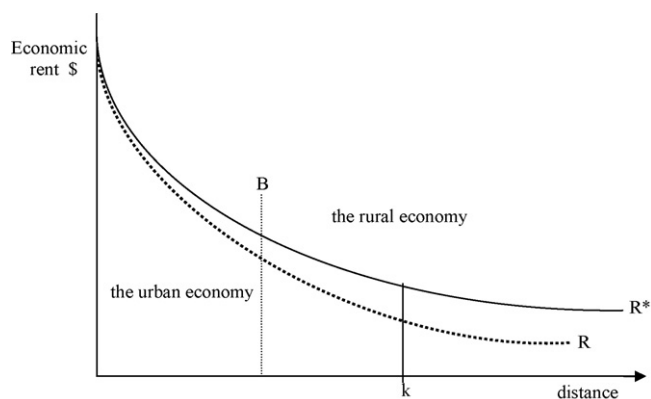


Fig. 1. Two rent gradients.

total and variable cost of producing a unit of Q at point k , c is the transport costs per unit of Q per unit of distance from the urban center, and k is distance from the urban center. Notice that when $\varphi_k = 0$ the above equation reduces to the pure von Thünen rent gradient (R^* in Fig. 1), but when φ_k takes on values greater than zero the rent gradient traces out the inferior gradient R . Villagers can devote their own resources to mitigating activities that will provide institutional coherence when it is otherwise missing. If villagers are able, through their individual efforts, to overcome the full extent of institutional isolation that undermines the value of traded goods moving to urban markets, then the value of $\varphi_k = 0$ and there is no decay in the value of traded goods as a function of their remote origins at k . On the other hand, if the villagers are unable through their own efforts to recreate the conditions of a coherent institutional regime for the transfer of traded goods from the village to the urban center, the value of φ_k will deviate from zero.

Villagers can expend their own resources to drive φ_k close to zero in order to preclude the value of traded goods being driven down because of institutional isolation. However, when the outlay of village resources is required to create the missing public good by private means, there are fewer funds available in the village to be devoted to necessary investments in village assets used for traded goods or for domestic consumption. Even if there is a labor market outside of the village, it cannot be expected that this opportunity for off-farm work will return wages very different from the meager opportunities available inside of the village. Unless the nation-state is willing to devote its energies and financial resources to enhance the provision of supportive institutional arrangements along the marketing chain, these costs will fall on those who must move their products long distances to urban markets. Agricultural producers are faced with a difficult choice—they must either insure the value of their products as they move through a tenuous institutional environment on their way to market, or they must incur a reduced value of their village assets because of the reduced net returns to land. If they try to protect against inevitable decay in the value of their products owing to institutional isolation, they must divert resources away from investment in production-enhancing improvements on the land in the village. Or they must withdraw their labor from the wage sector in order to provide for enhanced institutional coherence. Regardless of which option they choose, it is only a matter of time before investment funds are diverted away from village assets. The agricultural trajectory is one of falling asset quality and ultimately reduced yields. For this trajectory to be reversed requires an extensive program of institutional reform. Formalising tenure will not fix this problem.

With this focus on the more general institutional environment, it is possible to begin to understand that widespread poverty and resource degradation must be seen in a different light. To date, the central blame has been lodged inside the village, or it has been laid at the feet of flawed (insecure) property rights and the attendant depressing effect on investments in agriculture. To the extent that investments in agricultural productivity are stifled, the conclusion that formalisation (titles) will fix the problem is seriously misdirected. Indeed, the failed legal (and political) environment that produces institutional isolation is the very same failed legal (and political) environment that will most certainly mean that formalisation of tenure will fail to do the necessary work. The problem is not that titles and formal recognition of property rights is absent. The problem, instead, is that the legal regimes in most developing countries are often dysfunctional. Indeed, as I have argued above, formalisation in such economies is logical impossibility.

The social dimension of formalisation

I come, finally, to a discussion of the social dimensions of formalisation. It is ironic that advocacy for formalisation of tenure and the

issuance of titles is advanced as the necessary means to secure the economic and political stake of the poor in the economy. I should think that the fundamental means whereby that noble objective might be met would be through measures to make sure that the poor can find meaningful and remunerative work. After all, in a market economy, those who wish to acquire food and shelter must have some minimal disposable income by means of which such things might be purchased from others. A market economy bestows on those in control of capital and the associated capacity for job creation the ability to control who will and will not work. No work, no income, no food, no shelter.

Without a word about gainful employment, there are now confident assertions that titles will suddenly legitimize the poor and render them essential participants in the economy. The mere claim of becoming an “owner” is offered up as the magic solution to poverty. Income and food are not wanting. It is a simple matter of allowing everyone to become an owner of capital. Once everyone is an owner of capital, can riches be far behind?

In fact, such assured prescriptions seek to mislead us into believing that individuals now embedded in communities and villages and clans and neighbourhoods suffer from the debilitating effects of insecurity. However, the poor now stand protected against exclusion from their social networks. They are poor not because they are not owners. They are poor because flawed economic policies have not provided them with gainful employment in agriculture or some non-farm activity. The offer of formal titles to the poor presents them with the need to decide whether to exchange their current embeddedness in one community for an uncertain embeddedness in another community. In the absence of reasonable assurance that the new community (the government) can offer more effective protection than the current one, the switch is not obviously superior.

A word or two about cultural imperialism seems now in order. The advocacy for formal titles is an example of the persistent quest for ideational hegemony. Were African politicians to set up an international commission to impose African cultural and legal practices on the “developed” world there would be profound surprise. There would be surprise because imperialism flows downhill, as it were, and so it seems natural to us that poor countries must desperately need what it is we have in rich countries. They must become like us in all their legal and cultural practices so that they can then become rich like us. Indeed it is difficult for the rich to imagine that the world's poor do not wish for our social and economic arrangements in their entirety. The point here is to remind us of the nature and scope of what is being advocated when high-placed individuals launch global initiatives to facilitate the imposition of institutional arrangements that have been artificially naturalized by those doing the imposing. Lost in this quest for universal solutions to particularistic affairs is any modest reflection that the imposition of alien legal and cultural practices into any setting rarely works as imagined. And those impositions cannot be expected to work as imagined precisely because the larger institutional setting into which they are transplanted differs so profoundly from the legal and cultural setting from which they are taken. All legal arrangements, whether titles, bankruptcy laws, property rights arrangements, or family and divorce protocols are the evolved – and evolving – manifestations of a complex pattern of scarcities, priorities, power relations, and local circumstances. To suppose that a tiny piece (titles) of that complex cultural and legal fabric can be transplanted into a new web of complex relations and work as it seemed to work elsewhere is naïve in the extreme.

A related point is that the object of transplantation – in this case titles and all of the elaborate and complex “ownership” arrangements that lie behind this symbolic instrument – does not work quite like it is imagined to work even in its place of origin. It is not

possible to separate out the effect of titled-ownership in particular cultural and legal and economic settings from the full panoply of associated institutional and cultural accoutrements of which titles are just one small piece. The world cannot so easily be “carved at the joints.” Ecologists warn us against the transplantation of alien creatures into new environmental settings. The dangers are no less severe in the social realm. What arrogance is required to presume that titles will fix, rather than undermine, long-standing fundamental social and economic relations?

Some final reflections

The abiding puzzle is why and how bizarre “development” ideas gain such immediate and widespread currency. There is now an International Commission on Legal Empowerment of the Poor whose main agenda seems to be the spreading of the idea that “formalisation” of tenure is a necessary aspect of reducing poverty. At the same time, sundry celebrities are advocating the free distribution of mosquito nets—and then evincing surprise that they soon end up in the hands of desperate fishermen. We also find ourselves in the middle of the Millennium Development Goals. And it was only a few years ago that the Washington Consensus promised clarity about how to get development underway.

The eager acceptance of these curious prescriptions is evidence, I suggest, of the intellectual emptiness at the core of the development discourse. As long as we have no clear idea of how to bring about economic development in sub-Saharan Africa, strange nostrums will continue to appear on schedule. And they will be taken seriously until the next dose of magic appears. Meanwhile, the world's poor wait in vain.

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