

## Dr. Shlomo Angel

### Question 1.

Hernando de Soto's book *The Mystery of Capital* might be summarized as follows: "Most of the poor already possess the assets they need to make a success of capitalism. ... But they hold these resources in defective forms. ... They lack the process to represent their property and create capital. ... They have houses, but not titles. ... It is the representation of assets in legal property documents that gives them the power to create surplus value. "To get our discussion started, could you make a provide a general comment on de Soto's main theme and, from your experience, an illustration of the importance of the relationship between improved tenure and development?"

Largely because of a recent historical process that is still not completely understood, which I would call — to follow de Soto — *The Mystery of Informality*, wealth in the developing countries is now widely distributed, more widely than ever before. The broad distribution of the ownership of assets — houses in particular, but agricultural land and small businesses as well — has now become the norm, rather than the exception. Yet, for some reason that I fail to understand, de Soto, in his recent book *The Mystery of Capital*, chooses to ignore the recent history of informality and its accomplishments in the redistribution of wealth. He opts instead to focus on the history of property rights development in the West and its first-rate achievements, and to contrast it with the second-rate informally held wealth and the partially developed property rights in the developing countries.

De Soto does point out, correctly, that because most of these informally held assets have deficient property documentation and do not conform to laws and regulations governing their construction and use, they are not used optimally: for example, they cannot be traded for their full value on the market and they cannot be used as collateral for loans. He therefore exhorts governments to formalize the informal (and illegal) sector: "The only question that remains is how soon governments will begin to legitimize these extralegal holdings by integrating them into an orderly and coherent legal framework [de Soto, 92]."

In an early article on this subject, written in 1983 and entitled "Land Tenure for the Urban Poor,"<sup>1</sup> I surveyed the then available literature on the relationship between tenure security and house improvement in squatter settlements: In Karachi in the 1970s, for example, the initiation of public works in the settlements lead to major investments in houses, in expectation of "regularization" — the receipt of long-term leases. In many settlements, however, once the threat of eviction was removed, people refused to pay for land title documents.<sup>2</sup> Removing the fear of eviction was seen by settlers to have a much greater value than obtaining formal property documents.

At that time, in 1983, my colleagues and I already started to worry that "informal processes and arrangements for access to land are breaking down...and [that] the land market can now more completely exclude the poor." I must confess that I still worry about that. Unlike de Soto, who believes that "extralegal sectors are growing exponentially" [de Soto, 178], I am of the opinion

that, on the whole, the extralegal sector, at least in housing, is shrinking. Van der Linden and Baross, for example, note that squatting is now the exception rather than the rule, and that "an increasing proportion of land on which low-income settlements grow and develop is now supplied by commercial entrepreneurs who either circumvent the administrative apparatus, which is supposed to regulate urban development, or corrupt it."<sup>3</sup> On the whole, most informal commercial land development, even if it fails to meet zoning and land subdivision regulations does provide for legal title documents.

In my opinion, it is the popular struggle for security of tenure through the occupation of lands, the gradual construction of improvements on them, and the gradual accumulation of property rights to those lands, that has been at the heart of creating this enormous wealth that de Soto celebrates, yet somehow takes as *given*. This process has largely occurred during the great wave of urbanization in the post-war period, and has indirectly relied on and benefited from weak governments, weak legal frameworks, weak property registration, and weak enforcement for its unprecedented success is accumulating the enormous wealth so well documented by de Soto. But I very much doubt that this could have occurred had all these countries already possessed the West's legal frameworks and police powers that he so cherishes. Surely now — when a high level of de facto security of tenure has already been achieved, when forced evictions are the exception rather than the rule, when a large number of developing-country governments have adopted a variety of laws mandating the granting of titles to established squatters — the integration of informal wealth into the network of commercial exchange may make a lot more sense. It is, in fact, already gradually taking place, and, in many ways, it is inevitable.

Still, I worry. According to recent United Nations projections,<sup>4</sup> the urban population of the developing countries is now growing at the annual rate of 2.5 percent. At this rate, it will double in 30 years — from 2 billion in 2000 to some 4.1 billion in 2030. With current settlement patterns, this means that the built-up areas of cities will double in the next thirty years. Will the new urban poor that will settle in newly urbanized areas benefit from the formalization of the land market on the urban periphery? Or will they confront a pattern of land ownership that is more rigid, more regulated, better enforced, and hence considerably less affordable than before? By preaching the establishment of advanced systems of property rights, de Soto, if successful, will surely accelerate the formalization of the land market on the urban periphery — not necessarily a blessing for the new generation of rural-urban migrants. I doubt very much that they will already have the access to credit necessary to purchase land (and housing) in the open market at market prices.

I therefore do not share de Soto's unmitigated optimism regarding the future of housing: "bringing the extralegal sector inside the law will open up the opportunity for massive low-cost housing programs that will provide the poor with homes that are not only better built but much cheaper than what they themselves have been building in the extralegal sector" [de Soto, 191]. The use of words like 'program' and 'provide' suggest to me that de Soto fails, in the end, to recognize the true *Mystery of Informality* and its creative and forceful abilities to produce low-cost and affordable housing — at the required quantity, and with little or no homelessness — outside a formal property system, marvelous as it may be, that does not really care for them. No government or formal private-sector 'program' will supplant the progressive accumulation of housing assets, and no one will 'provide' affordable housing to the urban poor in any foreseeable

future, and surely not in the coming 30 years. The poor will have to fend for themselves, and in the absence of savings and loans, they will find it considerably harder to do in formal property markets than in informal ones.

**Question 2. In your experience, what are the practical challenges to achieving the "representation of assets in legal property documents"?**

The practical challenges to achieving "the representation of assets in legal property documents": One of the more disturbing aspects of *The Mystery of Capital* is the total absence of any reference to important and successful practical experiences in the developing countries in the granting of full property rights to squatters. Reading de Soto, one could wrongly surmise that no developing country has made any progress at all in this direction. For while the author acknowledges that the gradual development of property systems in the West took two centuries, he fails to see any progress at all along this dimension in the developing countries: "past attempts at legal change in developing and former communist countries have not worked" [de Soto, 162]; or "We certainly found no evidence that assets were being transformed into capital [de Soto, 169]. This is not so.

Two counter examples come to mind, one from India and one from Ecuador. Between 1959 and 1964, the Delhi Development Authority (DDA) notified landowners of 30,000 hectares of land around New Delhi that their lands will be subject to compulsory acquisition, and that they will eventually be compensated at the price prevailing on the date of notification. Many landowners proceeded to sell their 'former' lands to squatters, many of them middleclass, with the result that almost one million people settled illegally on DDA lands. Some 25 years later, these people were given full rights to their lands, and all of the houses are now on the formal private market.

Since 1992, the Municipality of Guayaquil has been engaged in the systematic legalization of lands and the issuing of proper land titles. The Office of Land Legalization now employs 70 people and issues approximately 15,000 official land titles per year at little net cost to the Municipality. The process of legalization in Guayaquil involves the use of a special law that allows Congress to approve the purchase of invaded lands by the Municipality for their assessed value (approximately 10 percent of market value) or on another politically determined value. Once land is transferred to the Municipality, the Office of Land Legalization can issue titles. Except for 15 percent of the invaded land in Guayaquil, which includes swamps on which houses were built, all the marginal settlements in Guayaquil will be legalized within a few years. Several other countries are actively engaged in land titling programs at various scales: Pakistan, Thailand, Turkey, Mexico, Nicaragua, Trinidad and Tobago, Mexico, Chile and even Peru to cite a few.

The practical challenges to the further development of regularization programs in many countries have now gone beyond the first and most critical stage — the legal recognition of the right of established squatters on public lands (and in some countries, such as Argentina, on private lands as well) to acquire their plots, and the establishment of legal procedures for the transfer of lands to their occupants. It has been very difficult to convince governments to legalize squatter occupation and to engage in titling programs (as opposed to extensive land registration programs

that seek to establish updated cadastres for all properties using computers in combination with satellite imagery), and in many countries it still is. Once the legal framework has been established, however, the challenges are, first of all, procedural: the process is usually cumbersome. It involves considerable work in obtaining accurate documentation on land in public ownership. It involves the transfer of lands among government agencies that are often reluctant to part with their assets. It involves organizing communities and mobilizing them to agree on plot boundaries, a process which becomes even more complicated when some families have to be resettled to make room for road expansion. Second, there is a considerable shortage of financial resources for engaging in titling and regularization. In this regard, I sincerely hope that de Soto's book will help, especially if it succeeds in raising the consciousness of governments and international organizations on this issue.

**Question 3. Can you describe your experience with "extralegal property systems", and how can they be incorporated into a larger and legal property system?**

My experience with extralegal property systems has been strictly limited to the housing sector. It has been largely theoretical, except for my personal involvement in several "land sharing" projects in Bangkok in the early 1980s. In these projects, my colleagues and I helped slum communities negotiate agreements with public landowners that resulted in the rebuilding of houses on a major part of the site while evacuating its street frontage, in exchange for formal, long-term perpetual leases to the land. I have been studying this question for many years: Organizing an international seminar on then subject in 1982; editing a book entitled *Land for Housing the Poor* in 1983; and drafting a theme paper on the subject, entitled "Land for Human Settlements", for the Fifth United Nations Commission on Human Settlements, Helsinki, 1983, for the Executive Director of UNCHS (Habitat). More recently, I collected 1990 data on the subject in 53 countries, as a co-director (with the late Stephen Mayo) of the Housing Indicators Program (a joint program of UNCHS and the World Bank), and published these data in my recent book, entitled *Housing Policy Matters: A Global Analysis* (Oxford University Press, 2000). My studies of the subject agree with de Soto on many points. I do believe that the establishment of a regime of individual property rights in land and housing is the cornerstone of an enabling housing policy regime. But I also believe, like Rose, that this needs to be done gradually:

Economic thinkers for several centuries have been telling us that the more important a given kind of thing becomes for us, the more likely we are to work towards hard-edged rules to manage it. We draw ever more sharper rules around our entitlements so that we can identify the relevant players and so that we can trade instead of getting into confusions and disputes that would otherwise only escalate as the goods in question become scarcer and more highly valued. At the root of these economic analyses lies the perception that it costs something to establish clear rules about things, and we won't bother to undertake the task unless it is worth it to us to do so. What makes it worth it? Increasing scarcity of resources and the conflicts attendant on scarcity. ... In effect, as competition for a resource raises the costs of conflict over it, the conflict itself comes to seem costlier than setting up a property regime. We then try to establish a system of clear entitlements in the resource so that we can barter and trade for what we want instead of fighting.<sup>5</sup>

De Soto, on the other hand, looks at the property rights regimes in developing countries strictly in black-and-white terms: "we found nothing even remotely resembling the success of advanced nations... We certainly found no evidence that assets were being transformed into capital [de Soto, 169].

**Question 4. In the absence of an effective legal system to manage property rights, microlending programs can be effective in drawing on other abstract assets that people might have such as social connections and a good payback history. This is already happening in what the deSoto refers to as the extralegal sector. Microcredit is a way to extend credit opportunity for investment until a better legal framework for identifying physical capital is developed. A microlending system can work hand in hand with the property rights system adjustments the author is calling for. Any comments on this?**

Micro-lending does not usually require the house as collateral. It is usually successful only when it is done in small quantities and repetitively, so that people need to maintain their good credit standing in order to qualify for additional loans. Such micro-lending can be used effectively to improve and extend houses, and has been used in that way. In Moreno, for example, on the outskirts of Buenos Aires, a community organization successfully administers some 4,000 micro-loans that are used to upgrade houses. The problem, though, is not with macro-loans, but with the near absence of mortgage loans in the established settlements of the poor. And the absence of mortgage loans makes buying and selling almost impossible, because virtually no one interested in buying a completed house there has the necessary cash. This greatly shrinks housing transactions, reduces mobility, and makes it impossible to realize the full economic value inherent in the house. de Soto correctly observes that the absence of title deeds is a major obstacle. But it is only one among many. Inflation, banking inefficiency, and the consequent high cost of credit are another. The shortage of supply of long-term funds another. Red-lining yet another. In short, titles may be a necessary but not necessarily a sufficient condition for accelerating investment and market transactions in informal properties. They will certainly help, but they are not a panacea or a blueprint for development.

**Question 5. In October 1999, the UN and the International Federation of Surveyors held a Workshop on Land Tenure and Cadastral Infrastructures for Sustainable Development in Bathurst, Australia. The "Bathurst Declaration" stated "land administration systems need to be re-engineered, using modern technology for recording and describing tenure arrangements." Please comment on the effort to "re-engineer land administration systems" based on your own experience.**

I completely agree with de Soto that the high-tech solutions to informality are misplaced, inefficient, and largely useless to the poor. They will not help regularize established communities, but they will help establish proper cadastres on the urban fringe, probably accelerating the purchase of rural lands by urban investors (not to mention speculators), and making land less affordable to the poor in the process. I would, therefore, really worry about supporting these initiatives. As the Argentinians and Trinidadians, for example, have learned, regularization is a community-based activity, not a satellite-based activity. It needs to be done on

the ground, with the people, using teams of professionals — lawyers, community organizers, surveyors, and physical planners — that can prepare regularization plans together with communities, and then push them through the bureaucratic nightmare of land registration. This is, unfortunately, still a labor-intensive activity. But — as the Ecuadorians have learned — it is an activity that, once streamlined, can be accomplished efficiently and at little cost to the authorities. I am afraid that this is not what the International Federation of Surveyors has in mind.

**Question 6. The Bathurst Declaration also stated: "An integrated perspective of the interface between markets, land registration, spatial planning and valuation indicates that society, through processes of good governance enabled by access to appropriate and reliable information, sets minimum requirements in terms of environmental standards and expectations and social tolerances." One of our roundtable participants, Edesio Fernandes, has written that "a new, socially-oriented and environmentally friendly approach to property rights is needed ... A wide range of legal-political options should be considered ..." Any comments or observations, based on your experience?**

"A new, socially-oriented and environmentally friendly approach to property rights is needed." I would suggest that a "socially oriented" approach means an approach that is focused on the regularization of existing rights in land and housing, the transfer of occupied lands to their established occupants, and the provision of documents that can gradually be upgraded to full titles. I would also suggest that the regularization of titles should be an integral part of housing policy, and that, because it is cost-effective and targeted on the poor, it should be able to compete with other housing programs for government housing subsidies. I would veer away from hurrying to register vacant lands on the urban periphery, because it will make them less accessible, rather than more accessible, to the poor. An "environmentally-friendly" approach suggests that we should monitor urban expansion and identify a small, yet realistic, amount of land that needs to be kept as open space, and then do anything in our power to protect it from development — through the establishment of land trusts that can purchase it, through conservation easements that keep it in agricultural or natural use, and through vocal and active protection. I am afraid that an extensive campaign to prevent urban expansion into rural areas altogether cannot and will not be sustained, in the face of the foreseeable urban development pressures in the coming decades.

**Question 7. Richard May makes the case (in another article that will appear in this issue of Interplan) that de Soto's research and findings help relate the two current campaigns of the UN Center for Human Settlements ("security of land tenure" and "good governance") to the broader topic of "finance for development". In June, there will be a special session of the UN General Assembly to discuss progress in implementing the Habitat Agenda ("Istanbul plus 5"). There will be a lot of discussion about the two campaigns, and "finance for development" (FfD) will be the subject of a global UN conference in 2002. What can organizations such as Habitat learn from de Soto's research?**

No comment.

**Question 8. What do you imagine will be the impact of these ideas and findings on donor approaches to property reform and good governance?**

De Soto's ideas can (and hopefully will) have an important impact on donors, and could direct substantial funds to property rights work. But that, unfortunately, is a two-edged sword: If de Soto's work helps generate new funds for a global campaign centered on the regularization of the established settlements of the poor, it will have done a great service to millions of people. If, however, it is commandeered by political and technocratic elites for more work on GIS-based high-tech cadastral systems that will help establish and secure the property rights of absentee landowners on the urban fringe, then it will have utterly failed us all.

**Question 9. What specifically can planners — and planning — contribute to the process of changing "dead assets" into capital?**

"Dead assets into capital": I believe that de Soto's use of the expression "dead assets" is misplaced. Houses, for example, do not qualify as "dead" assets simply because they do not have formal titles. They do qualify as "capital," because they generate housing services over their lifetime. They are not simply "shelter," not at all. They are both a stock and a flow. They are physical structures, but they are also a promise of housing services for their owner-occupants for years to come. And they are secure assets, even if they do not possess title documents, because their owners cannot be evicted from them. Secure de facto tenure is what matters to their inhabitants first and foremost — with or without documents. It is the security from eviction that gives the house its main source of value. When de facto tenure is secure — or very secure, as it is in Guayaquil, for example — title documents may add little economic value to land in squatter occupation. A recent study in Guayaquil, for example, estimated it to be of the order of 25 percent.<sup>6</sup> Yes, there is value in titles, and there is value in integrating houses into the financial system, so that they can be quickly bought and sold, and so that they can be leveraged as collateral for a host of non-housing economic activities. But even if they are not yet integrated into the financial system, they are by no means "dead assets."

Planners can indeed contribute in the regularization of established communities by:

- Organizing campaigns to establish legislation for the regularization of land tenure in established settlements on public and private lands;
- Establishing bureaucratic procedures for freeing occupied public lands from public agencies that refuse to part with them;
- Establishing inventories of existing settlements without proper land titles, and providing reliable statistical information on these settlements;
- Organizing communities for title registration and infrastructure upgrading campaigns; and
- Participating in demonstration projects and ongoing projects that aim to streamline, simplify, and reduce the cost of title-granting procedures.

## Notes

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1. Shlomo Angel. 1983. "Land Tenure for the Urban Poor," in Angel et al, eds., *Land for Housing the Poor*, Select Books, Singapore.
2. Schuringa et al, 1979, M. Schuringa, A. K. Salahudin, E. Meyer, and K. S. Yap. 1979. *Baldia Evaluation Survey Report: A Study of Improvement of Living Conditions in a Katchi Abadi*. Unpublished. Karachi: Karachi Slum Improvement Project, 66.
3. Jan Van der Linden and Paul Baross, 1990. "Introduction," in Jan Van der Linden and Paul Baross, eds., *The Transformation of Land Supply Systems in Third World Cities*, Avebury, 2.
4. U.N. Population Division, Department of Economic and Social Affairs of the United Nations Secretariat, 1998. *World Urbanization Prospects: The 1996 Revision*, table A3, 97]
5. Carol M. Rose. 1994. *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Private Ownership*. Boulder, Colo.: Westview Press, 199–200.
6. Jean O. Lanjouw and Philip I. Levy, 1998. "Untitled: A Study of Formal and Informal Property Rights in Urban Ecuador," Economic Growth Center, Yale University, Center Discussion Paper 788, New Haven, April, i.

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