

The Lessons of John Locke or Hernando de Soto: What if Your Dreams Come True?

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Abstract

Hernando de Soto has presented the most powerful argument for the extension of property rights since John Locke's revolutionary *Two Treatises of Government* in 1689. De Soto calls for the legal titling of land for squatters and other illegal occupants of the informal economy on a promise of efficiency (increased productivity of land). However, efficiency arguments, which have dominated recent literature on property law and economics, fall short of an adequate basis for a just doctrine.

Drawing on the theories of John Locke, this article addresses the need to understand the rules required to sustain the equity goals of society in the expansion of property ownership. These rules focus on the meaning of property, constraints on its use and accumulation, and delineation of the institutional embeddedness of these rights and obligations. Evidence from the impact of U.S. tax policy on housing illustrates the importance of property rules and their structure.

Keywords: Homeownership; Tax issues; Urban policy

Introduction

This article draws some lessons for U.S. housing policy from recent efforts to reform shelter policy in the Third World. Why do we speak of “housing” policy in the United States and of “shelter” policy in the Third World? This language reflects the ways in which differences in housing status determine a person's location in the social hierarchy. In the United States, we “shelter” the poor and we “house” the rest. Somewhere on this continuum of housing wealth in the United States, between the norm of homeownership and sheltering the homeless, lies the low- and moderate-income renter class. The lessons I draw bear especially on those who are housed below the norm of homeownership.

I will begin by reviewing the most prominent call for reform in property ownership in the Third World—the proposal by the Peruvian economist, Hernando de Soto. His entreaty to legalize property ownership for the informal sectors of the world is a noble proposal to make owners out of squatters and other illegally housed people. It is often not feasible in practice. The shortcomings of de Soto's prescription can be seen in numerous attempts by governments throughout the world to implement tenure security policies. This article contributes to the ownership debate by asking the following questions: What if the policy succeeds?

What if de Soto were to bring the Third World up to First World, in particular U.S., standards?

To answer these questions, I compare de Soto with his intellectual predecessor, John Locke, whose theories of property strongly influenced the foundations of U.S. property law. I then look at the U.S. housing policies that drive the social norm, in particular tax policy and urban sprawl. These policies fall short of Locke's rules for justice. Finally, I propose a National Homestead Trust—an innovation in U.S. housing policy that might respond to the reasoned equity of a just policy as well as to de Soto's prescription for increasing the security of tenure of people who do not own their homes.

De Soto's proposal for the informal economies of the world

According to Hernando de Soto, "Property law is the hidden architecture of capitalism" (Institute for Liberty and Democracy 2001). Seventy percent of the world's people reside without title or other legal rights to the land on which they live. These people of developing and former socialist nations do not have the benefits of legal property ownership; hence, they are not stakeholders in the capitalist political and economic system through which the developed world prospers. De Soto and his Institute for Liberty and Democracy are devoted to the creation of "modern legal frameworks that empower the poor...by providing them with a new, comprehensive legal property system which allows them to turn their assets into leverageable capital" (Institute for Liberty and Democracy 2001).

According to de Soto, it is not that the poor have no assets; it is rather that their assets are "dead capital." They are stuck in informal systems. The poor cannot leverage their assets by going to the bank and using that property as collateral to generate investment funds, to make their capital multiply, because they do not enjoy title security and the legally enforceable property rights that such legitimacy affords. De Soto points to Egypt, for example, where he has documented that the poor have amassed in excess of \$241 billion in property assets since World War II; this is more than 55 times the value of all recorded foreign investment in that country. Yet the poor cannot fully capitalize on those assets because they are not within the conventional legal property system. They are outside what the French historian Braudel calls the "bell jar" of the formal economy (1982).

“Globalization,” de Soto argues, “should not be just about interconnecting the bell jars of the privileged few” (2000, 207). Globalization must be about making everyone part of the property system. If de Soto’s dreams are realized, they, like all effective social reform, will be accomplished using both a carrot and a stick: the carrot in the form of doing well for the poor and the stick in the form of the potential revolution of the poor against the rich. The consequences of not doing this, de Soto has suggested, could be dire (2000). He observes that “Marx would probably be shocked to find how in developing countries much of the teeming mass does not consist of oppressed legal proletarians but of oppressed extra legal small entrepreneurs with a sizable amount of assets” (de Soto 2000, 216). But if this reform is to be truly effective, certain obstacles must be overcome. The tenure security programs that have been implemented have been the object of a number of well-documented criticisms (Durand-Lasserve and Royston 2002; Payne 1997).

Titles—and the privileges of ownership—also carry responsibilities, such as the payment of property taxes and fees for municipal services. When a poor resident receives legal title to land but cannot find work to secure the income to support that property, one of three results tends to follow: (1) No taxes and fees are paid, leaving the “owner” with an encumbered title; (2) the services are discontinued, which is tantamount to eviction; or (3) the title is sold, and the “owner” is no longer an owner. In all of these scenarios, the program for tenure security fails to produce collateral at the bank. Real security in housing is buttressed by local schools and jobs, health care facilities, water and sewer services, and transportation networks. This whole complex of necessities and amenities gives value to property. Without auxiliary services and infrastructure, title alone has little meaning.

While titling programs have led to some success stories, the failure of these programs is common for a wide variety of reasons. Criminals, who have an interest in seeing that communities remain informal, illegal, and undemocratic, often control illegal settlements, especially squatter settlements, and thwart tenure programs. Under these circumstances ownership alone will not bring tenure security: political reform is required. Favelas (urban slums in Brazil) are a case in point. One of them, Diadema, in the São Paulo region, has been the most successful community in that nation in regularizing tenure and attributes that success to four factors: legislation, institutional apparatus, popular organization, and political will (Alfonsin 1999). But Diadema is an exception. Most favelas are located on land that is illegally occupied and often environmentally unsuitable and dangerous; they are poorly served by public transportation; they have few health facilities or schools, no garbage collection, and precarious or no water supply, sewer,

or electricity. Moreover, they are controlled by violence and criminality (Fernandes 1997). The residents of favelas are, in the words of Sonia Rabello de Castro, “the hostages of a criminal state within a state” (1999, 11). Ownership will not bring security under these conditions.

Often, titling programs also replace a traditional or customary system of community land management, historically governed by chiefs and elders. In such cases, the customary system is sometimes viewed as more stable, reliable, and secure than government-issued land titles. Hence, residents continue to rely on their families for financial assistance and do not become part of the mainstream banking system, thereby remaining outside the bell jar of the larger capitalist system. Shillong, located in northeast India, illustrates an increasingly common case in developing countries as urban expansion encroaches on tribal areas. Members of the tribe are suspicious of municipal authorities, which are perceived as wanting to take or develop their land. Members rely on their own system of “pattas” issued by the tribal chief, which they do not register with the government. Perception and practice make a formal title registered with the government less secure than one organized by custom (Lyngdoh 1999).

The notion of tenure security encompasses assumptions about lifestyle or patterns of living that do not always apply. In South Africa, for example, there is a common pattern of seasonal movement of families and parts of families between rural and urban residences (Huchzermeyer 1999). The policy of fixing title in one place and forcing the poor to choose a place interrupts this circulatory migration, resulting either in eliminating the safety net the rural base provides or in forcing families to split their households to make them fit the ownership program. Under these conditions, housing security is diminished, not enhanced.

Finally, Cross (1999) argues that introducing titled tenure accentuates status divisions between owners and renters, landlords and tenants. The upgrading of housing associated with tenure programs in South Africa is seen as competing with the private rental sector, also known as backyard shack farming (owners supplement their income by erecting shacks for rent in their backyards). Single women and women with children are often not welcome and have to make special rental arrangements as lodgers. For those at the bottom of the social hierarchy, programs that exaggerate the privileges of ownership exacerbate the very dependency relationship tenure security was designed to erase.

Most of these criticisms focus not on the objectives of ownership programs themselves—the desire to bring security and prosperity to the poor through property rights—but on their failure to achieve those

objectives largely because of the complex nature of housing, which is intricately intertwined with the institutional structure of a community (Bruce and Migot-Adholla 1994; Krueckeberg 1999; Krueckeberg and Paulsen 2002). It may be true that those institutions cannot all be changed at once, but the question remains: Can they be changed at all if we plan only to alter titles? Without a community support system free from corruption and crime, and without a system of financial institutions, infrastructure, and full employment, it is difficult to imagine that property law alone can turn the informal economies of the world into what de Soto calls capitalism's "hydroelectric power plant."

De Soto and Locke

Suppose de Soto's dream comes true, that the majority of the world's population is inside the bell jar of capitalism and the poor on the outside become a minority as they are in the United States today. Suppose that, as is the case in the United States, only 25 percent of the world's children live in poverty. Suppose that only 32 percent of the world's households rent their homes. And suppose further that only the bottom 25 percent of those employed must hold several minimum-wage jobs to support a family of four, that only 5 percent are unemployed, and that the income of the average of the world's top 365 corporate CEOs is only 531 times the pay of the average worker and only 1,223 times the world minimum wage (Peirce 2001). Suppose we gained all that: then what? Is this the most property can do for us? I think not. This theory lacks any criteria governing equity, limits, and balance. The entire focus is on efficiency, the liberation of entrepreneurs. This is an important liberation to be sure, but, like any liberty without restraints, it harbors the potential for tyranny—the tyranny of the privileged majority over a poor minority.

De Soto's call for the alleviation of poverty throughout the world echoes the call of John Locke in 1689. Locke's theories of citizenship and government are recognized as having changed the world, linking democratic and capitalist ideas to each other and to the theories of the individual, the state, and property that became the foundation of the U.S. Constitution (Schochet 2000). Today, de Soto has presented the world with a similarly powerful theory of property rights to impel global reform, and he did so for many of the same reasons as Locke (Miller 2001). There are strong parallels between the two arguments.

Locke addressed a world in which the rich minority of royalty and nobles, a very small bell jar, excluded the vast poor majority. He earned his reputation as the leading philosopher of liberalism by developing,

like de Soto, a liberating theory of the individual, property, and the state. Locke's ideas remain fundamental, not just to 17th-century liberalism, but also to 21st-century public policy. De Soto's good ideas would be better, I argue, if they embraced a Lockean ethic that speaks to a just distribution in fully capitalist regimes. Locke's work contains the missing pieces of an ethically satisfactory and more complete theory of property. I will attempt to demonstrate this by using Locke to critique de Soto and, less directly, to critique the libertarian discussion of property rights in the United States today.

We might think of Locke's ideas as a story—a story aimed at freedom and rights and condemning slavery and oppression. Locke wrote against his protagonist Filmer and those who defended the divine right of kings. Royalty owned the land and claimed that the rights to it had been handed down in succession from Adam, the first man, who received them from God. Locke's counterargument was that God gave the earth to everyone in common and that in this state of nature and plenty, people are “all free, equal and independent, no one can be put out of this estate and subjected to the political power of another, without his own consent” (Locke II, 95, p. 163).¹ Two natural properties of men (and women) are given: (1) their ownership over their own lives (which he calls life) and (2) their ownership over their own labor (which he calls liberty). The full meaning of “property” according to Locke is “life, liberty and estate,” where estate refers to the means of sustenance—food, shelter, land, and other goods (Tully 1980, 167). The problem Locke faced was to explain how men justified the private ownership and use of property they appropriated from the commons. The argument is complex but important. I will illustrate how the central Lockean appropriation of property through labor embodies a mystical creative act that mirrors what de Soto refers to as “the mystery of capital” (the title of his book) in acts of land ownership.

For the sake of exposition, Locke divides history into two periods. The first is a state of nature and plenty in common in which the basic rules of property are developed. The second is one necessitating government, brought about by the development of scarcity and money. Life (self-control) and liberty (the freedom to work) are givens:

Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person. This nobody has any right to but himself. The labour of his body, and the work of his

¹ In deference to standard practice in Locke scholarship, references to the *Two Treatises of Government* will indicate Treatise I or II, followed by Locke's paragraph number, followed by the page number in the 1993 paperback edition edited by Mark Goldie and published by Everyman.

hands, we may say are properly his. Whatsoever then he removes out of the state that nature hath provided and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. (Locke II, 27, p. 128)

Since life and liberty are givens throughout, it is the acquisition and distribution of property in estates (food, clothing, land, shelter, and so on) and the persistent role of the consent of others in these matters that Locke proceeds to work out.

In the state of nature, a person acquires things by making them or mixing them with his or her labor. This is a simple ethic. Those who labor have a right to the fruits of their labor. Because they own their own labor to begin with, by irretrievably investing or mixing what they already own with what is not theirs but part of the commons, they make that part of the commons their own as well. The alternative would be to lose their investment: their liberty, which Locke likens to slavery. Locke imposes three ethical constraints on this acquisition process (Simmons 1992). First, one must take only as much as one can use before it spoils (Locke II, 31, p. 130). Second, one may take only as much as there is “enough and as good left in common for others” (Locke II, 27, p. 128). (In a state of plenty, there is enough in common that this taking harms no one, so that the issue of obtaining the consent of others for one’s use is moot.) Third, “charity gives every man a title to so much out of another’s plenty, as will keep him from extreme want, where he has no means to subsist otherwise” (Locke I, 42, p. 31).

So why does labor have such power to play the central role in just acquisition? First, making something is like the act of creation, which was God’s act of simultaneously making and owning His creation. One might say that God set the example. To Locke, speaking of creative human work also reflects the fact that the essence of the act of making something is intellectual. The maker’s claim is not just to the energy of construction or mixing, but also to the idea that motivates and guides the action (Sreenivasan 1995). This is the essence of owning something, of making it one’s own: It is a welding together of an idea and an action; it is simultaneously physical and intellectual.

De Soto’s arguments about property follow a remarkably Lockean logic. “The crucial point to understand,” de Soto tells us, “is that property is not a physical thing that can be photographed or mapped. Property is not a primary quality of assets but the legal expression of an economically meaningful consensus about assets” (2000, 157). He portrays this transcendental character in a warning to us:

Property is not really part of the physical world: its natural habitat is legal and economic. Maps capture the physical information of assets but miss the big picture. Without the pertinent institutional and economic information about extralegal arrangements, they cannot capture the reality outside the bell jar. They are thus unable to do their real job, which is to help anchor the property aspects of assets in physical reality so as to keep virtuality and physicality in sync. (de Soto 2000, 203)

De Soto and Locke also parallel each other in their arguments about the economic productivity of legitimate property. Locke reasons that “he who appropriates land to himself by his labour, does not lessen but increase [sic] the common stock of mankind” (II, 37, p. 133) He estimates, for example, that one who encloses and cultivates 10 acres of land increases its productivity “ten times more” or even “much nearer 100 to 1” than that of land lying waste, unused, in common (Locke II, 37, p. 133).

Locke’s enemy is the idleness and waste of the landed gentry of England, whose land was enclosed to keep the commoners out. De Soto’s enemy is the idleness of “dead” assets, the illegal property of those who live and maintain assets outside the formal legal and economic systems of the world. De Soto’s poor are denied the cultivation and productivity of their earned assets; Locke’s poor are denied the cultivation of their natural rights.

The second historic period in Locke’s story comes with the introduction of money, increased population, and consequent scarcities. Money allows people to accumulate property in a form that will not spoil, in the literal sense of rotting away. Tully describes the process this way:

Once money is present, men can and do enlarge their possessions of land by trading the surplus for money (Locke II, 48–50); they claim to be entitled to their enlarged possessions because they make use of them. With the increase of population, this rapidly leads to the situation in which others are excluded from exercising their natural claim right. The only solution, therefore, is to remove the rule that every man should have as much as he can make use of....Some other rule must now confine the possession of land such that the inclusive rights of everyone can be exercised. The new rule is civil law (Locke II, 50). (1980, 152)

Civil society is accomplished by the mutual consent of those who enter it and relinquish the protection of their property (life, liberty, and estate) to government, whose sole duty is to protect that property. Government is required to restore the natural order that money disrupts, but not by the independent creation of new rules. Government is bound

and guided by the same rules of fairness that controlled the natural order (Simmons 1992). It is the duty of government, under threat of legitimate revolution if it fails, to ensure that each law-abiding member has “life, liberty, health and indolence of body; and the possession of outward things, such as money, lands, houses, furniture and the like” (Locke 1963, as quoted in Tully 1980, 167).

The relationship between labor and land

The fullest notion of property as life, liberty, and estates has within it interesting implicit meanings. There seems to be an inherent sequential or logical order to the elements of property. Life is the first natural possession. Labor and the liberty to use that labor follow from life, and estates follow from the free use of labor. Charity gives those who cannot rely on their own labor the right to rely on the labor of others to acquire their estates.

Does it follow that everyone has a right to land, as might be inferred from proposals like de Soto’s? Locke’s theory is often misunderstood to be narrowly construed about matters of land in isolation from life, liberty, and other estates. Sreenivasan (1995) argues that there is

no natural right to land in Locke....[I]f those without land were denied the opportunity to labour on someone else’s land, then clearly they would be prevented from exercising their natural rights and in that degree would be injured. Hence, under conditions of scarcity, there attaches to property in land, as a condition of its continuing legitimacy, the obligation to employ those without land of their own. (53–54)

One could even hand over cash, he argues, and that would not be considered charity because charity applies only to the disabled. The point is that if there is no ethical obligation to make sure everyone has land, there is logically an ethical obligation that everyone should have employment, for without it there is no access to the estates of life but through charity.

This reciprocal relationship between land and labor is embodied in various policy contexts throughout the world. In China, for example, there are two kinds of land, rural land owned collectively by peasants and urban land owned by the state. As cities expand and take rural land, peasants are accommodated in one of two ways: They can be left some of their land, which they then rent out at increased values as landlords, or they can be moved into rental housing and be given state jobs as

compensation for their land (Meng and Li 2001). Jobs for land is an innovative and very Lockean form of compensation.

The connection between jobs and land can be seen differently in Brazil, where, in the city of Santo André, labor unions have been known for their active involvement in support of better social conditions generally yet are uninvolved in the struggle for housing improvements. Why? Because they perceived that “getting involved in fighting for housing conditions was, in a way, going to contribute to the weakening of the fight for better salaries” (Pinho 1999, 9). In other words, if housing conditions were improved, say by stabilizing land tenure and public investment, the bargaining power of the unions would be weaker in negotiations with government for higher wages. Their poor housing argument would be gone.

Property rights and housing in the United States

We need not go abroad to see connections. In the United States, the Homestead Act of 1862 provided that citizens, and those about to become citizens, could acquire 160 acres of public land at no cost other than a small filing fee and five years of working the land. According to Geisler,

The law embodied three fundamental concepts—residency on land would lead to ownership, ownership was affirmed by labor invested in the land, and residency and labor would be rewarded by a reduced purchase price as well as low-interest loans and reasonable terms of payment. (1984, 11)

The requirement that this use and occupancy be continuous, Sreenivasan (1995) points out, also emphasized the Lockean principle that slack and idleness of labor should lead to loss of land. The legal concept of adverse possession is another embodiment of these ideas: the loss of rights by the owner who does not use the land and the capture of those rights by the squatter who puts an idle property to good use.

We in the United States lack a balanced view of land and labor as alternative forms of property. For most prospective homeowners, regular and secure employment is, of course, a major prerequisite to securing a mortgage. Yet we tend to value property in land over property in labor, privileging homeownership over renting in ways that have highly inequitable consequences, as the following discussion elaborates.

In 1999, the Fannie Mae Foundation sponsored a conference to celebrate the legacy of the Housing Act of 1949. That act set, as a national goal,

“a decent home and suitable living environment for every American family.” Over the years, and especially in the past decade or so of privatization, that goal has been translated into a national goal of homeownership. As one of the principal speakers at the conference put it,

The opportunity to own a home is implicit in the promise of 1949. Americans consider homeownership as the touchstone of a decent home and suitable living environment. In fact, one of the greater national achievements of this century has been the democratization of homeownership. Owning one’s home is no longer a privilege reserved for the elite; the overwhelming majority of Americans aspire to own a home and only 28 percent of renters say they rent as a matter of choice. (Martinez 1999, 2)

The last sentence was based on a 1998 homeownership rate of 66.3 percent, which has in fact risen slightly. However, there are several problems with this interpretation of events that should cause us to reexamine the privileges of homeownership, not the least of which is the celebration of a state where 24 percent of all households have no choice but to rent as if it were a great achievement in the “democratization of homeownership.”² It is important to note the following:

1. The current rate of homeownership (about 67 percent) represents a rise of only 12 percent from the 55 percent found in 1949, when the goal was established. On what grounds can we say that we have somehow crossed the threshold of democratization in a shift from 55 percent to 67 percent? In fact, 55 and 67 both signify failing grades on most examinations.
2. Next, the homeownership rate is not really 67 percent or anything close to it. Some 75 percent of all U.S. homeowners have a mortgage. How does this differ from renting? For those who fail to make their mortgage payments, the result is ultimately the same as failing to pay the rent. While people may have gained some capital appreciation in the process and enjoyed the freedom to paint the front door any color they wish, they still do not live there anymore. Although 75 percent of homeownership is an illusion, those mortgage holders do not represent the downtrodden. A recent survey conducted by the University of Michigan for the Federal Reserve Board showed that the higher people’s income and education, the more mortgaged they probably are (Harney 1998). The value of a

² In 1998, 66.3 percent of all households owned their homes. Therefore, 33.7 percent were renters. Twenty-eight percent of all renters did so as a matter of choice. That is, 0.28×0.337 or 9.4 percent of all households. So, 33.7 percent minus 9.4 percent leaves 24.3 percent of all households renting not as a matter of choice, but rather having no choice except to rent.

tax-sheltered home mortgage is highly coveted, and the bigger the better. It is little wonder that mortgage-free owners are so few, because financially it is not the desired place to be.

3. Do Americans consider homeownership the “touchstone” of a decent home and a suitable living environment? A touchstone is a test. If homeownership—true liberal ownership, unfettered by debt—is the test of a decent home, then most of us fail. We cannot succeed in democratizing homeownership until we have democratized renting. Political and social equality—that is, democracy in housing tenure—will be achieved when everyone has a choice between renting and owning. Martinez is back on the slippery slope when she says that “rent overburden prevents renters from becoming homeowners” (1999, 11). There is another way to look at it. Rent overburden, which is paying more than a reasonable share of one’s income for rent, precludes renters from doing what they might otherwise do with those forgone savings: pay college tuition, take a vacation, move into a better school system, buy a car, and, yes, maybe even buy a house. Making the burdens and benefits of ownership and renting (of land and labor) relatively equal should be the goal of a democratic housing policy.

I have introduced the idea of deficiencies in de Soto’s program for ownership and parallel distortions in American housing policy through Locke’s principle of maker’s right, showing the link between labor and ownership and the reciprocal nature of that relationship. But a more effective illustration of the power of Locke’s larger theory might consist of using his idea that ownership is contingent on provisos regarding spoilage, sufficiency, and charity as a lens to see how homeownership policies in the United States have created a pattern of land development that many believe is morally untenable: specifically, urban sprawl.

The obligations of property

Locke’s first proviso has two conditions: that we leave “enough” and that we leave “as good.”

For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others. (Locke II, 27, p. 128)

The sufficiency condition here is understood to be the grounds for a right to employment for the landless. If one does not leave enough land for others to till, then one must leave property in some other form,

such as the offer of employment, so that the land can support everyone (Sreenivasan 1995). While this might appear to leave the door open for the rich to offer charity to the able-bodied landless, as Sreenivasan (1995) suggests, this option would seem to deny them access to the creative acts of appropriation that work affords. Charity under these conditions, then becomes another form of slavery.

The second proviso prohibits spoilage:

“God has given us all things richly” (I Timothy 6:17) is the voice of reason confirmed by inspiration. But how far has he given it to us? “To enjoy” as much as anyone can make use of to any advantage of life before it spoils; so much he may by his labour fix a property in. Whatever is beyond this is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy. (Locke II, 31, p. 130)

Simmons (1992) offers a useful way to combine these two provisos into a unified idea of a fair-share limit on what one might acquire; a fair share must meet both internal and external limits. The internal limit is “as much as anyone can make use of to any advantage before it spoils” (Locke II, 31, p. 130). Here the limitation is internal to a person’s own needs. The external limits are that one must leave “enough” (the sufficiency condition) “and as good” (not to do harm by leaving lesser quality) “for others” (Locke II, 27, p. 128). These external limits are imposed on the individual by the needs of others: past, present, and future.

The third claim against shares of property is the claim of charity for those who cannot provide for themselves by their own labor: essentially, children and those who are disabled.

And therefore no man could ever have a just power over the life of another, by right of property in land or possessions; since ’twould always be a sin in any man of estate, to let his brother perish for want of affording him relief out of his plenty. As justice gives every man a title to the product of his honest industry, and the fair acquisition of his ancestors descended to him; so charity gives every man a title to so much out of another’s plenty, as will keep him from extreme want, where he has no means to subsist otherwise. (Locke I, 42, p. 31)

In the remainder of this article, I want to examine some aspects of U.S. land use policy that are biased toward wealthy and elite households. Dominating these favored housing submarkets is urban sprawl and its inefficiency, waste, individual excesses, and inequity in access to employment. Urban sprawl appears to embrace all of the Lockean

vices: creating idle and unproductive (unworked) land, using too many resources (not leaving enough), creating a spatial mismatch of jobs and housing (not leaving enough in the right places), diminishing environmental quality (not as good), squandering public resources (spoilage), and generally neglecting the needs of the poor (lacking charity) (Burchell et al. 2002; Downs 2001).

As an example of the extent of sprawl, the average size of new homes in the United States has risen steadily over the past 30 years, from about 1,500 square feet in 1970 to 2,305 square feet as of March 2001 (Uchitelle 2001), although the average household is 15 percent smaller. Even before the tragic and economically damaging events of September 11, 2001, polls by the Pew Research Center revealed that “people with incomes above \$100,000 a year were more confident about their earning power in January 2001 than they had been in September 1999, while ‘satisfaction with earning power’ plummeted among people with less income” (Uchitelle 2001, BU4). So much for leaving enough for everyone’s security of the property of their own labor. Richard Curtin of the University of Michigan Survey Research Center notes, “People’s sense of personal space has increased tremendously in recent decades, and even in these difficult months they are expressing that preference. Children are no longer expected to share a room, and each spouse counts on having private space—a study, a den, a sewing room. They get different names but they are dedicated to the use of one spouse” (Uchitelle 2001, BU4). So much for eschewing the vices of idle and unproductive space.

One of the greatest forces supporting this acquisitive behavior is the U.S. federal individual income tax policy, which exempts mortgage interest and local property taxes from federal taxable income and does not tax homeowners for the investment aspect of their ownership called “imputed rent.” This mechanism legitimizes the concept that having invested in the property, homeowners who reside in the home they own are in fact their own landlords and are effectively renting to themselves. By extension, they may benefit from that activity in much the same way they would if they were renting to someone else: But if they were renting to someone else, that net income would be taxable. In the case of the owner-resident, the imputed rental income (also called equity return) is not taxed (Bourassa and Grigsby 2000; McLure 1986).

The economic effects of these tax breaks for homeowners have long been recognized and are enormous. Moreover, they increasingly contribute to sprawl and economic inequalities. Gyourko and Sinai document the record of research on these tax breaks, which

reduce the cost of owner-occupied housing relative to other investments (Hendershott and Slemrod 1983, Poterba 1984), encourage home ownership and higher housing consumption (Rosen 1979...), and perhaps even lead to overinvestment in the asset class (Mills 1987...). The benefit may raise house prices (Capozza, Green, and Hendershott 1996, Bruce and Holtz-Eakin 1999, Sinai 1998) and encourage suburbanization (Gyourko and Voith 2000). The tax treatment of owner-occupied housing also favors high-income people or those who own expensive houses (Poterba 1992). (Gyourko and Sinai 2001, 1)

These tax benefits to homeowners constitute a subsidy that was estimated at \$2,802 per homeowner in 1990 and has risen slightly in the subsequent decade (Gyourko and Sinai 2001; Harney 2001). The cost of this subsidy (\$163.8 billion in 1990) is borne by the general public and amounts to about \$1,815 per household (including renters and owners). Thus, it cost all renters an average of \$1,815 *with no benefit* while homeowners realize an average net benefit of nearly \$1,000 (Gyourko and Sinai 2001). These subsidies or the benefits of this particular form of property, in addition to being totally preferential to “owners” at the expense of renters, are highly biased among homeowners toward the wealthy, a few geographic regions of the nation, and the suburbs over most city residents. While these averages may exaggerate the nominal subsidy contributed by renters when the average renter’s income and hence taxes are lower than the average homeowner’s, nonetheless the real subsidy (in the sense of Adam Smith’s distinction between nominal and real values) by the renter may in fact be greater than that contributed by the average owner.

An odd but unavoidable feature of a progressive system like the U.S. federal income tax is that when there are across-the-board exemptions from taxes, the exemptions will be regressive: The wealthy, who pay the most, will be relieved of paying the most; the poor, who pay the least, will be relieved of paying the least. Bearing that in mind, the distribution of these homeowners’ tax benefits (from mortgage interest, property tax, and imputed rental-income exclusion) over the population is “more regressive than the tax code is progressive—by a fairly wide margin” (Gyourko and Sinai 2001, 2). Why? It is because the wealthy tend to live in disproportionately valuable homes, so that the “benefit received by the 17 percent of the nation’s owners who reside in the top 10 percent of census tracts in terms of benefit flows was 1.6 times their share of the national taxes paid” (Gyourko and Sinai 2001, 2). Similarly, federal government estimates for 2002 project that 59 percent of the mortgage-interest tax deduction will go to the 32.2 percent of the homeowners who have incomes of more than \$100,000, while those with incomes of \$50,000 to \$75,000 represent 25 percent of homeowners

but receive only 13.5 percent of the benefits. The lower the income, the worse it gets: Households with incomes between \$20,000 and \$30,000 constitute 3 percent of the claimants but receive only 0.5 percent of the benefits. Many homeowners in these lowest brackets do not itemize their deductions and therefore are not even in the pool (Harney 2001).

The regional distribution of these benefits is also very uneven. Specifically, 25 percent of the benefits go to California, which has only 10 percent of the owner-occupied units in the country and one of the lowest rates of homeownership (it hovers at close to what our national average was 50 years ago). If we look at net rather than aggregate benefits (benefits to homeowners minus contributions to the subsidy by households), we find that 75 percent of the net gains go to “just three large Consolidated Metropolitan Statistical Areas—Los Angeles-Riverside-Orange County, New York-New Jersey, and San Francisco-Oakland-San Jose” (Gyourko and Sinai, 2001, 2).

And it should come as no surprise to learn that within metropolitan areas, it is the suburbs and not the central cities that have most of the homeowners’ tax advantages. Persky and Kurban (2001) looked in depth at the case of Chicago and its suburbs and all forms of federal expenditure. Among what they termed “wealth-creating spending,” which took the form of cost-reducing programs (highways, public transit, other infrastructure, income tax subsidy for housing, environment and disaster, and crime), the federal expenditures in the city of Chicago were \$267 per capita. In each of the three suburban rings (pre-1950, 1950 to 1970, and post-1970), the expenditures were well over \$600 per capita. Some 85 percent of those suburban federal cost-reducing expenditures consisted of income tax subsidies to housing (Persky and Kurban 2001).

The point here is that biases in institutions like federal tax policy play an enormous role in determining property distribution, even in a legal system that in limited ways recognizes Lockean imperatives. To bring the argument back to de Soto, we can begin to see the perils to equity in a property system that privileges ownership of land without institutions to safeguard the distribution of more broadly defined property.

How might these particular policies be redressed under a Lockean ethic of property? First, we might recognize that the tax system we are looking at took a good principle and let it grow out of control. The principles that a person needs a place to live and that housing is a basic human need, not a form of wealth, lead perhaps to a view that housing should not be taxed as wealth or surplus. The state of Indiana had the right idea, briefly, in a proposed revision to its residential property assessment

procedures, which proposed to exempt a shelter allowance—the first \$16,000 to \$22,000 of value (depending on the county) to be deducted from the total assessment. This step acknowledges the separable investment, that is, wants and vanities, versus the basic shelter components of housing that have been recognized by philosophers for hundreds of years (Pipes 1999; Radin 1993). The governor of Indiana vetoed this noble effort (Kelly and Wuensch 2000). Similarly, the federal government might, if it had the will, exempt the value of basic shelter by creating an upper limit to tax exemptions and extending these exemptions to renters (Krueckeberg 1998).

The welfare reforms that moved or attempted to move persons able to work off public welfare during the past decade reflect a Lockean philosophy of the importance of work but frequently lack the balancing value of Lockean charity. Yes, certainly there are public programs that give free land to the homeless. In Title V of the McKinney Act (1987), Congress gave top priority in the disposal of excess federal property to housing the homeless, but the volume of the transfer has been infinitesimal. Similarly, one city (Portland, OR) permitted homeless squatters to camp on designated public property (Verhovek 2001). Still, the preponderance of local policy is exclusionary, refusing a fair share of affordable housing for the poor (Kirp, Dwyer, and Rosenthal 1995).

Conclusion

The property bias in U.S. culture and policy has established a great divide between owning a home and renting one, a divide that privileges the rights of landed property over the rights of labor as property. We have within the U.S. economy a bell jar effect similar to that found in the Third World—a bell jar not of legality, but of legitimacy—where a minority population on the outside labors to pay rent for housing to those on the inside.

We have two kinds of mortgage finance: The first is for owners, whose labor leverages a mortgage. In this case, labor reaps the returns on its investment—the returns to capital of property ownership. In the other kind of mortgage finance, the landlord reaps the returns of a renter's labor. A renter can deduct from the income tax on his labor neither the portion of the rent that pays interest on the landlord's mortgage nor the portion that pays for the taxes on that housing. Effectively, the landlord has a mortgage from the bank that is paid for by a tenant's labor. Moreover, a tenant's income taxes are used to reduce the tax burdens of those who own their homes. One could counter with the argument that the return on the renter's labor is the shelter that is paid for.

But why should some people's labor get a subsidized return on capital in addition to shelter (homeowners), while others get shelter alone, plus the obligation to support a subsidy to those who own?

What if we were to restructure these institutional arrangements in the spirit of Third World tenure security programs like those advocated by de Soto? What if we had in the United States a housing system based on a principle of property and choice for everyone? Imagine a set of National Homestead Trust accounts, similar to Social Security accounts. Each account would accumulate an amount equivalent to a down payment on a home for every individual up to a certain lifetime level, after which contributions would no longer be required and the owner of the account could draw on those funds to purchase a home. If at any time this new owner sold a home without purchasing another to replace it, the fund would have to be replenished, then held for safekeeping; if it is ever reduced in size, it must be rebuilt through new contributions.

Where would the money come from? Renters would contribute the equivalent of a portion of their rent, that contribution being exempt from income taxes. Homeowners would contribute a portion of their housing costs in the form of a reduced tax exemption for mortgage interest and property taxes. Where would the money go? It would go into a fund, available to anyone whose account was paid and whose financial needs left no alternative source of housing funds, to be used to purchase a personal residence. At any point, there might be a substantial portion of this housing safety net unused. This fund might then be lent to support affordable housing programs and consumer education at the community level.

This notion of a National Homestead Trust is speculative and sketchy, but it is not far removed from a number of concepts that are being tried throughout the country. In *Assets and the Poor: A New American Welfare Policy*, Michael Sherraden (1991) introduced the concept of Individual Development Accounts (IDAs), which were implemented in a demonstration by the Ford Foundation and 10 other foundations, to show that the poor will save their money when the incentive of matching funds is offered. After the success of these private foundation demonstrations, Congress implemented the idea in the Assets for Independence Act in 1998. IDAs are capped at about \$2,000 and can be used only for homeownership, education, starting a business, or retirement. More than 10,000 Americans are now saving in IDAs in 350 different programs across the country (Miller-Adams 2002). However, this is still a small portion of the poor.

Other innovations have been attached to other federal programs. Section 8 housing vouchers are no longer limited to the rental market, but

can now be counted toward income eligibility for a mortgage and can be used to make mortgage payments (Wilgoren 2002). Housing developments funded with low-income housing tax-credits are offering rent-to-own programs; at the end of 15 years, a low-income renter has an option to buy at very considerable savings over market prices (Baumgardner 2002; “Toledo, Ohio, Couple Hope to Own Home” 2003). Rent-to-own programs have spread rapidly enough in the public sector to generate a genus of private sector imitators. Their notices, proliferating on the World Wide Web, tend to be standard lease-purchase arrangements in new clothing, and some appear to verge on predatory lending.

Is it contradictory, after all the criticism in this article of homeownership policies, to be advocating yet another program of homeownership for the poor? I do not think so. The idea of the IDAs and legitimate rent-to-own programs is to expand tenure security and housing choice. The idea of the National Homestead Trust is an effort to give that security and choice to everyone in an enduring form.

Certainly there will be objections, arguing that it is inefficient to build yet another government bureaucracy to do what people should be doing for themselves: saving and investing in the American dream. But these objections ignore the massive barriers of existing public and private institutions that support homeownership in this country in its present form. William M. Duggar summarizes the kernel of the problem:

A property rights theorist asks..., “How much inefficiency are we to accept in exchange for more equality?” The institutionalist’s reply stresses that inequality is itself inefficient in an evolutionary sense. That is, inequality reduces opportunity and participation. (1980, 45)

The institutionalists argue that efficiency arguments are historically tautological. A change is efficient if the value of the output is greater than the value of the input. But these values are based on current prices, which reflect the current institutional structure, just as the value of owning a home in the United States reflects the institutional structures that now determine housing prices—structures like our hugely biased income tax exemption laws. If we change the institutions, we will change the prices and have a new efficiency position. Like Locke, John R. Commons, one of the founders of the institutional approach to economics, saw civil law as reallocative:

If we start with...the individual as a free man existing prior to the law, then man’s liberty has been gradually taken away from him by...law. But if we start with individuals as subjects of conquest, slavery, serfdom, then liberty has gradually been taken away from the masters and bestowed on the subjects. (1924, 126, quoted in Duggar 1980, 560)

It is the latter view that was the point of departure of Locke's arguments against the divine right of kings and the idle property of royalty and the gentry. Both Locke and de Soto argue for the expansion of property rights to promote economic growth, not for new rights but for the redistribution of old, badly distributed rights, to make for a more efficient society in the longer term.

Tax policies that support sprawl and elite urban housing submarkets are not truly efficient because we have structured the institutions of life, work, and property in a particular way, unconstrained by considerations of leaving enough and as good for others, unconstrained by restraints on spoiling the environment, and unconstrained by charity. De Soto's dreams must be shaped to do more than liberate the developing world to a new order of exclusion and inequality. We can either reconstruct the dream of Horace Vandergelder, the wealthy merchant from Yonkers in the Broadway musical *Hello, Dolly*, who proclaims, "I've worked hard and become rich and friendless and mean, and in America that's as far as you can go," or we can go farther than that, and not just in America.

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The author thanks the following persons, whose ideas and comments were of great help in preparing this article: Kristen Crossney, Robert Lake, Mickey Lauria, Kurt Paulsen, Arlene Pashman, Frank Popper, Kristopher M. Rengert, Thomas Ford Rudduck, Gordon Schochet, Martim O. Smolka, Niraj Verma, Jan Wells, and two anonymous reviewers.

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