

The Impact of Property Rights Reform on Development

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Dramatic differences in wealth and quality of life experienced by those living in different countries is one of the biggest problems facing the world today. For decades, development agencies, national governments, and scholars have strived to eliminate this staggering inequality through the use of various strategies. While limited success has been achieved in some areas, there is still a large gap between the level of development in the richest countries compared to the poorest. It is clear that more needs to be done to combat this problem and improve the quality of life experienced by billions of people. Figuring out how to accomplish this is the core focus of the development community.

In the attempt to achieve this goal, development efforts have targeted various aspects of society. One major area of focus has been the legal system. Development agencies like the World Bank have invested a great deal of time and money into legal reform projects, and an entire academic field known as Law and Development has come up to study law's relationship to development and the role it plays in the development process. Competing theories on this relationship have arisen. Some believe that legal reform is central to a nation's development, and that taking steps like securing property rights will almost inevitably lead to growth in other areas. Others contend that, for a variety of reasons, legal reform alone is not sufficient for generating development, at least as it has been commonly implemented in the past. Even among those who support legal reform there is disagreement over how such reform should be implemented and the areas of the law it should focus on.

This study seeks to analyze the impact of property rights reform programs in particular. It is widely believed among the development community that the establishment of strong and clear property rights is essential to economic development, and many development programs have been based on this assumption. Reform efforts have thus often targeted the introduction of strong property rights, although there are mixed opinions on how effective these policies have been. The goal of this paper is to examine whether these programs have been successful, and to look at some of the reasons for their success or failure.

It is important to study these reform programs to ensure that future development efforts are more successful in helping the inhabitants of impoverished nations. By looking at the features and results of different programs, one can see which policies are more or less effective at bringing about development. Reformers can try to emulate aspects of the programs that are successful, and learn from the mistakes of programs that are less so. By examining the relationship between property rights reform and development, I hope to contribute in some small way to this effort.

In addition to being relevant to the study of legal reform, this paper also holds significance for the field of Law and Society in general. Property rights reform programs are designed to bring about social and economic change. Studying them can reveal how changes to the law affect other aspects of society. Additionally, an understanding of the

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relationship between property rights and social and economic development is not just important for reformers in developing countries, it is important for scholars attempting to understand the role played by property rights law in developed nations as well. Law and Society scholars in the U.S, for example, could use this deeper understanding to look at how our system of property rights affects other areas of our country's legal system and society at large.

In examining the relationship between property rights reform and development, I will look at specific reform policies, examining their features, goals, and results. Additionally, I will discuss different arguments regarding the effectiveness of property rights reform, both for and against. Arguments based on empirical evidence and ones that are more theoretical in nature will both be examined. Finally, I will look at two case studies in greater detail to illustrate the topics discussed throughout the paper. The case of Peru will serve as an example of a place where property rights reform was seemingly successful, while the case of Cambodia will serve to show what it looks like when such reform fails. First though, background information on the wider field of development in general, and Law and Development in particular, will be presented to provide context for the deeper examination of property rights reform. In each of these sections, I will reference and analyze academic articles, books, and publications released by development agencies.

Background and history

Development

Before diving more deeply into law's relationship with development, it will be helpful to look at development itself. Measuring and describing development might seem simple at first, but upon closer inspection the concept is more nebulous and complicated than it first appears. There are many different ideas about what exactly development is, and it is not clear which factors should be considered essential parts of it.

What is clear is that the level of wealth and quality of life experienced by the inhabitants of different countries varies greatly. One can easily look at statistics online and see that the yearly GDP per capita of Norway is \$81,697.25, while in Chad it is only \$728.34 (World Bank, 2021), for example. Similarly, Norwegian citizens have access to more social services, possess greater political freedoms, and experience a higher level of personal safety than the citizens of Chad do. These stark differences reveal the importance of development and the need for reform efforts, but they do not show the path countries like Chad can take to achieve the level of development seen in places like Norway.

Deciding which factors to include or exclude as a part of development is a somewhat subjective process, and different reformers and theorists tend to prioritize different things. Some take a more strictly economic view of development and view it as nothing more than the measure of a nation's GDP. Others think that things besides just economic growth are important as well. They argue that factors that affect the quality of life experienced by the citizens of a nation are just as important as economic measurements.

This latter perspective is supported by the idea of sustainable development, one of the most prominent conceptions of development today. In sustainable development, factors like access to education and healthcare, income equality, environmental

protections, political freedoms, and personal safety are all measures that need to be considered when making assessments of development (Soubbotina, 2004). In this view, reform efforts must target these factors in addition to purely economic ones if development is to be truly achieved.

According to sustainable development, a country could have a high GDP but still be considered underdeveloped if it scores lowly in these other areas. Conversely, a country could have a relatively low GDP, but still be considered more developed if its citizens experience a high quality of life and it is strong in other areas like healthcare and education. As Soubbotina (2004) puts it, “countries with similar average incomes can differ substantially when it comes to people’s quality of life” (p.7). Just as with the broader concept of development though, sustainable development doesn’t have one concrete definition. Even among supporters of sustainable development, there is disagreement on which factors should be given greater importance, and the concept is still being refined (Soubbotina, 2004). In general though, the core idea of sustainable development is that factors other than purely economic ones are important to the development process.

This type of development is defined as sustainable because its focus on multiple aspects of society makes it more durable and likely to persist into the future. The development process in any given country is likely to stagnate if it does not involve advancement in all of these separate areas. A country that develops economically without worrying about the protection of its environment or the health of its citizens, for example, might soon face environmental or social crises that wreck its economy and prevent it from achieving any type of development at all. A country that focuses on all aspects of development simultaneously is less likely to face such obstacles (Soubbotina, 2004).

“Development as freedom,” introduced by Indian economist Amartya Sen, argues that not only will development fail if these different factors are not each given equal attention, but that it will not occur at all. In his mind, the goal of development is to increase the number of freedoms enjoyed by a country’s citizens. The overall level of freedom present in a country is dependent on freedoms in multiple different areas, including in the economic, legal, and political spheres. These freedoms are all interrelated, and one cannot be advanced without the others. Any development efforts must therefore focus on all of these intertwined areas, as focusing solely on one would be a pointless endeavor (Sen, 2000).

Perhaps unsurprisingly, sustainable development, with its wider take on the goals of development, has motivated many of the efforts taken by the World Bank and other reform groups. The Bank’s rhetoric evokes the ideas of sustainable development, and many of the organization’s published articles and reports discuss the importance of things like environmental protections, human rights, and political freedoms to the overall development process (Boisson de Chazournes et al., 2016). The legal reform policies pursued by the Bank have mostly followed this trend, largely motivated by ideas of sustainable development and Sen’s more specific conception of “development as freedom” (Faundez, 2009).

Whether or not these efforts are actually successful in achieving these sustainable development goals, or any kind of development for that matter, it is clear that reform groups view them as important and strive to achieve them. This focus seems to be justified, and it is hard to argue that reform efforts shouldn’t be targeted at the aims of

sustainable development. After all, what good would development be if its fruits were not experienced by the bulk of a country's population? Most would agree that reform efforts should strive to do more than achieve economic gains that benefit only a small number of a country's wealthy elites. Legal reforms, property rights reforms included, are no exception.

Law and development

Clearly, development is an important topic, one that has real world implications for the lives of billions of people around the globe. It is understandable why groups like the World Bank dedicate so much time and money to reform efforts aimed at bringing about development, such as with their property rights reform policies and their other efforts in the legal sphere. What exactly is the relationship between law and development, however? While there is no one answer to this question, an understanding of different theories about this relationship is useful for analyzing the strengths and weaknesses of specific reform policies.

Early theories focused more on law's role in bringing about economic development; sustainable development goals weren't considered until more recently. In the 19th century, two early competing theories emerged. The first was put forward by sociologist Max Weber. Weber argued that the rise of capitalism in 17th and 18th century Europe, and the explosion of economic growth that followed it, were made possible by the nature of the legal systems present in Europe at the time. These systems "were more conducive to the development of a capitalist economy than the systems of social regulation found in other parts of the world" (Krever, 2018, p.2).

According to Weber, it was the rationality of European law that made it so effective in spurring economic development. This rationality, often referred to as the rule of law, ensured that laws were fairly and consistently applied. The consistency offered by this rational law, Weber said, made the legal system more predictable, and motivated people to take business risks that they otherwise would not have (Krever, 2018). Individuals could more easily calculate the risks and benefits associated with any business endeavor, and did not have to worry as much about arbitrary legal decisions destroying their business. The collective action of all the Europeans who took economic risks, buoyed by their confidence in the predictability of their country's legal system, led to the rise of capitalism and the rapid development that followed suit. Weber believed that this rational type of legal system was deeply rooted in the historical development of European society, however, and did not make the argument that it would automatically lead to development wherever it was implemented (Krever, 2018).

The other early theory of law's relationship to development was put forward by Karl Marx. Marx's theory directly opposed Weber's: he claimed that the causal relationship between law and development ran the opposite way. In Marx's view, the growing merchant class that arose along with the expansion of capitalism drove the formation of a rational legal system. As this class grew in size and importance, they pushed for the establishment of laws that would benefit their interests, and "sought to establish the institutional conditions which would permit their trading activities" (Krever, 2018, p.11). Rational and consistently applied laws governing things like banking, insurance, and trade disputes arose out of this demand.

Marx also argued that the new property relations that capitalism brought about drove the development of a more rational legal system as well. The technological and

societal changes that came out of capitalism led to new forms of property, along with an increased need for the protection of private property. Just as with the other legal changes that occurred at the time, the establishment of stronger private property rights resulted from the wishes of the emerging merchant class (Krever, 2018). If correct, Marx's theory has disheartening implications for reform policies enacted by groups like the World Bank today. If economic development brings about changes in property rights law, and not the other way around, then the effectiveness of reforms that seek to spur development through establishing strong property rights is called into question.

Earlier theorists like Weber and Marx touched on law's relationship to development, but it wasn't until the 1960s that the field of law and development emerged as an independent area of academic study. Since the field emerged, it has waxed and waned in popularity, and over time different perspectives have dominated the field (Trubek, 2016). In the early days of law and development, a more state-focused approach prevailed. Theorists and reformers alike believed that strong governments could lead the way towards economic growth and development, and legal reform was seen as a method of empowering the state. Governments in developing countries were encouraged to do things like extensively regulate the private sector, enact import substitution policies, and form state-run enterprises (Trebilcock, 2016). It was hoped that these actions, orchestrated by a strong state, would bring about economic and social development.

In addition to stressing the importance of a strong central government, this early perspective also placed an emphasis on the adoption of "modern" legal principles. The legal systems of the U.S and Europe were believed to be superior to those present in less developed countries. It was thought that if struggling nations copied the features of these more "modern" systems, then a period of development would be kick started that would allow these countries to catch up to the West (Trubek, 2016). Reform efforts were thus targeted at introducing private markets, democracy, the rule of law, meritocracy, and welfare programs (Trebilcock, 2016). The combination of these western legal features with a strong central government, these hopeful early theorists thought, would be sufficient for bringing about development.

After two decades of disappointing results, the state-run perspective began to fall out of favor in the 1980s. It was supplanted by the neoliberal approach of the Washington Consensus, which proposed a more limited role for state governments, and was centered on the idea that legal reforms should be favorable to free markets. Supporters of this perspective "often viewed the state as the problem, rather than the solution, to a country's development challenges" (Trebilcock, 2016, p.333).

In a one-eighty turn from the state-centered approach to development, the Washington Consensus encouraged reform policies targeted at privatization and deregulation. Additionally, it was more solely focused on laws governing the economy; things like democratic elections and welfare programs were deemed to be less important. While supporters of the Washington Consensus claimed that its reforms would bring about development not only in the economy but in the political and social spheres as well, critics argued that they were too narrow in scope to cause broader change. It was unlikely, these critics argued, that reforms focused only on markets and property rights would lead to things like democracy, or improve the quality of life experienced by the average citizen (Faundez, 2009). These critics were largely proven correct, and in the 1990s the Washington Consensus began to fall out of favor within the

law and development community, largely because of its lack of success (Trebilcock, 2016).

The early state-centered school of thought and the Washington Consensus had radically different views on the relationship between law and development, but there was one similarity underlying both perspectives. Both were universal in nature, and operated on the assumption that there is one blueprint to legal reform that can be successfully implemented in any country (Trebilcock, 2016). In the 1990s, after the fall of the Washington Consensus, more relativistic theories started to gain popularity that broke from this mold. These theories continue to be dominant in the field today.

In substance, the reforms inspired by these new theories tend to fall between those of the first two perspectives, and advocate for a combination of state-run efforts and free markets policies. What really sets this modern perspective apart from the previous ones, though, is the way that it emphasizes contextual approaches over universal ones (Trebilcock, 2016). Supporters of the perspective argue that reform policies in any given country should be designed with the specific circumstances of that country in mind. Policies should be custom tailored with respect to that country's specific "history, culture, geography, political evolution, economic structure, and ethnic, religious, and demographic make-up" (Trebilcock, 2016, p.333). What works in the context of one country might not work in that of another.

While these three approaches have been the most popular in the field of law and development, a number of other theories have been formulated as well. Dependency theory, for example, argues that the development process in underdeveloped countries is inextricably linked to the relationships these countries have with developed countries. Proponents of dependency theory make the case that simply introducing new laws is unlikely to bring about any change in a country's level of development, as doing so would not significantly alter the relationship that country has with more developed countries. While dependency theorists tend to doubt the effectiveness of legal reform, they do argue that any reforms which are made should be inspired by socialist ideals (Davis and Trebilcock, 2001).

Feminist theory focuses on how development efforts impact the lives of women in developing countries. Supporters of this view argue that reform efforts need to be designed in a way that ensures the economic, political, and social gains of development are experienced equally by women and men. They also argue that legal reforms should target problems that are more commonly faced by women, such as gender discrimination in employment and sexual harassment (Davis and Trebilcock, 2001). Sustainable development theory, as the name implies, emphasizes the importance of the broader goals of sustainable development in legal development efforts. According to this theory, legal reforms need to be designed with environmental and social concerns in mind, and cannot just be meant to bring about economic growth (Davis and Trebilcock, 2001).

The true nature of law's relationship to development is still an open question. As of yet, no one has developed a complete and accurate description of this relationship, and it seems unlikely that such a theory will be developed soon. All one can do is try to learn the details of each theory, and understand the implications they have for real world development efforts. Doing so can help one understand the motivations behind these policies, and make them better able to judge whether or not they've achieved their intended goals.

Property rights reform policies

In this chapter, I will examine features common to most property rights reform policies and specific examples that will illustrate the real world implementation of these policies.

Just as there have been a variety of theories on law's relationship to development, there have also been a variety of specific legal reform policies implemented. While sharing many commonalities, these policies have differed in terms of their areas of focus, specific features, goals, and methods of implementation. Property rights reform policies have been no exception. Some reforms have been based on a more universalist perspective, and have involved simply transplanting western forms of property rights to developing countries. Others have been more tailored to the individual circumstances of the country undergoing reform.

In countries like Russia and Poland after the fall of the Soviet Union, for example, reform policies aimed to introduce strong, western style private property protections to legal systems where property rights had previously been extremely limited (Goldman, 1999). In places like Peru, on the other hand, reforms were focused on formalizing pre-existing informal systems of property rights (De Soto, 1989). The specific features of the reform programs carried out in each place reflected these situational differences. Reforms enacted elsewhere have been similarly based on the idiosyncrasies of the country experiencing reform and the motivations of the reformers.

While specific reform policies have taken a variety of forms, they have all been based on the idea that making adjustments to laws surrounding property rights will help bring about economic development. As discussed in the previous chapter, it has long been thought that certain types of legal systems are more conducive to commercial activity and the economic growth that comes along with it. The protection of property rights is typically viewed as one of the most important elements of such a legal system. Just like with other types of legal reform, the strengthening of property rights is believed to encourage individuals to take economic risks and pursue business endeavors. Strong property rights allow people to do so confident that the fruits of their labor will not be arbitrarily taken by a corrupt government, or stolen by other citizens with no recourse for recovery (Krever, 2018). Whether or not this is true, it has been the core motivating factor behind most property rights reform policies.

The policies pursued by the World Bank have been no exception, and the organization has identified strong property rights as being essential for economic growth and prioritized their protection in its reform efforts. The Bank has argued that such rights, similarly to transparency, contract enforcement, and access to justice, are crucial for development (Legal Vice Presidency, 2003). Official Bank publications include language such as, "For an effective market-based economy in particular, there must be legal systems and processes that protect property rights and economic opportunities on behalf of individuals" (Legal Vice Presidency, 2003, p.14). The Bank clearly views property rights reform as important, but, at least in its rhetoric, it acknowledges that such reform needs to involve more than simply transplanting western style laws to developing nations, and that reform efforts need to be sensitive to each specific country's culture (Legal Vice Presidency, 2003).

Potential benefits of reform

In the eyes of reformers at the World Bank and other organizations, strengthening property rights offers a number of benefits to the citizens of developing countries. For one, there is the general economic confidence mentioned earlier that such rights provide. Broadly speaking, the ownership of property is thought to come along with a number of associated rights, including “the right to possess, to transfer, and to alter” a piece of property (Djankov et al., 2020, p.2). Strong protections of these rights can encourage individuals to start businesses, invest more in ones they already own or that are owned by others, and be more willing to engage in commercial transactions in general. In a place with weak property rights, citizens may be averse to these things for a variety of reasons. They may worry that their property will be seized at the government's whim, that others may make a claim on the property they own or any profits that come from it, or that it will be outright stolen. These fears can prevent these individuals from taking economic risks, which collectively can hinder a country's overall development effort.

The recognition of property rights can also allow individuals to use their property as collateral for taking out loans. This is especially relevant when it comes to land ownership. In many developing countries, a large percentage of personal property, including land, is owned informally (Deininger, 2003). Without formal recognition of their property, people in these countries cannot go to lenders and use their possessions as collateral for taking out loans. This prevents them from being able to invest more in and grow their businesses. These individuals may have large tracts of land that would be worth a great deal if the market were more formalized, but do not have any sort of official documentation to show that the property is really theirs. Property rights reform programs can provide citizens with formal government recognition of their property so that they can reap the benefits of using their land, or other property, as collateral.

Land rights protections are considered to be an important aspect of property rights, and reforms targeting land rights are often at the core of property rights reform policies. As Ede Ijjasz-Vasquez, World Bank Senior Director for the Social, Urban, Rural and Resilience Global Practice, puts it, “Addressing land tenure issues is at the center of building sustainable communities – countries, regions, cities, and rural communities need secure rights, clear boundaries, and accessible land services for economic growth” (World Bank, 2017). While the benefits to property rights reform discussed here apply to all forms of property, the benefit of collateral is mainly relevant to land ownership. Additionally, many of the specific reform programs that will be looked at later are mainly concerned with rights surrounding land ownership.

The ability to use formally recognized land or other forms of property as collateral not only benefits individuals living in developing countries, but it helps the lenders based there as well. With a strong system of property rights, creditors can more confidently lend money out to borrowers. These rights ensure that the borrower's collateral is formally recognized by the government, and that there is a defined procedure for the creditor to go through in order to obtain the collateral in the event that the borrower does not repay the loan (Legal Vice Presidency, 2003). With the knowledge that the government will help recover the property that is owed to them, creditors would be more willing to lend money. This will further contribute to the increase in business activity in the country, and on a larger scale lead to economic growth and development, at least in theory.

In addition to these more purely economic benefits, reformers tout the potential for property rights reform to help achieve broader sustainable development goals as well. Property rights reform has the potential to bring about the kind of development that leads to improvements in the quality of life experienced by all citizens, and not just to an increase in GDP. One way such reform could do this, proponents argue, is by helping developing countries feed their growing populations and alleviate hunger. Farmers and other rural land owners can use the formal recognition of their property to obtain loans that they can then reinvest in their land. These investments allow them to make more efficient use of the land they own, and to increase yields of crops and animal products (Tuck and Zakout, 2019). These increased yields could then be used to feed the country's population.

Another way property rights reform could potentially help achieve sustainable development goals is through the protection of the environment. World Bank officials have argued that “people are better stewards of the environment and their natural resource base when their property rights are secure” (Tuck and Zakout, 2019). It is thought that clearly defined land ownership would help prevent environmental degradation, both because the government could more easily designate certain areas as protected, and because, with formal recognition of ownership, local landowners would be better able to prevent their land from being taken by groups looking to profit through deforestation or other types of environmental destruction. The protection of the environment is considered to be one of the core elements of sustainable development (Soubbotina, 2004). If property rights reform really is effective at achieving such protections, it would be enormously beneficial for both the current and future generations of those inhabiting countries undergoing reform.

Finally, reformers argue that property rights reform benefits historically disadvantaged groups such as women, the poor, and indigenous communities. Women can benefit from reforms that focus specifically on providing them with rights over their property. Even in some countries that already have more formalized systems of property rights, women may not be able to exercise the rights thought to come along with property ownership, whether due to cultural or other factors. They may be prohibited outright from owning property, or may face barriers in receiving the recognition they are legally entitled to. Many of the efforts undertaken by the World Bank and other groups place importance on ensuring that reforms made to property rights take women into account, and that women benefit from them equally (Tuck and Zakout, 2019).

The poor benefit from reform because usually they lack formal recognition of their property (Deininger, 2003). Even in less developed countries, wealthier individuals likely do not face the same issues that the impoverished do when it comes to property rights. Reforms that focus on improving access to the official recognition of property thus benefit a country's poor citizens the most. Likewise, indigenous communities have often faced particular struggles in receiving recognition for ownership over their land and other property. Because these communities tend to reside in remote, underdeveloped areas, and have historically faced a great deal of oppression and discrimination, they often have even less recognition of their property rights than other inhabitants of less developed countries. Property rights reform policies have the potential to ensure that the property of these communities is recognized, and that their rights are protected (World Bank, 2017).

Examples

Clearly property rights reform efforts have the potential to offer developing countries a great number of benefits, at least according to the arguments of reform groups. Looking at how specific reform programs have played out can help demonstrate the different forms such efforts can take, and can show how the various potential benefits may or may not be realized.

In Nicaragua, a World Bank program starting in the early 2000s set out to recognize the property rights of those inhabiting the country's rural areas, with a particular focus on the nation's Indigenous communities. At the time, these communities had almost no recognition of their land rights, but since then all 23 of the country's Indigenous groups have had their land titled and formally recognized (World Bank, 2017). According to the Bank, this has allowed these groups to better protect their lands and to control the natural resources located on them. It has also helped to resolve land disputes between different Indigenous groups (World Bank, 2017).

In 2005, the Bank began an even more ambitious project in FYR Macedonia. While the program in Nicaragua was focused only on rural areas and Indigenous groups, this project was aimed at reforming property rights throughout all of Macedonia (World Bank, 2017). At the start of the project, only about one-third of apartments in the country were officially registered with the government, and there was little public awareness about the rights people had available to them. In order to help alleviate this problem, the World Bank set out to help Macedonia "build an efficient and effective real estate cadastre and registration system, contributing to the development of efficient land and real estate markets" (World Bank, 2016).

The program attempted to achieve this through expanding the size of and increasing the funding for Macedonia's Real Estate Cadastre (REC), the organization responsible for registering land ownership in the country, and through streamlining the REC's registration procedures. It also aimed to reform the country's laws and regulations surrounding land and real estate markets. As of the project's completion in 2015, its efforts seemed largely successful. By the end of its run, seventy-five percent of apartments and plots of land were registered with the REC. Additionally, the average amount of time taken to register a plot of land decreased from two months to two days, and the number of transactions in the land and real estate market increased by over fifty percent (World Bank, 2016).

Other reform programs have seen more mixed results. In Cambodia, the Bank attempted to institute reforms in the area of titling and land rights under its Land Management Administration Project (Upham, 2018). The project was aimed at replacing the deeply entrenched informal property ownership customs that dominated the country with a more formal and bureaucratic system of land registration. The project was largely successful in getting individuals to register their land with the government, but for various reasons the program did not spur on wider economic development.

While the Bank's efforts in Cambodia were mostly unsuccessful, the Peruvian government undertook similar efforts to reform its own property rights policies in the 1980s, which saw greater success (De Soto, 1989). Peru focused on formally recognizing the informal property rights systems that already existed among the country's impoverished communities. Perhaps because these policies were more attuned to the intricacies of Peruvian culture, their introduction was followed by a period of economic growth and the end to the guerilla warfare which had been plaguing the country (De

Soto, 1989). The examples of Cambodia and Peru will be looked at in much greater detail later on, as they serve as great examples for highlighting the various arguments on property rights reform's effectiveness in the development process.

After the fall of the Soviet Union in the 1990s, property rights reform policies were implemented throughout the nations of the former Soviet Union. These policies were different from the ones discussed so far, as instead of replacing or formalizing customary forms of property rights, they were aimed at supplanting the collective forms of property ownership that existed under communism with privatized western ones (Goldman, 1999). While the policies implemented in each country all had this similar goal, the specific ways they were implemented differed, and the results they produced were mixed.

In Russia, policies designed to protect private property were implemented rapidly. The nation's inhabitants experienced a very abrupt transition from the limited property ownership of communism to the wider property rights regime offered by these new western policies. This rapid implementation backfired however, and a small number of well-connected oligarchs used their power and influence to quickly accumulate much of the country's wealth (Goldman, 1999). Additionally, while the new property rights protections existed on paper, many of the nation's citizens feared that these protections would not actually be enforced, and they did not have the confidence needed to start businesses or invest in their land and property. This led to the widespread stripping of land and assets for cash, and to many people storing their wealth outside the country for safety (Hoff and Stiglitz, 2004).

Post-communist reforms were much more successful in Poland on the other hand. The Polish government instituted such reforms much more gradually, which allowed the population to slowly grow accustomed to the rights and privileges afforded to them under the new policies, and prevented a few powerful individuals from immediately taking advantage of the more open system for their own gain (Goldman, 1999). As Goldman describes, "the Polish method not only facilitated the restructuring of [state run] industries, but also generated a minimum amount of scandal, corruption, and outright theft. In Russia it was just the opposite" (1999, p.390).

Property rights reform programs have taken a number of different forms, and have been implemented in a number of countries and cultural contexts. As these examples show, the results of these policies have been inconsistent. In some places they have seemingly been successful, but in others they have failed to generate wider economic development. Even in places where they have appeared to achieve success, some question whether it was really the changes to property rights that brought on development, or if these are just correlations that do not signify any kind of causation. Many arguments have been made both in favor of and against the idea that property rights reform is necessary to achieving development, and that it can be effective at doing so. The next section will look at some of the arguments advanced by each side, and will analyze the strengths and weaknesses of each.

The effectiveness of property rights reform

The development community has prioritized property rights reform in its efforts. Since the rise of the Law and Development movement, reformers have dedicated a great deal of time and money to programs designed to strengthen and modify property rights, seeking to achieve the many benefits they believe reform can bring, and they have

attempted to do so in a variety of ways. In this chapter, I will discuss and analyze the arguments made by both supporters and detractors of property rights reform. An understanding of these arguments will help in analyzing the two case studies looked at in the next chapter, and will be critical in making an assessment of the overall impact of property rights reform on development.

While property rights reform programs have varied when it comes to their specific features, they have all operated on the assumption that modifying property rights in some way will help spur on development. It makes sense then to question the validity of this assumption, and to look at whether or not these reform programs are actually effective at achieving the kind of development they intend.

Perhaps unsurprisingly, there is a lot of disagreement when it comes to this question. Many reformers clearly believe that this assumption is valid, otherwise their commitment to property rights reform efforts wouldn't make much sense. The World Bank and other reform groups have released a number of publications that argue in favor of property rights reform. These sources lay out a number of reasons for why these groups support such programs. In addition to the reformers themselves, a number of academics have also expressed their support for property rights reform efforts. Many others, though, have made the opposite claim, arguing that there is little evidence supporting the effectiveness of such reform. These individuals point to a number of reasons for why, at least in their eyes, property rights reform does not necessarily lead to development. Looking more deeply at the claims made by each side can help reveal the strengths and weaknesses of their arguments.

Arguments in favor of property rights reform

A number of the arguments that have been made in favor of property rights reform have come from groups like the World Bank, including both theoretical arguments and ones based more on empirical evidence. Many of these arguments deal with legal reform more generally, but can be used to lend support to property rights reform more specifically as well. Sources based on empirical evidence often tout statistics which, according to these groups, show the effectiveness of legal reform. The main arguments made by property rights reform's supporters are that the empirical evidence shows a positive relationship between such reform and development, that it offers many benefits such as promoting commercial activity, preserving the environment, and protecting the interests of minority groups, and that there are many historical examples of the success of these reforms.

The World Bank has argued, for instance, that there is evidence supporting a causal relationship between improved governance and development outcomes. In an aggregate study of 300 different governance measures, researchers at the Bank found a connection between six core elements of governance (Voice and Accountability, Political Instability and Violence, Government Effectiveness, Regulatory Burden, Rule of Law, and Graft) and "outcomes such as higher per capita income, lower infant mortality, and higher literacy" (Kaufmann et al., 1999, p.1). While none of these six indicators deal directly with property rights, some could be seen as relating to the protection of such rights. The Rule of Law indicator deals with the extent to which laws are applied fairly and equally to all citizens, and it seems this would include the application of laws surrounding property rights. The government's ability to effectively enforce property rights also seems like it would fall under the Government Effectiveness indicator.

Additionally, some of the governance measures used to create these aggregate indicators do mention property rights explicitly. It is one of the core factors in the Heritage Foundation's Index of Economic Freedom, for example (Kaufmann et al., 1999, p.48).

Overall, the study found that the better a country did in these six areas, the greater the quality of life experienced by its citizens. Most dramatically, the researchers found that an increase of one one-standard deviation above the mean in any of these indicators results in 2.5 to 4 times increase in per capita income. They also found that a correspondingly large decrease in infant mortality occurs at the same time, and that literacy rates rise by roughly 15 to 20 percent (Kaufmann et al., 1999). The researchers argued that this data demonstrates the importance of investing more in reform efforts targeted at improving governance.

While these results do show the promise held by legal reform, it seems that the researchers go too far in concluding that there is definitely a causal relation between such reform and wider development. Their study does show that the six indicators they look at correlate with better performance in various areas of development, but it does not necessarily imply that these indicators are the causal factor for this performance. It could be that there is another confounding variable (or variables) responsible for both better governance and improved development outcomes. If this were the case, it would challenge the idea that simply enacting legal reform in certain areas will bring about development, and raise doubts about the researchers' conclusions. This issue of correlation versus causation plagues many of the arguments made in favor of property rights reform. As will be seen later, other studies of property rights reform's effect on development have found much more mixed results.

Other statistical evidence deals more specifically with property rights. One such measure is a comparison of per capita income and expropriation risk in different countries, originally included in *The International Country Risk Guide*. Expropriation risk measures the chance that individuals will "fail to realise the fruits of their investment and efforts" due to weak property rights protections (Besley and Ghatak, 2009), and serves as an indicator for how strongly property rights are protected in a country. Countries that have a greater level of expropriation risk tend to have lower per capita incomes, and vice versa. This seems to indicate a connection between the two factors, and could be used to argue that strong property rights protections help lead to economic development.

Another similar piece of evidence comes from comparing ease of registering property with per capita income. The World Bank's *Doing Business* project compared these two factors for 172 countries and found a correlation between them. In countries where it is easier to register property, per capita income tends to be higher. Similarly, countries with more obstacles to property registration tend to have lower average incomes (Besley and Ghatak, 2009). While this correlation isn't as strong as the previous one, it still suggests that property registration and economic development are connected in some way. With both of these measures, though, the issue of correlation versus causation must be kept in mind. They can be used to argue that property rights and economic development are related, but they do not necessarily show that property rights reform can cause this kind of development.

Other arguments for property rights reform are more theoretical in nature. They deal with the substance of how legal reform could help spur on economic development. As with the empirical examples, these theoretical arguments are also often put forward

in publications released by the World Bank and other reform groups. Oftentimes these sources simply assume the causal link between legal reform and development, and they commonly include language like, “there are strong links between the rule of law, economic development, and poverty reduction... therefore the World Bank and organizations with comparable mandates should make promoting the rule of law a priority” (Legal Vice Presidency, 2003). Others though do delve more deeply into the specifics of this connection and provide more concrete arguments when it comes to property rights.

Many of the potential benefits offered by property rights reform, discussed in the previous chapter, are pointed to by those who argue in favor of reform policies. They argue that property rights protections encourage individuals to invest in their property to make it more productive, and make them more willing to engage in commercial transactions. Additionally, the potential to use formally recognized property as collateral for loans is often cited as one of the main arguments for property rights reform (Legal Vice Presidency, 2003). Others argue that such reform can reduce expropriation risk, reduce the costs associated with defending property, ensure that assets are “used by those who can do so most productively,” and promote various types of commercial transactions (Besley and Ghatak, 2010, p.4528).

Many reformers also point to the role legal reform could play in achieving sustainable development. They argue that legal reform policies, including property rights reform, could be used to not just bring about wider economic growth but to improve the living conditions experienced by the average citizen (Boisson de Chazournes et al., 2016). These policies could have a positive effect on the lives of indigenous peoples, benefit historically disenfranchised groups like women and minorities, and help with the protection of the environment (Tuck and Zakout, 2019). Finally, those arguing in favor of property rights reform often point to countries where such reform has been implemented successfully, at least at first glance. As discussed in the previous section, property rights reform was successfully implemented in Poland after the fall of the Eastern Bloc, and the country experienced a period of rapid economic growth following this implementation (Goldman, 1999). Similarly, Peru is often cited as a shining example of property rights reform’s success. After the Peruvian government began a program of formal property registration, the country’s economy started quickly improving and the country’s guerilla war came to an end.

These examples, though, are not necessarily indicative of the broader potential of property rights reform. In the cases of Poland and Peru, it could have been some other social or economic factor that led to both the strengthening of property rights and the wider development the countries experienced. Also, even if the property rights reform policies were the cause of development in these instances, it doesn’t mean that reform would necessarily lead to development anywhere it was implemented. It’s possible that other factors need to be present in combination with property rights reform in order for reform efforts to be successful. Perhaps the conditions in Poland and Peru were just right for enabling property rights reform to be successful, but in other countries these conditions may not be present.

Arguments against property rights reform

Just like with the arguments for property rights reform, the arguments commonly made against it are based on a mix of both empirical evidence and more

theoretical claims. Some critics doubt property rights reform in principle, and argue that such reform does not have any possibility of being successful. Others focus more on property rights reform in practice. They argue that while this reform could be effective, there have been many issues with the way it has been implemented by the World Bank and other reformers, which have prevented it from being successful. Other arguments focus on the failure of property rights reform to achieve sustainable development goals, and on real world examples of places where such reform has failed.

While some empirical studies have claimed to reveal the success of property rights reform, others have presented less promising results. In a survey of a number of aggregate statistical studies, Law and Development scholars Kevin Davis and Michael Trebilcock found mixed results when it comes to legal reform's effect on development. Some of these studies seemed to indicate that legal reform does have a positive effect on economic growth, but others showed no such effect, and some even found a negative effect in certain instances (Davis and Trebilcock, 2001). They found similarly mixed evidence regarding property rights reform more specifically. Studies looking at the effects of formal land titling projects, land privatization efforts, and reforms designed to make it easier to sell and transfer ownership of property all failed to reveal conclusive results. While these empirical studies don't necessarily disprove the claims of those who support property rights reform, they do "fall well short of validating the claims that [supporters of reform] tend to make about the merits of formalised, individualised and freely alienable property rights" (Davis and Trebilcock, 2001).

Other arguments attack the ideological foundations of property rights reform. According to some critics, those who support reform make a variety of faulty assumptions about the connection between strong property rights and economic development. Of these, the two most significant assumptions are that development cannot occur without the strengthening of private property rights, and that reforming property rights will inevitably bring about development (Upham, 2018). The cases of China and Cambodia serve to illustrate the problems with these two perspectives. Over the last few decades, China's economy has grown at an incredibly fast rate, despite the lack of any reform to the country's property rights law. Conversely, in Cambodia extensive reform efforts have failed to bring about wider development. These examples call into question some of the most fundamental ideas underlying property rights reform efforts.

Critics of property rights reform have identified a number of other assumptions made by its supporters that they believe to be flawed. Among these are the assumptions that laws surrounding property rights can be separated from other social and economic elements of a society; that property rights have some ideal form that all countries should strive to achieve; that formalized forms of property recognition are necessarily better than informal ones; and that strong property rights will inevitably lead to resources being distributed in the way that's most efficient and beneficial for the entire economy (Kennedy, 2009). All of these are ideas that are simply assumed to be true by those who support property rights reform. Reform policies are thus designed with these ideas in mind, and based on the perspective that they are all valid. If one or more of them are flawed, however, as critics of property rights reform claim, then the potential effectiveness of these policies is called into question.

Another theoretical argument against the effectiveness of reform has to do with the concept of development clusters. These clusters provide an interesting and insightful

way to look at the shortcomings of legal reform. The concept refers to the tendency for countries to be at similar levels of development in multiple different areas of society. The three core areas most often discussed with reference to development clusters are per capita income, government institutions and legal systems, and peace and stability (Besley and Persson, 2014). Countries that do well in one of these areas tend to also do well in the other two, and vice versa. This tendency seems to indicate that there is some independent factor (or factors) that contribute to simultaneous development in all of these areas, or that development in each area results from a positive feedback loop between it and the other two (Besley and Persson, 2014).

Both of these possibilities challenge the potential effectiveness of property rights reform. If there is some independent factor that leads to legal and institutional change, economic growth, and peace and stability, then it seems that simply modifying one area of the law, like property rights, without the presence of this factor would fail to bring about broader development. Likewise, if development results from these areas advancing in tandem, altering only one of them might not be enough to trigger the positive feedback loop needed for wider development to occur. The existence of development clusters raises doubts about whether a narrow focus on property rights reform, or legal reform in general even, could bring about large scale sustainable development.

These arguments have largely dealt with the ability of property rights reform to bring about development in principle, but others are more concerned with how such reform has been implemented in practice. Some argue that while reform to property rights and other areas of the law could theoretically be successful, there are multiple problems with how it has actually been implemented. Reform programs, they say, have focused too much on simply introducing updated legal codes and altering legal institutions. They haven't targeted the main obstacles to the kind of true reform that would bring about development. This obstacle, these critics argue, is the willingness of governments and leaders to comply with these new laws and accept limits to their own power (Carothers, 1998).

Achieving this requires a focus on deeper cultural change. To bring about this change, reform programs need to promote values that will make a country's leaders and the population as a whole more accepting of the legal changes being implemented. Without this acceptance, it is unlikely that a country's leadership would enforce or comply with such changes, and that the country's citizens would actively push for their leaders to do so. Educational programs and awareness campaigns would thus need to be a part of any successful reform effort. This kind of reform is a much more gradual process than the simple introduction of new laws, "as breaking down entrenched political interests, transforming values, and generating enlightened, consistent leadership will take generations" (Carothers, 1998, p.105). According to this argument, it is unlikely that the kinds of property rights reform programs pursued by reform groups like the World Bank will be successful, as for the most part they have not targeted this deeper cultural change.

Finally, those critical of property rights reform often point to countries where property rights reform has been unsuccessful as evidence of its ineffectiveness. There are multiple examples of such countries, including the cases of Cambodia and Russia previously mentioned. One might say that this is not a strong argument, as there are also examples of countries where property rights reform has been seemingly effective.

Opponents of property rights reform might say though that this evidence is still on their side.

In order to argue that property rights reform is effective, one would need more conclusive evidence that it alone is responsible for bringing about development in the majority of cases. The burden is on the supporters of such reform to show that it is successful most of the time. Critics of property rights reform just need to show that it is frequently unsuccessful in order to argue against it. In the places where it has seemingly been successful, it could be that other factors just so happened to contribute to the country's economic growth at the same time as reform was being implemented. The existence of unsuccessful examples though means that property rights reform is not a definite recipe for development, which counters the arguments made by reformers.

This is not the only area where property rights reform's critics make the stronger argument. I believe these critics make the more compelling case regarding the impact of property rights reform on development overall. In addition to the historical examples described, the statistical evidence and theoretical arguments made by reform's critics are also more persuasive than those advanced by its supporters. While property rights reform may be successful in some instances, its opponents have successfully shown that it is not a definitive recipe for wider development. A more in depth discussion of my agreement with these critics and my overall assessment of property rights reform's impact will be provided in the conclusion of this paper. First though, the case studies of Peru and Cambodia will highlight the ideas and arguments discussed so far.

Case studies

So far we have looked at some of the different theories that have been proposed on law's relationship to development, the features and potential benefits of property rights reform policies, and the arguments that have been made both for and against the effectiveness of property rights reform in bringing about development. While I have briefly looked at some specific property rights reform programs, a more in depth look at individual examples has not yet been conducted.

In this section, I will analyze two case studies: the case of Peru, where property rights reform was seemingly successful in encouraging development, and the case of Cambodia, where such reform seems to have failed. In addition to showing the contrast between places where reform has succeeded and where it has failed, these cases also serve as great examples of the different concepts and arguments discussed throughout this paper. The specific features of these programs have been extensively documented, and enough time has passed since their implementation that their impact can be properly examined.

For the case of Peru, I will be relying mainly on the book *The Other Path*, by Hernando De Soto, and for Cambodia I will primarily be using Frank Upham's book *The Great Property Fallacy*. In looking at each case, I will describe the state the country was in before reform efforts began, detail the specifics of the reform policies that were implemented, and examine their impact on the country and whether they contributed to wider development. Each case will also be used to highlight the different theories and perspectives that have been discussed so far.

Peru

In the early 1980s, Peru was a rapidly changing place. In the previous few decades, millions of Peruvians had migrated to the nation's largest cities, abandoning their traditional lifestyles in the country in search of a better life. As such, a whole new class of urban workers began to grow rapidly. These newcomers were highly entrepreneurial, and many of them became street vendors, mini bus drivers, and other types of business people (De Soto, 1989). Peru's inefficient and outdated legal system was unable to keep up with this rapid change, however.

The vast majority of these workers operated outside of the legal system, with no official recognition of their property or business. An estimated 4.8 percent of Peruvians at the time were legally employed, while between 60 and 80 percent were believed to be a part of the unrecognized entrepreneurial class, operating roughly 56 percent of Peru's businesses. The vast majority of property also went unrecognized: an estimated \$80 million in assets were held by Peruvians informally (De Soto, 1989, Location No. 114). In Lima, 69 percent of all homes constructed existed outside the official legal system (De Soto, 1989, Location No. 1041). This was all largely a result of how difficult it was to register a property or business formally. It would take someone 21 years to obtain the legal title needed to build a home on unused land, and over 13 years to get the proper permits needed to open a retail market (De Soto, 1989, Location No. 114), obviously absurd and unreasonable amounts of time.

The members of this informal economy created their own extralegal system to govern their affairs. Owners of unrecognized land developed informal organizations to protect their property and make it more valuable. These groups served "a whole range of functions, from negotiating with the authorities, preserving law and order, and trying to provide services, to registering the properties in the settlement and administering justice within it" (De Soto, 1989, Location No. 654). Street vendors also developed their own informal system of property ownership. Vendors would each claim a section of the street or sidewalk to be their own, and for the most part would respect each other's exclusive rights to use these areas.

These extralegal systems did provide Peruvians with some property protections, but there were still a great deal of benefits that those in the informal economy missed out on. Without official recognition of their property, they were unable to use what they owned as collateral to take out loans. They could not create business entities to hold their property, limit personal liability in their commercial endeavors, and issue shares to raise capital. They could not obtain insurance on their property that would make them more likely to take economic risks. Owners of unrecognized property were reluctant to rent out their dwellings, out of fear that a tenant might end up claiming the property as their own. The list goes on. The extralegal system was unable to provide many of the rights and privileges that are offered by a formal legal system and promote economic activity.

This had a major impact on Peru's economy and its society as a whole. In the early 80s, Peruvians' average income had been declining steadily for a decade, and was at lows not seen in over twenty years (De Soto, 1989, Location No. 381). Additionally, crime rates soared, with thefts and illegal seizures becoming commonplace. Most dramatically, this economic situation led to the rise of the Shining Path, a Maoist terrorist organization which sought to alleviate the country's situation by implementing a communist economic system. The Shining Path was able to attract supporters from the ranks of those who were struggling economically and felt excluded from the official legal

system, and at its peak had over 80,000 members. One of the main draws of the group was that it promised to protect the property rights of poor Peruvians in response to the government's failure to do so. In the early 80s, Peru was essentially in a state of civil war against this group. Over 25,000 people had been killed in the conflict between the Shining Path and the government, many of those being civilians.

Starting in the mid-1980s, the Peruvian government began to undertake efforts to reform the broken system of property rights that had led to this crisis. The reforms they enacted were based largely on ideas from the book *The Other Path*, published by Hernando de Soto, a member of the political think tank The Institute for Liberty and Democracy (ILD). In the book, de Soto proposed a path to prosperity that countered the more radical ideas of the Shining Path. While the Shining Path's rhetoric treated poor Peruvians like helpless victims that needed saving, de Soto argued that they were in fact highly capable and entrepreneurial. He claimed that it was the lack of strong, formalized property rights protections that held them back, and that reforms to the country's property rights law could bring about economic change, lift millions out of poverty, and end the war (De Soto, 1989, Location No. 149). *The Other Path* and its ideas were very popular in Peru: it became a number one bestseller, it was discussed widely in newspapers and on television, and shortened pamphlets summarizing its ideas were spread throughout the country.

In response to the public support for the ideas of the book, and looking for a solution to the country's many problems, the Peruvian government partnered with the ILD to actually implement the ideas de Soto had proposed. They set out to completely reform the country's legal system and the way it dealt with property rights. One of their main focuses was on streamlining the process of property registration. By making this process simpler and more efficient, the government reduced the time it took to formally register property from more than 12 years to around only one month. They also reduced the costs of registering property by 99 percent (De Soto, 1989, Location No. 202). The government also established an ombudsman to look after the interests of the poor, and began hosting "Administrative Simplification Tribunals" to hear citizens' complaints about inefficiencies and excessive red tape in the bureaucracy. By the end of the 1990s, these reforms brought over 300,000 property owners into the official legal system, accounting for roughly 75 percent of the properties that had previously gone unrecognized.

These reform programs, and the increase in formal property ownership that resulted from them, were seemingly very successful. A period of rapid economic growth followed their implementation. Peru had high rates of GDP growth throughout the 1990s, and in 1994 had the highest growth rate in the world at 12 percent (De Soto, 1989, Location No. 213). Additionally, Peru's Human Development Index increased by 13 percent between 1990 and 2000 (United Nations Human Development Report, 2020). These economic advances also led to a decrease in crime rates, and an end to the Shining Path and the war the group had been waging with the government. By the mid-1990s, the group had been almost entirely broken up and most of its leadership had been arrested. The group's message and promise of property protection were less appealing after the government started offering a legitimate alternative to prosperity for Peru's poorest citizens.

The case of Peru involves many of the concepts that have been discussed so far in this paper. For one, the features and goals of the reform program mirror those looked at

earlier. Reform was aimed at formally recognizing the property of those whose property had previously gone unrecognized. The Peruvian government sought to accomplish this by making the process of registering property more efficient and enacting stronger property protections. Additionally, Peru's reform program was focused on more than just economic growth. The reforms enacted there achieved some of the wider aims of sustainable development, and led to an increase in the quality of life experienced by the average citizen. Personal safety is one of the core elements of sustainable development (Soubotina, 2004), and the average Peruvian experienced a dramatic increase in their personal safety with the end of the war against the Shining Path.

At first glance, this case study seems to serve as a shining example of the success property rights reform can have. Some of the arguments against property rights reform, though, call into question whether it was the country's reform programs that were really responsible for the development seen there. Many of property rights reform's critics argue that it is hard to tell if reform is really the causal factor behind development. It might be that some independent factor was responsible for both the development seen in Peru and the government's success in implementing legal reform. Perhaps whatever is behind the phenomenon of development clusters is what allowed Peru to advance in multiple areas at the same time. While these ideas are speculative and would be hard to prove conclusively, they are successful in raising doubts about the success of Peru's property rights reform programs.

Even if the reform programs were responsible for the development seen in Peru, they might be the exception that proves the rule about how hard it is to implement legal reform successfully. As we saw earlier, critics of reform programs charge that they often fail because they focus too much on simply changing the laws on the books and not enough on achieving the deeper cultural change and the support from leadership needed for these laws to be successfully enforced. Peru might be one of the rare cases where these things were actually achieved. *The Other Path* was incredibly popular in the country, and its ideas became fervently supported by millions of people. Additionally, the Peruvian government was willing to listen to the ILD, and allowed the group to play a large role in designing reform policies. Without this support from the country's population and leadership, it is unlikely that reform would have been successful. Additionally, it might be that Peru's strong culture of informal property rights allowed for a relatively easy transition to a more formal system. Countries without these strong informal systems of property rights might have a more difficult time with this transition. Whatever the case, it is likely that something unique to Peru contributed to the success of the reforms implemented there. So while Peru might serve as an example of a successful property rights reform program, it might not lend support to the arguments that such reform would be successful anywhere it would be implemented.

Cambodia

Despite debate over the true cause of Peru's economic growth and over whether the reforms implemented there could be successful elsewhere, it is clear that development in the country was at least achieved in some way. Conditions for the majority of the country's residents have improved dramatically over the last few decades. Even with all the disagreements we've looked at, it is easy for supporters of property rights reform to point to the country as evidence for why such reform should be pursued. On the surface at least it seems that the formalization of Peru's system of

property rights helped achieve wider development. When it comes to the case of Cambodia though, supporters of reform don't even have this veneer of success to point to. The reforms implemented in Cambodia clearly failed to achieve their goals, and they serve to bolster the arguments made by reform's critics.

Historically, all land in Cambodia was the property of the king. Individuals could occupy and use certain plots of land, and pass on these plots to their heirs, but ultimately the land belonged to the king (Upham, 2018). In the 1920s French colonial authorities introduced Western style private property rights, but the government lacked the ability to issue titles on a large scale. In the succeeding decades only around 10 percent of land was formally titled. When the communist Khmer Rouge took over in 1975, they abolished private property rights and destroyed all records of property ownership. This had disastrous results. Over the next five years, nearly 2 million Cambodians died and national rice production decreased by nearly 80 percent. The Khmer Rouge also purged most of the country's political and intellectual elites, leaving few people with the knowledge and ability to run a formal system of property registration (Upham, 2018).

It wasn't until the United Nations Transitional Authority in Cambodia took power in 1991 that the first attempts to reform the country's system of property rights were made. At the time, Cambodia remained one of the least developed countries in the world, and it was hoped that, like in Peru, property rights reform would spur economic growth and overall development. The Transitional Authority took tentative steps toward reform in the 1990s, but the first major step towards reform happened with the passage of the 2001 Land Law (Upham, 2018). This law introduced a system of property rights that determined "ownership exclusively on the basis of formal registration with a centralized cadastral agency" (Upham, 2018, p.107).

The law served as a way for Cambodia to redistribute the land that had been nationalized by the Khmer Rouge, as at the time roughly 80 percent of the country's land was still owned by the government. Under the law, claimant's qualified for official title to their property if they could prove that they had held uncontested possession of the land for at least five years prior to 2001 (Upham, 2018). If the claimant could not provide sufficient proof of their claim to the land, it remained in the possession of the state. The possession also had to have been before 2001, "no matter how long, open, and peaceful, post-2001 informal possession or use cannot ripen into ownership or even a continued right to possession" (Upham, 2018, 108).

The law had some success. As of 2010, more than two million certificates of title had been issued. Additionally, banks have begun accepting title certificates as collateral for loans, and there have been examples of certificates being used to settle disputes between individuals (Upham, 2018, p.112). There have been many issues with the Land Law, however. For one, at the current rate it is estimated it will take decades for all the property in the country to be titled. Another major issue has been the lack of reporting of title sales and transfers. Under the law, individuals must report changes in ownership of officially titled property to the government so that official records accurately reflect the current owner of the property.

Many Cambodians are unaware that they need to report these transactions however, and oftentimes title certificates are transferred with no notification given to the government (Upham, 2018, p.111). This makes it difficult for the new owners of the property to fully enjoy the rights granted to them by the Land Law, and for property

disputes to be settled down the line. The system of registration is also susceptible to fraud. Land officials rely mainly on documentation in giving out titles, allowing people with fraudulent documents to secure claim to land that isn't really theirs, and leaving the legitimate owners with little recourse.

Another major problem with the law is that it has benefited the interests of the rich and powerful over those of the average Cambodian. The law dictated that the government, in choosing which properties to grant title to first, should "begin with areas that were neither 'likely to be disputed' nor of 'unclear status' and to avoid 'informal' settlements altogether" (Upham, 2018, p.111). This gave the government a lot of discretion in choosing when to grant title. While in many instances they have used these guidelines legitimately, in others they have been abused by corrupt officials.

For example, in the popular tourist area of Boeung Kak Lake, the government refused to issue title to local residents occupying the land around the lake, even though for the most part they had extensive proof of their possession of the land for over five years prior to 2001. The government first claimed that these properties would be held as public land, despite the valid claims of local residents. It was then announced that they had signed a \$79 million lease with a major real estate development company to turn the land around the lake into a commercial center. This company just so happened to be well connected politically. On top of this, the residents of the area were given compensation far below the market value of their property (Upham, 2018, p.119).

Many similar incidents have occurred. In 2006, for instance, the government granted over 18,000 hectares of land to the Koh Kong Sugar Industry Company, despite the fact that this land was home to many villagers who had proof that they had resided there for decades. The sugar company then forced most of these villagers off the land. Some were able to stay, but their way of life was dramatically impacted by the company's activities. While the Land Law was designed to benefit the lives of the average citizen, in instances like these and many others the law has backfired, providing benefits only to the rich and powerful.

When it comes to the Land Law's impact on development, the evidence is mixed. In purely economic terms, Cambodia has seen GDP growth, but it is difficult to say if this has been a result of the property rights reform brought about by the 2001 Land Law. From a broader conception of development though, one that takes into account the various aims of sustainable development, it appears that the reform efforts in Cambodia have failed. As Frank Upham puts it, we must weigh raw GDP growth against "Amartya Sen's definition of development, one that values governmental legitimacy, social trust, political development, bureaucratic competence, control of corruption and the expansion of individual capabilities as ends in themselves" (Upham, 2018, p.128). The 2001 Land Law has largely failed to achieve these aims, which are arguably more important to the development process than the purely economic ones. GDP growth doesn't mean much to the average citizen if it comes as a result of him being kicked off his land so that it can become a part of a sugar plantation run by a multinational company.

Just like with the case of Peru, the case of Cambodia highlights many of the issues we have discussed so far in this paper. It illustrates the contrast between development that is purely economic in nature, and development that takes into consideration other factors that impact the average citizen's quality of life. It also provides support to many of the arguments made by those who oppose property rights reform. For one, it serves as

a clear example of a place where such reform failed to achieve sustainable development, even if it could be argued that some economic growth was achieved.

Additionally, the case of Cambodia helps reveal many of the faulty assumptions made by those who support reform, such as the assumptions that strengthening property rights will inevitably lead to development, that formal forms of property recognition are invariably better than informal ones, and that there exists an ideal form of property rights that can be successfully imposed in any cultural context (Kennedy, 2009). The cases of Peru and Cambodia should be looked at by any future development official attempting to design a legal reform policy.

Conclusion

On the whole, the evidence available regarding the effectiveness of property rights reform in bringing about development is mixed, but seems to provide more support to the arguments of those who oppose these reform policies than those who support them. Before diving more deeply into why this is the case, I will provide a short summary of the issues discussed throughout this paper and the evidence presented in favor of each side.

Supporters of property rights reform policies point to the potential benefits offered by these programs. They argue that strengthening property rights will allow citizens to feel more confident in the outcomes of their commercial activity and encourage them to take more economic risks. With stronger property rights in place, they argue, individuals will be more likely to do things like start businesses and invest in making their property more productive. Additionally, greater property recognition could allow people to use their property as collateral for taking out loans, providing them with capital to invest in their own business endeavors. On a large scale, overall development would be driven by the collective effect of a large percentage of the population engaging more confidently in such economic activity.

The broader aims of sustainable development are also pointed to by proponents of property rights reform. They argue that such reform can not only bring about economic growth, but that it can help achieve the goals of sustainable development as well. The strengthening of property rights could help protect the environment, alleviate hunger, and benefit historically disadvantaged groups like women, the poor, and indigenous communities. Proponents of reform also point to some statistical evidence which they claim supports their arguments, including studies that compare per capita income to measures that are related to the strength of property rights found in a country, like ease of registering property and expropriation risk (Besley and Ghatak, 2009). These studies show a strong correlation between per capita income and these measures. Finally, these supporters point to examples of places where property rights reform policies did achieve success. Examples include the World Bank's efforts to formally recognize the land rights of indigenous groups in Nicaragua, the Bank's project in Macedonia to build a more effective property registration system, and the case of Peru's economic transformation.

Critics of property rights reform make a number of counter arguments to these claims. While supporters tout statistical evidence that they say shows the success of property rights reform, critics point to a number of other studies that seem to indicate the opposite. There are some studies which have found a positive relationship between legal reform and economic growth, but there are also others that have found no

relationship between the two or even a negative one. Studies looking at property rights reform more specifically have revealed similarly mixed results (Davis and Trebilcock, 2001). In addition to these empirical arguments, critics of such reform also claim that its supporters make a number of faulty assumptions about the relationship between property rights and development. They criticize, for example, the assumptions that development cannot occur without property rights reform, and that such reform will inevitably lead to development.

Other criticisms focus on whether legal reform could be effective in principle. The concept of development clusters, for instance, raises doubts over whether reform could ever have any substantial impact on development. Some of property rights reform's critics argue that while reform could work in principle, there are problems with how it has actually been implemented and point to the practical obstacles to success. Finally, property rights reform's detractors point out the places where such reform has failed to bring about any kind of development, such as Russia and Cambodia.

The supporters of property rights reform do make some moderately compelling arguments, and they have some basis for the claims they make. Overall though, the arguments made by the opponents of property rights reform are stronger and more convincing. For one, the supporters of property rights reform rely too much on their relatively weak theoretical arguments. These supporters refer to the connection between strong property rights and economic growth in their rhetoric, and tout all the potential benefits that such reform offers, but they don't provide enough evidence of these things playing out in the real world.

While the opponents of property rights reform do rely on theoretical arguments as well, the claims they make are more persuasive. The concept of development clusters, for example, provides a strong case for why development in one area of society, like the legal system, may not be enough to spur on wider development. The charge made by Carothers that reform programs focus too much on simply changing the laws on the books is another example of how the theoretical arguments made by property rights reform's critics are more compelling. Supporters of reform tend to seem more dogmatic about their theoretical ideas, and simply state that strengthening property rights will lead to development as if it were definitely true.

The statistical evidence also seems to be more on the side of property rights reform's critics. The empirical evidence that supporters point to really shows more of a correlation between reforming property rights and wider development, and doesn't necessarily indicate that reform causes growth. These measures simply show that places with stronger property rights tend to have more developed economies. The studies that look more specifically at the impact of reform programs show much more mixed results. As described earlier, while they show that reform has had a positive effect in some instances, they also show that it has had either no effect or a negative one in many others. While this evidence is mixed, it still serves to support the arguments of reform's opponents. To make their case, supporters of property rights reform need to show that there is a strong positive relationship between reform and development. All opponents need to do is show the absence of this strong relationship. The mixed results seen so far seem to constitute such an absence.

Finally, the many examples of property rights reform's failures provide strong support for those who criticize such reform. There are some examples of property rights reform succeeding, as we have seen, but just like with the statistical evidence the burden

of proof is on the supporters of reform to show that it succeeds in the vast majority of cases. The fact that it fails so often seems to show that such reform cannot itself lead to development, as many of its supporters claim. Even if it does play a role in bringing about development in some instances, it is clear that it can only be successful in certain conditions or in combination with other factors. It is also possible that other independent factors were really responsible for the economic growth seen in places where property rights reform was seemingly successful. Additionally, the existence of cases where development has occurred without any reformation of property rights further undermines the arguments of reform's supporters.

While I have argued that critics of property rights reform's effectiveness in bringing about development make a stronger case, the issue is far from being settled. Further research is needed to determine more conclusively which side of the argument has the more accurate perspective. More statistical data needs to be collected on the effectiveness of legal reform in general and property rights reform in particular. More research also needs to be done into other factors that influence development, development clusters being one area of focus that seems particularly promising. Future research should focus on examining whether reforming one area of society can bring about development in other areas, or if all areas need to be focused on simultaneously. It is crucial that scholars and reformers develop a better understanding of the relationship between property rights reform and development, and of the development process as a whole. The better they understand these things, the more successful they will be in improving the quality of life experienced by the billions of people around the world currently living in underdeveloped areas.

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