

Open Access Journal

Hernando de Soto on Land Titling: Consensus and Criticism

Cora Fontana

PhD in Urban Studies, Gran Sasso Science Institute
cora.fontana@gssi.infn.it

The proliferation of informal settlements is one of the most relevant consequences of the urbanization process that has been affecting most of the cities in the Global South. Among the different ways to cope with this issue, the regularization of informal settlements through land titling has been one of the main shared strategies that scholars and policy makers have focused on for the last twenty years. A relevant and well-known contribution concerning this issue is the one provided by the Peruvian economist Hernando de Soto. Defined together, one of the best economists in the world, and the 'guru of neo-liberal populism', de Soto attracts both important endorsements and harsh criticisms for his theories. The contribution of this paper is to provide a detailed framework of de Soto main achievements, in terms of his current institutional influence and the international impact of his ideas, in contraposition with an analysis of the most relevant critiques developed against his theories.

Keywords: informality; property rights; extra-legality; poverty reduction.

Copyright: author(s). Protected under CC BY-NC 4.0. ISSN: 2468-0648.

Please cite as: Fontana, C. (2016). Hernando de Soto on Land Titling: Consensus and Criticism. *plaNext – next generation planning*. 3: 36-48. DOI: [10.24306/plnxt.2016.03.003](https://doi.org/10.24306/plnxt.2016.03.003)

Open Access Journal

Introduction

According to UN-Habitat (2012), 33% of the urban population of the Global South – more than 862 million people – lives in informal settlements.

In order to slow down the process of the formation of informal settlements, policy makers and international organizations have been working – for the last fifty years – on programs and strategies for the regularization of informality. Since the 1950s, given the proliferation of informal urban settlements, the issue of urban poverty and informal housing in the Global South became a matter of public international debate. On this topic, one of the relevant contributions of the last twenty years has been the one provided by the Peruvian economist, Hernando de Soto (Varley, 2002; Fernandes, 2002). His theories – which arose during a season of turmoil for informal housing policies and in which Peru was experiencing a critical political phase – gained a large consensus, at both the national and international levels. The founder of the research group ILD¹ and author of two well-known books, *The Other Path* (1986) and *The Mystery of Capital* (2000), de Soto has, since the 1980s, been investigating the informal economy of Peru and other countries of the Global South, such as the Philippines, Egypt, Mexico, and Haiti. However, his theory, based on the idea that giving property titles to poor could be a strategy to diminish urban poverty, led to harsh criticism, mainly within the international academic community.

The following article, which consists of a literature review of de Soto's theory, focuses on this dualistic division of consensus and criticisms that he inspired during the past twenty years, mainly after the publication, in 2000, of *The Mystery of Capital*. The paper comprises four sections: after providing a review of de Soto's theory, section 3 will offer an overview of the achievements and international impact of de Soto, and the influences that his ideas had in making public housing policies in the Global South; section 4 will summarize the main critiques of de Soto's theories and work; while section 5 will discuss the previous sections, providing some conclusions to the article.

Hernando de Soto's theory

The establishment of *Instituto Libertad y Democracia* (1979) and the further publication of *El Otro Sendero* (1986) took place during a crucial period for the political history of Peru. In the early 1980s, the country was marked by the terrorist actions of the revolutionary movements of *Sendero Luminoso* and *Tupac Amaru*, which under the leadership of by Alan García Pérez (1985-1990, 2006-2011), struggled against the State. Pérez first presidential term, in part because of unpopular political and economic choices, and in part because of repeated terrorist attacks, was declared one of the bloodiest periods for the country and for the violation of civil rights. In the elections of 1990, the favourite candidate, Mario Vargas Llosa, was overwhelmed by Alberto Fujimori, president from 1990 to 2000, leader of the centre-right wing party, *Cambio 90*. Only a few months after Fujimori's win – helped by a general economic crisis and the votes of the poorest strata of the population frightened by the austerity regime proposed by Vargas Llosa – the totalitarian character of the new president became apparent when he decided to readopt the anti-subversive military regime that characterized the government during the 1980s. The 'self-coup' of 1992 heralded the collapse of democracy and the fragility of political parties (CVR, 2003, p. 16).

¹ The *Instituto Libertad y Democracia* is a Peruvian NGO founded by Hernando de Soto in 1979. For more information see the official website: www.ild.org.pe/index.php/en/.

Open Access Journal

The theories that were developed by de Soto and his research group arose in this uncertain national panorama. The publication of *El Otro Sendero*, whose title refers to the terrorist movement of *Sendero Luminoso*, was embraced by various strata of Peruvian society as a purposeful message of change for the country, change that would lead to the country's development and counteract the forces of terrorism. The work, promoted by ILD, showed that the intent of *Sendero* did not correspond to the needs of the 'poor' and that if the Peruvian government wanted its citizens to avoid the temptation of terrorism and lawlessness, it had to show that to work within the law was in the interest both of the entire population, and of individual citizens. To make this possible, the government had to reform its legal system (de Soto, 2000, p. xxii).

Hernando de Soto, the founder of the ILD research team in 1979, published in 1986 his first work, *El Otro Sendero*, a detailed analysis of the Peruvian informal economy. Already popular in Peru, the book was translated into English in 1989 with the title *The Other Path*. The translation gave it the opportunity to spread beyond Latin American boundaries, mainly in the USA. *The Mystery of Capital* was published in 2000. The book, translated into more than twenty different languages, gave rise to the popularity of the author and the ILD team.

As Vargas Llosa expresses (1986) in the prologue for *El Otro Sendero*, the analysis of the Peruvian informal economy conducted by de Soto and his research team proposes a new interpretation of poverty in the Global South. Following several studies in Lima's area, de Soto claims that the causes of urban informality and the economic decline of the country depend on the national legal system. The lack of an efficient law and the high cost of formal economy fostered the exclusion of some social groups from the formal market, constraining them to alternative economic systems, which found their representation in the informal market, defined by de Soto as the extra-legal market. Thus, the origins of the extra-legal economy could be attributed to the lack of a good legal system and the impossibility for the poor to have easy and free access to justice (de Soto, 2002a, p. xxiv).

To better explain the previous assumption and to report the high costs of the formal market, the ILD team documented the bureaucratic procedures that a small Peruvian entrepreneur should follow in setting up a one-employee garment factory on the outskirts of Lima. The conclusion was that legally setting up a small enterprise or obtaining permission to build a house are economic operations that just half of Peru's citizens could afford. Consequently, for the other half, extra-legality was the only possible solution (*ibid.*, pp.135-158). According to the ILD statistics, in 1984 83% of Lima's markets, as much as 95% of the city public transport system, worked thanks to extra-legal mechanisms; while half of the population of the city lived in houses that were built informally, for a value of 8.319,8 millions of dollars (*ibid.*, pp. 13-19). Analysing these data, de Soto concluded that the poor are not really poor, but small informal entrepreneurs, who, inserted in extra-legal economic circles, managed to hold and hoard a certain amount of capital. The issue is to understand why these informal economic circles are not able to produce 'active' capital (*ibid.*, p. xviii). The answer, according to de Soto, is that as extra-legality is excluded from the formal legal system, whoever lives in informality cannot take advantage of the rights, primarily the property rights, that the system guarantees (*ibid.*, p. 180). Thus, the poor suffer not only from illegality, but also from the absence of a legal system that guarantee and promotes their economic efficiency (*ibid.*, p. 158).

Open Access Journal

[...] it becomes obvious that the most significant cost of the absence of a good law is the absence of secure, reliable property rights. We shall, therefore, explain the three main conclusions we have been able to reach and which will enable us to identify more readily the costs of informals must assume because they do not have these rights:

1. Informals do not use or preserve the resources available to them as efficiently as they might if they were sure of their rights [...] secure property rights encourage holders to invest in their property because of their certainty that their property will not be usurped.
2. Informals cannot transfer their property easily. This limits their property's mobility as a factor of production and reduces its productivity.
3. Informals incur substantial costs in defending their possessions and satisfying the need for public property by establishing and operating thousand of different organizations (*ibid.*, pp. 159-160).

If, in *The Other Path*, the conclusion reached by de Soto is that extra-legality is not a problem generated by informality itself, but by the weakness of the state legal structure, in *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, his next work (de Soto, 2001; 2002b; 2004), the Peruvian economist reaches the maturity of his thought. As the subtitle says, in the book, de Soto discusses his theory about why capitalism triumphs just in the West and fails in all the other parts of the world. If, in the past, the explanations given for the failure of capitalism pertained to cultural, religious, geographic, and political factors, de Soto searched for the causes of capitalism's failures elsewhere. As the book says, 'the idea that is culture that explains the big success of countries like Japan, Switzerland and California and that justify the relative poverty of others like, China, Estonia, and Baja California, is worse than inhuman: it's simply not convincing. The disparity of wealth between the West and the rest of the world is too big to be explained by culture alone'(de Soto, 2000, p.4). de Soto claims that most of the poor in the countries of the Global South already possess the necessary assets to start a capitalistic process. According to ILD estimations, the total value of assets held but not legally owned by the poor of Peru, Mexico, Philippines, Haiti, and Egypt would be 9.3 billion dollars (*ibid.*, p. 32). If it is true that the poor possess such a large amount of capital, why has capitalism managed to develop just in Western countries as though it were confined inside a 'bell jar'? This issue has to be researched using the inadequate documentation concerning the rights that the poor possess with regard to the goods they own, such as the houses they build on lands without recorded property rights, or informal commercial activities. Given the omission of formal and legal property recognition, all these potential resources cannot be transformed into 'active' capital; thus, they are useless, 'dead capital'(*ibid.*, pp. 27-32). Unlike what happens in the United States, where a small entrepreneur can manage to easily start his/her own economic activity, using his/her property as credit to get loan and mortgages from banks, in the countries of the Global South, this does not happen. The lack of an efficient legal property system discriminates non-Western countries and insulates them from that capitalistic world of the economic and social wealth of the West. Although almost every government in non-Western countries already possesses its own formal property system; the problem is that this facility is not available for the majority but just for the elite that live inside the bell jar. Those excluded from this 'property apartheid' are forced to live in poverty and in extra-legality, committing themselves to informal rules, unable to spread outside their territorial boundaries, and without the security of a formal legislation (*ibid.*, p. 191). According to de Soto, the biggest difference between developed countries and non-developed ones stays in the division between those countries that possess a good formal property rights system and the ones that do not (*ibid.*, p. 225). Property rights, de Soto claims, are not just a matter of titles and contracts, but an instrument of thinking: they represent the resources that the human mind needs to generate added value. For this reason, it is important that they be universally accessible (*ibid.*, p. 231). According to de Soto, the West allows every citizen to activate his/her own individual capital, starting in this way a capitalistic process that has driven the wealth of every nation.

Open Access Journal

Marginalization of the poor, mainly caused by the lack of an efficient system of property rights, shows itself in the impossibility of the poor benefiting from their assets. Upgrading the property rights system, giving property titles to the poor, are a means to encourage them to invest economically in their goods. This process could activate their 'dead capital', allowing them to enter the capitalistic circle, the only one, according to de Soto, that is useful for the development of countries and for diminishing urban poverty.

I am not a diehard capitalist. I do not view capitalism as a credo. Much more important for me are freedom, compassion for the poor, respect for the social contract and equal opportunity. But for the moment, to achieve those goals, capitalism is the only game in town. It is the only system we know that provides us with the tools required to create massive surplus value (*ibid.*, p. 242).

To sum up, de Soto assumes that poor people are rich in assets but remain poor in capital because they do not really own the real estates that they possess, since they obtained them through the informal market. de Soto also argues that poor are obliged to live and work in informality because they lack easy access to property mechanisms. Because of this lack, they cannot turn their assets into capital. However, assets without property titles are just 'dead capital'. Moreover, people without titles cannot invest and negotiate their assets, and without these conditions, the formal market is restricted, a fact that leads to direct consequences for the socio-economic development of the entire country. In these conditions, 'informals' remain poor and the country cannot start a real capitalistic process. The only possible solution to change the situation is to improve the national legal system, guaranteeing to everyone access to justice and regulating the property rights system. In fact, according to de Soto, giving property titles to everyone is the only way to convert the informal system to a formal one, reducing urban poverty and increasing the national wealth.

Consensus

If, with the translation in English of *The Other Path*, the success of de Soto reached an international level, in 2000, with the publication of *The Mystery of Capital*, he reached a level of popularity that allowed him to win several prizes, get a Nobel Prize nomination, and gain the support of politicians, policy makers, and international organizations all over the world (Gilbert, 2002; 2012; Bromley, 2004; Gravois, 2005; Sjaastad & Cousins, 2008; Otto, 2009; Payne, Durand-Lasserve and Rakodi, 2009; Obeng-Odoom, 2013). The publication of *The Mystery of Capital* stimulated a significant wave of recognitions, appreciations, and a relevant media echo. From various government presidents to national politicians, the success of de Soto spread to a global level. Among the most prestigious awards, there were those by some US presidents. George Bush Sr., for instance, declared in 1989 that 'the economist Hernando de Soto helped us to understand a global economic phenomenon [...]', while Bill Clinton in 2002 claimed that 'the most promising anti-poverty initiative is the one promoted by the great economist, Hernando de Soto'. *Time Magazine* placed de Soto in the top five in their rankings of *Leaders of the New Millennium* in 1999, and in 2004, the magazine positioned him among the *Hundred Most Influential Personalities of the Year* rank. *Cato Institute* awarded him the *Milton Friedman Prize for Advancing Liberty* in 2004 and the *Economist* the *Innovation Award* in 2006.

According to several scholars, the success of de Soto's ideas could be attributed mainly to two factors: (1) that de Soto, better than anyone before, managed to emphasize the economic aspect of informality (Varley, 2002; Fernandes, 2002; 2003; Cousins *et al.*, 2005; Sjaastad and Cousins, 2008); and (2) that de Soto saw a possible causal connection

Open Access Journal

between a functioning and accessible legal system and poverty reduction (Bruce, 2006; Otto, 2009).

Influences and achievements

In the last 20 years, several national governments – Egypt, Peru, Tanzania, and Philippines among them – ran titling programs inspired by de Soto's ideas and the work of ILD (Panaritis, 2001; Fernandes, 2002; CLEP, 2008; Gilbert, 2012). Additionally, some big organizations, like the United States Agency for International Development (USAID), Inter-American Development Bank (IDB) and World Bank revived their interest in land titling programs, clearly declaring the influence of de Soto on some of their projects (Rossini and Thomas, 1990; Panaritis, 2001; Gilbert, 2002; Bruce, 2006; Payne, 2008; Rutten, 2009; Payne, Durand- Lasserre and Rakodi, 2009; McFarlane, 2012; Earle, 2014). Among the different programs influenced by de Soto's theory, Building Opportunity for the Majority – an initiative launched by IDB in 2006 – and Peruvian property rights reforms, such as the Urban Property Right Program, are the most relevant ones (Panaritis, 2001; IDB, 2006; Gilbert, 2002; 2012). The World Bank was already dealing with legalization issues as part of its upgrading programs from the 1970s. During the 1980s, shifting from an upgrading to enabling approach – an approach that was partially influenced by de Soto's theory – the property right paradigm became one of the main concern about housing policies for the Global South. As the document Housing: Enabling Markets to Work (1993) states,

The registration of property rights in squatter settlements is [...] important in making land and house transactions possible and giving occupants legal protection. It encourages the buying and selling of housing and makes it possible for households to move to a dwelling that suits their needs and their budgets. It also increases the choice of tenure available to households, allowing them to own or rent as they see fit (World Bank, 1993, p. 117)

Moreover, since 2004, the World Bank has been conducting a yearly project called *Doing Business*. This project aims to foster small medium-sized enterprise and reduce social gaps. The project is explicitly inspired by de Soto and ILD's work:

Here, *Doing Business* builds on Hernando de Soto's pioneering work in applying the time and motion approach first used by Frederick Taylor to revolutionize the production of the Model T Ford. De Soto used the approach in the 1980s to show the obstacles to setting up a garment factory on the outskirts of Lima (World Bank, 2009, p. v; 2010, p. v; 2011, p. 1; 2012, p.17; 2013a, p. 17; 2013b, p.10; 2014, p. 22).

In 2005, in co-chairmanship with Madeleine Albright, de Soto launched *The Commission for Legal Empowerment of the Poor* (CLEP), an initiative promoted by the United Nations Development Programme to mobilize the international community through the observation and analysis of poverty from the perspective of the poor themselves and to upgrade their economic conditions, giving them the basic legal tools to gain access to the market (Sjaastad and Cousins, 2008; Payne, 2008; Otto, 2009; Fernandes, 2011; Gilbert, 2012). The final report, published in 2008, *Making the Law Work for Everyone*, is based on four foundational pillars: property rights, access to justice and the role of the law, business rights, and labour rights (CLEP, 2008). Although the organization has not been working as an independent body since 2008, its principles are still part of the UNDP agenda, in UNDP's Legal Empowerment of the Poor programs.

Open Access Journal

Critique

Nevertheless the idea of regularising informal settlements through land titling is not a de Soto invention (Gilbert, 2001; Varley 2002; Fernandes, 2002; Calderon, 2007). The origins of international housing policies for the poor can be attributed to the 1960s, a period in which the issue of urban poverty and informal housing in the Global South started to be considered a structural question and not a temporary phenomenon. Since the growth of informal settlements in urban areas was rapidly increasing and since there was an evident shortage of public housing policies at the national level, international researchers and organizations began to work on strategies that aimed at regularizing informal settlements instead of demolish them. Thanks to the pioneering work of John Turner (1968; 1972; 1976), based on the *(aided) self-help* paradigm, international organizations – UN-Habitat and World Bank to start with – started to promote policies that had the purpose of fostering a self-help building process for informal inhabitants, mainly through two different types of approaches: *site and service* and *upgrading*. With the goal being to improve the conditions of existing informal settlements, the first approach aimed at increasing the quality of the physical assets, while the second approach included some legal issues in the program, such as security land tenure and access to credit (Davis, 2006; Fernandes, 2002; Gilbert, 2002; Rutten, 2009; McFarlane, 2012). However, the contextual limits and small scale of these policies soon became apparent, and from the 1980s, big international organizations started to work on a broader and more holistic approach, capable of having an impact on the national governments of the Global South. This approach was expressed in the concept of *enabling*: a strategy that started a shift from doing something for the poor to enabling them to do something for themselves (Helmsing, 2002). This approach not only looked at the spatial dimension but also sought innovation at the institutional level. During this new international public housing season, Hernando de Soto's theories were prominently discussed, and as we saw in the previous section, they even inspired and designed some features of the *enabling* approach (Woodruff, 2001; Varley, 2002; Fernandes, 2002; Payne, Durand-Lasserve and Rakodi, 2009; Otto, 2009). However, beyond the endorsements, de Soto's theory attracted harsh critiques from the international academic community. Below are presented the arguments that aroused the most criticism and that warmed up the debate on the effectiveness of land titling programmes.

The criticisms are subdivided into three categories: methodological and theoretical- historical ones (sections 4.1; 4.2); those related to poverty issues (sections 4.3; 4.4); and those concerning the role of property and the effectiveness of land titling as a strategy for poverty reduction (sections 4.5; 4.6; 4.7).

Doubts concerning methodological approach and data

The Other Path and *The Mystery of Capital* report the results of the research carried out by de Soto and his research team of the ILD in the urban areas of Lima, Manila, Cairo, Mexico City, and Port-au-Prince. These studies raised a lot of doubts on the methodological approach used to extract the data and calculate the amount of 'dead capital' theoretically owned by the poor in the analysed cities. According to Woodruff (2001), Gilbert (2012), and Bromley (2004), the calculation of 9.3 billion dollars saved by the poor seems difficult to interpret and is not so reliable. Moreover, as much of the data collected by de Soto were quoted in international publications, several economists like Rossini and Thomas (1990) and Woodruff (2001) had analysed their statistic effectiveness, looking for mistakes and weakness.

Open Access Journal

Superficial and confused historical and economic evidence

The interpretation of U.S. and European history, conducted by de Soto in *The Mystery of Capital*, concerned many scholars (Fernandes, 2002; Kinsella, 2002; Obeng-Odoom, 2013). In the fifth chapter of the book, 'The Missing Lessons of U.S. History' (de Soto, 2000, pp. 115-159), the author argues how U.S. history has been based on private property regulation and property rights, and how these aspects contributed in the economic development of the whole country. Bromley (2004) criticises this historical interpretation of de Soto, mainly for two reasons: (1) the omission of the negative aspects of American history, such as social exclusion of black people, land conquests and land speculation and (2) the risks of comparing American history and its complex constitutional system with the history of the countries of the Global South, like Peru, Egypt, and the Philippines. Additionally, Payne (2008) does not hesitate to show his doubts about the weak and inappropriate comparison between the U.S. experience and the one of Global South countries. He underlines the importance and the meaning that colonialism and slavery had in the construction of Western economies, that the success of capitalism was more related to these factors instead of real estate property. Moreover, Sjaastad and Cousins (2008) remark how property rights cannot explain the growth of the U.S. economy. According to them, the growth finds its origins in other factors, such as available natural resources, trade culture, high literacy rates, and several policies in favour of 'the small American businessman'. Finally, according to Benda-Beckmann (2003), the reconstruction provided by de Soto of European history is not impressive. Indeed, if it is true that an efficient property legal system helped in the development of capitalism, it is unclear if that was the factor, among others, that changed the economic status of the poorest people.

Stereotypes and generalization

Categorization and stereotyping of concepts and terms represent is another critique of de Soto's work. He seems to consider the poor as an undifferentiated class, and to merge the different types of property rights into a unique category (Fernandes, 2002; Benda-Beckmann, 2003; Bromley, 2004; Cousins *et al.*, 2005; Sjaastad and Cousins, 2008; Obeng-Odoom, 2013). As Benda-Beckmann (2003) states, when de Soto speaks about the poor, he refers to them as all living in the extra-legal sector accumulating capital when they can. But it is necessary to make some distinctions within the extra-legal realm based on the degree of wellbeing or exploitation of every inhabitant or his/her type of job. Additionally, it seems appropriate to underline that many poor do not work in the extra-legal sector, and many of them do not own anything. Thus, in these cases, the concession of property titles would not help them to upgrade their social and economic conditions.

Concerning property rights, writes Fernandes (2002), it seems that de Soto speaks about them as though there exists a unique and universal category that defines them. This category seems to belong just to the land sector and does not take into account neither the differences among different types of property rights – financial, industrial, or intellectual – nor the endogenous features that they own (Galiani and Schargrotsky, 2010).

Cementing inequality

According to Gilbert (2002) and Sjaastad and Cousins (2008), big land titling programs are implemented for goals that are different from the goal of reduction of social inequality. Besides, the economic profit that comes from the costs of the implementation of the programs is lower in comparison with the ones of other housing policies – upgrading for

Open Access Journal

instance. Land titling represents a good economic entrance for the State. This aspect could affect the poorest strata of society, increasing the social gap. Considering the profits generated by giving property titles is not so unusual that governments manipulate the programs for the economic benefits of a small élite (Gilbert, 2002; Payne, Durand-Lasserve and Rakodi, 2009; Balbo, 2014). According to Fernandes (2003), this model of legalization helps not the poor but the old and new élite of power, who benefit from the enrichment of the urban areas thanks to the new market value assigned by the titling.

Weak link between tenure security and land titling

de Soto emphasises the importance of tenure security as the answer to eviction, endorsing the statement that the higher the perceived security, the strongest will be the economic investment of the poor in his/her house, and vice versa. The total guarantee of rights on a property is possible only through the formalization of the titles on that property (de Soto, 2002a, p. 252). On the contrary, several studies on the topic of tenure security have shown that although property titles facilitate tenure security within informal settlements, land titling does not need to be considered a necessary and sufficient condition in order to guarantee to the poor the maximum protection from eviction (Fernandes, 2002; Gilbert, 2002; 2012; Payne, 2008; Calderon, 2007; 2011; Ward, 2012).

No certain relationship between property titles and access to credit

According to de Soto, land titling helps the poor to get credits and loans from banks and credit institutions. Property titles, in fact, would be a guarantee for creditors in case of lack of payment by debtors. According to Fernandes (2002), de Soto failed to show that banks and other credit institutions would be prepared to give loans to the poor, when there is much evidence of the opposite. As Calderon (2007; 2010) argues, after the implementation of several titling programs in Peru promoted by national organizations like *Comision de formalizacion de la propiedad informal* (COPROFI) and *Política Nacional de Formalizacion* (PNF), only a few families managed to gain access to formal credit. Additionally, in other countries of Latin America and Africa, as shown by the research provided by Gilbert (2002), Durand-Lasserve, Fernandes, Payne and Rakodi (2007), Fernandes (2002), and Woodruff (2001), the ownership of a legal title on a property does not change the possibilities for the poor to have access to credit.

Together with the weak availability of the poor to give loans to the poor, there is a lack of will by the poor themselves to ask for loans and credit from banks and credit institutions. In fact, it seems that the poor prefer to ask for informal loans from friends and family or other informal circles (Fernandes, 2002; Calderon, 2007; 2010; Woodruff, 2001; Gilbert, 2002; Durand-Lasserve and Selod, 2007; P&DM, 2007; Ward *et al.*, 2011; Ward, 2012).

Doubts about the relation between land titling and poverty reduction

de Soto claims that one of the main aims of land titling consists of the reduction of urban poverty in the countries of the Global South. If it is true that the concession of titles promotes the tenure security and personal wellbeing of some people, this does not necessarily mean that this operation activates a general process of socio-spatial integration (Gilbert, 2002; Fernandes, 2002; Sjaastad and Cousins, 2008; Otto, 2009). Moreover, regularization programs, if isolated from broader and more structured public policies, have no significant impact on poverty. According to Bromley (2008) and Payne, Durand-Lasserve and Rakodi (2009), property titles could even have negative effects in the long term and reduce the

Open Access Journal

security of tenure, both for new owners and tenants, because of the increased value of the 'new' legal properties. Moreover, as Gilbert (2002) and Siaastad and Cousins (2008) write, de Soto does not take into account the costs and the economic effects that land titling would have on the inhabitants, the beneficiaries of the new property titles. Unexpected additional costs – property taxes and increased land and building market value for instance – could in fact raise housing rent, a factor that would force some residents to leave their homes, losing the security of tenure that property titles should ensure (Varley, 2002).

Conclusion

The aim of this research was to provide a framework of de Soto's theory and the reasons of its influence at the national and international level. Why is it so important for the informal housing policy debate? Why has it gained as much success as criticism? As this article has shown, Hernando de Soto has been depicted as 'the best economist ever' by Bill Clinton and as 'the guru of neo-liberal populism [...] Messiah of people's capitalism' by Mike Davis (2006, pp.79-80). Alan Gilbert (2002, p. 3) refers to *The Mystery of Capital* as a book 'clearly populist in tone and [not hesitant] to attack neo-liberalism and conditionality'. Benda-Beckmann (2003, pp.187-190) defined the book as 'a visionary plea to governments in the Third World and the former Soviet Union [...], a mystification of property law'. Despite the critiques de Soto has also been a candidate for the economic Nobel Prize. If on the one hand, his theories have attracted the enthusiasm of some international organizations like the World Bank and IDB, who have promoted titling programs inspired by him, *The Other Path* and *The Mystery of Capital* have disappointed scholars and researchers around the world. As Varley (2002), Gilbert (2002) and Fernandes (2003) underlined, de Soto did not invent anything new, and *The Mystery of Capital* seems a superficial attempt to solve an economic world problem in a few pages (Gilbert, 2002; Bromley, 2004) that misinterprets the meaning of capital and the works of thinkers that came before de Soto (Kinsella, 2002; Bromley, 2004; Obeng- Odoom, 2013). Moreover, analyses conducted on some titling programs in countries of the Global South by experts like Fernandes (2002; 2003), Calderon (2007; 2010; 2011), Gilbert (2002), Ward (2012), Varley (2002), Durand-Lasserve and Rakodi (2008; 2009) show that titling is not a good strategy for poverty reduction or for guaranteeing tenure security to the poor. A study of the World Bank in countries like Morocco, Ethiopia, and India has demonstrated that titling, even if relevant, does not seem the first crucial step for upgrading the quality of life of the inhabitants of those countries (Buckley and Kalarickal, 2006). At any rate, the general failure of titling experiences so far could be a signal that the assignment of land titling does not represent the most efficient strategy to tackle the informality phenomenon. However, this article is not the place to discuss this issue.

As explained in the first section, during the last few decades, the regularization of informal settlements became an issue that attracted increasing attention from international organizations and researchers who, interested in urban poverty, were looking for strategies to cope with the urban crisis that involved a lot of cities in the Global South. Nevertheless, if in the past, regularization of informality was considered as a part of broader programs, like upgrading for instance, de Soto's point of view changed this perspective. He stated that poor are not really poor, but they are obliged to live in informality because of the lack of a good legal system, inverting the way of thinking about both informal housing policies and the concept of poverty itself.

If the poor are poor because of an inappropriate and inaccessible legal system wherein the state forces them to live and work in extra-legal conditions, giving the poor the right tools –

Open Access Journal

that according to de Soto are property rights and land titles – would allow poor people to enter in the formal market and consequently escape from their poverty conditions. This perspective, at the time of its publication, appeared quite innovative and fomented political and institutional enthusiasm, both at the national and international levels. As explained in the second section of this paper, the establishment of ILD and the publication of *The Other Path* arrived at a difficult moment for Peru; the country was dominated by a terrorist movement from one side and the authoritarian regime of Fujimori from the other. The work of de Soto and his research group appeared to be the answer to solve both the unrestrained illegality that was spreading because of the terrorism and the bureaucratic gaps in the national legal system. At the international level, de Soto's theories were largely supported by big Western organizations – the World Bank firstly – and political characters, above all within the US society. The reasons for de Soto's influence could be identified in the potential advantages, in terms of time and costs, that his way of thinking about informal housing regulation implied. Titling programs, as written in section four, are cheaper and require less effort compared to more complex programs such as upgrading programs, with which big international organizations were trying to cope. Moreover, by giving titles, there was an advantage for all the actors involved in the process: citizens would have a guarantee on their property, and the state would benefit from the cost of having a title and maintaining a property. The reason that de Soto became so famous and acclaimed within the US political realm could be that *The Mystery of Capital* is a sort of apologia for capitalism and a paean to Western economy, and that de Soto saw the US system as a viable model of development for the Global South countries, a message that was reasonably appreciated by the Western society in general. At any rate, whether one agrees or not with de Soto's ideas – which in some cases seem to be misinterpreted by the critics – he deserves credit for triggering international debate on land titling and on informal housing policies and regulation in general, and for achieving all this by putting forth a different point of view that remarked on the importance of a reliable and open legal system.

References

- Balbo, M. (2014). Beyond the city of developing countries. The new urban order of the 'emerging city'. *Planning Theory*. 13 (3): 269-286.
- Benda-Beckmann, F. (2003). Mysteries of capital or mystification of legal property? *Focaal- European Journal of Anthropology*. 41: 187-191.
- Bromley, R. (2004). Power, property, and poverty: Why de Soto's 'Mystery of capital' cannot be solved? In A. Roy & N. AlSayyad (Eds.), *Urban informality: Transnational perspectives from the Middle East, Latin America, and South Asia* (pp. 271-288). New York, NY: Lexington Books.
- Bromley, D.W. (2008). Formalising property relations in the developing world: The wrong prescription for the wrong malady. *Land Use Policy*. 26: 20-27.
- Bruce, J. (2006). Reform of land law in the context of World Bank lending. In J. Bruce, R. Mitchell, R. Giovarelli, L. Rolfes & D. Bledsoe (Eds.), *Land law reform* (pp. 11-64). Washington, DC: World Bank.
- Buckley, R. & Kalarickal, J. (Eds.) (2006). *Thirty years of World Bank shelter lending: What have we learned?* Washington, DC: World Bank.
- Calderon, J. (2007). Después de la formalización ¿Qué sigue? Paper presented at the *World Bank Urban Research Symposium*, Washington, May. Retrieved 08 November 2016 from <http://siteresources.worldbank.org/INTURBANDEVELOPMENT/Resources/336387-1269364687916/6892589-1269394475210/calderon.pdf>.
- Calderon, J. (2010). Titulación de la propiedad y mercado inmobiliario. *Estudios Demográficos y Urbanos*. 25(3): 625-661.
- Calderon, J. (2011). Titulación de la propiedad y mercado de tierras. *EURE. Revista de Estudios Urbano Regionales*. 37(111): 47-77.

Open Access Journal

- CLEP (Commission on Legal Empowerment of the Poor) (2008). *Making the law work for everyone*. New York, NY: The Commission on Legal Empowerment of the Poor.
- CVR (Comisión de la Verdad y Reconciliación) (2003). Informe final de la Comisión de la Verdad y Reconciliación. Retrieved 08 November 2016 from <http://cverdad.org.pe/ifinal/>.
- Cousins, B., Cousins, T., Hornby, D., Kingwill, R., Royston, L. & Smit, W. (2005). Will formalising property rights reduce poverty in South Africa's 'second economy'? Questioning the Mythologies of Hernando de Soto. *Programme for Land and Agrarian Studies Policy Brief*. 18: 1-6.
- Davis, M. (2006). *Planet of slums*. London: Verso.
- de Soto, H. (1986). *El otro sendero: La revolucion informal*. Lima: Editorial El Barranco.
- de Soto, H. (2000). *The mystery of capital: Why capitalism triumphs in the West and fails everywhere else*. New York, NY: Basic Books.
- de Soto, H. (2001). The mystery of capital. *Finance and Development*. 38(1) [online].
- de Soto, H. (2002a). *The other path: The economic answer to terrorism*. Washington, DC: Basic Books.
- de Soto, H. (2002b). Law and property outside the West: A few new ideas about fighting poverty. *Forum for Development Studies*. 29(2): 349-361.
- de Soto, H. (2004). Bringing capitalism to the masses. *Cato's Letter*. 2: 1-6.
- Durand-Lasserve, A., Fernandes, E., Payne, G., & Rakodi, C. (2007). Social and economic impacts of land titling programmes in urban and peri-urban areas: A review of the literature. March 2007. Retrieved 08 November 2016 from www.birmingham.ac.uk/Documents/college-social-sciences/government-society/idd/research/social-economic-impacts/social-economic-impacts-literature-review.pdf.
- Durand-Lasserve, A. & Selod, H. (2007). The formalisation of urban land tenure in developing countries. Paper presented at the *World Bank's 2007 Urban Research Symposium*, 14-16 May, Washington.
- Earle, L. (2014). Stepping out of the twilight? Assessing the governance implications of land titling and regularization programmes. *International Journal of Urban and Regional Research*. 38(2): 628-645.
- Fernandes, E. (2002). The influence of de Soto's *The mystery of capital*. *Land Lines*. 14(1): 5-8.
- Fernandes, E. (2003). Programas de regularizacion de la tenencia de la tierra urbana y pobreza urbana en latinoamerica. *Vivienda Popular*. 12: 5-16.
- Galiani, S., & Schargrodsy, E. (2010). Property rights for the poor: Effects of land titling. *Journal of Public Economics*. 94: 700-729.
- Gilbert, A. (2002). On *The mystery of capital* and the myths of Hernando de Soto: What difference does legal title make? *International Development Planning Review*. 24(1): 1-19.
- Gilbert, A. (2012). De Soto's *The mystery of capital*: Reflections on the book's public impact. *International Development Planning Review*. 34(3): v- xviii.
- Gravois, J. (2005). The de Soto Delusion. *Slate*. 9 January.
- Helmsing, A.H.J. (2002). Decentralisation, enablement, and local governance in low-income countries. *Environment and Planning C: Government and Policy*. 20(3): 317-340.
- ILD (Instituto Libertad y Democracia) (2014). Impact. Retrieved 30 July 2014 from <http://www.ild.org.pe/index.php/en/impact>.
- Inter-American Development Bank (IDB) (2006). Building opportunity for the majority. Washington, DC: IDB.
- Kinsella, N.S. (2002). Book reviews. Hernando de Soto. *The mystery of capital*. *Journal of Libertarian Studies*. 16(1): 99-114.
- McFarlane, C. (2012). The entrepreneurial slum: Civil society, mobility and co-production of urban development. *Urban Studies*. 49(13): 2795- 2816.
- Obeng-Odoom, F. (2013). The mystery of capital or the mystification of capital? *Review of Social Economy*. 71(4): 427-442.
- Otto, J.M. (2009). Rule of law promotion, land tenure and poverty alleviation: Questioning the assumption of Hernando de Soto. *Hague Journal on the Rule of Law*. 1: 173-195.
- P&DM (Graduate School of Public and Development Management) (2007). *Are Hernando de Soto's views appropriate to South Africa?* Johannesburg: Graduate School of Public and Development Management.

Open Access Journal

- Panaritis, E. (2001). Do property rights matter? An urban case study from Peru. *Global Outlook: International Urban Research Monitor*. 1: 20-22.
- Payne, G. (2008). Owning up: What price home ownership? *Housing Finance International*. December: 1-11.
- Payne, G., Durand-Lasserve, A., & Rakodi, C. (2009). The limits of land titling and home ownership. *Environment and Urbanization*. 21(2): 443-462.
- Rossini, R.G., & Thomas, J.J. (1990). The size of the informal sector in Peru: A critical comment on Hernando de Soto's *El otro sendero*. *World Development*. 18(1): 125-135.
- Rutten, M. (2009). Why de Soto's land tenure ideas of formalized property rights are failing to benefit the Africa's poor. *African Studies Centre Netherlands*. Info Sheet 6.
- Sjaastad, E. & Cousins, B. (2008). Formalisation of land rights in the South: An overview. *Land Use Policy*. 26: 1-9.
- Turner, J. (1968). The architecture of democracy, *Architectural Design*, 38.
- Turner, J. (1972). *Freedom to build: Dweller control of the housing process*. New York, NY: Macmillan.
- Turner, J. (1976). *Housing by people: Towards autonomy in building environments, ideas in progress*. London: Marion Boyars.
- UN-Habitat (2012). *State of the world's cities 2012/2013: Prosperity of cities*. Nairobi: United Nations Human Settlements Programme.
- Vargas Llosa, M. (1986). Prologo. *El otro sendero: La revolucion informal*. Lima: Editorial El Barranco.
- Varley, A. (2002). Private or public: Debating the meaning of tenure legalization. *International Journal of Urban and Regional Research*. 26(3): 449-461.
- Ward, P.M. (2012). Housing policies in developing countries. In S.J. Smith (Ed.), *International encyclopedia of housing and home* (pp. 559-572). San Diego, CA: Elsevier.
- Ward, P.M., de Souza F., Giusti, C., & Larson, J.E. (2011). *El titulo en la mano: The impact of titling programs on low- income housing in Texas colonias*. *Law and Social Inquiry*. 36(1): 1-82.
- Woodruff, C. (2001). Review of de Soto's 'The mystery of capital'. *Journal of Economic Literature*. 39(4): 1215-1223.
- World Bank (1993). *Housing: Enabling markets to work*. Washington, DC: The International Bank for Reconstruction and Development.
- World Bank (2009). *Comparing regulation in 181 economies. Doing Business 2009*. Washington, DC: World Bank.
- World Bank (2010). *Reforming through difficult times. Doing Business 2010*. Washington, DC: World Bank.
- World Bank (2011). *Making difference for entrepreneurs. Doing Business 2011*. Washington, DC: World Bank.
- World Bank (2012). *Doing business in a more transparent world. Doing Business 2012*. Washington, DC: World Bank.
- World Bank (2013a). *Regolamentazioni più efficienti per le Piccole e Medie Imprese. Doing Business in Italia 2013*. Washington, DC: World Bank.
- World Bank (2013b). *Smart regulations for Small- and Medium- Size Enterprises. Doing Business 2013*. Washington, DC: World Bank.
- World Bank (2014). *Understanding regulations for Small- and Medium- Size Enterprises. Doing Business 2014*. Washington, DC: World Bank.