

Why property laws do not work outside the West?
The analyses of the views of H. de Soto on the role of private property protection laws
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Почему законы о частной собственности не действуют за пределами запада?
Анализ взглядов Э. де Сото о роли законов в защите частной собственности.
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Abstract: *the article analyzes the views of the Peruvian economist Hernando de Soto on the role of a developed legal system and its connection with the institution of private property. The analysis of de Soto is based on developing countries and built on the example of the Peruvian economy, while in this article more emphasis is placed on the Russian economy.*

Аннотация: *в статье анализируются взгляды перуанского экономиста Эрнандо де Сото о роли развитой законодательной системы и связи её с институтом частной собственности. Анализ де Сото касается развивающихся стран и построен на примере экономики Перу, в то время, как в рамках данной статьи больший акцент делается на российской экономике.*

Keywords: *private property, Hernando de Soto, developing countries, institutionalism.*

Ключевые слова: *частная собственность, Эрнандо де Сото, развивающиеся страны, институционализм.*

In chase to clarify why some countries become rich while others remain poor, economists suggest many possible interpretations. In spite of there is no consensus, some factors are widely recognized as being positively correlated with economic development. Afterwards, economists are emphasizing the role of institutions in the development process (North 1990, 2005). The most important of these institutional structures is the presence of secure and well-defined property rights, something that economists have long claimed must exist for markets to function effectively.

To analyze reasons why property laws do not work outside the West and main factors influenced on its issues, current situation and what views exist on the topic, here will be investigated a part of the book of H. de Soto “The Other Path and The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else”.

H. de Soto advanced a lot of ideas in his book, most of them are presented below.

1. Listening of your own people is the most relevant source for government for creating a law system, in particular, property laws, because laws emerged from extralegal sector and already formed social behavior could be recognized and enforced by society itself [1, p. 171].

2. At the same time in developing and third world countries could exist two law systems, legal and extralegal, for its part, regulated by its own institutions. These institutions are not maintained separately connecting with government officials in some checkpoints, where the former struggle to gain official acceptance and the latter try to achieve a semblance of order [1, p. 188].

3. Mainly based on west law system, developing and Third world countries have difficulties to adapt capitalism. Because of poor law system, a significant part of money does not work for the benefit of the state being a dead weight in foreign Bank accounts or offshore companies [1, p. 223].

Why did the book cause such a stir among economists and politicians? First, property rights eventually assist economic growth. Thus, the works of these scholars provide theoretical linkages between secure and well-defined property rights and economic development consistent with de Soto.

Second, the empirical literature examining the impact of property rights finds that more secure property rights are positively correlated with a country’s level of investment and economic growth.

Third, in an examination of the variation in output per worker across countries, Hall and Jones (1999) emphasize the importance of social infrastructure, defined as government policies and institutions, and conclude that a good social infrastructure positively affects economic performance.

These studies are able to determine that secure and well-defined property rights positively influence the level of economic development.

Over time, new ideas appeared that led to the emergence of criticism of the main ideas of “The Mystery of Capital” H. de Soto, which can be divided into 6 main components.

1. The experiences so far. De Soto neglects that experiences from the past demonstrate that titling does not work [2, p. 62].

2. Customary practices (legal pluralism). De Soto neglects the role of customary tenure and management as existing legal institutions, although not under the formal 'bell jar' [3, p. 54].

3. Land distribution De Soto neglects the skew access to land in many countries [3, p. 59].

To conclude, it should be to summarized ideas mention above and add ideas about property laws in Russia. First, our institution of private property is very young, as we did not even have ideas of something private, everything in our country was public due to socialism. Russian mentality is unfamiliar with idea of capitalism at all, as far as, our people relied on the power of the state and believed that somebody could take a true decision for them. Thus, time has come only now and legislative regulation of private property starts to form in West way. (e.g. So far privatization of the housing)

Second, our legislature should listen our people, when they lay down and then pass a law to ensure its implementation. Nevertheless, our lawyers must use only "barking dogs" in this process, because the state cannot invent law on an empty place. It should be mentioned that any legal system has developed nor in isolation from its legal family to which a state belongs historically. Here Russia refers to the Romano-Germanic legal family. Primarily this means that the legislation is codified (e.g., there are codes, there are separate laws). Our legal system is very similar with German law, because it is based on Roman statutes and the contemporary German law, and it is hard to say could we did it in better way or not. In this case, it should not be called rewriting, because it is the basics of the whole law system and we just cannot change some underlying principles.

References

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